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12/9/2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

Execution Petition No.253/2023 in Service Appeal No.02/2018

Anwar Shah S/O Gulberg Khan, Ex-Constable No.126 Swat Police R/O
Shahgram Teshil Bahrain, District Swat.

----- (Appellant)

Versus

1. Government of Khyber Pukhtunkhwa through Provincial Police Officer/IGP at Peshawar.
2. The Regional Police Officer/DIG, Malakand Region at Saidu Sharif, Swat.
3. District Police Officer, Saidu Sharif, Swat.

----- (Respondents)

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N.D. - 04/10/23
swat


District Police Officer, Swat
(Respondent No.03)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

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----- (Respondents)

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS.

Respectfully shewith:

Preliminarily objection:-

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

ON FACTS

1. Para No.01 regarding enlistment in Police Department and subsequent posting pertains to record, hence need no comments
2. Incorrect. Being member of disciplined force, every police official/officer is under obligation to perform his duties with zeal, zest and devotion irrespective of harsh, tense and calm environment. The appellant did not performed his duties for certain period and he was proceeded against departmentally on the allegations of absentee, therefore stance of the appellant is not tenable in the eye of law.

3. Incorrect. That no discrimination has been done with the appellant by the respondents. The appellant while posted at Police Station Kabal Swat willfully and deliberately absented himself from his lawful duty vide DD No.09 dated 03/11/2008 whereupon he was proceeded departmentally and departmental enquiry was initiated against him. During the course of enquiry, the appellant was summoned time and again to join enquiry proceedings for defending himself, but to no avail, Therefore after fulfillment of all codal formalities the appellant was awarded appropriate punishment of dismissal from service. Furthermore, appeal of the appellant was badly time barred, hence appellate authority filed the same as per law/rules.
4. Pertain to record, hence needs no comments.
5. Pertain to record, hence needs no comments.
6. Correct to the extent that the this honorable Tribunal vide Judgment dated 06/07/2022 directed the respondent department to examine the case of applicant with the cases of those constable who were reinstated in service by the Commandant FRP and in case the applicant is found entitled to similar treatment as extended to other constables, then the authority shall also extend the same treatment to the applicant. In compliance of Judgment dated 06/07/2022. RPO Malakand being competent authority examined the case of appellant, wherein he was provided opportunities of self defense and was also heard in person to defend the charges leveled against him but he failed to defend the charges leveled against him, therefore his punishment of dismissal from service was kept up-held vide Region office Order No.2341/E dated 22/02/2023. **Annexed "A"**. Furthermore, CPLA against the said Judgment has also been filed by the department before the Supreme Court of Pakistan which is still pending subjudice before the apex Court.
7. Incorrect. As stated above, in light of directions of this honorable Tribunal, the case of appellant was thoroughly examined by the competent authority, wherein his appeal was filed after completing all legal formalities.
8. Incorrect. That RPO Malakand being competent authority complied with the directions of this honorable Tribunal in its true spirit, wherein case of the appellant was examined in light of Judgment dated 06/07/2022 by

providing ample opportunities of personal hearing and self defense to the appellant.

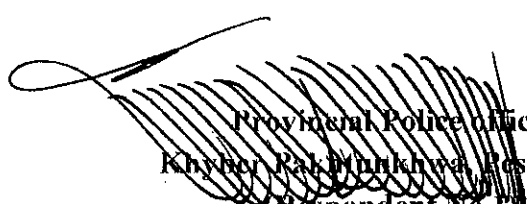
9. Incorrect. That act of respondents is legal, lawful and in accordance with law/rules.
10. Incorrect. As stated above, respondents complied with the directions of this honorable Tribunal in its true spirit, wherein case of the appellant was examined in light of Judgment dated 06/07/2022.
11. That the respondents also seek permission of this honorable Tribunal to adduce additional grounds at the time of arguments.

PRAYER:-

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


District Police Officer, Swat
(Respondent No.3)


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


Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar
(Respondent No.1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

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----- (Appellant)

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----- (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 on oath in this appeal the answering respondents have neither been placed ex-parte nor their defence have been struck off.*

[Signature]
District Police Officer, Swat
(Respondent No.3)

ATTESTED



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

[Signature]
Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar
(Respondent No.1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

Execution Petition No.253/2023 in Service Appeal No.02/2018

Anwar Shah S/O Gulberg Khan, Ex-Constable No.126 Swat Police R/O

Shahgram Teshil Bahrain, District Swat.

----- (Appellant)

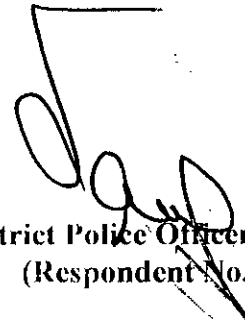
Versus

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2. The Regional Police Officer/DIG, Malakand Region at Saidu Sharif, Swat.
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----- (Respondents)

AUTHORITY LETTER

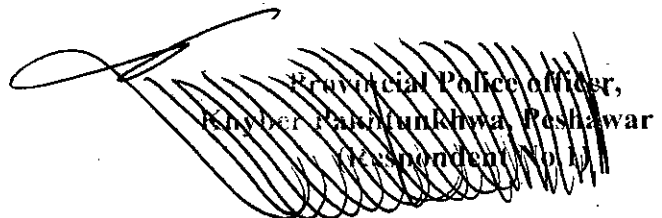
We, the above respondents do hereby authorize Mr. Naccm Hussain DSP/Legal Swat to appear before the Tribunal on our behalf and submit reply etc in connection with titled Service Appeal.



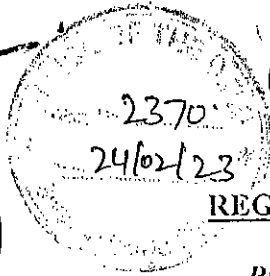
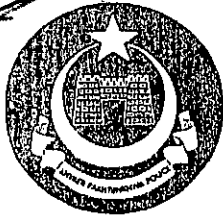
District Police Officer, Swat
(Respondent No.3)



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



Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar
(Respondent No.1)



(19)

383K

24/2/23

ANWAR
C.A.

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

Ph: 0946-9240388 & Fax No. 0946-9240390
Email: ebmalakandregion@gmail.com

ORDER

This order will dispose of appeal of Ex-Constable Anwar Shah No.126 of Swat District, in compliance with judgement dated 06-07-2022 in Service Appeal No.02/2018 titled "Anwar Shah VS PPO, KPK and others" wherein the Honorable Tribunal accepted the present appeal set aside the impugned order and direct the appellate authority to examine the case of appellant with the cases of those constables who were re-instated in service by the Commandant, FRP, Khyber Pakhtunkhwa in case the appellant found entitled to similar treatment as extended to other Constables, then the said authority shall also extend the same treatment to the present appellant. The Honorable Tribunal also directed that the appellant shall be afforded opportunity of hearing during the proceedings which shall be conducted and concluded within a period of 60 days from the date of receipt of copy of this judgement.

The District Police Officer, Swat filed CPLA against the judgement dated 06-07-2022 of Honorable Tribunal vide his office letter No.13242/Legal. dated 19-09-2022, which is pending subjudice before the Supreme Court of Pakistan.

In compliance of directions received form Honorable Tribunal vide Judgement dated 06-07-2022, the appellant namely Ex-Constable Anwar Shah No.126 of Swat District was called in Orderly Room on 09-02-2023 and heard him in person by providing opportunity of personal hearing, but he could not produce any cogent reason to defend the charges leveled against him. Therefore, the punishment awarded to him is upheld and his appeal is hereby filed.

Regional Police Officer,
Malakand Region Swat

No. 2341 /E,

Dated 22-02-2023.

Copy to the District Police Officer, Swat for information and necessary action with reference to his office Memo: No.16995/Legal, dated 01-11-2022.

EC - Dsp Legal

Informs Ex-Const
Concerned

[Signature]
District Police Officer
Swat. 24/02/2023

C.T.C
[Signature]

ATTESTED

Deputy Superintendent of Police Legal
Swat.

Placed on file
[Signature]
DSP/Legal
27/2/23

CHARGE SHEET

(19)

I Mr. Waqif Khan, DPO Swat as competent authority, hereby charge you, Constable Anwar Shah No.126 as following that you, while posted in Police Lines committed the following irregularities:

You while posted in Police Lines absented yourself from duty with effect from 10/11/2007 to 08/12/2007. Your absence in the emergency is due to extreme cowardice on your part.

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.

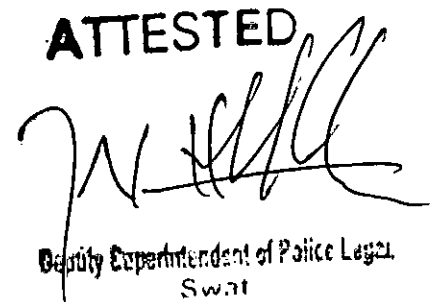
5. Intimate whether you desire to be heard in person.

6. A statement of allegations is enclosed.

No. 48 /EB

Dated 27/11 /2008


District Police Officer, Swat

ATTESTED

Deputy Superintendent of Police Legal
Swat

DISCIPLINARY ACTION

20
37
23/1/08

I Mr. Waqif Khan, DPO, Swat District Police Officer, Swat as competent authority, am of the opinion that Constable Anwar Shah No.126, 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

Constable Anwar Shah No.126 while posted in Police Lines absented himself from duty with effect from 10/11/2007 to 08/12/2007. His absence in the emergency is due to extreme cowardice on his part.

All this based on your malafied intention, negligence, omission and dis-interest 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. Mohammad Ayaz Khan, DSP Legal
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. 48 /E, Dated Gulkada the, 21/1/2008

Copy of above is forwarded to the:-

1. Mr. Mohammad Ayaz Khan, DSP Legal
 2. _____
- } for initiating proceeding against the Officer/Official under the provisions of the NWFP/Removal from Service (Special Powers) Ordinance 2000.
3. Constable Anwar Shah No.126

ATTESTED

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 *[Signature]*

Swat

FINDING REPORT

الف، س، ا

(2)

This is regular departmental enquiry against Constable Amwar Shah no 120. According to the allegation, that the Constable while posted in Police Ps Kabal absented himself from lawful duty with effect from 3/11/08 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 6/11/09 but did not attend this office. According to report of MHC 10HC/S he is absent from 3/11/08 up till now. The charges/allegation were proved against the defaulter Constable Amwar Shah no 120 and found him guilty of the charges.


Being found guilty of charges/allegation, Constable Amwar Shah no 120 is recommended for major punishment.



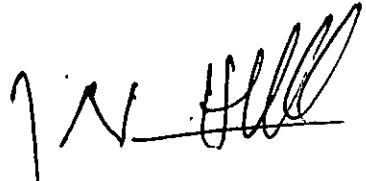
Muhammad Ayaz
DSP/Legal, Swat

EC

Issue final Show cause Notice 19/2/09


DPO/Swat.
19/02/09.

ATTESTED



Deputy Superintendent of Police Legal
Swat

تعداد و معقولانہ 3 11/08

میں

تفانہ میں

سید الفاضل خان 570 وقت 18.00 و عوام 08-11-3

بزرگوارانہ

وقت اس میں 277 : مشورہ حیدر پور میں سے بزرگوارانہ عوام

دی کہ سید الفاضل خان 126 حسب معمول بچت پر خود گیا ہوا تھا حال

دائیں میں آ رہا ہے۔ غیر حاضری کے اس آمدن امداد رزق و عوام ریسورس

کسیں الفاضل خان، 126 غیر حاضری تصور کیا جانا ہے۔

استدین ہاں ہی خدمت میں ارسال ہو گئی۔

صاحب عالی

صاحب عالی

لکھنؤ میں آ رہا ہے

بزرگوارانہ میں آ رہا ہے

بزرگوارانہ میں آ رہا ہے

بزرگوارانہ میں آ رہا ہے

بزرگوارانہ میں آ رہا ہے

ATTESTED

Signature and stamp area

6-11-08

pay stopped and issue charge sheet.

Signature

Signature and date 6-11-08

CB No. 210

08-11-08