

Order

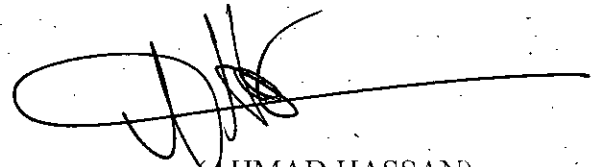
18.04.2018

Counsel for the appellant and Mr. Muhammad Jan, DDA alongwith Mr. Arif Saleem, ASI for respondents present. Arguments heard and record perused.

This appeal is dismissed as per detailed judgment of today placed on file in connected service appeal No. 218/2016 titled "Shah Duran-vs-The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and 2 others". Parties are left to bear their own cost. File be consigned to the record room.

Announced:

18.04.2018



(AHMAD HASSAN)

Member



(MUHAMMAD AMIN KHAN KUNDI)

Member

11.12.2017

Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Arif Saleem, ASI for the respondents present. Copy of denovo enquiry may be produced on the next date. To come up for arguments on 14.02.2018 before the D.B.



Member



Chairman

14.02.2018

Clerk of the counsel for appellant present. Mr. Kabir Ullah Khattak, Additional AG for the respondents present. Counsel for the appellant is not in attendance due to general strike of the bar. To come up for arguments on 18.04.2018 before D.B.



Member



Chairman

18.04.2018

Counsel for the appellant and Muhammad Jan, DDA alongwith Mr. Arif Saleem, ASI for respondents present. Arguments heard. To come up for order on 19.04.2018 before D.B.



(Ahmad Hassan)  
Member

(M. Amin Khan Kundi)  
Member

21.11.2016

Counsel for the appellant and Addl:AG for respondents present. Rejoinder submitted. To come up for arguments on 03.04.2017.



(ABDUL LATIF)  
MEMBER



(MUHAMMAD AAMIR NAZIR)  
MEMBER

03.04.2017

Counsel for the appellant and Mr. Muhammad Jan, GP for the respondents present. Argument could not be heard due to incomplete bench. To come up for final hearing on 07.06.2017 before D.B.



Chairman

07.06.2017

Counsel for the appellant present. Mr. Arif Saleem, ASI alongwith Mr. Kabirullah Khattak, Assistant AG for the respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 06.10.2017 before D.B.



(GUL ZEB KHAN)  
MEMBER



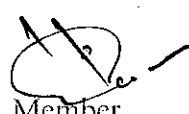
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

06.10.2017

Junior to counsel for appellant present. Mr. Kabir Ullah Khattak, Assistant Advocate General for respondents present. Junior to counsel for appellant seeks adjournment. Adjourn. To come up for arguments on 11.12.2017 before D.B.



Member  
(Executive)



Member  
(Judicial)

28.03.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as S.I when subject to inquiry on the allegations of bad reputation etc and removed from service vide order dated 9.1.2014 where-against he preferred service appeal No. 419/2015 decided on 12.5.2015 where-in departmental proceedings were directed and accordingly conducted. That the appellant was exonerated from the charges vide order dated 2.11.2015 but the intervening period with effect from 9.1.2014 to 2.6.2015 was treated as leave without pay. Feeling aggrieved the appellant preferred departmental appeal on 10.11.2015 which was not responded and hence the instant service appeal on 17.3.2016.

Appellant Deposited  
Security Access Fee

That the appellant was exonerated of the charges and that the intervening period was unlawfully treated as leave without pay hence the impugned order is liable to be set-aside.

Points urged need consideration. Admit. Subject to deposit of security and process within 10 days, notices be issued to the respondents for written reply/comments for 25.5.2016 before S.B.

25.05.2016

Counsel for the appellant, Mr. Arif Saleem, SI (Legal) alongwith Assistant AG for respondents present. Written reply not submitted. Requested for adjournment. Last opportunity granted. To come up for reply/comments on 25.7.2016 before S.B.

  
Chairman

25.07.2016



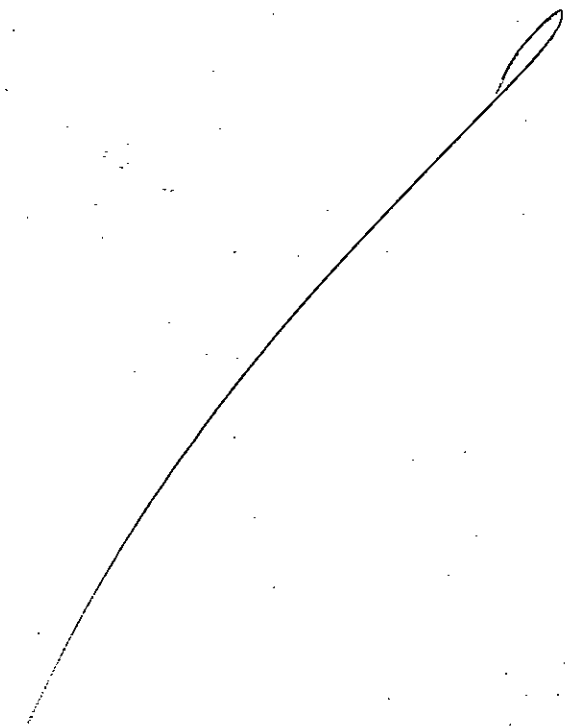
Clerk of counsel for the appellant and Addl. AG alongwith Arif Saleem, Sub Inspector (Legal) for the respondents present. Parawise comments submitted. The appeal is assigned to D.B for rejoinder and final hearing for 21.11.2016.

  
Chairman

Form- A  
FORM OF ORDER SHEET

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

Case No. 258/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	17.03.2016	<p>The appeal of Mr. Ayat Ullah presented today by Mr. Muhammad Asif Yousafzai 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>
2	21.3.16	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>28-03-2016</u></p> <p style="text-align: right;"> CHAIRMAN</p> 

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 258 /2016

Ayat Ullah

V/S

Police Deptt:

**INDEX**

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of Appeal	-----	1-4
2.	Condonation of delay application	-----	5-6
3.	Copy of order dated 9.1.2014	A	7
4.	Copy of judgment dated 12.5.2015	B	8-11
5.	Copy of order dated 2.11.2015	C	12
6.	Copy of departmental appeal	D	13
7.	Affidavit in original	E	14
8.	Vakalat nama	-----	15

APPELLANT

THROUGH:

  
(M.ASIF YOUSAFZAI)

  
(TAIMUR ALI KHAN)

 &  
(SYED NOMAN ALI BUKHARI)

ADVOCATES, PESHAWAR.

**BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR.**

APPEAL NO. 258 /2016

Ayat Ullah, Sub Inspector.

Police Station Ustarzai, Kohat.

A.W.F. Province  
Service Tribunal  
Diary No. 239  
dated 17-3-2016

(APPELLANT)

VERSUS

1. The Provincial Police Officer, KPK, Peshawar.
2. The Deputy Inspector of Police, Kohat region, Kohat.
3. The District Police Officer, Kohat.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 02.11.2015, WHEREBY THE INTERVENING PERIOD OF THE APPELLANT'S COMPULSORY RETIREMENT W.E.F. 09.01.2014 TO 02.06.2015 IS TREATED AS LEAVE WITHOUT PAY AND NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 02.11.2015 MAY BE SET ASIDE AND RESPONDENTS MAY BE DIRECTED TO CONSIDER THE PERIOD W.E.F.09.01.2014 TO 02.06.2015 WITH ALL PAY & SERVICE BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

~~Filed to the~~  
~~Registrar~~  
17/3/16

**RESPECTFULLY SHEWETH:**

**FACTS:**

1. That the appellant is serving in Police Deptt: as Sub-Inspector and was compulsory retired on dated 09.01.2014 on the basis of different charges. (Copy of order dated 09.01.2014 is attached as Annexure-A)
2. That against the order dated 09.01.2014, the appellant filed service appeal No. 419/2014 in the KPK service Tribunal which was finally decided on 12.5.2016. The appeal was partially accepted by set aside the impugned order dated 09.01.2014 and the appellant was reinstated in service for the purpose of the de-novo enquiry proceeding. (Copy of judgment dated 12.5.2016 attached as Annexure-B)
3. That the Deptt: conducted de-novo inquiry against the appellant and the inquiry officer in his inquiry report submitted that the appellant was found innocent and the allegation against him could not be substantiated.
4. That on the basis of inquiry report, the DPO Kohat exonerated the appellant from all the charges leveled against him. However, his intervening period i.e compulsory retirement w.e.f 09.01.2014 to 02.06.2015 is treated as leave without pay vide order dated 02.11.2015. (Copy of order dated 02.11.2015 is attached as Annexure-C).
5. That against the order dated 02.11.2015, the appellant filed departmental appeal on dated 15.11.2015, which is not responded within the statutory period of ninety days. (Copy of departmental appeal is attached as Annexure-D)
6. That now the appellant come to this august tribunal on the following grounds amongst others.

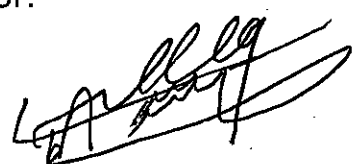
**GROUND:**

- A) That the impugned order dated 02.11.2015 and not taking action on the departmental appeal within the statutory period are against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.



- 3  
✓
- B) That the appellant was compulsory retired on the basis of allegations vide order dated 9.1.2014. The appellant filed service No.419/2014 in this august Tribunal, which was partially accepted by set adding the impugned order dated 09.01.2014 and the appellant was reinstated in service for the purpose of the denovo enquiry proceeding and on the basis of denovo inquiry, the allegations were not proved against the appellant and the DPO Kohat exonerated the appellant from the charges leveled against him vide order dated 02.11.2015. therefore there remain no ground to treating appellant's intervening period i.e compulsory retirement w.e.f 09.01.2014 to 02.06.2015 as leave without pay as the Honourable Tribunal has already set aside the impugned order dated 09.01.2014.
- C) That the inquiry officer has exonerated the appellant from all the charges on the basis of which the appellant was compulsory retired. Therefore by treating appellant's intervening period i.e compulsory retirement w.e.f 09.01.2014 to 02.06.2015 as leave without pay is against the law and rules.
- D) That the appellant did not willfully compulsory retired, but he was compulsory retired by the Deptt: on the basis of allegations, however the allegations were not proved against the appellant as well as the Honourable Tribunal also already set aside the impugned order dated 09.01.2014. Therefore the Deptt: acts as arbitrary manner by treating appellant's intervening period i.e compulsory retirement w.e.f 09.01.2014 to 02.06.2015 as leave without pay.
- E) That the appellant is not remained in any gainful employment during this period. (Affidavit in this respect is attached as Annexure-E)
- F) That not responding on the departmental appeal of the appellant by the department within the statutory period of time is the violation of Supreme Court's judgment.
- G) That the appellant has been dealt according with law and rules and has been deprived from his legal right of pay.
- H) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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

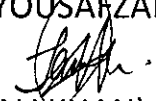


APPELLANT  
Ayat Ullah

THROUGH:



(M. ASIF YOUSAFZAI)



(TAIMUR ALI KHAN)



(SYED NOMAN ALI BUKHARI)

ADVOCATES, PESHAWAR.

5

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. \_\_\_\_\_/2016

Ayat Ullah

V/S

Police Deptt:

**APPLICATION FOR CONDONATION OF**  
**DELAY IN THE INSTANT APPEAL.**

**RESPECTFULLY SHEWETH:**

1. That the appellant has filed the instant appeal in which no date is fixed so for.
2. That appellant has filed departmental appeal on dated 15.11.2015 which was not responded within statutory period of ninety days and time limit for this instant appeal to be filed in august Tribunal was completed on dated 15.3.2016.
3. That due to unavoidable circumstance, the appellant could not consult with the counsel and could not file the instant appeal in time and submit the instant appeal on dated 17.3.2016 after two days delay.
4. That the Apex Court has already held that the matters should be decided on merits rather than on technicalities including limitation.
5. That valuable rights are involved in the instant appeal for which decision on merit will be just and fair.

It is, therefore, most humbly prayed that the application for condonation of delay may be accepted. Any other remedy, which this august tribunal deems fit and appropriate that, may also be awarded in favour of appellant.

G  
✓

APPELLANT

THROUGH:

*M. Asif Yousafzai*  
(M.ASIF YOUSAFZAI)

*Taimur Ali Khan*  
(TAIMUR ALI KHAN)

*Syed Noman Ali Bukhari* &  
(SYED NOMAN ALI BUKHARI)  
ADVOCATES, PESHAWAR.

**AFFIDAVIT.**

It is affirmed that the contents of this application are true and correct.



*M. Asif*  
DEPONENT.

ORDER

This order relates to departmental enquiry conducted against SI Ayat Ullah who was proceeded against departmentally under Police Disciplinary Rules, 1975 on the following charges:-

- i. Bad reputation in public.
  - ii. Standard of living beyond his means.
  - iii. Financial corruption.
  - iv. Poor performance as a Police officer.
2. On the basis of said charges, he was issued charge sheet with statement of allegation, Mr. Mansoor Aman ASP HQrs was appointed as enquiry officer to enquire into the allegations leveled against him.
3. During course of enquiry, the enquiry officer recorded statement of defaulter official and also approached revenue department for provision of report regarding landed property in his name. The enquiry officer also approached in writing all bank Managers in Kohat district for provision of account details in respect of said defaulter official which were regretted for the reason that the same can be provided if directed by court of competent jurisdiction.
4. The enquiry officer, on completion of enquiry proceedings, found guilty the defaulter official of the charges leveled against him and recommended him for major punishment in his findings.
5. Accordingly the defaulter official was issued Final Show Cause Notice, in response to which he submitted reply which was not found satisfactory. He was also given a chance of personal hearing but he failed to produce any defence to rebut the charges being established against him.
6. After going through the report of enquiry officer and other available record, I am satisfied that the said defaulter official/SI Ayat Ullah is a person having bad reputation in the department as well as in the public. He is indiscipline official who has got irregular promotion without qualifying the requisite courses which is evident from his service record. He is also facing another departmental enquiry on the charges of financial embezzlement of an amount of Rs. 7,45,000/-. Retention of such a person brings a bad name for the department which may cause dishearten among other officials of the department so, I in exercise of the powers vested in me under Rule 5(5) of Police Disciplinary Rules, 1975, awarded him the punishment of compulsory retirement from service with immediate effect.

Announced

OP No. 45  
Dated 09-01-2014.

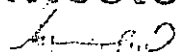
  
DISTRICT POLICE OFFICER,  
KOHAT

OFFICE OF THE DISTRICT POLICE OFFICER, KOHAT.

No. 164 /PA dated Kohat the 09-1-2014.

Copy of the above is forwarded to the Deputy Inspector General of Police, Kohat Region Kohat for favour of information w/r to his office Ends: No. 180-83/EC dated 03.01.2014.

**Attested**

  
To be true copy)  
Advocate

DISTRICT POLICE OFFICER,  
KOHAT

**ATTESTED**  


B

8

Sr. No.	Date of order/ proceedings	Order or other proceedings with signature of Judge/ Magistrate
1	2	3
1:	12.05.2015	<p>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, <u>PESHAWAR.</u></p> <p>Appeal No. 419/2014.</p> <p>Ayat Ullah S/O Aman Ullah R/O Shakardara, Tehsil Lachi, District Kohat Versus The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar etc.</p> <p><u>PIR BAKHSH SHAH, MEMBER.</u> Appellant</p> <p>Ayatullah with his counsel (Mr. Arshaf Ali, Advocate) and G.P Mr. Ziaullah, with Arif Saleem, ASI for the respondents-department present.</p> <p>2. The instant appeal has been filed by appellant Ayat Ullah under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned order dated 09.1.2014 whereby he was awarded major penalty of compulsory retirement from service with immediate effect.</p> <p>3. The appellant Ayatullah Sub Inspector Kohat Police was issued charge sheet alongwith statement of allegations on 23.08.2013. Charges against the appellant were that according to reliable source report he was having ill reputation in the department. An enquiry was conducted by Mr. Bashir Ahmad Syed, Superintendent of Police (Investigation) Kohat in which the appellant was found innocent and recommended for exoneration. The competent authority issued another charge sheet to the appellant on 12.12.2013 with the charges of bad</p>

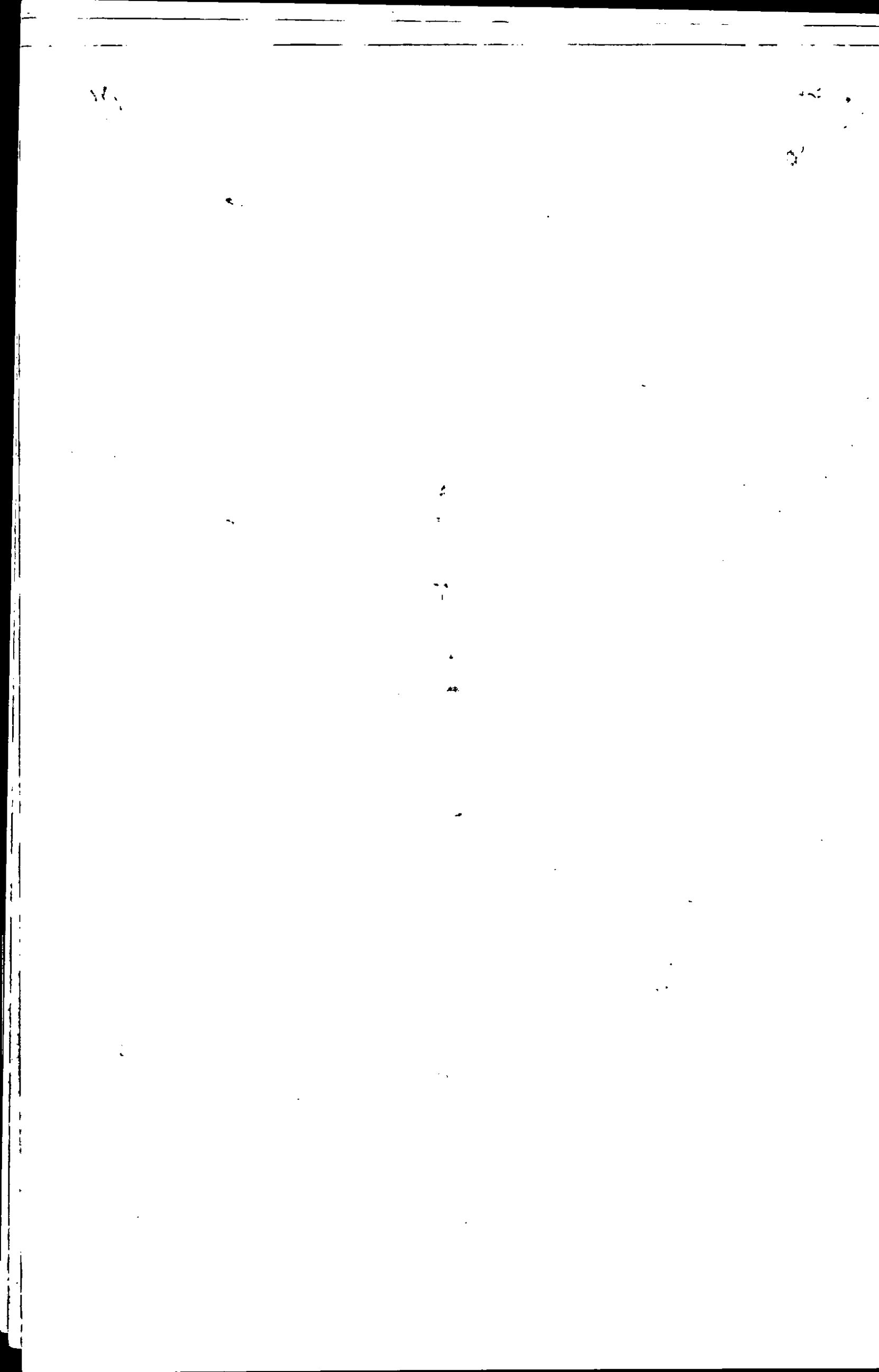
ATTENDED

reputation in public, living beyond his means, financial corruption and poor performance as police officer. Mr. Mansoor Aman, ASP, Headquarter, Kohat was appointed as enquiry officer, who conducted the enquiry and recommended the appellant for major punishment. Final show cause notice was issued to the appellant on 30.12.2014, to which the appellant submitted his reply on 5.1.2014. Vide impugned order dated 09.1.2015, the appellant has been compulsorily retired from service under Rule 5(5) of Police Discipline Rules, 1975. Feeling aggrieved, the appellant filed departmental appeal on 16.1.2014, which has not been decided within the statutory period, hence the instant appeal before this Tribunal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

4. Learned counsel for the appellant stated that charges against the appellant were general in nature much-less that it would have referred any specific time of occurrence or any specific instance. He further stated that no proper procedure has been adopted by the respondents before passing the impugned order. In the first enquiry conducted by SP Investigation, Kohat, the appellant was found innocent while the second enquiry officer failed to examine any witness or to collect any documentary proof in support of the charges leveled against the appellant. That the appellant was not given proper opportunity of defence to prove his innocence and that the enquiry officer has given his findings on surmises and

TESTED

ATTES





reputation in public, living beyond his means, financial corruption and poor performance as police officer. Mr. Mansoor Aman, ASP, Headquarter, Kohat was appointed as enquiry officer, who conducted the enquiry and recommended the appellant for major punishment. Final show cause notice was issued to the appellant on 30.12.2014, to which the appellant submitted his reply on 5.1.2014. Vide impugned order dated 09.1.2015, the appellant has been compulsorily retired from service under Rule 5(5) of Police Discipline Rules, 1975. Feeling aggrieved, the appellant filed departmental appeal on 16.1.2014, which has not been decided within the statutory period, hence the instant appeal before this Tribunal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

4. Learned counsel for the appellant stated that charges against the appellant were general in nature much-less that it would have referred any specific time of occurrence or any specific instance. He further stated that no proper procedure has been adopted by the respondents before passing the impugned order. In the first enquiry conducted by SP Investigation, Kohat, the appellant was found innocent while the second enquiry officer failed to examine any witness or to collect any documentary proof in support of the charges leveled against the appellant. That the appellant was not given proper opportunity of defence to prove his innocence and that the enquiry officer has given his findings on surmises and

TESTED

ATTES

(10)

conjectures. He stressed that in fact the appellant was selected for upper course in the year, 2011. He requested that on acceptance of the appeal, the impugned order may be set aside and the appellant may be reinstated into service with all back benefits.

5. The learned Government Pleader while rebutting the arguments submitted that all godal formalities were fulfilled. Charge sheet and statement of allegation was served upon the appellant, opportunity of personal hearing was given to him, and major penalty was recommended by the enquiry officer. He requested that the appeals may be dismissed.

6. We have heard arguments of the learned counsel for the parties and perused the record with their assistance.

7. It transpired from perusal of record that in the first enquiry, the appellant was declared as innocent and in the second enquiry he has been found guilty for financial embezzlement and recommended for major penalty. This is specifically noted that for the said alleged financial embezzlement the fact finding enquiry was also conducted by the same enquiry officer, ASP Headquarter Kohat and both the enquiries seem to have been concluded on one and the same time. This practice of both the enquiry by one and the same enquiry officer is not appreciated by law. Moreover, the Tribunal feels from perusal of the enquiry report that prejudice of the enquiry officer was a bit harsh rather biased against the



**ATTESTED**  


appellant. According to the enquiry report the alleged embezzlement was loan received by the appellant from his concerned boss. If it was a loan, then how it was embezzled and if it was embezzlement through fake receipt whether he was also the DDO? The charges are not specific and further that no evidence has been collected for the subsequent departmental enquiry against the appellant.

8. In view of the above, the impugned order is therefore, liable to be set aside. In order to meet the ends of justice and to provide opportunity of fair trial to the appellant, the case is remanded back to the respondent department for denovo enquiry strictly in accordance with law/rules. The appellant is reinstated in service for the purpose of the denovo enquiry proceedings. Back benefits will be subject to the outcome of the fresh enquiry which should be completed within a period of two months of the receipt of this judgment. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
12.5.2015

*Sd/- Mr. Bahadur Singh,*  
*Member*  
*Sd/- Sh. Abdul Latif,*  
*Member*

*[Handwritten signature]*

**ATTESTED**  
*[Handwritten signature]*

## ORDER

This order is passed on the de-novo departmental enquiry against SI Ayat Ullah of this district Police under the Khyber Pakhtunkhwa, Police Rules, 1975 with Amendment 2014.

Brief facts are that he has hereby charged with:-

1. Bad reputation in public.
2. Living beyond his means.
3. Financial corruption.
4. Poor performance as Police Officer.

On acceptance his departmental appeal, under Khyber Pakhtunkhwa, Police Rule-1975 against the punishment order i.e Compulsory retirement by DPO Kohat vide office order book No. 45 dated 09.01.2014.

A De-Novo enquiry was ordered by W/IGP vide his Memo No. 1485-87/E-III dated 02.06.2015. In this regard, hence the instant enquiry, with the same allegations.

He was served with Charge Sheet/Summary of Allegations and Mr. Sona Khan DSP Saddar, Kohat was appointed as Enquiry Officer to proceed against him departmentally. He submitted his finding report that in view of the above circumstances, certificates of different cadre police officers/officials and other respectable private personalities received in favour of the above name SI and found him innocent and the allegations against him could not be substantiated.

Final Show Cause Notice was issued, reply to the Final Show Cause Notice was found satisfactory. He was called in O.R heard in person.

In view of above the undersigned gone through the record and has come to the conclusion that I Muhammad Sohaib Ashraf District Police Officer, Kohat in exercise of the powers conferred upon me, he is exonerated from the charges leveled against him. However, his intervening period i.e Compulsory retirement w.e.f 09.01.2014 to 02.06.2015 is treated as leave without pay and his pay is hereby released from the date of 02.06.2015.

  
DISTRICT POLICE OFFICER,  
KOHAT

OB No. 839  
Date 30-10-2015  
No 13396-98/PA Dat. 02-11-2015

**ATTESTED**  


Copy to the Pay officer & SRC for necessary action.

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175  
05.05.15

Through Proper Channel

To: The Deputy Inspector General of Police Kohat Region Kohat.

Subject: Re-Presentation.

Respected sir,

It is submitted that the applicant was compulsory retired on 09-01-2014 vide OB No-41-  
The applicant filed service appeal before the Hounrable service tribunel Khyber Pakhtun Khwa Peshawar  
which was decided in favour of the applicant (copy of order enclosed). In the light of this order the  
applicant was

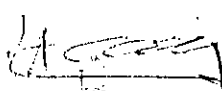
Re-instated worthy Provincial Police Officer Khyber Pakhtun Khwa Peshawar(copy enclosed).

After Re-enstatement in service a De-novo enquiry was conducted against the applicant and the  
applicant was found "innocent" (copy enclosed).

The District Police Officer Kohat has passed seprate order on Dated-30-10-2015 .which he  
also declared applicant as "innocent " case has been filed for the period from-09-01-2014 to 12-05-2015  
treted as leave with out pay.

In view of the above fact it is humbly prayed that the order of DPO Kohat may kindly be set a  
sight, partialiy the period has been treted as leave with out pay very humbly released the monthly  
salary of the above mentioned period .I shall be thank ful to you.

Yours Obediently,

  
Ayatullah Khan

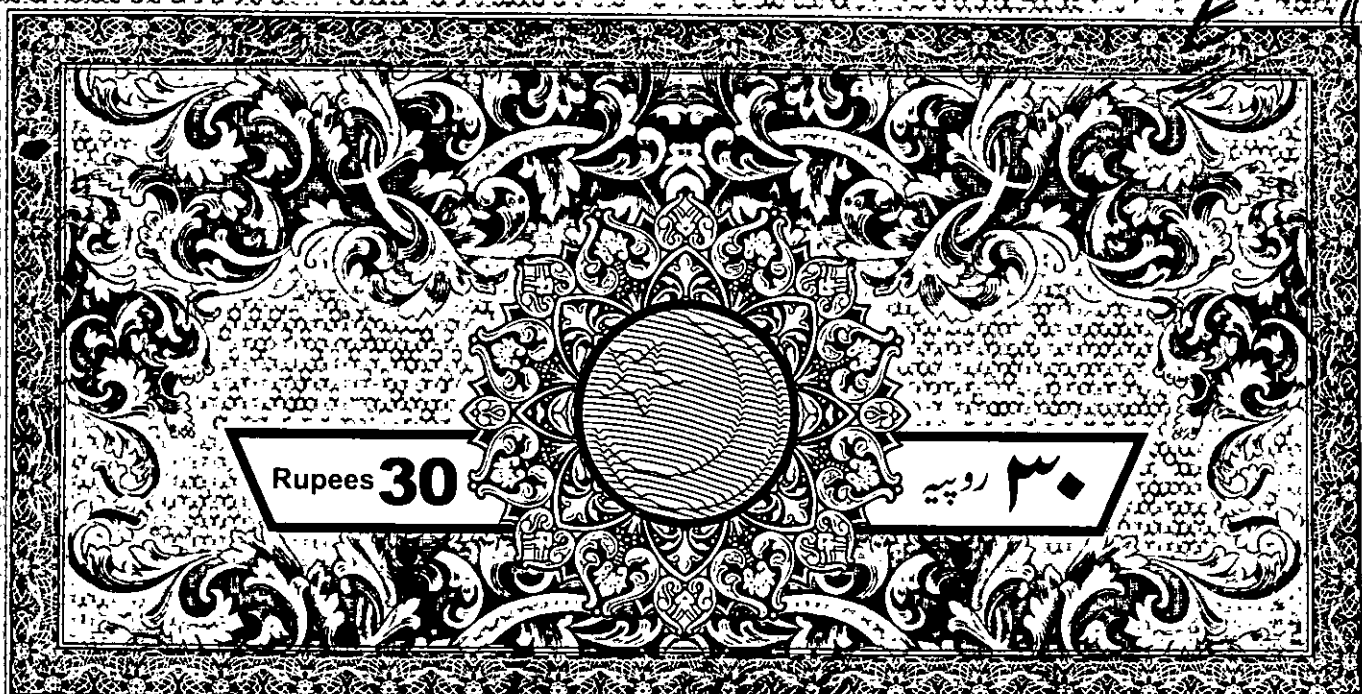
Sub:Inspector P.S Ustarzai Kohat

11/11/15  
15 11-15  
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SAC  
17/11

**ATTESTED**



114



Rupees 30

۳۰ روپے

AFFIDAVIT

I, Mr. Ayat Ullah Khan Babar son of Aman Ullah Khan, resident of Shakar Dara, Kohat, having CNIC No. 14301-2048067-9, do hereby solemnly affirm and declare on oath that I was not availed any service (private / government ) in the period from 09/01/2014 to 02/06/2015.

 Deponent  
Mr. Ayat Ullah Khan Babar

*Affirmed*

  
**TAHIR MUNIR**  
Oath Commissioner  
Distt. Courts Kohat

سروس ٹریڈ مارک لکھنؤ

قیمت ایک روپیہ

۲۰ منجانب ایپرائس

آرام الثبام محلہ پولیس

مقدمہ

مقدمہ

ایپیل

جرم

## باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جوابدہی کل کارروائی متعلقہ آں مقام کے لئے لکھا

محمد آصف دوسمفرئی اور محمود علی خان امیر پولیس

مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا اختیار ہوگا۔ نیز وکیل صاحب کو کرنے راضی نامہ و تقریر الیہ فیما۔ برحلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک در روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زر اس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی ابجد منصوبی و نیز دائر کرنے اپیل نگرانی نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ اور بصورت ضرورت مقدمہ مذکور کے کل یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے۔ اور اس کا ساختہ پر داخلہ منظور و قبول ہوگا۔ دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب سے ہوگا۔ اس کے مستحق کیا صاحب موصوف ہوں گے نیز بقایا خرچہ کی وصولی کرنے کا بھی اختیار ہوگا۔ اور کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر وکیل صاحب پابند نہ ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

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ماہ

المرقوم

الع

کے لئے منظور ہے۔

مقام

Accepted  
&  
Attested

Amir  
Ali

Amir  
Ali

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

Service appeal No. 258/2016

Ayat Ullah

Appellant.

**VERSUS**

Provincial Police Officer,  
Khyber Pakhtunkhwa, Peshawar and others

Respondents.

**PARAWISE COMMENTS ON BEHALF OF RESPONDENTS.**

**Respectively Sheweth:-**

**Preliminary Objections:-**

1. That the appeal is not maintainable in the present form, he has not filed departmental appeal.
2. That the appellant has got no cause of action.
3. That the appellant has not come to this Hon: Tribunal with clean hands.
4. That the appeal is badly time barred.
5. That the appeal is bad for misjoinder of unnecessary parties and non-joinder of necessary parties.

**FACTS:-**

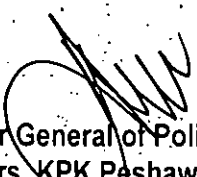
1. Pertains to record.
2. Pertains to record.
3. Pertains to record.
4. Pertains to record.
5. Incorrect. The appellant did not file departmental appeal before departmental appellate Authority within the statutory period nor it is pending. Report of concerned establishment clerk is enclosed as annexure "A".
6. The appellant has not come to this Honorable Tribunal with clean hands.


**GROUND:-**

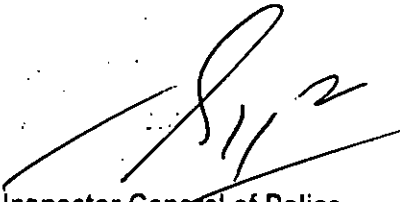
- A. Incorrect. The order dated 02.11.2005 was passed by the Authority in accordance with law & rules. Furthermore, the appellant has not filed departmental appeal against the order within statutory period as mentioned above.
- B. Correct to the extent that appellant was compulsory retired on the basis of allegation vide order 09.01.2014 the appellant filed service appeal No. 419/14 in this Honorable Tribunal, which was partially accepted by setting aside the order dated 12.05.2014 and the appellant was reinstated in service for the purpose of de-novo proceedings on the basis of de-novo inquiry he was exonerated from the charges vide order dated 02.11.2015. The remaining the portion of the para is incorrect because the order dated 02.11.2015 was passed by the Authority in accordance with law & rules. The intervening period of compulsory retirement was treated as leave without pay by following a principle of "no work there is no pay".



- C. Incorrect. The order was passed by the Authority in accordance with law & rules after proper departmental proceedings.
- D. Incorrect. The appellant was compulsory retired as a result of proper departmental proceedings conducted on professional misconduct by the Authority in accordance with law & rules. The subsequent order of exoneration from the charges in de-novo enquiry was also passed by the Authority in accordance with law & rules.
- E. No comments.
- F. Incorrect. The appellant has not filed departmental appeal within statutory period. In this connection report of concerned establishment clerk has already been annexed as annexure "A".
- G. Incorrect. The intervening period of compulsory retirement to re-instatement has been treated as leave without pay by the Authority in accordance with law & rules. Furthermore, the appellant has not filed departmental appeal against the order.
- H. The appeal of the appellant is not maintainable because he has not filed departmental appeal before the competent departmental Authority. Furthermore, the respondent may also be allowed to advance additional grounds at the time of hearing.

  
Dy: Inspector General of Police,  
Head Quarters, KPK Peshawar  
(Respondent No. 2)

  
Dy: Inspector General of Police,  
Kohat Region, Kohat  
(Respondent No. 3)

  
Inspector General of Police,  
Khyber Pakhtunkhwa,  
Peshawar  
(Respondent No. 1)

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

Service appeal No. 258/2016

Ayat Ullah

..... Appellant.

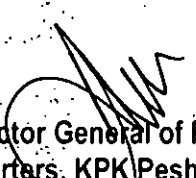
**VERSUS**


Provincial Police Officer,  
Khyber Pakhtunkhwa, Peshawar and others

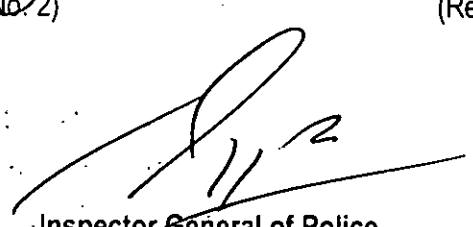
..... Respondents.

**COUNTER AFFIDAVIT**

We, the below mentioned respondents, do hereby solemnly affirm and declare on oath that contents of parawise comments are correct and true to the best of our knowledge and belief. Nothing has been concealed from this Hon: Court.

  
Dy: Inspector General of Police,  
Head Quarters, KPK Peshawar  
(Respondent No. 2)

  
Dy: Inspector General of Police,  
Kohat Region, Kohat  
(Respondent No. 3)

  
Inspector General of Police,  
Khyber Pakhtunkhwa,  
Peshawar  
(Respondent No. 1)



Phone No: 9260112.

Fax No: 9260114.

From: - The Regional Police Officer,  
Kohat Region, Kohat.

To: - The DSP Legal, Kohat.


No. 5268 /EC, Dated Kohat the 08/06/2016.

Subject: - SERVICE APPEAL NO.218 & 258 FILED BY APPELLANT SI  
SHAH DURAN AND SI AYAT ULLAH.

MEMO:

Please refer to your office Memo: No. 10560/LB, dated  
05.05.2016.

As per record of this office, the appellants have not  
filed appeals before this forum.

  
Regional Police Officer,  
Kohat Region

**BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.**

Service Appeal No. 258/2016

Mr. Ayat Ullah

VS

Police Department

.....

**REJOINDER ON BEHALF OF APPELLANT**

.....

**RESPECTFULLY SHEWETH:**

**Preliminary Objections:**

- (1-5) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

**FACTS:**

- 1 No comments endorsed by the respondents department which means that they have admitted Para-1 of the appeal is correct as record of the appellant is already in the custody of the department.
- 2 No comments endorsed by the respondents department which means that they have admitted Para-2 of the appeal is correct as record of the appellant is already in the custody of the department.
- 3 No comments endorsed by the respondents department which means that they have admitted Para-3 of the appeal is correct as record of the appellant is already in the custody of the department
- 4 No comments endorsed by the respondents department which means that they have admitted Para-4 of the appeal is correct

as record of the appellant is already in the custody of the department.

- 5 Incorrect. While Para-5 of the appeal is correct, as mentioned in the main appeal of the appellant. The appellant properly filed the departmental appeal within statutory which is already attached with the main appeal of the appellant as **Annexure-D** on which properly endorsement was made along with signature and date which proves that appellant filed the departmental appeal. Moreover, the statement of annexure-A of the reply is contradictory with stamen of the para-5 of the reply, so the plea raised by the department is with malafide intention.
- 6 Incorrect. While Para-6 of the appeal is correct as mentioned in the main appeal of the appellant. Moreover, the appellant has good cause of action and his appeal may be accepted.

**GROUND:**

- A) Incorrect. While Para-A of grounds of the appeal is correct as mentioned in the main appeal of the appellant. Moreover, the impugned order dated 2.11.2015 is against the law, rules, facts and norms of justice and The appellant properly filed the departmental appeal within statutory which is already attached with the main appeal of the appellant as **Annexure-D** on which properly endorsement was made along with signature and date which proves that appellant filed the departmental appeal. Moreover, the statement of annexure-A of the reply is contradictory with stamen of the para-5 of the reply, so the plea raised by the department is with malafide intention.
- B) Partially admitted by the respondent department while rest of the contention of the respondents department is incorrect while Para-B of grounds of the appeal is correct as mentioned in the main appeal of the appellant. Moreover, the absence period is not willful and appellant is also

exonerated from the charges already, so there is no ground remained to punish the appellant for no fault at his account. The principle of "NO work there is no pay" is not applicable in the present case.


- C) Incorrect. While Para-C of grounds of the appeal is correct as mentioned in the main appeal of the appellant.
- D) Incorrect. While Para-D of grounds of the appeal is correct as mentioned in the main appeal of the appellant.
- E) No comments endorsed by the respondents department which mean that they have admitted Para-E of the appeal as correct.
- F) Incorrect. While Para-F of grounds of the appeal is correct as mentioned in the main appeal of the appellant. The appellant properly filed the departmental appeal within statutory which is already attached with the main appeal of the appellant as **Annexure-D** on which properly endorsement was made along with signature and date which proves that appellant filed the departmental appeal. Moreover, the statement of annexure-A of the reply is contradictory with stamen of the para-5 of the reply, so the plea raised by the department is with malafide intention.
- G) Incorrect. While Para-G of grounds of the appeal is correct as mentioned in the main appeal of the appellant. Moreover, Para-G, F and Para-5 is contradictory to each other. Furthermore, The appellant properly filed the departmental appeal within statutory which is already attached with the main appeal of the appellant as **Annexure-D** on which properly endorsement was made along with signature and date which proves that appellant filed the departmental appeal. Moreover, the statement of annexure-A of the reply is contradictory with stamen of the para-5 of the reply, so the plea raised by the department is with malafide intention.

H) Incorrect. While Para-H of grounds of the appeal is correct as mentioned in the main appeal of the appellant. Moreover as explained in the above paras.

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

**APPELLANT**

**Through:**

  
**(M. ASIF YOUSAFZAI)**  
**ADVOCATE, PESHAWAR.**

**AFFIDAVIT**

It is affirmed and declared that the contents of rejoinder and appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from the Hon'able Tribunal.

  
**DEPONENT**

