

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

Service Appeal No. 116/2019

Muhammad Ghaffar S/O Gul Aziz Ex-Constable No.606 District Swat.

..... Appellant

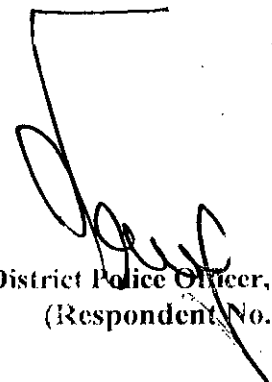
VERSUS

1. Regional Police Officer Malakand at Saidu Sharif Swat.
2. District Police Officer Swat.
3. Provincial Police Officer KPK Peshawar

..... Respondents

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District Police Officer, Swat
(Respondent No.02)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 116/2019

Muhammad Ghaffar S/O Gul Aziz Ex-Constable No.606 District Swat.

..... Appellant

VERSUS

**Khyber Pakhtunkhwa
Service Tribunal**

Case No. 7578

Dated 18/09/23

1. Regional Police Officer Malakand at Saidu Sharif Swat.
2. District Police Officer Swat.
3. Provincial Police Officer KPK Peshawar

..... 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. That departmental appeal of the appellant was filed by appellate authority being badly time barred vide Order No.1133/13 dated 27/01/2020. **Annexed "A"**. Rest of the Para pertains to record.
2. Correct to the extent that the appellant joined Police department as Constable in the year 1991, however during his posting, he never performed his duty honestly and with devotion, rather the appellant absented himself from official duty on many occasion as evident from his service record. **Annexed "B"**
3. Incorrect. As per KP Police Act, 2017, the duty of every Police Officer is to protect life, property and liberty of citizen. Moreover, that in the year 2007 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 left for Ex-Pakistan leave by showing cowardice. Furthermore, no such report is available on record where appellant was threatened by the militants or any commander of terrorists.
4. Correct to the extent the FIR No.1487 was registered at Police Station Mingora but it does not mean that the appellant would left his duty and absent himself from official duty. The appellant showed cowardice, did not face the situation and willfully absented himself from official duty and did not report back for his duty.

5. Incorrect. As stated above, appellant had neither received any threat from militants nor is any report available on record in this respect. The appellant was granted Ex-Pakistan Leave, however he did not report back for his duty and willfully absented himself from official duty which showed disinterest in performing his official duties. Being part of discipline force appellant was supposed to report back to his duty but he did not bother to do so, therefore he was rightly proceeded departmentally and awarded punishment of dismissal from service.
6. Incorrect. The appellant was dismissed from service as he was found guilty of misconduct by absenting himself from official duty without prior permission or approved leave. Proper enquiry was conducted in the matter wherein it was found that the appellant was proceeded on Ex-Pakistan leave and did not report back for his duty and willfully absented himself from official duty which showed his disinterest towards his duty, hence dismissed from service on the recommendation of Enquiry Officer after completing all codal formalities under the law/rules. **Finding report Annexed "C"**.
7. Incorrect. Departmental appeal of the appellant was filed by appellate authority being badly time barred vide Order No.1133/13 dated 27/01/2020. Rest of the Para pertains to record.
8. Incorrect. That orders of respondents are legal and in accordance with law/rules. Furthermore, appeal of the appellant is badly time barred and has wrongly challenged the legal and valid orders of the respondents before the honorable tribunal through unsound reasons/grounds.

GROUND:

- A. Incorrect. That the order passed by the respondents is legal and in accordance with law/rules.
- B. Incorrect. The appellant has been treated in accordance with law/rules and no rules have been violated by the respondents.
- C. Incorrect. Charge Sheet coupled with statement of allegations were issued to the appellant and after proper departmental enquiry, he was dismissed from service as per law/rules.
- D. Incorrect. As stated above all the opportunities of self defense were provided to the appellant but he deliberately absented himself from the enquiry proceedings and did not appear before the enquiry officer.
- E. This Para already explained above in detail.

- F. Incorrect. That the orders of the respondents are legal and in accordance with law/rules.
- G. Incorrect. The appellant willfully and deliberately absented himself from official duty and no compelling situations were faced by the appellant.
- H. As explained above.
- I. Incorrect. That each and every case has its own facts and circumstance, hence the plea taken by the appellant is not plausible under the law/rules.
- J. Incorrect. The appellant was found guilty of misconduct and remained absent from official duty without prior permission or approved leave.
- K. Incorrect. As explained above in detail.
- L. As explained above at Para No.01 of Facts.
- M. That other grounds not specifically answered in the reply, will be agitated with the permission of honorable Tribunal at the time of arguments.

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. 02)


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


Regional Police Officer,
Malakand Region
(Respondent No. 03)

BEFORE THE KHYBER PAKHTUNKIWA SERVICE TRIBUNAL

PESHAWAR.

Service Appeal No. 116/2019

Muhammad Ghaffar S/O Gul Aziz Ex-Constable No.606 District Swat.

..... Appellant

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2. District Police Officer Swat.
3. Provincial Police Officer KPK 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 on oath in this appeal, the answering respondents have neither been placed ex-parte nor their defence has been struck off.*

[Signature]
District Police Officer, Swat
(Respondent No.2)

ATTESTED



[Signature]
Regional Police Officer,
Malakand Region
(Respondent No.1)

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

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

Service Appeal No. 116/2019

Muhammad Ghaffar S/O Gul Aziz Ex-Constable No.606 District Swat.

..... Appellant

VERSUS

1. Regional Police Officer Malakand at Saidu Sharif Swat.
2. District Police Officer Swat.
3. Provincial Police Officer KPK 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.2)


Regional Police Officer,
Malakand Region
(Respondent No.1)


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



عرفان

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A

OFFICE OF THE
REGIONAL POLICE OFFICER, MALAKAND
AT SAIDU SHARIF SWAT.
Ph: 0946-9240381-88 & Fax No. 0946-9240390
Email: dtgmalakand@yahoo.com

ORDER:

This order will dispose off application of Ex-Head Constable Muhammad Ghaffar No. 606 of Swat District for reinstatement in service.

Brief facts of the case are that Ex-Head Constable Muhammad Ghaffar No. 606 of Swat District while posted at Javed Iqbal Shaheed Police Lines, Swat proceeded on three years Ex-Pakistan leave vide CPO, Peshawar Notification No. 7782-85/E-II, dated 14/04/2008. He reported his departure for three years Ex-Pakistan leave on 22/04/2008 and was due back to report for duty on 22/04/2011 but instead he absented himself from duty vide DD No. 85, dated 23/04/2011 till the date of dismissal as per report of RI JIS, Police Lines Swat dated 23/04/2011. DSP Headquarter Swat was appointed as Enquiry Officer to conduct proper departmental enquiry against him. Charge Sheet No. 165/E, dated 07/05/2011 was issued to him. Later on final Show Cause notice No. 165/E, dated 10/06/2011 was also issued to him. The enquiry officer DSP Headquarter in his finding report dated 07/06/2011 has intimated that after expiry of three years Ex-Pakistan leave the above named Head Constable was due to report back on 23/04/2011 but instead he remained absent till the date of dismissal i.e 20/06/2011. Hence, the Enquiry Officer recommended him for major punishment i.e dismissal from service with effect from the date of his absence. Therefore the DPO, Swat agreed with the recommendation of Enquiry Officer and dismissed him vide OB No. 130, dated 20/06/2011.

His application for reinstatement in service was perused and found that the applicant was required to report back for duty after expiry of Ex Pakistan leave but he failed to join his service. Therefore, his application for reinstatement in service is hereby held being badly time barred i.e 9 years.

Order announced.

Regional Police Officer,
Malakand, at Saidu Sharif Swat

No. 1133 /E,
Dated 27/01 /2020.

Copy to District Police Officer, Swat for information and necessary action please.

ATTESTED

Deputy Superintendent of Police Logat
Swat.

B

CHARACTER AND SERVICE ROLL OF

Constabulary No. () in District
 Ditto () in District
 Ditto () in District

Accepting S.L.C

Name	Father's Name	Tribe or caste	Village or Town	Post and Telegraph Office	Police Station	District	Province	Date of Birth	Height	Chest Measurement	Date of Enrolment	Age on Enrolment	Distinctive Marks
Mohammad Ghafar	Gul Aziz	Alshera	Alghal	Matta	Matta	Swat	N.W.F.P	4-3-70	5'9 1/2	33 X 35	1-1-92		22 years

Verification Roll No. _____ dated _____ received back and attached to the Fauji Misal

Government Service prior to present employment, which is approved for pension service.

No or department	Rank or grade	Pay of last Appointment	From	To	PERIOD	
					Year	Months
Reference to orders approving above service for pension service in the Police Department.					<p style="text-align: center;">ATTESTED</p> <p style="text-align: center;">[Signature]</p> <p style="text-align: center;">Deputy Superintendent of Police Swat</p> <p style="text-align: right;">5/9/03</p>	

I understand that I have been appointed under section 7 of the Police Act (V of 1861), and the purport of that section, the provisions of the Act and of the Rules issued under it and now in force, by which my discipline and conduct are governed, have been explained to me. I agree to serve faithfully under the provision of the said Police Act and to obey all lawful orders issued by my Superior Officers and undertake not to resign my appointment within three years from the date of my enrolment. I have received a certificate of appointment issued under section 8 of the Police Act (V of 1861).

Attested
 [Signature]
 S.P./Swat

Signature.

Impression of fingers and thumb of left hand.

Little	Left ring	Left middle	Left index

B -8- B
 No. 139 of 2008
 Date 14/4/08
 Malakand Range Sub-Station

FOR PUBLICATION IN THE NWFP, POLICE GAZETTE PART-II
 ORDERS BY THE PROVINCIAL POLICE OFFICER NWFP, PESHAWAR.

NOTIFICATION.

Dated: 14/4/2008.

No. 7782/E-II LEAVE EX-PAKISTAN: - LHC Ghaffar No. 606 of Swat
 District Police is hereby granted 1095 days leave Ex-Pakistan with the following format
 from the date of availing under the Civil Servant Revised Leave Rules 1981.

i.	On full pay	=	120 days
ii.	on half pay	=	975 days
	Total	=	1095 days.

He is allowed to proceed abroad:

MALIK NAVEED KHAN
 Provincial Police Officer,
 NWFP, Peshawar.

No. 7783-85/E-II Dated Peshawar the 14/4/2008.

- Copy of above is forwarded for information and necessary action to the:-
- Addl: IGP/Investigation NWFP Peshawar with 2 spare copies for publication in the NWFP Gazette part-II.
- Deputy Inspector General of Police, Malakand Region Swat with reference to his memo No. 1345/E dated: 03.04.2008. His Service Roll is returned herewith for record in your office.
- DPO/Swat

El SRoll

Khurshid Alam Khan
 (KHURSHID ALAM KHAN)
 Addl: IGP/HQs.
 For Provincial Police Officer,
 NWFP, Peshawar.

Attested
ATTESTED
[Signature]
 Deputy Superintendent of Police
 Swat

Copy along with Service
 Roll of the above named
 official is sent to DPT Swat

For inspection
[Signature]
 Deputy Inspector General of Police

حکایت الیٰ ا محوام انکوٹری غز 165 سورج 7/5 نہ خلاف کنیشن عدو ریلو 6/6/11
خبریں ہوں بہتے اس پر الزام ہے کہ مذکورہ کنیشن خرم ادیکس ڈاکستان اور خط ہر
تھا۔ بعد ازاں اس وقت اپنی منقری بن دی پورہ بند کی ہے۔

اندر میں ذرا انکوٹری کرنے کی غرض سے مذکورہ کو طار کرنے کے لیے دو بار خبر گیری پر وہ
خبر کی لیے گئے۔ تاکہ وہ پیش ہو کر انکوٹری سے ایسا بیان دے کہ بند کرنے سے پہلے
مافر میں ایک فریڈ پورہ اور ایسا بیان دے کہ اس کے پاس ایک گاڑی
تھی جسے وہ اس میں رکھتا ہے۔ تاکہ وہ اس کے پاس سے اس کو لے کر
آجائے۔ تاکہ وہ اس کو لے کر آجائے۔ تاکہ وہ اس کو لے کر آجائے۔

کنیشن مذکورہ کی ادیکس ڈاکستان کو جو 22/11/11 کو ختم ہو چکی تھی۔ اس
پر وہ مافر آئے اور یہ ان کے خلاف پورہ غرضیہ درجہ دوڑا چکی تھی۔

مذکورہ کی منقری کرنے کے خاطر کا ہی انتہائی رکھی گیا۔ مذکورہ کے بارے میں معلوم
کرنے پر پتہ چلا کہ وہ مذکورہ کی منقری کرنے کے لیے مذکورہ کی منقری کرنے کے لیے
آئے تاکہ وہ اس کو لے کر آجائے۔ تاکہ وہ اس کو لے کر آجائے۔ تاکہ وہ اس کو لے کر آجائے۔

لینڈ کنیشن عدو ریلو 6/6 کے خلاف ایک طرف کارروائی کرنے کے لیے Major punishment
کی سفارش کی جاتی ہے۔

(رمدار خان)

DSP H.C.
07/06/2011

ATTESTED
(Signature)

OFFICE OF THE DISTRICT POLICE OFFICER, SWAT

ORDER SHEET IN CONNECTION WITH ENQUIRY AGAINST
CONSTABLE GHAFAR No. 606

ALLEGATION:-

That the Constable Ghaffar No. 606 of JIS Police Lines, Swat while proceeded on 3 years Ex-Pakistan leave, his report of arrival back was due on 22/04/2011 but instead he absented himself from duty vide DD No. 85 dated 23/04/2011 till to date, as per report of R/I JIS Police Lines, Swat dated 23/04/2011. DSP/Hqrs: Swat was appointed as Enquiry Officer to conduct departmental enquiry against him. Charge Sheet No. 165/E dated 07/05/2011 was issued to him. Final show cause Notice No. 165/E dated 10/06/2011.

RECOMMENDATION OF
ENQUIRY COMMITTEE:-

The Enquiry Officer DSP/Hqrs: Swat in his finding report dated 07/06/2011 has intimated that after expiry of 3-years Ex-Pakistan leave, the above named Constable was due to report back on 23/04/2011, but instead he is remained absent till to date. Final show cause Notice No. 168/E dated 10/06/2011 was also issued to him. Hence the Enquiry Officer recommended for major punishment i.e dismissal from service w-e-t the date of his absence.

d/s

E.C
16/06/2011

ATTESTED
Deputy Superintendent of Police Legal
Swat

FINAL DECISION
BY DPO SWAT:-

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Subim: Hid for t/o Rimal
purvash d uvdar phos.

Attested
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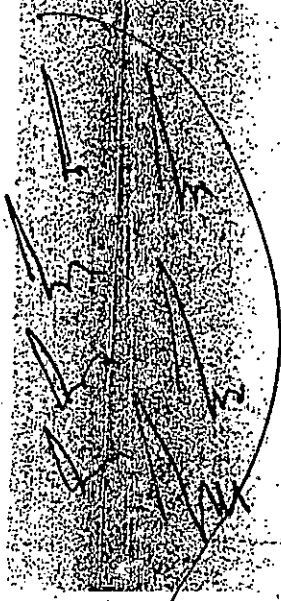
w DPO/Swat

Agreed
OB No. 130
20.6.11

17/6/11

Impugned
18.6.2011

OB No 130



بھخور جناب ڈپٹی انسپکٹر جنرل صاحب پولیس ملاکنڈ ڈویژن سید و شریف سوات

عنوان: رحم درخواست

آداب:-

بذریعہ درخواست ہذا معروض خدمت ہوں کہ سائیل محکمہ پولیس سوات میں سخت کنسٹیبل مورخہ یکم جنوری 1991ء کو بھرتی ہو کر ہیڈ کنسٹیبل کے عہدہ پر ترقی یاب ہوا تھا۔ سائیل دہرہ آغل تحصیل منہ سوات کا باشندہ ہے۔ جو دہشت گردی کے سخت پیٹ میں تھا۔ سائیل کو 2007ء میں علاقہ کے طالبان کمانڈران سے سخت خطرات لاحق تھے۔ اور روز بروز قسم قسم کی دھمکیاں مل رہے تھے۔ یہاں تک کہ سائیل کے گھر کو طالبان کمانڈر عبدالرحمن نامی کیلئے خالی کرنے پر زور دے دیا تھا۔ جبکہ سائیل نے ان سارے خطرات کا خیال نہ کرتے ہوئے اپنی ڈیوٹی سرانجام دے رہا تھا۔ سائیل مورخہ 28 دسمبر 2007ء کو ہمراہ نفری پولیس معمول کے مطابق بینگورہ بازار میں کرفیوں کے نفاذ کے سلسلے میں ڈیوٹی پر تعینات تھا۔ کہ اسی دوران ایک دہشت گرد اسم و سکن نام معلوم گلی سے بازار میں نکلا سائیل نے کئی بار مذکورہ کو نہ آنے کی نسبت آواز دی جس پر مذکورہ شخص نے اللہ اکبر اور شریعت یا شہادت کا نعرہ بلند کر کے سائیل پر پتھر سے باآرادہ قتل وار کیا جسکے نتیجے میں سائیل سر پر لگ کر شدید زخمی ہوا۔ جبکہ دیگر ساتھیوں کے مدد سے حملہ آور مذکورہ کو صین موقع پر مار ڈالا اور اسکے دیگر ساتھی فرار ہو گئے جسکے نقل FIR ہمراہ لف ہے۔

اسکے بعد سائل اور سائل کے اہل خانہ کیلئے علاقے میں رہنا مشکل ہو گیا۔ بدیں وجہ ترک سکونت اختیار کر کے ڈاون اضلاع میں چلے گئے۔ من سائل کو اسی دوران موت کی دھمکیاں مل رہے تھے۔ کیونکہ سائل کا گھر بھی ایسی جگہ پر تھا کہ آس پاس کے زیادہ تر لوگ طالبان تھے بدیں وجہ سے سائل نے 14/04/2008 کو بحوالہ منسلکہ ارڈر، مجاریہ جناب PPO صاحب، 1095 یوم ایکس پاکستان لیو لے کر جان بچانے کے خاطر سعودی عرب چلا گیا۔ چونکہ سائل بہت غریب ہے اور انتہائی مقروض ہوا تھا۔ قرضہ اتارنے اور بیمار والدین، بچوں کے پیٹ پالنے کیلئے وہاں پر محنت مزدوری شروع کر کے محکمہ پولیس سے مورخہ 18/06/2011 کو منسلکہ ارڈر پر جناب DPO صاحب سوات نے درخواست کیا۔

لہذا بذریعہ درخواست استدعا ہے کہ سائل کے حال پر رحم کر انسانی ہمدردی کے بنیاد پر محکمہ پولیس میں بحال کیا جائے تا حیات دعا

گور ہونگا۔

العارض

سابقہ ہیڈ کانسٹیبل محمد غفار نمبر 606

ساکن اغل برتھانہ منہ سوات

موبائل نمبر 03473979929

مورخہ 28/06/2018

اللہ

Attested
کے

Deputy Commissioner