

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.900/2023

Noor ul Amin Ex-Constable No.75/RR District: Swat.

----- (Appellant)

Versus

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

----- (Respondents)

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District Police Officer, Swat
(Respondent No.02)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No.900/2023

Noor ul Amin Ex-Constable No.75/RR District: Swat.

----- (Appellant)

Versus

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

----- (Respondents)

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS.

Respectfully shewith:

Preliminarily objection:-

1. That the service appeal is time barred.
2. That the service appeal is not maintainable in its present form.
3. The instant appeal is bad due to mis-joinder and non-joinder of necessary parties.
4. That the appellant is estopped due to his own conduct.
5. That the appellant has concealed material facts from this Honorable Tribunal.
6. That the appellant has got no cause of action and locus standi to prefer the instant appeal.
7. The appellant has not come to this Tribunal with clean hands.

ON FACTS

1. Para to the extent of employment in Police Department pertains to record, hence need no comments
2. Correct to the extent that appellant was dismissed from service after fulfillment of all legal and codal formalities as appellant while posted at Javed Iqbal Shaheed Police Lines Swat absented himself from lawful duty vide daily diary No.04 dated 06/01/2009 (**annexed "A"**) without prior permission/leave of the competent authority.
3. Incorrect. The appellant while posted to Javed Iqbal Shaheed Police Lines Swat, willfully and deliberately absented himself from lawful duty vide daily diary No.04 dated 06/01/2009 without prior permission/leave of the competent authority, hence he was issued charge sheet, statement of allegations, duly served on appellant and enquiry officer was nominated to probe into the conduct of appellant. Despite repeated summons/Parwanas

the appellant bitterly failed either to submit his reply or joined enquiry proceedings meaning thereby that he had no defense to provide in his favor. It is worthwhile that right from the date of his absence till the order of dismissal i.e 12/06/2009, the appellant neither reported his arrival nor bothered to join enquiry proceedings rather remained dormant which clearly depicts his disinterest/in his official duties. Therefore after fulfillment of all legal and codal formalities the appellant was awarded appropriate punishment of dismissal from service vide OB No.146 dated 12/06/2009 which does commensurate with the gravity of misconduct of appellant. **(order annexed "B")**

4. Incorrect. Each and every case has its own facts and circumstances, hence plea of the appellant is not plausible.
5. Incorrect. As discussed earlier each and every case has its own facts and circumstances, hence plea of the appellant is not tenable in the eyes of Law, moreover the appellant after dismissal from service kept mum and after lapse of almost 08 years he preferred departmental appeal at a very belated stage which was rejected being badly time barred. Therefore, stance of the appellant is devoid of any merit, hence liable to be set aside at naught.
6. Pertain to record, hence needs no comments.
7. Correct to the extent the honorable Tribunal vide Judgment dated 28/01/2022 accept appeal of the appellant, the operating of which is reproduced as **"Consequently, keeping in view the principle of consistency, the impugned orders are set aside and the appellant is reinstated in service. Since the appeal is decided on technical grounds more so while keeping in view the conduct of the appellant, he shall not be entitled to any of the back benefits, hence the absence as well as the intervening period during which the appellant has not performed duty shall be treated as extra-ordinary leave without pay. The department is at liberty to conduct de-novo inquiry against the appellant in accordance with law. Parties are left to bear their own costs"**
8. That in compliance of the judgment dated 28/01/2022 of Service Tribunal, the appellant was reinstated into service vide this office OB No. 101 dated 22/07/2022 **(annexed "C")** for the purpose of Denovo departmental enquiry, wherein after completing all codal formalities under the law/rules and providing opportunities of personal hearing and self defense to the

appellant, he was found guilty of misconduct, consequently awarded appropriate punishment of dismissal from service. **(Order annexed as "D")**

9. Incorrect. That the appeal of the appellant was thoroughly examined by the Region Police Officer Malakand Region, wherein the appellant was also called and heard in person but he failed to defend the charges leveled against the him, hence filed the same vide Region office Order No:7375 dated 16/05/2023. **(Annexed "E")**
10. That appeal of the appellant is liable to be dismissed on the following grounds.

GROUND

- A. Incorrect. That the appellant has been treated in accordance with law/rules. Furthermore, the order passed by the competent authority is legal and lawful which was passed after fulfillment of codal formalities.
- B. Incorrect. That the order of respondents is legal, lawful and in accordance with law/rules.
- C. Para explained earlier needs no comments.
- D. Incorrect. That the appellant has not been discriminated by the respondents. Furthermore, each and every case has its own merits and circumstance, hence the plea taken by the appellant is not plausible under the law.
- E. Incorrect. As stated above, all legal formalities have been fulfilled by the respondent department during department probe against the appellant wherein final show cause notice was also issued to the appellant, however he failed to defend the charges leveled against him.
- F. Incorrect. As explained above in detail.
- G. Incorrect. The judgment of this honorable Tribunal has been implemented in its true spirit by the respondent department.
- H. Incorrect. As explained above in detail.
- I. Incorrect. As explained above in detail.
- J. Incorrect. As explained above in detail.

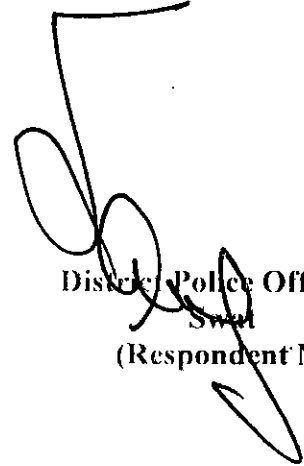
K. That the respondents also seek the permission of this Honorable Tribunal to adduce additional grounds at the time of hearing.

PRAYER:-

In view of the above comments of answering respondents, it is prayed that instant appeal may be dismissed with cost.



**Regional Police Officer,
Malakand Region at Saidu Sharif,
Swat
(Respondent No.1)**



**District Police Officer,
Swat
(Respondent No.2)**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.900/2023

Noor ul Amin Ex-Constable No.75/RR District: Swat.

----- (Appellant)

Versus

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

----- (Respondents)

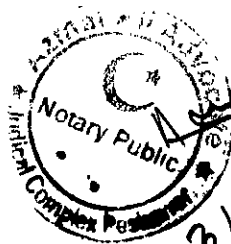
AFFIDAVIT

We, the above respondents do hereby solemnly affirm on oath and declare that the contents of the appeal are correct/true to the best of our knowledge/ belief and nothing has been kept secret from the honorable Tribunal. *It is further stated that in this appeal, the answering respondents have neither been placed ex-parte nor their defence has been struck off.*

[Signature]
Regional Police Officer,
Malakand Region
Saidu Sharif, Swat
(Respondent No. 01)

ATTESTED

[Signature]
District Police Officer Swat
(Respondent No. 02)



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.900/2023

Noor ul Amin Ex-Constable No.75/RR District: Swat.

----- (Appellant)


Versus

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

----- (Respondents)

AUTHORITY LETTER

We, the above respondents do hereby authorize Mr. Naccm Hussain DSP/Legal Swat to appear before the Tribunal on our behalf and submit reply etc in connection with titled Service Appeal.


Regional Police Officer,
Regional Police Officer,
Malakand Region,
Malakand Region,
Saidu Sharif.
(Respondent No. 01)


District Police Officer Swat
(Respondent No. 02)

BETTER COPY

ضلع سوات

پولیس لائن

نقلہ 04 روزنامہ چپ 06.01.2009

مد 4 رپورٹ غیر حاضری LO وقت 08:30 بجے 06.01.2009 کنٹینیل نورالامین نمبر 75-

MRR بکار سرکار طلب کر کے مسز کورہ کنٹینیل حدود لائن میں عدم موجود پایا۔ مسز کورہ کنٹینیل کے

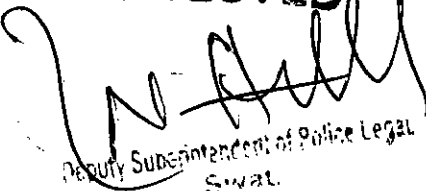
خلاف رپورٹ غیر حاضری درج روزنامہ چپ کی گئی۔

جناب عالی!

نقل مد بمطابق اصل ہے

-Sd-

MM- Police Line, Swat

ATTESTED

Deputy Superintendent of Police Legal
Swat.

ORDER

This order will dispose off the enquiry initiated against Constable Noor-ul-Amin No. 75-MRR, who while posted to Javid Iqbal Shaheed Police Lines Swat, absented himself from duty w.e. from 06-01-09 vide DD No.04, dated 06/01/2009 and failed to report for duty.

He was issued charge sheet with statement of allegations. Enquiry was initiated against him and DSP Legal was appointed as Enquiry Officer. The Enquiry Officer in his finding report submitted that the defaulter Constable was summoned time and again, but did not appear to record his statement. Hence he was recommended for Major punishment of the Enquiry Officer. He was issued Final Show Cause Notice No. 691/E, dated 18-9-2009 but no reply has been received.

This constitutes misconduct, cowardice on his part and as such he is liable for action under section 5 sub section (4) of the Removal from service (Special Powers) Ordinance 2000 (Amendment) Ordinance 2001.

This constitutes misconduct/disinterest on his part and as such he is liable for action under section 5 Sub Section (4) of the Removal from service (Special Power) Ordinance 2000 (Amendment) Ordinance 2001 and dispose with the enquiry proceeding as laid down in the Ordinance and am further satisfied that there is no need of holding further departmental enquiry. Since the defaulter Constable has been found guilty of gross misconduct as defined in the said Ordinance, I Mr. Qazi Ghulam Farooq DPO Swat as a competent authority, therefore impose major penalty by dismissing him from service from the date of absence i.e 06/01/2009.

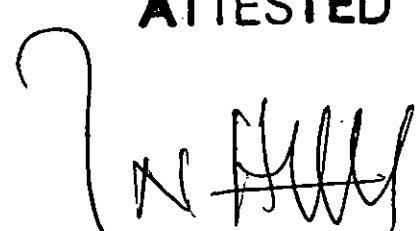
Order announced.

O.B. No. 146

Dated. 12-2-09.


District Police Officer, Swat

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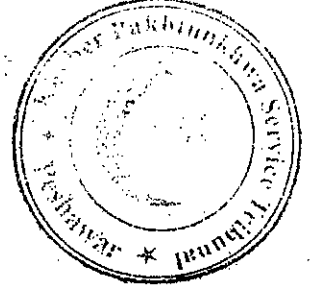

Deputy Superintendent of Police Legal
Swat

N.C. 9
A

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 5/2018

Date of Institution ... 28.12.2017
Date of Decision ... 28.01.2022



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

(Appellant)

VERSUS

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

Uzma Syed,
Advocate

For Appellant

Noor Zaman Khattak,
District Attorney

For respondents

AHMAD SULTAN TAREEN
ATIQU-UR-REHMAN WAZIR

CHAIRMAN
MEMBER (EXECUTIVE)

ATTESTED

Deputy Superintendent of Police Legal

JUDGMENT

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

This single judgment

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

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

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

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

9 (10)

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

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

Wm

[Signature]

04. Learned District Attorney for the respondents has contended that the appellant willfully absented himself from lawful duty without permission of the competent authority, hence he was issued with charge sheet/statement of allegation and proper inquiry was conducted; that despite repeated reminders, the appellant did not join the disciplinary proceedings; that right from the date of his absence i.e. 06-01-2009 till his order of dismissal i.e. 12-10-2009, the appellant neither reported his arrival nor bothered to join inquiry proceedings rather remain dormant which clearly depicts his disinterest in his official duty; that after fulfillment of all the codal formalities, the appellant was awarded major punishment of dismissal from service in absentia; that the appellant preferred

ATTESTED
[Signature]
Khyber Pakhtunkhwa
Service Tribunal

11

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

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

06. Placed before us is cases of police constables, who alongwith many other police personnel had deserted their jobs in the wake of insurgency in Malakand division and particularly in District Swat. Police department had constituted a committee for cases of desertion and taking humanitarian view, re-instated such personnel into service in large number. Placed on record is a notification dated 01-11-2010, where 16 similarly placed employees had been re-instated on the recommendation of the committee constituted for the purpose. Other cases of similar nature have been noticed by this tribunal, where the provincial government had taken a lenient view keeping in view the peculiar circumstances in the area at that particular time and re-instated such deserted employees in service after years of their dismissal. Even this tribunal has already granted relief in similar nature cases on the principle of consistency. Appellants are also amongst those, who had deserted their jobs due to threats from terrorists.

Coupled with this are dents in the departmental proceedings, which has not been conducted as per mandate of law, as the appellant in case of willful absence was required to be proceeded under general law i.e. Rule-9 of E& D Rules, 2011. Regular inquiry is also must before imposition of major punishment of dismissal from service, which also was not conducted.

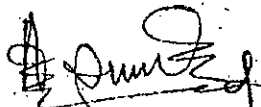
07. Consequently, keeping in view the principle of consistency, the impugned orders are set aside and the appellants are re-instated in service. Since the appeals are decided on technical grounds more so while keeping in view the conduct of the appellants, they shall not be entitled to any of the back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

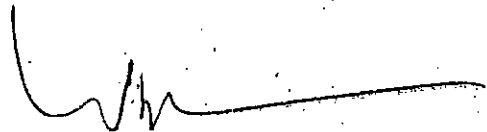
ATTESTED


Secretary
Service Tribunal
Peshawar

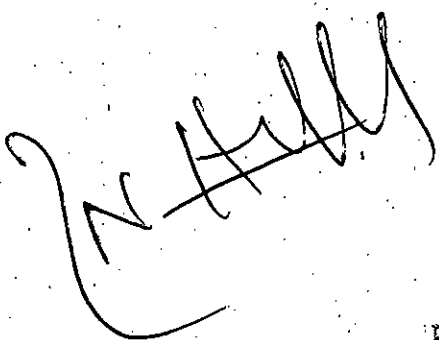
without pay. The department is at liberty to conduct de-novo inquiry against the appellants in accordance with law. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
28.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


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

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal
Peshawar



Date of Presentation of Application 12/4/23
Number of Vols 4-1
Copying Fee 20/-
Urgent 5/-
Total 25/-
Notes _____
Date of 12/4/23
Date of delivery of copy 12/4/23



"D" 13

**OFFICE OF THE
DISTRICT POLICE OFFICER, SWAT**
Ph: 0946-9240393 & Fax No, 0946-9240402,
Email: dposwat@gmail.com

ORDER

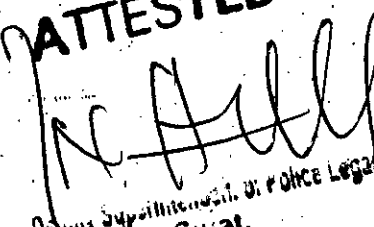
This order will dispose of the Denove-departmental enquiry conducted against Constable Noor Ul Amin No.7/RR, That he while posted to JIS Police Line Kabal Swat, has absented himself from his lawful duty vide DD No.04 dated 06/01/2009 and failed to report for duty. He has proceeded against departmentally and subsequently dismissed from the service vide this office OB No.146, dated 12-06-2009. He has preferred an appeal before the Service Tribunal, which set aside, the punishment of Dismissal and ordered a denove departmental inquiry. In the compliance of the judgment dated 28/01/2022 of Service Tribunal in service Appeal No.05/2018 He Have been reinstated into service vide this office OB No.101 dated 22/07/2022 for the purpose of Denove departmental inquiry. As per direction of CPO Peshawar order No.988-90/CPO/IAB, dated 10-08-2022 and worthy Regional Police Officer Memo No.9574-77/E dated 09/09/2022, Denove departmental inquiry is initiated.

He was issued charge sheet coupled with statement of allegations vide this office No.100/PA dated 05/10/2022. District Police Officer, Shangla and DSP Legal Swat was deputed as Inquiry Officers to conduct Denove-departmental inquiry against the defaulter official. The Inquiry Officers, District Police Officer, Shangla and DSP Legal Swat conducted proper departmental enquiry against the above named delinquent Constable, recorded statements of all concerned. The Inquiry Officers has provided ample opportunity to the delinquent Constable to defend the charges leveled against him. After conducting proper departmental enquiry, the Inquiry Officer submitted his findings report wherein he intimated that Constable Noor ul Amin No.7/RR has badly failed to perform his duty correctly, also found negligent and the allegations leveled against him was proved. The IO recommended him for Major punishment. He was served with final Show Cause notice No.232/PA, His replied was received which is found unsatisfactory.

Foregoing in view, the undersigned is of considered opinion that there are no chances that Constable Noor Ul Amin No.7/RR will become an efficient Police Official. His further retention in service is bound to affect the discipline of the entire force. Therefore, in exercise of the powers vested in the undersigned under Rules 2 (iii) of Police Disciplinary Rules-1975, I, **SHAFIULLAH GANDAPUR**, District Police Officer, Swat as a competent authority, am agreed with the finding report of inquiry officers and award him major punishment of Dismissal from the date of Re-instatement i.e 22-07-2022:

Order announced.

O.B. No. 175
Dated 07/12/2022.

ATTESTED

District Police Officer, Swat

District Police Officer
Swat

OFFICE OF THE DISTRICT POLICE OFFICER SWAT

No. 657-62 /PA, dated Saidu Sharif the, 14/12 /2022.

Copy for information to the;

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



" E " (14)

7289

Swat

**OFFICE OF THE
REGIONAL POLICE OFFICER, MALAKAND
AT SAIDU SHARIF SWAT.**
Ph: 0946-9240388 & Fax No. 0946-9240390
Email: ebmalakandregion@gmail.com

ORDER

This order will dispose of appeal of Ex-Constable Noor-ul-Amin No.07/RR of Malakand Range Reserve, Swat in connection with major punishment awarded by the District Police Officer, Swat vide OB No.175, dated 07-12-2022 i.e. dismissed from service from the date of re-instatement.

Brief facts of the case are that Constable Noor-ul-Amin No.07/RR while posted to JIS Police Lines, Kabal Swat had absented himself from lawful duty vide DD No.04, dated 06-01-2009 and failed to report for duty. He was proceeded against departmentally and subsequently dismissed from the service by the District Police Officer, Swat vide OB No.145, dated 12-06-2009. He preferred an appeal before Honorable Service Tribunal, wherein his order of dismissal from service was set aside and ordered for conducting de-novo departmental enquiry. In the compliance of the judgment dated 28-01-2022 of Service Tribunal in Service Appeal No.05/2018, the applicant was re-instated into service for the purpose of de-novo departmental enquiry by the District Police Officer, Swat vide OB No.101, dated 22-07-2022. He was issued Charge Sheet coupled with statement of allegations and DPO Shangla and DSP/Legal Swat were appointed as Enquiry Officers. The Enquiry Officers conducted de-novo enquiry and after fulfilling all formalities, submitted their findings report wherein the allegations leveled against above constable were proved and recommend him for major punishment. Being found guilty of the charges leveled against him the District Police Officer, Swat awarded him major punishment of dismissal from service from the date of his re-instatement vide OB No.175, dated 07-12-2022.

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

[Signature]
Regional Police Officer,
Malakand Region Swat

9/16/23

No. 7375 /E,
Dated 16-05-2023.

Copy to the District Police Officer, Swat for information and necessary action with reference to his office Memo: No.21758/E, dated 29-12-2022. Service Roll and enquiry file of above-named Ex-Constable, received with your memo: under reference are returned herewith for record in your office.

Encl: S. Roll
Enquiry file

ATTESTED

[Signature]
Deputy Superintendent of Police Legal
Swat

EO/Officer
For N/A action
Check the Service record
If correct keep on Roll

[Signature]
District Police Officer
Swat