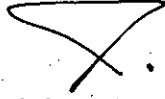


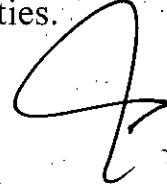
1st June, 2023

1. Learned counsel for appellant present. Mr. Muhammad Jan, District Attorney alongwith Mr. Raza Ullah Superintendent for respondents present.

2. Learned counsel for appellant requested for adjournment in order to prepare the brief. Adjourned. To come up for arguments on 11.09.2023 before D.B. P.P given to the parties.



(Salah-Ud-Din)
Member (J)



(Kalim Arshad Khan)
Chairman

**Mutazem Shah **

SCANNED
KPST
Peshawar

2nd Mar, 2023

Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for respondents present.

Learned counsel for the appellant seeks adjournment. To come up on 14.04.2023 before DB. PP given to the parties.



(Rozina Rehman)
Member (Judicial)



(Kalim Arshad Khan)
Chairman

14.04.2023

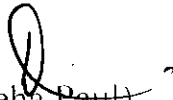
Appellant present through counsel.

Asif Masood Ali Shah learned Deputy District Attorney alongwith Raza Ullah Assitant for respondents present.

Former made a request for adjournment in order to prepare the brief. Adjourned. To come up for arguments on 01.06.2023 before D.B. Parcha Peshi given to the parties.

SCANNED
KPST
Peshawar

Mutazem Shah



(Fareeha Paul)
Member (E)




(Rozina Rehman)
Member (J)

4th October, 2022 Counsel for the appellant present. Syed Naseer Ud Din Shah, Asst: AG for respondents present.

Learned counsel for the appellant seeks adjournment as he has not prepared the case. Last opportunity granted for arguments failing which the case will be decided on the available record without arguments. To come up for arguments on 01.11.2022 before the D.B



(Fareeha Paul)
Member(Executive)



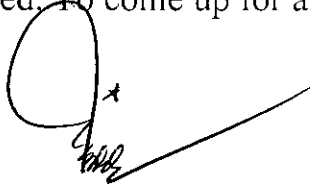
(Kalim Arshad Khan)
Chairman

01.11.2022

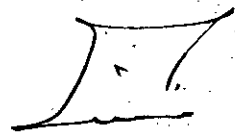
Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments.

Adjourned. To come up for arguments on 05.12.2022 before the D.B.



(Mian Muhammad)
Member (E)



(Salah-Ud-Din)
Member (J)

05th Dec. 2022

Counsel for the appellant present. Mr. Naseerud Din Shah; Assistant Advocate General for the respondents present.

Former seeks adjournment in order to further prepare the brief. Last opportunity is granted. To come up for arguments on 02.03.2023 before the D.B.



(Fareeha Paul)
Member (E)



(Kalim Arshad Khan)
Chairman

SCANNED
KPST
Peshawar

73-22

Due to Retirement of the Honble
Chairman the case is adjourned on
27-6-22

of
Rehman

27.06.2022

Clerk of learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Clerk of learned counsel for the appellant requested for 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 04.10.2022 before the D.B.



(Rozina Rehman)
Member (J)



(Salah-ud-Din)
Member (J)

08.07.2021

Counsel for the appellant present. Preliminary arguments heard.

This appeal seems to be the part of ongoing pursuit of appellant against his removal from service vide order dated 24.03.2015. In the meantime, he filed appeal before the Federal Service Tribunal in a status of a Federal Government employee which was remanded to the department. Although due to the 25th Constitutional Amendments, the forum for appellant changed but the parties in the matter remained the same. Last order has been passed on 09.06.2020 which is also impugned in the present appeal. Subject to valid, legal objections, this appeal is admitted for regular hearing. 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 after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, or extension of time is not sought through written application with sufficient cause, the office shall submit the file with a report of non-compliance. File to come up for arguments on 29.11.2021 before the D.B.

Appellant Deposited
Security & Process Fee

28/11/21


Chairman

29.11.2021 Due to unavailability of DB, the case is adjourned to 07/03/2022.

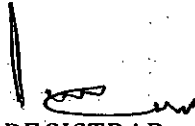



Amie
Reader

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1604 /2021


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	22/01/2021	<p>The appeal of Mr. Sahibzada resubmitted today by Syed Noman Ali Bukhari 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</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>02/04/21</u></p> <p style="text-align: right;"> CHAIRMAN</p>
2-	02.04.2021	<p>Appellant present through counsel.</p> <p>He made a request for adjournment; granted. To come up for preliminary hearing on <u>8/07/2021</u> before S.B.</p> <p style="text-align: right;"> (Rozina Rehman) Member (J)</p>

The appeal of Mr. Sahib Zada son of Mazullah Khan Levy Sepoy received today i.e. on 24.12.2020 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Address of the appellant is incomplete which may be completed.
- 2- The law under which appeal is filed is wrong.
- 3- Copy of service appeal and judgment/order passed by the Federal Service Tribunal mentioned in para-4 of the memo of appeal are not attached with the appeal which may be placed on it.
- 4- Annexures of the appeal are not in sequence which may be annexed serial wise as mentioned in the memo of appeal.
- 5- Copy of application mentioned in para-2 is not attached.
- 6- Annexure-A of the appeal is illegible which may be replaced by legible/better one.
- 7- Appeal has not been flagged/marked with annexures marks.
- 8- Annexures of the appeal may be attested.
- 9- Four more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 4121 /S.T,

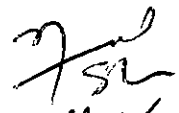
Dt. 28/12 /2020


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.


Syed Noman Ali Bukhari Adv. Pesh.

Sir,

all objection removed, file resubmitted.


objection no. 1 and 3 are still stand.
The appeal in hand is returned again
to the counsel for the appellant for
completion and resubmission with 15 days.

no. 64 /S.T
dt 13/01/2021


13/1/2021
Registrar

Regards to objection NO:3

Federal Service Tribunal

Judgment is not annexed but only reflected in Facts
Due to Reason it is recanted in last appellate
order, which is evident from Annexure - F Page # 10

Regards to objection NO:1

objections Remand. Adress is completed.

File re-submitted.

7/8/21

with
etc

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BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

1604
APPEAL NO. _____/2020

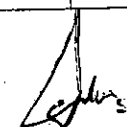
Sahib Zada

V/S

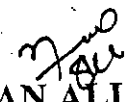
Levies :

.....
INDEX

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	1-4
2.	Copy Death Certificate	-A-	05
3.	copy of Impugned order	-B -	06
4.	Copy of departmental appeal	-C-	07
5.	Copy of rejection order	-D-	08
6.	Copy of application	-E-	09
7.	Copy of last appellate order	-F-	10
8.	Vakalat Nama	-----	11


APPELLANT
Sahib Zada

THROUGH:


SYED NOMAN ALI BUKHARI
Advocate, High Court
Peshawar

(1)

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

APPEAL NO. _____/2020

Mr. Sahib Zada S/o Mazullah Khan
Levy Sepoy (Federal) now provincial.

.....(Appellant)

VERSUS

1. The Secretary Home, KP. Civil secretariat, KP Peshawar.
2. The commandant Levis, Deputy Commissioner Dir Upper .

.....(Respondents)

APPEAL UNDER SECTION 4 OF THE KP SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 24.03.2015 WHEREBY, THE APPELLANT HAS BEEN REMOVED FROM SERVICE AND AGAINST THE REJECTION ORDER DATED 25.04.2018 AND 09.06.2020 RECEIVED ON 16.12.2020 THROUGH APPLICATION WHEREBY THE DEPTT APPEAL OF THE APPELLANT HAS BEEN REJECTED FOR NO GOOD GROUNDS.

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDERs DATED 24.03.2015, 25.04.2018 and 09.06.2020 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED INTO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND

APPOPRIATE THAT MAY ALSO BE AWARADED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH:

FACTS:

Facts giving rise to the present service appeal are as under:

1. That the appellant was appointed as Levy Sepoy in year 2012 and the appellant was performed his duties with entire satisfaction of his superiors.
2. That the appellant was facing some serious Domestic Problems in 2015 i.e serious illness of his brother, in result of illness brother die due to which appellant remained absent. Therefore appellant was absented from duty which was not willful. **Copy of death certificate is attached as annexure-A.**
3. That, thereafter, the appellant was departmentally proceeded, without charge sheet, statement of allegation, regular inquiry and even without show cause notice, the impugned order dated 24.03.2015 was passed against the appellant whereby the appellant was removed from service with retrospective effect. The appellant been aggrieved from the impugned dismissal order preferred departmental appeal but the same was rejected vide order dated 25.04.2018. **Copy of impugned order, departmental appeal, rejection order are attached as Annexure-B, C & D.**
4. That thereafter the appellant filed service appeal before the federal service Tribunal which was remanded to appellate authority for decision a fresh by the appellate authority by the authority again reject the appeal of the appeal vide order dated 09.06.2020 received by the appellant through application on 16.12.2020. **copy of rejection order and application is attached as annexure-E & F.**
5. That now the appellant come to this august Service Tribunal Tribunal on the following grounds amongst others.

GROUNDS:

- A) That the impugned orders dated 24.03.2015 , 25.04.2018 and 09.06.2020 are against the law, facts, norms of justice and void-ab-initio as has been passed with retrospective effect and material on record, therefore not tenable and liable to be set aside.
- B) That the impugned order was retrospective order which was void in the eye of law and according to Superiors Court Judgment reported as 2002 SCMR, 1129 and 2006 PLC 221.
- C) That there is no order in black and white form to dispense with the regular inquiry which is violation of law and rules and without proper inquiry the appellant was removal from the service vide order dated 24.03.2015 without given personal hearing and with retrospective effect which is necessary and mandatory in law and rules before imposing major penalty. So the whole procedure conducted has nullity in the eye of law. So the impugned order is liable to be set aside.
- D) That the appellant has been condemned unheard and no personal hearing was provided to the appellant so according superior court judgment.
- E) That no show cause notice was served upon the appellant nor inquiry was conducted against the appellant, which was necessary and mandatory in law before imposing major punishment which is violation of law, rules and norms of justice.
- F) That according to superior court and this Hon'ble Tribunal judgment any order passed without following mandatory provisions of laws is void ab initio.
- G) That the appellant has not been treated under proper law despite he was a civil servant of the province, therefore, the impugned order is liable to be set aside on this score alone.
- H) That the absent of the appellant was not intentionally but due to domestic problems. So the penalty imposed upon the appellant was so harshed.
- I) That the appellant's guilt has not been proved beyond the shadow of doubt and the appellant has been punished on the basis of conjecture and surmises.
- J) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

4

It is, therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.


APPELLANT

Sahib Zada

THROUGH:


SYED NOMAN ALI BUKHARI

Advocate, High Court

Peshawar



حکومت خیبر پختونخوا
Govt of Khyber Pakhtoonkhwa



اندراج وفات سرٹیفکیٹ

Death Registration Certificate

Form No: W11693771

دفتر اندراج: یونین کونسل چکیاتن

Training Id: 50064610006821

CRP No: D500016-21-10308

OL REG #:

Deceased Person's Details متوفی کے کوائف

Name:	SHIR MULLA KHAN	نام:	شیر ملخان
Nationality:	Pakistani	قومیت:	پاکستانی
CNIC:	16201-4694085-7	شناختی کارڈ نمبر:	16201-4694085-7
Date of Birth:	01-January-1965	تاریخ پیدائش:	01-January-1965
Gender:	Male	جنس:	مرد
Religion:	ISLAM	مذہب:	اسلام
Date of Death:	15-June-2020	تاریخ وفات:	15-June-2020
Date of Burial/Last rite:	15-June-2020	تاریخ تدفین/آخری رسومات:	15-June-2020
Place of Death:	HOME	جائے وفات:	گھر
Nature of Death:	Natural	طبیعت وفات:	طبیعی
Place of Burial/Last rite:	NANGAR KARI	جگہ تدفین/آخری رسومات:	نگر کارے

Parental Information والدین کی معلومات

Father's Name:	MAAZULLAH KHAN	والد کا نام:	ممتاز اللہ خان
CNIC:	15701-7781063-1	شناختی کارڈ نمبر:	15701-7781063-1
Mother's Name:	BAKHT NISA	والدہ کا نام:	بخت نسیا
CNIC:	15701-2186284-8	شناختی کارڈ نمبر:	15701-2186284-8

Address

Address:	P.O. dir, Village NAD BANDA,	پتہ:	ڈاکخانہ، گاؤں ناد بندا،
Tel:	DIR	تھیلیفون:	ڈیر
Dist:	UPPER DIR	ضلع:	اوپر ڈیر

Applicant's Details درخواست دہندہ کے کوائف

Name:	SAHIBZADA	نام:	صاحب زادہ
CNIC:	15701-8651881-1	شناختی کارڈ نمبر:	15701-8651881-1
Relationship Deceased:	BROTHER	متوفی سے رشتہ:	بھائی

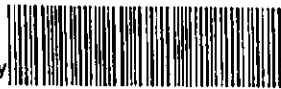
Information of Burial/Last rite by تدفین/آخری رسومات کنندہ کی معلومات

Name:	MAAZ ULLAH KHAN	نام:	ممتاز اللہ خان
CNIC:	15701-7781063-1	شناختی کارڈ نمبر:	15701-7781063-1
Relationship Deceased:	FATHER	متوفی سے رشتہ:	والد
Date of Burial/Last rite:	07-January-2021	تاریخ اندراج:	07-January-2021
Date of Burial/Last rite:	07-January-2021	تاریخ تدفین:	07-January-2021
Nature of Burial/Last rite:	Normal	اندراج اسٹیٹس:	نارسل
Additional Information:		اضافی معلومات:	



سیکرٹری یونین کونسل چکیاتن

This certificate can be verified at <https://crms.nadra.gov.pk/verify>



W11693771



OFFICE OF THE
COMMANDANT/DEPUTY COMMISSIONER
UPPER DIR

No: 4487-92 DC/LHC/Removal.
Dated Dir the: 24/03/2015.



To,

Mr. Sahib Zada s/o Mazullah Khan
Levy Sepoy (Federal)

Annexure

B

6

Subject: REMOVAL FROM SERVICE.

Memo:

As per report received from the Addl:Assistant Commissioner Dir vide his memo No: 60/AAC/EM/Levy dated 16-02-2015 that You remained absent from duty w.e.f 01-02-2015 and have gone to Saudi Arabia without prior permission from the competent authority, which is mis-conduct on your part and attracts disciplinary action against you.

Later on an explanation was called vide this office order No: 2726-79/DC/LHC dated 18-02-2015 with the direction to submit your written reply within specified time, but you failed to present any written material before the undersigned.

Moreover, your brother in writing gave statement in front of two witnesses of your area Anwar Zaman & Hakim Khan duly recorded by DFC Ibrahim that you have left country and no more interested in joining force.

In light of the above, the undersigned has decided to impose upon you Mr. Sahib Zada Levy Sepoy (Federal) the major penalty of removal from service w.e.f 27-02-2015 under Section-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline Rules) 2013 in interest of public service.

M. J. 21/3
(Commandant Dir Levies)
Deputy Commissioner
Dir Upper.

Even No, & Dated:-

Copy forwarded to:-

1. The Commissioner Malakand Division.
2. The District Accounts Officer Dir Upper for information and necessary action.
3. Subidar Major Dir Levies.
4. The PS to Secretary Home & TA's Department, Peshawar.
5. The PS to Secretary SAFRON Division, Islamabad.
6. Office File.

M. J. 21/3
(Commandant Dir Levies)
Deputy Commissioner
Dir Upper

7

Annexure

بھنور جناب ہوم سیکرٹری امور داخلہ و قبائلی علاقہ جات خیبر پختونخوا ایشاور

حکمہ جاتی اپیل بر خلاف حکم نمبر 92-4487 مورخہ
24/3/2015 صادر کردہ جناب کمانڈنٹ/ ڈپٹی کمشنر ضلع دیر بالا

جناب عالی! گزارش ہے۔

- 1- یہ کہ سائل بطور لیوی سپاہی ضلع دیر بالا میں از سال 2010 اپنی ڈیوٹی انجام دیتا رہا۔
- 2- یہ کہ جناب ڈپٹی کمشنر/ کمانڈنٹ صاحب لیوی فورس ضلع دیر بالا نے سائل کو بروئے حکم/ چٹھی متذکرہ بالا ملازمت سے برطرف کیا ہے۔
- 3- یہ کہ سائل غریب شخص ہے اور اپنی ڈیوٹی نہایت مستعدی سے انجام دیتا چلا آیا ہے۔
- 4- یہ کہ سائل کو سماعت کا صحیح موقع نہیں ملا ہے۔
- 5- یہ کہ سائل نے کوئی کوتاہی نہیں کی ہے۔
- 6- یہ کہ سائل اپنی نوکری بحال کروانا چاہتا ہے۔
- 7- یہ کہ حکم برطرفی بر خلاف سائل قانون کے خلاف ہے۔

لہذا استدعا ہے کہ حکم مورخہ 24/03/2015 نسبت

برطرفی ملازمت سائل منسوخ فرمایا جائے اور سائل کو اپنی

ملازمت پر بحال فرمایا جائے۔

المقوم:- 28/07/2017

سائل

صاحبزادہ ولد ممتاز اللہ خان

اکرہ کا تحصیل ضلع



Annexure 1- D 8

IN THE COURT OF SECRETARY HOME
KHYBER PAKHTUNKHWA
(APPELLATE AUTHORITY)

CASE TITLE:

APPELLANT: SAHIBZADA S/O MAAZ ULLAH, DIR UPPER LEVIES
VERSUS
COMMANDANT LEVIES, DIR UPPER.

INTRODUCTION:-

The applicant submitted an appeal before the Competent Authority on 28.07.2017 for reinstatement into service.

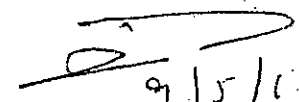
The representative of Deputy Commissioner / Commandant Levies Dir Upper submitted that the applicant was absent from duty without any prior permission of the competent authority. It was confirmed from reliable sources that applicant had gone abroad to Saudi Arab and recommended strict disciplinary action due to which, he was terminated from service w.e.f 27.02.2015.

PROCEEDINGS:-

The Appellant was heard in person and supporting documents were also checked / scrutinized in details. The plea is time barred but the applicant was unaware of the proper procedure. In this regard he also submitted condonation application and prayed for re-instatement into service.

DECISION:-

After perusal of available record and statement of the appellant, the appeal is rejected in light of the comments / views of DC / Commandant Levies Dir Upper. The appellant may be informed accordingly.


9/5/18
(IKRAM ULLAH)
SECRETARY HOME
KHYBER PAKHTUNKHWA

Announced
Dated 25.04.2018

میتھری ٹیوٹر - خیر محمد شاہد

Annexure E

51

درخواست کنندہ، درخواست گزار ہے لہذا اس کی حالت حلیم مایہ اس میں

حیات عالی

معدبانہ گزارش ہے کہ عدوی سے اپیل دائر کی گئی

تذلل سروس ٹریبونل میں چونکہ ڈسپارٹمنٹ کو دوبارہ قبضہ

کرنے کے لیے واپس بھیجی گئی تھی لہذا سنوئی میں آجائے کہ ڈسپارٹمنٹ

سے دوبارہ قبضہ کر لیا ہے۔ لیکن ابھی تک اس میں کبھی کوئی قبضہ

نہیں ہو سکا۔ لہذا گزارش ہے کہ مجھے قبضہ کی عالی فرما دی

جی چاہے

الحارص

آپ کا تاج فرمانہ والا سیاسی صبا خیر (دہ ولد مخار انور خان)

ساکن کوٹک تحصیل ویدج ڈیرالہ

Date: 16-12-2020

Mobile No = 0342-9896825



Annexure F
IN THE COURT OF SECRETARY HOME
KHYBER PAKHTUNKHWA
(APPELLATE AUTHORITY)

10

CASE TITLE:

APPELLANT: SAHIBZADA S/O MAAZ ULLAH, DIR UPPER LEVIES
VERSUS
COMMANDANT LEVIES, DIR UPPER.

INTRODUCTION:-

The present appeal for reinstatement of the subject official into service was received from the office of DC Dir Upper on 14-05-2020. The applicant's earlier appeal against removal from service was processed in this Department and rejected on 25-04-2018. Feeling aggrieved from the said order, the appellant filed appeal before Federal Service Tribunal Islamabad, which has remanded the same for decision afresh.

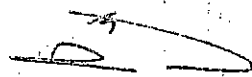
Acting upon the same order of FST, the appellant was called for personal hearing on 09-06-2020. Representative of Deputy Commissioner / Commandant Levies Dir Upper was also present and submitted that the appellant was dismissed from service due to absence from duty without any prior permission of the competent authority. Moreover, It was further confirmed from available record that the appellant had gone abroad to Saudi Arabia. Therefore, he may be recommended for strict disciplinary action. Hence, he was removed from service w.e.f 27.02.2015.

PROCEEDINGS:-

The Appellant was heard in person and supporting documents were also checked / scrutinized in details. The appellant admitted during the hearing that he went abroad without informing anyone due to financial constraints and returned back in 2017.

DECISION:-

After perusal of available record and statement of the appellant/departmental representative, the appeal is rejected. The appellant may be informed accordingly.


(IKRAM ULLAH)
SECRETARY HOME
KHYBER PAKHTUNKHWA

Announced
Dated 09.06.2020

Recd on 16/06/20

VAKALATNAMA

11

NO. _____ /20

IN THE COURT OF KP Service Tribunal Peshawar

Sahib Zade

Appellant (s)
Petitioner (s)
Plaintiff (s)

VERSUS

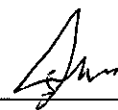
Levis

Respondent (s)
Defendants (s)

I/WE Sahib Zade

do hereby appoint and constitute the **Syed Noman Ali Bukhari** Advocate High Court for the aforesaid Appellant(s), Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party to commence and prosecute / to appear and defend this action / appeal / petition / reference on my / our behalf and al proceedings that may be taken in respect of any application connected with the same including proceeding in taxation and application for review, to draw and deposit money, to file and take documents, to accept the process of the court, to appoint and instruct council, to represent the aforesaid Appellant(s), Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party agree(s) ratify all the acts done by the aforesaid.

DATE _____ /20



(CLIENT)

ACCEPTED



SYED NOMAN ALI BUKHARI
ADVOCATE HIGH COURT

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No: 1604/2021

Mr. Sahib Zada's/o Maaz Ullah Khan Levy Sepoy (Federal) Now Provincial.....Appellant

V/S

1. The Secretary Home & Tribal Affairs Department Khyber Pakhtunkhwa Civil Secretariat Peshawar.
2. The Commandant Dir Levies, Deputy Commissioner Dir Upper.....Respondents

INDEX

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02	Joint Para wise Comments	-	2-3
03	Absence Report	"A"	4
04	Explanation Notice	"B"	5
05	Statement of his brother	"C"	6
06	Copy of Departmental Appeal for Personal Hearing	"D"	7
07	Copy of Departmental Appeal rejected by Home Deptt	"E"	8
08	Copy of Appeal Remanded by Federal Service Tribunal	"F"	9-10
09	Copy of Departmental Appeal agian rejected by Home Deptt	"G"	11


(Raza Ullah)

Assistant/Levy Head Clerk
Office of the Deputy Commissioner Dir Upper.

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No: 1604/2021

Mr. Sahib Zada s/o Maaz Ullah Khan Levy Sepoy (Federal) Now Provincial.....Appellant

V/S

1. The Secretary Home & Tribal Affairs Department Khyber Pakhtunkhwa Civil Secretariat Peshawar.
2. The Commandant Dir Levies, Deputy Commissioner Dir Upper.....Respondents

AFFIDAVIT

I, Raza Ullah, Assistant/Levy Head Clerk Office of the Deputy Commissioner/Commandant Dir Levies Upper Dir do hereby solemnly affirm and declare on oath that the contents of the instant reply are true and correct to the best of my knowledge and belief and nothing relevant has been concealed from this Honorable Court.



Mr. Raza Ullah
Assistant/Levy Head Clerk

Service appeal No. 1604/2021

Mr. Sahibzada s/o Maaz Ullah Khan Levy Sepoy (Federal) now Provincial... (Appellant)

Versus

- 1) The Secretary Home and Tribal Affairs Department Khyber Pakhtunkhwa Civil Secretariat Peshawar.
- 2) The Commandant Dir Levies, Deputy Commissioner Dir Upper... (Respondents).

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 24-03-2015, WHEREBY THE APPELLANT HAS BEEN REMOVED FROM SERVICE AND AGAINST REJECTION ORDER DATED 25-04-2018 AND 09-06-2020 RECEIVED ON 16-12-2020 THROUGH APPLICATION WHEREBY THE DEPTT APPEAL OF THE APPELLANT HAS BEEN REJECTED FOR NO GOOD GROUNDS.

JOINT PARAWISE COMMENTS OF BEHALF OF RESPONDENTS:-

PRELIMINARY OBJECTIONS:-

- 1) That the appellant has got no cause of action or locus standi.
- 2) That the appellant has been estopped by his own conduct to file the appeal.
- 3) That the appeal is not maintainable under Section-4 of the service Tribunal Act-1974.
- 4) That this Honorable Tribunal has no jurisdiction to entertain the appeal.
- 5) That the appellant has not come to the Tribunal with clean hands.
- 6) That the appeal of the appellant is badly time barred.
- 7) That the appeal is bad for miss joined/ non joined if necessary party.

RESPECTFULLY SHEWETH

- 1) Pertained to the record.
- 2) In Correct. No leave application was received from the appellant for the reason that he was facing domestic issues i.e illness or death of his brother rather the Additional Assistant Commissioner/Executive Magistrate Dir (in whom office the appellant was deployed/performing duty) reported vide letter No. 60/AAC/EMDir/34-PC dated 16-02-2015 stating therein that Mr. Sahibzada Levy Sepoy was absent from duty for the last 15 days i.e from 01-02-2015, and reportedly had gone abroad for earning livelihood and requested that departmental action may be taken against him (copy enclosed at Annexure "A").
- 3) In Correct. As explained earlier neither any leave application was received from the concerned individual regarding the ailment or death of his brother nor he had approached this office for assuming his charge resultantly explanation was called from him vide this office letter at Annexure "B" with the directions to submit reply of the same within 07 days positively. When the DFC approached his home for the delivery of the same his brother namely Yarmula Khan told/gave him written statement that he had left for Saudi Arabia for earning livelihood and he was no more interested in Government Service (copy attached at Annexure "C"). As far as the question of

departmental appeal is concerned Home Department Khyber Pakhtunkhwa called the accused levy official for personal hearing vide letter No. SO (Levies)/HD/6-185/018/Sahibzada dated 02-03-2018 and after perusal of the record and statement of the appellant his appeal was rejected vide order dated 25-04-2018 (copies enclosed Annexure "D" & "E").

4) Correct to the extent that departmental appeal was filled by petitioner in the honorable Federal Service Tribunal Islamabad but the same was remanded to the Home Department/Competent Authority for decision afresh by treating them as pending departmental appeal (copy of the order is attached at Annexure "F"). owing to the reason above the petitioner was heard again in person and after perusal of the record his appeal was rejected again by the Home Department/Competent Authority vide order dated 09-06-2020 (copy enclosed at Annexure "G")

5) No comments

Grounds:-

- a. Incorrect as explained at para No. 2, 3, & 4 all the codal/legal formalities were fulfilled by the respondent No. 01 and 02 in all the proceeds against the appellant.
- b. Incorrect as explained above.
- c. Incorrect as explained at para No. 2, 3 & 4.
- d. Incorrect as explain earlier full opportunities of personal hearing was given to petitioner by the respondent No. 2.
- e. Incorrect as explained at above paras the petitioner left for Saudi Arabia which was confirmed from his brother statement that he was no more interested in government service.
- f. No comments.
- g. Incorrect as explained at above paras all the legal formalities have been fulfilled by the respondent No. 1 and 02 during the departmental proceedings.
- h. Incorrect as explained at para No. 1, 2 and 3.
- i. In correct.
- j. No comments.

In light of the facts explained above, it is humbly prayed that the appeal filed by the appellant does not merit consideration therefore may kindly be dismissed with cost please.

Secretary Home & Tribal Affairs Department
Khyber Pakhtunkhwa Peshawar
(Respondent No. 01)

Home Secretary,
Khyber Pakhtunkhwa

Deputy Commissioner/
Commandant Dir Levies
Upper Dir
(Respondent No. 02)

DC/Commandant
Dir Levies

4 (circled)



DISTRICT ADMINISTRATION DIR UPPER

OFFICE OF THE ADDL. ASSISTANT COMMISSIONER/EM

DIR UPPER

No: 60/AAC/EM/Dir/34-P.C
Dated: 16-02-15, 26 R/Sani 1436H
P#0944880887/E.mail:aaedir@gmail.com

To ✓ The Deputy Commissioner/
Commandant Dir levies,
Dir Upper.

Subject: ABSENCE FROM THE DUTY
Memo:

Mr. Sahibzada Levy Sepoy is absent from his duty for the last 15 days i.e. from 01-02-2015. The undersigned came to know that he has gone abroad for earning livelihood.

It is therefore, requested that an appropriate action may be taken against the said levy sepoy and an alternate arrangement may kindly be made to this office for running the official business smoothly.

ADDL. ASSISTANT COMMISSIONER/EM
DIR UPPER

Copy forwarded to:

- 1) The Assistant Commissioner, Dir. for information.
- 2) The Subidar Major Dir Levies.
- 3) The SDLO Dir.

For further necessary action.

C.H.C.

ADDL. ASSISTANT COMMISSIONER/EM
DIR UPPER

URGENT

Do the needful immediately
AD
17/2

1503
17-2-15

ATTESTED

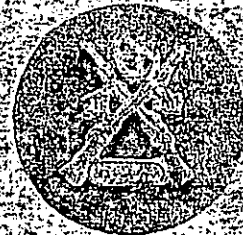
RAJ
District Revenue
Deputy Commissioner Office
Dir Upper.



5 2

OFFICE OF THE
COMMANDANT/DEPUTY COMMISSIONER
UPPER DIR

No: 2726-29/DC/LHC/Exp
Dated Dir the: 18/02/2015



To:

Sahiib Zada

(Levy Sepoy Federal at AAC Dir Office)

Subject:
Memo

EXPLANATION

Reference to Additional Assistant Commissioner/EM Dir letter No. 60/AAC/EM dated 16-02-2015, that you remained absent from duty point and gone aboard for earning livelihood without prior permission from the competent authority.

This act on your part is against the discipline of the levy force and amounts to mis-conduct.

You are therefore, directed to explain your position in this regard within 07 days after the receipt of this explanation, failing which strict action will be taken against you under section (9) of E & D rules 2011.

Even No. & Dated:
Copy forwarded to:-


Commandant Dir Levies/
DEPUTY COMMISSIONER UPPER DIR

- The Addl. Assistant Commissioner Dir w/r to his letter No. quoted above
- The District Account Officer Dir Upper with request to stop the pay of the above official immediately.
- The Subidar Major Dir Levies

o/c


Commandant Dir Levies/
DEPUTY COMMISSIONER UPPER DIR

ATTESTED


Deputy Commissioner Office
Dir Upper



خدمت صباغ و رنگی لکھنؤ صاحبان / لکھنؤ ڈیم ہونیو ڈیم ہارا

صباغ عالی

لکھنؤ کی جاتی ہے۔ یہ کم سائیل صلیو ڈیم ہارا کاؤں کوٹھے کا اصل
نالیوڈہ ہے۔ سائیل فوڈ جوڑو ہونیو صباغی صباغی لودہ کا بجائی پارلاخان

ولڈ معاذ اللہ خان افرار گرت لکھ دیئے ہیں۔ کہ فوڈ جوڑو ہونیو صباغی

صباغی لودہ جنت فوڈ جوڑو لکھ دیئے ہونیو صباغی لودہ کا بجائی پارلاخان

۱۵/۱۰/۲۰۰۵ کو لکھ دیئے ہیں۔ اور لکھ دیئے ہیں۔ اور لکھ دیئے ہیں۔

لکھنؤ فوڈ جوڑو لکھ دیئے ہیں۔ اور لکھ دیئے ہیں۔ اور لکھ دیئے ہیں۔

سائیل پارلاخان ولڈ معاذ اللہ خان لکھ دیئے ہیں۔ اور لکھ دیئے ہیں۔

دستخط

صباغی لودہ کا بجائی پارلاخان

۱۵۷۰۱-۸۳۲۶۹۰۳-۷

ATTESTED

Dist. ...
Dy. Comm. ...
Mr. ...



7

**GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT**

No. SO (Police-II)/HD/6-185/018

Dated Peshawar the 02/03/2018

To,


Mr. Shahib Zada s/o Maaz Ullah,
R/o Totkay, District, Dir Upper.

Subject: - DEPARTMENTAL APPEAL FOR REINSTATEMENT IN SERVICE.

Memo:

I am directed to refer to the subject noted above and to state that the Competent Authority has been pleased to grant you an opportunity of personal hearing.

You are therefore directed to appear before the Additional Secretary (Security), Home & TA's Department on 09th March, 2018 at 10.30 A.M for personal hearing in his office.


Section Officer (Police-II)
Phone 091-9210503

Copy forwarded to:-

1. The Deputy Commissioner/Commandant Levies, Dir Upper with the request to ensure the appearance of above applicant before the competent authority on the date time and venue mentioned above. Moreover a well conversant representative (not below the rank of BPS-17) alongwith record may also be deputed to be present at the time of personal hearing.
2. Section officer (General), Home and TA's Department.
3. PS to Secretary Home & Tribal Affairs Department.
4. PA to Additional Secretary (Security), Home Department.

ATTESTED


District Commissioner
Deputy Commissioner Office
Dir Upper.

Section Officer (Police-II)



8

IN THE COURT OF SECRETARY HOME
KHYBER PAKHTUNKHWA
(APPELLATE AUTHORITY)

CASE TITLE:

APPELLANT: SAHIBZADA S/O MAAZ ULLAH, DIR UPPER LEVIES
VERSUS
COMMANDANT LEVIES, DIR UPPER.

INTRODUCTION:-

The applicant submitted an appeal before the Competent Authority on 28.07.2017 for reinstatement into service.

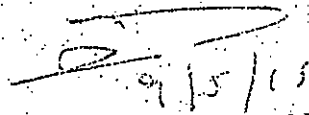
The representative of Deputy Commissioner / Commandant Levies Dir Upper submitted that the applicant was absent from duty without any prior permission of the competent authority. It was confirmed from reliable sources that applicant had gone abroad to Saudi Arab and recommended strict disciplinary action due to which, he was terminated from service w.e.f 27.02.2015.

PROCEEDINGS:-

The Appellant was heard in person and supporting documents were also checked / scrutinized in details. The plea is time barred but the applicant was unaware of the proper procedure. In this regard he also submitted condonation application and prayed for re-instatement into service.

DECISION:-

After perusal of available record and statement of the appellant the appeal is rejected in light of the comments / views of DC / Commandant Levies Dir Upper. The appellant may be informed accordingly.


(IKRAM ULLAH)
SECRETARY HOME
KHYBER PAKHTUNKHWA

Announced
Dated 25.04.2018

ATTESTED


Deputy Commissioner Office
Dir Upper.

9

Judgement Sheet
IN THE FEDERAL SERVICE TRIBUNAL, ISLAMABAD

BEFORE : **Raja Hasan Abbas and**
Mr. Manzoor Ali Khan, Members

Appeal No.401(P)CS/2019

Date of Institution	: 06.05.2019
Date of Hearing	: 18.12.2019
Date of Judgment	: 19.12.2019

APPELLANT : **Sahib Zada**, Ex-Sepoy, S/o Maz Ullah, R/o Nangar Kari, Post Office Dir, Tehsil Dir, District Upper Dir, KPK.

Vs.

RESPONDENT: 1. **The Secretary**, Home and Tribal Affairs Deptt. Merged FATA Secretariat, Peshawar, Khyber Pakhtunkhwa.

2. **The Deputy Commissioner/Commandant**, Levies Force, District Upper Dir, KPK.

PRESENT : Mr. Aamad Nasir Kundi, Advocate alongwith the appellent.

S. M. Raza, Assistant Attorney General for the respondents.

JUDGEMENT

RAJA HASAN ABBAS, MEMBER:-

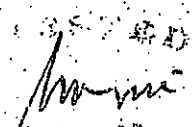
The appellent is aggrieved by the order dated 24.03.2015 where by major penalty of *removal from service* was imposed upon him w.e.f. 27.02.2015 on charge of absence. His departmental appeal dated 01.04.2015 has remained unresponded. He submitted another appeal dated 04.04.2019 to Secretary, Home and Tribal Areas Affairs. Respondent submitted parawise comments wherein it is stated that his departmental appeal was rejected by Secretary Home and Tribal Areas Affairs vide order dated 25.04.2018.

2. It is contended that identical appeals have been disposed of by order of the Tribunal dated 04.12.2019 and remanded to departmental authorities for decision afresh by treating them as pending departmental appeal.

3. It is argued that keeping in view the rule of consistency his appeal may also be remanded to departmental/competent

ATTESTED


Dist. Dir. Room
Deputy Commissioner Office
Dir Upper.


Secretary
Federal Service Tribunal
Islamabad

authority for decision in terms of order of Federal Service Tribunal dated 04.12.2019 in *Appeals No. 87(P)CS/2019 and others*. The appeal is disposed of in the above terms.

4. No order as to costs. Parties will be informed.

Sd-
MEMBER

Sd-
MEMBER

19.12.2019
"Gulzar"

SCANNED TRUE COPY
Registrar
Federal Service Tribunal
Islamabad



ATTESTED

D. [Signature]
Distt. Room
Deputy Commissioner Office
Dir Upper.



11

IN THE COURT OF SECRETARY HOME
KHYBER PAKHTUNKHWA
(APPELLATE AUTHORITY)

CASE TITLE:

APPELLANT: SAHIBZADA S/O MAAZ ULLAH, DIR UPPER LEVIES
VERSUS
COMMANDANT LEVIES, DIR UPPER.

INTRODUCTION:-

The present appeal for reinstatement of the subject official into service was received from the office of DC Dir Upper on 14-05-2020. The applicant's earlier appeal against removal from service was processed in this Department and rejected on 25-04-2018. Feeling aggrieved from the said order, the appellant filed appeal before Federal Service Tribunal Islamabad, which has remanded the same for decision afresh.

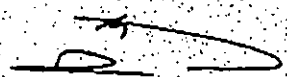
Acting upon the same order of FST, the appellant was called for personal hearing on 09-06-2020. Representative of Deputy Commissioner / Commandant Levies Dir Upper was also present and submitted that the appellant was dismissed from service due to absence from duty without any prior permission of the competent authority. Moreover, It was further confirmed from available record that the appellant had gone abroad to Saudi Arabia. Therefore, he may be recommended for strict disciplinary action. Hence, he was removed from service w.e.f 27.02.2015.

PROCEEDINGS:-

The Appellant was heard in person and supporting documents were also checked / scrutinized in details. The appellant admitted during the hearing that he went abroad without informing anyone due to financial constraints and returned back in 2017.

DECISION:-

After perusal of available record and statement of the appellant/departmental representative, the appeal is rejected. The appellant may be informed accordingly.


(IKRAM ULLAH)
 SECRETARY HOME
 KHYBER PAKHTUNKHWA

Announced
Dated 09.06.2020

ATTESTED


 Distr. 
 Deputy Commissioner Office
 Dir Upper.