

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

Service Appeal No.1285/2023

Ahmed

Rashid ~~Islam~~ S/O Sher Zada R/O Kokarai Ex-Constable No.2304 District Swat.

----- (Appellant)

Versus

1. District Police Officer, Swat.
2. Regional Police Officer Malakand at Saidu Sharif Swat
3. Provincial Police Officer, Khyber Pukhtunkhwa, Peshawar

----- (Respondents)

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District Police Officer, Swat
(Respondent No.01)

(e) 9

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.1285/2023

Rashid Khan S/O Sher Zada R/O Kokarai Ex-Constable No.2304 District Swat.
----- (Appellant)

Versus

1. District Police Officer, Swat.
2. Regional Police Officer Malakand at Saidu Sharif Swat
3. Provincial Police Officer, Khyber Pukhtunkhwa, Peshawar

Khyber Pakhtunkhwa
Service Tribunal

Date: 7/6/23
18/09/23
Dated:

----- (Respondents)

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS

PRELIMINARY OBJECTIONS.

1. That the appeal is badly barred by Law & limitation.
2. That the appellant has got no cause of action and locus standi to file the present appeal.
3. That the appeal is bad due to misjoinder and nonjoinder of necessary parties.
4. That the appellant has not come to the Tribunal with clean hands.
5. That the instant appeal is not maintainable in its present form.
6. That the appellant has concealed the material facts from this Hon'ble Tribunal.

Respectfully Submitted:-

1. Pertain to record of this honorable Judgment dated 24/01/2022.
2. Correct to the extent that this honorable Tribunal vide Judgment dated 24/01/2022 converted major punishment of dismissal from service into minor punishment of stoppage of increments for two years while the intervening period was counted as leave without pay. Respondents were at liberty to conduct denovo enquiry as per law if they so desired.
3. Incorrect. That in compliance of this honorable Tribunal Judgment dated 24/01/2022, denovo departmental enquiry was conducted in the matter, wherein SP/HQrs: Traffic Peshawar and DSP/Legal CPO Peshawar were deputed enquiry officers. The enquiry officers conducted proper departmental enquiry against the appellant and after completing all codal formalities under the law/rules, submitted his finding report wherein they intimated that absentec of the appellant were deliberate. He was also issued final show cause notice but his reply was found unsatisfactory, hence DPO Swat awarded him major punishment of dismissal from service vide OB No.14 dated 31/03/2023.
4. As stated above, reply of the appellant was found unsatisfactory by the respondents.
5. That major penalty of dismissal from service was awarded to the appellant as per law/rules.
6. That appeal of the appellant was examined by the respondent No.02, wherein he was called and heard in person but he could not defend the charges leveled

against him, hence his appeal was rejected vide Region office Order No.7376/E dated 16/05/2023. Appellant has wrongly challenged the legal and valid orders of the respondents before this honorable tribunal through unsound reasons/grounds.

GROUND:

1. Incorrect. As per KP Police Act, 2017, the duty of every Police Officer is to protect life, property and liberty of citizen. Moreover, when militancy in Swat was at its peak and the services of the appellant were direly needed by the department for the protection of lives and properties of the public, he remained deliberately absented from duty and showed cowardice.
2. Incorrect. Each and every case has its different facts and circumstance, the case of instant appellant is different from that of others.
3. This Para explained above in facts.
4. Incorrect. As stated above in detail, that proper denovo departmental enquiry has been conducted in the matter wherein all the opportunities of personal defense have been provided to the appellant as per law/rules.
5. This Para explained above in detail.
6. That the order of the respondents is legal, lawful and in accordance with law/rules.

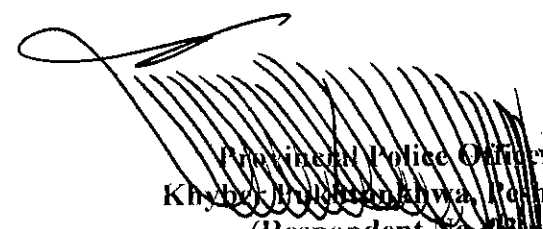
PRAYER:

Keeping in view the above facts and circumstances, it is humbly prayed that the appeal of appellant being devoid of legal force may kindly be dismissed with costs.




District Police Officer Swat
(Respondent No. 01)


Regional Police Officer,
Malakand Region
(Respondent No. 02)


Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 03)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

Service Appeal No.1285/2023

Rashid Khan S/O Sher Zada R/O Kokarai Ex-Constable No.2304 District Swat.

----- (Appellant)

Versus

1. District Police Officer, Swat.
2. Regional Police Officer Malakand at Saidu Sharif Swat
3. Provincial Police Officer, Khyber Pukhtunkhwa, Peshawar

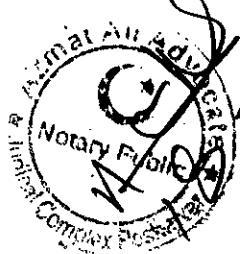
----- (Respondents)

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 on Ex-parte, nor their defence have been struck off.*

[Signature]
District Police Officer, Swat
(Respondent No.1)

ATTESTED



[Signature]
Regional Police Officer,
Malakand Region
(Respondent No.2)

[Signature]
Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar
(Respondent No.3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

Service Appeal No.1285/2023

Rashid Khan S/O Sher Zada R/O Kokarai Ex-Constable No.2304 District Swat.

----- (Appellant)

Versus

1. District Police Officer, Swat.
2. Regional Police Officer Malakand at Saidu Sharif Swat
3. Provincial Police Officer, Khyber Pukhtunkhwa, Peshawar

----- (Respondents)

AUTHORITY LETTER

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


District Police Officer, Swat
(Respondent No.1)


Regional Police Officer,
Malakand Region
(Respondent No.2)


Provincial Police Officer,
Khyber Pukhtunkhwa, Peshawar
(Respondent No.3)

Annex -A- Better copy.

Order

This order will dispose of the departmental enquiry conducted against ex- constable Rashid Ahmad number 2304 while posted to PTC Hangu, was absented himself from duty WEF 29-10-2008 till date without prior permission or leave LF No. 48200- 4305/ GC dated 27-11-2008 of PTC Hangu. He was proceeded against departmentally, and subsequently dismiss from service vide this office OB No,28, dated 21-02-2009. He has preferred an appeal before the service tribunal which set aside the punishment and ordered denove in departmental enquiry. In compliance of the judgment dated 24-01-2022 of service tribunal in service appeal No. 498/2018 he has been re instated into service vide in this office OB No. 124 dated 09-09-2022 for the purpose of departmental enquiry., as per direction of CPO Peshawar Memo No.1578-81/ CPO /IAB, dated 17-11-2022 and worthy Regional Police Office letter No. 12216-17/ WPC dated 31-10-2022. The following officers were nominated to conduct proper departmental enquiry against him

1. Mr. Rahim Hussain Sp HQRS Traffic Peshawar
2. Mr. Kamal Hussain Peshawar DSP legal.

The enquiry officers conducted proper departmental enquiry against him. The enquiry officers recommended that his absently was deliberately however it was case due to militancy in the whole area of Makand Division. The enquiry officers stated further stated that he was untrained and just within three months of initial service faced with life treats. The undersigned is not agreed with the recommendation of enquiry officers.

He was issue final show cause notice No. 04/PA dated 17-01-2023 his replied was received but found unsatisfactory.

For going in view, the undersigned considered opinion that there are so many chances that Ex-constable Rashid Ahmad will become an official. His further retention in service as bound to affect the discipline of the entire force. Therefore, the exercise of the powers vested in the undersigned under rule 2/M police disciplinary rules – 1975 I Shafi Ullah Gandapur, DPO Swat as a competent authority awarded him major punishment of dismissal from service from the date of reinstatement.

Order Announced

DPO Swat

.....

D99L 5



06/12

OFFICE OF THE
DISTRICT POLICE OFFICER, SWAT
Ph: 0946-9240393 & 0946-9240402,
Email: dpo~~swat~~@gmail.com

ORDER

This order will dispose of the departmental enquiry conducted against Ex Constable Rashid Ahmad No.2304 while posted to PTC Hangu, was absent himself from duty w.e.f 29-10-2008 till date without prior permission or leave vide L.F.M No. 4200-4205/GC dated 27-11-2008 of PTC Hangu. He was proceeded against departmentally, and subsequently dismissed from service vide this office OB No. 28, dated 21-02-2009. He has preferred an appeal before the Service Tribunal which set aside the punishment and ordered a de novo departmental enquiry. In compliance of the judgment dated 24-01-2022 of Service Tribunal in Service Appeal No. 498/2018 he has been reinstated into service vide this office OB No.124 dated 09-09-2022 for the purpose of de novo departmental enquiry, as per direction of CPO Peshawar Memo No.1578-81/CPO/IAB, dated 17-11-2022 and worthy Regional Police Officer letter No.12216-17/WPC dated 31-10-2022. The following Officers were nominated to conduct proper departmental enquiry against him.

- 1. Mr. Raheem Hossain, SP/Hqrs: Traffic, Peshawar.
- 2. Mr. Kamal Hussain, DSP/Legal, CCP, Peshawar.

The Enquiry officers conducted proper departmental inquiry against him. The Enquiry officers recommended that his absence was deliberate however, it was caused due to confinement in the area of Malakand division. The Enquiry Officers further stated that he was untrained and had just within 03 months of initial service faced with life and death. The undersigned is in agreement with the recommendation of Enquiry officers.

He was issued Final show cause Notice No.04/PA dated 17/01/2023; his reply was received, but found unsatisfactory.

Foregoing in view, the undersigned is of considered opinion that there are no chances that Ex-Constable Rashid Ahmad No.2304 will become an efficient Police Officer. 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 (ii) of Police Disciplinary Rules-1975, I, SHAHULIAH KHAN GANDAPUR, District Police Officer, Swat as a competent authority awarded him major punishment of Dismissal from service from the date of advertisement.

Order sanctioned.

Signature and stamp of the District Police Officer, Swat.

OB No. 23640
Dated 31/12/2023

OFFICE OF THE DISTRICT POLICE OFFICER, SWAT
No. 23640 PA, dated Saidu Sharif the 31/12 2023.

- Copy for information to the;
- 1. Regional Police Officer Malakand Region vide his office memo No.40/2023-56/VTC dated 21-01-2022.
- 2. DSP Headquarters Lower Swat.
- For necessary action to the;
- 3. EC
- 4. Pay Officer, Swat.
- 5. OASI, Swat

ATTESTED

Deputy Superintendent of Police Legal
Swat.

Faxed to R.P.O-MRP

Faxed on 01/04/2023

Signature of Fax Op. [Signature]

Transmit Swift

01/04/23

OFFICE OF THE DISTRICT POLICE OFFICER, SWAT
FINAL SHOW CAUSE NOTICE

Whereas You Ex Constable Rashid Ahmad while posted to PTC Hangu, were absented yourself from duty w.e.f 29-10-2008 till date without prior permission or leave vide T.P.M No. 48288-4305/GC dated 27-11-2008 of PTC Hangu. You were proceeded against departmentally, and subsequently dismissed from service vide this office OB No. 23, dated 21-02-2009. You have preferred an appeal before the Service Tribunal which set aside the punishment and ordered a denove departmental enquiry. In compliance of the judgment dated 24-01-2022 of Service Tribunal in Service Appeal No. 498/2018 you have been reinstated into service vide this office OB No.124 dated 09-09-2022 for the purpose of denove departmental enquiry, as per direction of CPO Peshawar Memo No.1576-81/CPO/IAB, dated 17-11-2022 and worthy Regional Police Officer letter No.12216-17/WFO dated 31-10-2022. The following Officers were nominated to conduct proper departmental enquiry against you.

1. Mr. Raheem Hussain, SP/Hqrs: Traffic, Peshawar.
2. Mr. Kamal Hussain, DSP/Legal, CCP, Peshawar.

The Enquiry officers conducted proper departmental inquiry against you. The Enquiry officers recommended that your absence was deliberate; however, it was caused due to militancy in the core area of Malakand division. The Enquiry Officers further stated that you were untrained and had just within 03 months of initial service faced with life risk threats. The undersigned is not agreed with the recommendation of Enquiry officers and thus issued this final show cause notice to you.

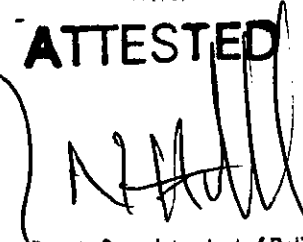
You are, therefore, served with this Final Show Cause Notice to show cause in writing within seven (07) days of the receipt of this notice as to why major punishment as mentioned in Rule-4 of Police Disciplinary Rules-1975 should not be imposed on you. You should also state in writing as to whether you wish to be heard in person by the competent authority, your failure in this respect will be deemed that you have no defense to offer and ex-parte action will be taken against you.

Ex-Constable Rashid Ahmad
JIS Police Line Kabal

No. 04 /PA.
Dated 17/01/2023.

District Police Officer
Swat.

ATTESTED


Deputy Superintendent of Police Legal,
Swat.

جناب عالی!

بحوالہ مشمولہ فائل شوکاژ نوٹس نمبر P/04 مورخہ 17/01/2023 بجاریہ جناب DPO صاحب سوات معروض
 ہوں کہ سائل ماقبل محکمہ پولیس میں ملازم تھا اور PTC ہنگو میں زیر تربیت تھا اس دوران ضلع ہذا کے حالات تھوڑے بھولے
 دیکھ کر دی خراب ہو کر پولیس اہلکاران کا جینا مشکل ہو اور یہ پولیس والوں کے کسی قسم کے جانی و مالی نقصان کا لحاظ نہیں رکھتے
 اور ان کا نقصان لسانی کے درپے تھا۔ چونکہ ہمارے گاؤں میں بھی یہ لوگ دیکھ کر نکلا دیں تھے جو مجھے اور والدین اور بھائیوں کو
 جانتے تھے۔ انہوں نے مجھے اور میرے والدین کو دھمکیاں دینا شروع کر دیے کہ میں لو کرے چھوڑ دوں ورنہ گھر کو بلاسٹ
 کر کے والد اور بھائیوں کو اغوا کرینگے۔ اور ہر وقت میرے گھر کے راستوں میں موجود ہوتے تھے۔ بدیں و بچے۔ امر مجبوری
 مجھے لو کرے چھوڑنا پڑا چونکہ سائل نہایت غریب اور بیکار کوئی چارہ نہیں تھا بدیں وجہ عدالت سے رجوع کر کے عدالت کے
 حکم پر افسران بالا کے مہربانی کر کے مجھے دوبارہ مقرر کریں پر بحال کیا۔ چونکہ سائل یہ امر مجبوری غیر حاضر ہوا تھا۔ جس کی
 نوکری مشکوک سے کریگا۔ لہذا استدعا ہے اس نالا معالی دعا دے
 لہذا احتیاط رہونگا اور فائل شوکاژ نوٹس فائل فرمایا جاوے۔

رشیہ احمد نیٹ نمبر 2304

Attested

ATTESTED

Deputy Superintendent of Police Legal
Swat

جنسور جناب ریجنل پولیس افسر ملا کنڈر ریجن سپیڈ وٹھریف ضلع سوات۔

عنوان :- درخواست برائے بحالی ملازمت۔

جناب عالی!

گزارش کی جاتی ہے کہ سائل سال 2008 میں محکمہ پولیس سوات میں بحیثیت کنسٹیبل بھرتی ہوا تھا۔ اس سال سائل پولیس ریگروٹ کورس کیلئے PTC ہنگو روانہ ہوا۔ تین مہینے کورس میں گزارنے کے بعد سائل ریس پر گھر خود آیا تھا۔ جب سائل گھر آیا تو اس دوران طالبان جنگوں نے سائل کا پیچھا کر کے سائل پر زمین تنگ کر دی تھی۔ روزانہ گھر آ کر تلاشی لی جاتی اور سائل کے گھر والوں کو سنگین دھمکیاں دیتے اور سائل کے مارنے کے درپے تھے۔ اس دوران سائل نے بہت کوشش کی کہ واپس کورس کیلئے چلا جائے۔ لیکن بارہا کوشش کے باوجود سائل نہ پہنچ سکا۔ اور یوں سائل غیر حاضر رہا۔ اسی غیر حاضری کے پاداش میں سائل کو محکمہ ہذا سے فارغ کر دیا گیا۔

جناب والا!

سائل نے نوکری بحالی کیلئے بہت درخواستیں گزاریں لیکن سائل کو بحال نہیں کیا گیا۔ اس کے بعد سروس ٹریبونل سے رجوع کیا گیا۔ اور سروس ٹریبونل نے اپیل نمبر 498/2018 میں محکمہ پولیس سوات کو سائل کو Denove انکواری کیلئے بحال کرنے کے احکامات جاری کئے۔ Denove انکواری کر کے سائل کو دوبارہ بحوالہ O.B No. 44 مورخہ 31/03/2023 جاری یہ دفتر جناب ڈسٹرکٹ پولیس افسر سوات برخواست کیا گیا ہے (ارڈر مہراہ لف ہے)۔

سائل ایک نہایت غریب گھرانے سے تعلق یافتہ ہے۔ اور مہنگائی کے اس دور میں سائل کا کوئی دوسرا ذریعہ معاش نہیں ہے۔ یہ بھی کہ سائل پولیس کے نوکری کا انتہائی خواہاں ہے۔ سائل کے دوسرے ساتھی جو اسی طرح برخواست کئے گئے تھے کو مختلف اوقات میں بحال کر دئے گئے ہیں۔

لہذا بذریعہ درخواست ہذا استدعا ہے کہ سائل کو نوکری پر بحال فرما کر سائل کے بچوں اور ضعیف العمر والدین پر مہربانی فرمایا جائے۔ تو سائل اور سائل کے گھر والے تاحیات دعا گو رہینگے۔

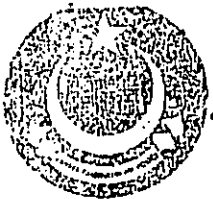
العارض

اپکا تابع فرمان سابقہ کنسٹیبل رشید احمد نمبر 2304

سائل کو کارٹی پولیس سٹیشن کو کارٹی ضلع سوات

موبائل نمبر 0348-9174248

Deputy Superintendent of Police Legal
Swat



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

Ph: 0946-9240388 & Fax No. 0946-9240399
Email: ebmalakandregion@gmail.com

19/05/23
7288

9

ORDER

This order will dispose of appeal of Ex-Constable Rashid Ahmad No.2304 of Swat District in connection with major punishment awarded by District Police Officer, Swat vide OB No.44 dated 31-03-2023 i.e. "Dismissal from Service".

Brief facts of the case are that Ex-Constable Rashid Ahmad No.2304 of Swat District while posted to Police Training College, Hangu, had absented himself from lawful duty w.e.f 29-10-2008 till date without prior permission from high Ups or leave vide T.P. Message No.48288-4305/GC dated 27-11-2008 of PTC, Hangu. He was proceeded against departmentally and subsequently dismissed from service by the District Police Officer, Swat vide OB No.28 dated 21-02-2009. He has preferred an appeal before the Service Tribunal, wherein his order of dismissal from service was set aside and ordered for conducting De-novo departmental enquiry. In compliance of the judgment dated 24-01-2022 of Service Tribunal in Service Appeal No.498/2018, the appellant was re-instated into service for the purpose of De-novo departmental enquiry by the District Police Officer, Swat vide OB No.124 dated 09-09-2022. As per direction of CPO Peshawar Memo No.1578-81/CPO/IAB, dated 17-11-2022 and this office letter No.12216-17/WPC dated 31-10-2022, the following Officers were nominated as Enquiry Officers to conduct Denovo departmental enquiry against him.

1. Mr. Raheem Hussain, SP/Hqrs: Traffic, Peshawar.
2. Mr. Kamal Husain, DSP/Legal, CCP, Peshawar.

The Enquiry Officers conducted denovo departmental enquiry against above-named Ex-Constable, the Enquiry Officers recommended that his absence was deliberately, though, it was caused due to militancy in the core area of Malakand division. The Enquiry Officers further stated that he was untrained and just within 03 months of initial service faced with life risk threats. However, the District Police Officer, Swat not agreed with the recommendations of the Enquiry officers and the delinquent Constable was issued Final Show Cause Notice vide No.04/PA dated 17-01-2023, to which he replied but was found unsatisfactory. Forgoing in view, the District Police Officer was of considered opinion that there are no chances that Ex-Constable Rashid Ahmad No.2304 will become an efficient Police Officer, his further retention in service is bound to affect the discipline of the entire force. Therefore, the District Police Officer, Swat awarded him major punishment of "Dismissal from Service" from the date of re-instatement vide OB No.44 dated 31-03-2023.

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.

No. 7376 /E.
Dated 16-05-2023.

E.C/OASD
for selection & check
the service record
to prevent correct decision
made
Regional Police Officer,
Malakand Region Swat
14/05/23

Copy to the District Police Officer, Swat for information and necessary action with reference to his office Memo: No.12358/E, dated 28-04-2023. Service Roll and Fuji Missal containing enquiry file of above-named Ex-Constable, received with your memo under reference are returned herewith for record in your office.

Encd: 5 ROLL
FURNISHED Containing Enquiry file

Attended
Deputy Superintendent of Police Legal,
Swat.

"F" 9

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 498/2018

Date of Institution ... 10.04.2018

Date of Decision ... 24.01.2022



Rashid Ahmad S/o Sher Zada, R/o Village Kokarai, Swat, Ex-Constable No. 1834,
District Police Swat. ... (Appellant)

VERSUS

District Police Officer, Swat and others. ... (Respondents)

Arbab Saiful Kamal,
Advocate

... For Appellant

Asif Masood Ali Shah,
Deputy District Attorney

... For respondents

AHMAD SULTAN TAREEN
ATIQ-UR-REHMAN WAZIR

...
...

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

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

This single judgment shall dispose of the instant service appeal as well as the connected Service Appeal bearing No. 571/2018 titled "Aamir Shah Versus District Police Officer, Kohat and two others", as common question of law and facts are involved therein.

ATTESTED

Chairman, Superintendent of Police Legal

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 and was ultimately dismissed from service vide order dated 21-02-2009. Feeling aggrieved, the appellant filed departmental appeal dated 20-03-2009, which was not responded. Subsequent appeal was submitted to respondent No 2, which was rejected vide order dated 12-03-2018, hence the instant service appeal with

ATTESTED

Member (Executive)

prayers that the impugned orders dated 21-02-2009 and 12-03-2018 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 was dismissed from service on the charges of absence but absence of the appellant was not willful but was due to compelling reason of terrorism; that a large number of police personnel had deserted their jobs due to threats of Taliban, who were again re-instated in service vide orders dated 30-11-2010, 15-03-2017 and 09-08-2017, but case of the appellant was not considered positively; that this Tribunal in numerous cases has already granted relief to the similarly placed employees and the appellant is also requesting for the same treatment under the principle of consistency; that absence of the appellant was not willful, which does not constitute gross misconduct and the penalty so awarded is harsh, which does not commensurate with gravity of the guilt; that the impugned order was issued with retrospective effect, which is void ab initio; that no codal formalities were fulfilled and the appellant has not been treated in accordance with law, hence his rights secured under the Constitution has badly been violated.

04. Learned Deputy District Attorney for the respondents has contended that the appellant was proceeded against on the charges of willful absence from duty, therefore proper departmental proceedings were initiated against him, which culminated into his removal from service under RSO 2000; that the appellant file departmental appeal with a considerable delay, which was rejected being barred by time; that numerous other officials were re-instated into service but every case has its own merits, whereas the appellant was awarded punishment for his own conduct; that final show cause notice was also served at his home address, but the appellant did not turn up, hence he was proceeded in absentia.

ATTESTED

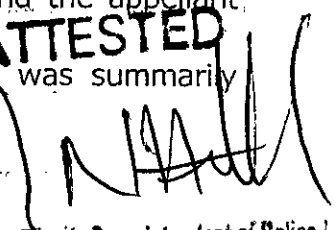
Deputy Superintendent of Police Legat. Swat.

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

ATTESTED

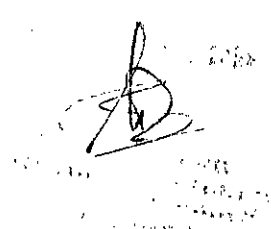
06. Placed before us is case of a police constable, who alongwith many other police personnel had deserted their jobs in the wake of insurgency. Police department had constituted a committee for cases of desertion and keeping in view humanitarian aspect, re-instated such personnel into service in large number. Placed on record is a notification dated 30-11-2010, where 253 similarly placed employees had been re-instated on the recommendation of the committee constituted for the purpose. Vide another order dated 07-02-2012, batch of another 12 employees had been re-instated in service. Yet another order dated 15-03-2017 would show that similarly placed employee had been re-instated upon his revision petition on the ground of length of his service and cause of terrorism. Other cases of similar nature are available on record, which would suggest that the provincial government had taken a lenient view keeping in view the peculiar circumstances in the area at that particular time. Even this tribunal has already granted relief in similar nature cases under the principle of consistency. Appellant is also one among those, who had deserted his job due to threats from terrorists. Situation at that particular time was so perturb, as how to proceed such large number of cases of desertion, for which publications were made in newspapers, hence the proceedings so conducted in such like cases were not in accordance with law. (In the instant case no regular inquiry was conducted, nor any charge sheet/statement of allegation was served upon the appellant and the appellant was condemned unheard and which shows that the appellant was summarily proceeded without adhering to the method prescribed in law.

ATTESTED



Deputy Superintendent of Police Legal

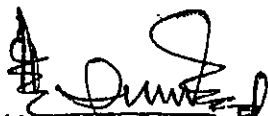
07. We are also mindful of the question of limitation, but since the impugned order was passed without proper legal process and when an adverse order is passed without fulfilling the legal formalities, such order is void and no limitation runs against void order. Still another reason exists for condonation of delay that the impugned order was issued with retrospective effect being void ab initio.



08. In view of the situation mentioned above and keeping in view the principle of consistency, we are inclined to partially accept the instant appeal as well as the connected service appeal by converting the major penalty of dismissal from service into minor penalty of stoppage of increments for two years. The intervening period is treated as leave without pay. Respondents however are at liberty to conduct de-novo inquiry as per mandate of law, if they so desire. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

24.01.2022

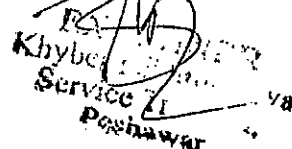


(AHMAD SULTAN TAREEN)
CHAIRMAN



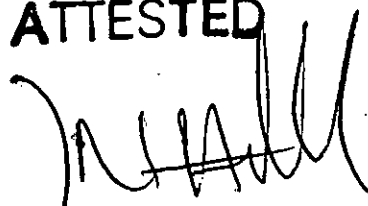
(ATIQU-UR-REHMAN WAZIR)
MEMBER (E)

Certified to be true copy



Khyber Pakhtunkhwa
Service Commission
Peshawar

ATTESTED



Deputy Superintendent of Police Legat,
Swat

1834

7 Pages "g" 11

ORDER

This order will dispose off the enquiry initiated against Constable Rashid Ali No.1834, who while posted to PTC Hangu absented himself from duty with effect from 29/10/2008 vide T.P Message No.4288-3405/GC, dated 27/11/2008 and failed to report. Thus absented himself from his legitimate duty and a report to this effect was entered at PTC Hangu T.P Message No.4288-3405/GC, dated 27/11/2008 with effect from 29/10/2008.

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 Charge Sheet No. 42/E, dated 16/01/2009 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. Dilawar Khan Bangash DPO Swat as a competent authority, therefore impose major penalty by dismissing him from service from the date of absence i.e 29/10/2008.

Order announced.

O.B. No. 28
Dated. 21.2.09.

ATTESTED
District Police Officer, Swat

Deputy Superintendent of Police Legal
Swat

FINDING REPORT

This is regular departmental enquiry against Constable Rashid Ali No 1835. According to the allegation, that the Constable while posted in Police QTR Hamra absented himself from lawful duty with effect from 29/10/08 uptill now with out getting prior permission of the high ups.

In this connection proper departmental enquiry was conducted and the undersigned was appointed as Enquiry Officer. The defaulter Constable was summoned for 3/2/09 but did not attend this office. According to report of MHC Imro/Swat he is absent from 29/10/08 up till now. The charges/allegation were proved against the defaulter Constable Rashid Ali No 1835 and found him guilty of the charges.

Being found guilty of charges/allegation, - Constable Rashid Ali No 1835 is recommended for major punishment.

[Signature]
Muhammad Ayaz
DSP/Legal, Swat
4/2/09

BC
Issue final Show cause Notice.

[Signature]
OPo/Swat
15/02/09

ATTESTED
[Signature]
Deputy Superintendent of Police Legal
Swat.

DISCIPLINARY ACTION

I Mr. Dilawar Khan Bangash, DPO, Swat District Police Officer, Swat as competent authority, am of the opinion that Constable Rashid Ali No.1834, has rendered himself liable to be proceeded against as he committed the following acts/omissions within the meaning of section 3 of the N.W.F.P Removal from Service (Special Powers) Ordinance, 2000.

STATEMENT OF ALLEGATIONS

That he while posted to PTC Hangu, absented himself from duty with effect from 29/10/2008 till to date with out permission or leave vide T.P.M No.4288-4305/GC, dated 27/11/2008 of PTC Hangu.

All these based on your malafied intention, negligence, omission and disinterest in duty which is gross misconduct on your part.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations, an Enquiry committee consisting of the following is constituted under section 3 of the Ordinance.

1. Mr. Muhammad Ayaz Khan DSP/Legal, Swat
2. _____

3. The enquiry Committee shall, in accordance with the provisions of the Ordinance, provide reasonable opportunity of hearing to the accused, record its findings and make within, 25 Days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place given by the enquiry Committee.

[Signature]
District Police Officer, Swat

No. 42 /E, Dated Gulkada the, 16 11 2008

Copy of above is forwarded to the:-

1. Mr. Muhammad Ayaz Khan DSP/Legal, Swat
 2. _____
- } for initiating proceeding against the Officer/Official under the provisions of the NWFP/Removal from Service (Special Powers) Ordinance 2000.

3. Constable Rashid Ali No.1834 *Through line office*

With the direction to appear before the enquiry Committee on the date time and place fixed by the Committee for the purpose of he proceeding

ATTESTED
[Signature]
Swat

CHARGE SHEET

I Mr. Dilawar Khan Bangash, DPO Swat as competent authority, hereby charge you, Constable Rashid Ali No.1834 as following that you, while posted in PTC Hangu committed the following irregularities:

You Constable Rashid Ali No.1834, while posted to PTC Hangu, absented yourself from duty with effect from 29/10/2008 till to date with out permission or leave vide T.P.M No.4288-4305/GC, dated 27/11/2008 of PTC Hangu.

All these based on your malafied intention, negligence, omission and disinterest in duty which is gross misconduct on your part.

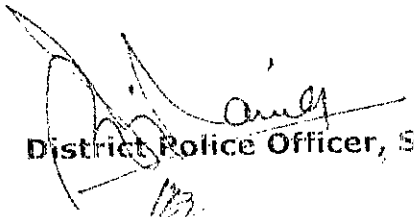
2. By reasons of the above, you appear to be guilty of misconduct under Section-3 of the NWFP (Removal from Service) Special powers ordinance 2000, and have rendered yourself liable to all or any of penalties specified in section-3 of the ordinance.

3. You are, therefore, required to submit your written defense within seven days of the receipt of this Charge Sheet to the Enquiry officer / Committee, as the case may be.

4. Your written defense, if any, should reach the Enquiry Officer/ Committee within the specified period, failing which it shall be presumed that you have no defense to put in and in that case exparte action shall follow against you.

5. Intimate whether you desire to be heard in person.

6. A statement of allegations is enclosed.


District Police Officer, Swat

No. 42 /EB

Dated 16/11 / 2008

ATTESTED


Deputy Superintendent of Police Legal
Swat

DISCIPLINARY ACTION

I **Mr. Dilawar Khan Bangash, DPO , Swat** District Police Officer, Swat as competent authority, am of the opinion that Constable Rashid Ali Khan No. 1834 has rendered himself liable to be proceeded against as he committed the following acts/omission within the meaning of section 3 of the N.W.F.P removal from service (Special Powers) Ordinance, 2000.

STATEMENT OF ALLEGATIONS

That he while posted to PTC Hangu absented himself from duty with effect from 29/10/2008 till to date without permission or leave vide T.P.M No. 4288-4305/GC, dated 27/11/2008 of PTC Hangu.

All these based on your malafide intention, negligence, omission and disinterest in duty which is gross misconduct on your part.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations, an Enquiry committee consisting of the following is constituted under section 3 of the Ordinance.

1. **Mr. Muhammad Ayaz Khan DSP/Legal, Swat**

2. _____

3. The enquiry Committee shall, in accordance with the provision of the Ordinance, provide reasonable opportunity of hearing to the accused, record its finding and make within, 25 days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place given by the enquiry Committee.

-Sd-

District Police Officer, Swat

No. 42 /E, dated Gulkada the, 16/01/2008

Copy of above is forwarded to:-

1. **Mr. Muhammad Ayaz Khan DSP/Legal, Swat**

2. _____

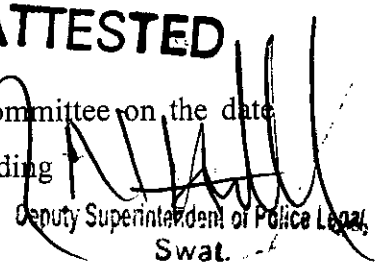
} for initiating

proceeding the Officer/Official under the provisions of the NWFP/Removal from Service (Special Powers) Ordinance, 2000.

3. Constable Rashid Ali No. 1834

With the direction to appear before the enquiry Committee on the date time and place fixed by the Committee for the purpose of the proceeding

ATTESTED


Deputy Superintendent of Police Legal,
Swat.

1834

خواجہ سوات

لوہیہ لائن

دفعہ 17 دہرہ 17/12/08

سر 12 دہرہ (پیر) عزیز خاں صاحب وقت 11.00 بجے اس وقت شہر علی 1325
 دفعہ 17 دہرہ 17/12/08
 مہرہ ڈاک آڈیو ریکارڈنگ کی جیسے ایک فی مری اور دفعہ 1325
 مریہ کی ایک دفعہ 1325 کی ایک دفعہ سے ایک دفعہ مریہ
 223 OB ان کو انعامتہ مریہ واپس دیکھ کر مریہ دہرہ
 اور مریہ دہرہ 17/12/08
 مریہ دہرہ 17/12/08 سے عزیز خاں صاحب صاحب

جہاں عالی

دفعہ 17 دہرہ 17/12/08

M.M.P.L - Swat
22-12-08

جہاں عالی

ریگروٹ ریشیا علی 1834
 مریہ دہرہ 17/12/08 سے عزیز خاں صاحب صاحب
 مریہ دہرہ 17/12/08 سے عزیز خاں صاحب صاحب

Dammari

Swat
dt: 23-12-08

ATTESTED

(Signature)
 Deputy Superintendent of Police Legal
 Swat

pay stopped and is
charge sheet.

OB No. 237
31.12.08

(Signature)
 D.P. of Swat
 29.12.08