FORM OF ORDER SHEET

Court of _____

Appeal No. 1611/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	07/08/2023	The appeal of Mr. Abid Ali is presented today by Mr. Kabir Ullah Khattak Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on By the order of Chairman REGISTRAR

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

In Re S.A No. 1611 /2023

Abid Ali

VERSUS

Govt of Khyber Pakhtunkhwa through Secretary home Tribal Affairs department KPK Peshawar & others

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Abid
APPELLANT

Through

Kabir Ullah Khattak
Advocate, High Court
Peshawar.

(1)

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

In Re S.A No. 1611 /2023

Abid Ali S/o Said Akbar Shah R/o Mohallah Bahadar Abad, Tehsil Batkhela District Malakand.

Appellant

VERSUS

1. Govt of Khyber Pakhtunkhwa through Secretary home Tribal Affairs department KPK Peshawar.
2. Inspector General of Police Khyber Pakhtunkhwa.
3. Deputy Commissioner / Commandant Malakand Levis Malkannd
4. Regional Police Officer Malakand.
5. District Police Officer Malakand.

Respondents

APPEAL U/S-4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 25/08/2011 WHEREBY THE APPELLANT HAS BEEN TERMINATED FROM SERVICE AGAINST WHICH THE APPELLANT FILED DEPARTMENTAL APPEAL ON 15.09.2011 WHICH HAS NOT BEEN DECIDED WITHIN STATUTORY PERIOD OF 90 DAYS.

(2)

Prayer:-

ON ACCEPTANCE OF THIS APPEAL THE IMPUGNED TERMINATION ORDER DATED 25.08.2011 MAY KINDLY BE SET ASIDE AND THE APPELLANT MAY KINDLY BE REINSTATED IN SERVICE ALONGWITH ALL BACK BENEFITS. ANY OTHER REMEDY WHICH DEEMS FIT BY THIS HON'BLE TRIBUNAL MAY ALSO BE GRANTED IN FAVOUR OF THE APPELLANT.

Respectfully Sheweth,

1. That the Appellant was appointed as a Sepahi BPS-5 in Malakand Lives on the recommendation and tribal affairs department Peshawar in 2005.

2. That the appellant performed his duty regularly and with full devotion and no complaint whatsoever has been made against the appellant.

3. That the appellant was performing his official duty in district Malakand regularly, punctuality, sincerity dispite the constant threat to Levis of the police man and law

enforcement agencies from terrorist due to the war on terror.

4. That after the threat of the terrorist side appellants along with his family shifted to other district to save his life.

5. That on 25.08.2011 the impugned order has been passed against the appellant whereby the appellant has been terminated from service without fulfilling the codal formalities and without providing opportunity of defense to appellant. **(Copy of termination order is attached as annexure "A").**

6. That the appellant filed departmental appeal on 15.09.2011 against the impugned order dated 25.08.2011. **(Copy of departmental appeal is attached as annexure "B").**

7. That the appellant submitted applications regarding the response of departmental appeal in the year 2014 and 2018 and lastly submitted on 2023 but NO response whatsoever has been provided to the appellant. **(Copies**

of applications are attached as annexure "C, D & E).

8. That feeling aggrieved the Appellant prefers the instant service appeal before this Hon'ble Tribunal on the following grounds inter alia:-

GROUNDS:-

A. That the impugned order 25/08/2011 is void and abinitio order because it has been passed without fulfilling of the codal formalities.

B. That no charge sheet has been served or communicated to the appellant in this respect the appellant relied upon a judgment reported on 2009 SCMR page:615

C. That no regular inquiry has been conducted by the Respondent department and no chance of personal hearing has been provided to the appellant in this respect the appellant relied upon the judgment dated 2008 SCMR Page:1369.

D. That no final show cause notice has been issued and communicated to the appellant by Respondent department before imposing the major penalty in this respect the appellant relied upon a judgment reported on 2009 PLC (CS) 176.

E. It is a well settled maxim no one can be condemned unheard because it is against the natural justice of law in this respect the appellant relied upon a judgment reported on 2008 SCMR page:678.

F. That the impugned order termination from service is not included in the list of penalty provided in the rules applied of the appellant that's why according to the judgment of superior courts as well as of this Hon'ble Court the impugned termination order is come under the definition of void order against which no limitation has been counted.

G. That no opportunity of cross examination has been provided to the appellant.

H. That the impugned termination order is also void because no specification of absentee has been mention in the impugned order.

I. That it is pertinent to mention here that the appellant has never remain absent from duty but infact all the employees has been restrained from performing his official duty, due to threat of terrorist.

J. That no opportunity of personal hearing has been provided to the appellant which has been clarified from impugned order because the appellant.

K. That the punishment has been given by the Respondent department is harsh one.

(16)

L. That any other ground not raised here may graciously be allowed to be raised at the time full of arguments on the instant service appeal.

It is therefore, most humbly prayed that **on acceptance of this appeal the impugned Termination Order dated 25.08.2011 may kindly be set aside and the appellant may kindly be reinstated in service alongwith all back benefits. any other remedy which deems fit by this Hon'ble tribunal may also be granted in favour of the appellant..**

APPELLANT

Through

Kabir Ullah Khattak
&
Roeeda Khan
Advocates, High Court
Peshawar.

NOTE:-

As per information furnished by my client, no such like appeal for the same petitioner, upon the same subject matter has earlier been filed, prior to the instant one, before this Hon'ble Tribunal.

Advocate.

(7)

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

In Re S.A No: _____/2023

Abid Ali

VERSUS

Govt of Khyber Pakhtunkhwa through Secretary home Tribal Affairs department KPK Peshawar & others

AFFIDAVIT

I, **Abid Ali S/o Said Akbar Shah R/o Mohallah Bahadar Abad, Tehsil Batkhela District Malakand,** do hereby solemnly affirm and declare that all the contents of the **instant appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Hon'ble Court.

DEPONENT

(8)

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

In Re S.A No. _____/2023

Abid Ali

VERSUS

Govt of Khyber Pakhtunkhwa through Secretary home Tribal Affairs department KPK Peshawar & others

ADDRESSES OF PARTIES

PETITIONER.

Abid Ali S/o Said Akbar Shah R/o Mohallah Bahadar Abad, Tehsil Batkhela District Malakand.

ADDRESSES OF RESPONDENTS

1. Govt of Khyber Pakhtunkhwa through Secretary home Tribal Affairs department KPK Peshawar.
2. Inspector General of Police Khyber Pakhtunkhwa.
3. Deputy Commissioner / Commandant Malakand Levis Malkannd
4. Regional Police Officer Malakand.
5. District Police Officer Malakand.

APPELLANT

Through

Roeeda Khan
Advocate, High Court
Peshawar.

(91)

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

In Re S.A No. _____/2023

Abid Ali

VERSUS

Govt of Khyber Pakhtunkhwa through Secretary home Tribal Affairs department KPK Peshawar & others

APPLICATION FOR CONDONATION OF DELAY (if any)

Respectfully Sheweth,

Petitioner submits as under:

1. That the above mentioned appeal is filing before this Hon'ble Tribunal in which no date is fixed for hearing so far.

2. That it is pertinent to mention here that the appellant has never remain absent from duty but infact all the employees has been restrained from performing his official duty, due to threat of terrorist.

Grounds:

A. That the impugned orders are void order and no limitation run against the void orders because the impugned termination order has been passed without fulfilling the codal formalities.

B. That the impugned order termination from service is not included in the list of penalty provided in the rules applied of the appellant that's why according to the judgment superior courts as well as of this Hon'ble Court the impugned termination order is come under the definition of void order against which no limitation has been counted.

C. That the impugned termination order is also void because no specification of absentee has been mention in the impugned order.

D. That there are number of precedents of the Supreme Court of Pakistan which provides that the cases shall be decided on merits rather than technicalities.

It is, therefore, requested that the limitation period (if any) may kindly be condone in the interest of justice.

Appellant

Through

Kabir Ullah Khattak

&

Roeeda Khan

Advocates, High Court

Peshawar.

("A" (11).

OFFICE OF THE DCO/COMMANDANT
MALAKAND LEVIES MALAKAND

NO. 3238 /LC
DATED MALAKAND THE 25/8/11

OFFICE ORDER

As reported by Subedar Major Malakand Levies that No. 4690 Sepoy Abid Ali of Malakand Levies has absent from his duty and he was informed several times to attend his duty but he did not attend his duty till now and request for departmental action against the official concerned.

The official concerned has issued show cause notice to attend his duty within three days, otherwise he will be terminated from service, vide this office No. 3196/LC dated 20-08-2011. The Post Commander Batkhela has reported that he has gone abroad without any prior permission of the competent authority.

Hence, keeping in view the above, No.4690 Sepoy Abid Ali of Malakand Levies is hereby terminated from service with immediate effect.

DCO/COMMANDANT
MALAKAND LEVIES MALAKAND

NO. 3239-40 /LC
Copy forwarded to the:-

1. Agency Accounts Officer, Malakand.
2. Subedar Major Malakand Levies.

For information & necessary action.

DCO/COMMANDANT
MALAKAND LEVIES MALAKAND

"B" (12)

To,

The Secretary home Tribal Affairs
Department KPK Peshawar.

Subject: **DEPARTMENTAL APPEAL AGAINST THE ORDER DATED 25.08.2011 WHEREBY THE APPELLANT HAS BEEN TERMINATED FROM SERVICE.**

Respected Sir,

With most respect and reference the following few lines are submitted for your kind consideration and favorable orders.

1. That the Appellant was appointed as a Sepahi BPS-5 in Malakand Lives on the recommendation and tribal affairs department Peshawar in 2005.

2. That the appellant was performing his official duty in district Malakand regularly, punctuality, sincerity dispite the constant threat to Levis of the police man and law enforcement agencies from terrorist due to the war on terror.

3. That after the threat of the terrorist side appellants along with his family shifted to other district to save his life.

4. That it is pertinent to mention here that the appellant has never remain absent from duty but infact all the employees has been restrained from performing his official duty, due to threat of terrorist.

5. That on 25.08.2011 the impugned order has been passed against the appellant whereby the appellant has been terminated from service without fulfilling the codal formalities and without providing opportunity of defense to appellant.

(13)

It is therefore humbly prayed that on acceptance of the instant departmental appeal the impugned termination order dated 25.08.2011 may kindly be set aside and the appellant mapy kindly be reinstate on his service along with all back benefit.

Dated: 15.09.2011

Appellant

ABID ALI
Ex- Sepahi Malakand Levis

(161)

بخدمت جناب ڈپٹی کمشنر / کمانڈنٹ صاحب ہوم گارڈ لاہور ضلع ہوم گارڈ

درخواست ہمراہ فراہم کرنے معلومات برائے ڈیپارٹمنٹل اپیل

جناب عالی۔ سائل حسب ذیل عرض رساں ہے۔

① یہ کہ سائل ایک پرامن وفاداری شہری ہے۔

② یہ کہ سائل کو مورخہ 8/2011 کو نوکری سے Terminate کیا جس کے خلاف بجائی کے لیے سائل نے Departmental Appeal مورخہ 9/2011 کو دائر کی تھی جس کی بابت سائل کو کوئی معلومات فراہم نہیں کی جا رہی۔

لہٰذا استدعا ہے کہ سائل کو Departmental Appeal کی بابت معلومات فراہم کرنے کا حکم صادر فرمایا جائے۔

مورخہ 10/2016

عابد علی سابقہ سپاہی ہوم گارڈ لاہور

Abid Ali

بخدمت جناب ڈپٹی کمشنر / چیئرمین ضلع مقامی امداد کنٹرولنگ اتھارٹی ضلع مقامی امداد کنٹرولنگ اتھارٹی

درخواست ہمراہ فراہم کرنے معلومات پرانے ڈیپارٹمنٹل اپیل

جناب عالی سائل حسب ذیل عرض رساں ہے۔

1. سائل کو مورخہ 25/8/2011 کو نوکری سے Terminate کیا جس کے خلاف مجاز اتھارٹی سائل نے مورخہ 15/9/2011 Departmental کو دائر کی جس کی بابت سائل کو کوئی معلومات فراہم نہیں کی جا رہی۔

2. یہ کہ سائل نے اس سلسلے میں کئی سال 2016ء میں اس بابت درخواست دائر کی تھی۔

لہٰذا استدعا ہے کہ سائل کو Departmental Appeal کے بابت معلومات فراہم کرنے کا حکم صادر فرمایا جائے۔

مورخہ 20/11/2018

سائل: عابد علی سابقہ سپاہی مدد کنٹرولنگ اتھارٹی

"E" (161)

بخدمت جناب ڈپٹی کمشنر/کمانڈنٹ صاحب مالاکنڈ لیویز ضلع مالاکنڈ

درخواست بمراد فراہم کرنے معلومات برائے ڈیپارٹمنٹل اپیل

جناب عالی:

سائل حسب ذیل عرض رساں ہے۔

1- یہ کہ سائل ایک پرامن وقانون پسند شہری ہے۔

2- یہ کہ سائل کو مورخہ 25.08.2011 کو نوکری سے Terminate کیا جس کے خلاف بحالی کے لئے سائل Departmental Appeal مورخہ 15.09.2011 کو دائر کی تھی جسکی بابت سائل کو کوئی معلومات فراہم نہیں کی جا رہی۔

3- یہ کہ سائل نے اس سے پہلے بھی سال 2014ء اور 2018ء میں اس بابت درخواست دائر کی تھی لیکن اس بارے تاحال کوئی شنوائی نہیں ہوئی۔

لہذا استدعا ہے کہ سائل کو Departmental Appeal کے بابت معلومات فراہم کرنے کا حکم صادر فرمائیں۔

المرقوم:- 20-7-23

العبد---

Abid

عابد علی سابقہ سپاہی مالاکنڈ لیویز

بعدالت جناب

مورخہ ۔۔۔ ء 2منجانب

مقدمہ ۔۔۔ بنام

دعویٰ

جرم

باعث تحریر آنکہ

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

بمقام ۔۔۔ کیلئے

مقرر کرکے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز

وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ار عرضی دعویٰ اور درخواست ہر قسم کی تصدیق

پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برامدگی

منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختاج ہوگا۔ از بصورت ضرورت

مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے

کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکور با اختیارات حاصل ہوں گے

کا ساختہ پرداختہ منظور وقبول ہوگا دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ ہوں گے

سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔

پیروی مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ سند رہے۔

رقم

20ء

العبد