

5<sup>th</sup> July, 2023

1. Learned counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.

2. Learned counsel for the appellant seeks adjournment on the ground that he has not prepared the case. To come up for arguments on 30.10.2023 before D.B. P.P given to the parties.

SCANNED  
KPST  
Peshawar



(Rashida Bano)  
Member (Judicial)



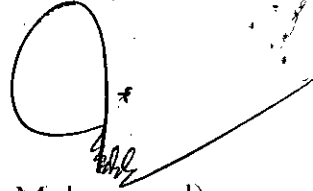
(Kalim Arshad Khan)  
Chairman

\*Adnan Shah\*

23.11.2022

Miss Roeeda Khan, Advocate for the appellant present.  
Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents.

Learned counsel for the appellant requested for adjournment on the ground that she has not made preparation for arguments. Adjourned. To come up for arguments on 11.01.2023 before D.B.



(Mian Muhammad)  
Member (E)



(Salah-Ud-Din)  
Member (J)

11.01.2023

Counsel for the appellant present.

Muhammad Riaz Khan Paindakhel learned Assistant Advocate General for the respondents present.

Former made a request for adjournment in order to further prepare the brief. Adjourned. To come up for arguments on 24.04.2023 before D.B.



(Fareeha Raul)  
Member (E)



(Rozina Rehman)  
Member (J)

24<sup>th</sup> April, 2023

24<sup>th</sup> April has been declared as public holiday on account of Eid-UI-Fitr, therefore, the case is adjourned. To come up for the same on 05.07.2023.

  
**Reader**

26<sup>th</sup> May, 2022

Learned counsel for the appellant present. Mr. Asif Masood, Deputy District Attorney for respondents present.

Learned counsel for the appellant seeks time to argue the case on the next date. Last opportunity granted. To come up for arguments on 11.08.2022 before D.B.



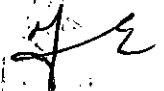
(Fareeha Paul)  
Member(E)



(Kalim Arshad Khan)  
Chairman

11-8-2022

Proper DB not available the case is  
adjourned to 13-10-2022

  
Reader

13<sup>th</sup> Oct., 2022

Counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl. Addl. Advocate General for the respondents present.

Counsel for the appellant seeks adjournment in order to further prepare the brief. Last opportunity is granted. To come up for arguments on 23.11.2022 before the D.B.



(Fareeha Paul)  
Member (E)



(Kalim Arshad Khan)  
Chairman

23.09.2021

Counsel for the appellant present. Preliminary arguments heard. Record perused.

Points raised need consideration. Instant appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notice be issued to respondents for submission of written reply/comments in office within 10 days of the receipt of notices, positively. If the reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 31.01.2022 before D.B.

Appellant Deposited  
Security & Process Fee

27/9/21

(Rozina Rehman)  
Member (J)

31.01.2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Addl. AG alongwith Mr. Ghasan Ullah ASI for respondents present and submitted reply/comments which are placed on file. To come up for rejoinder if any, and arguments before the D.B on 26.05.2022.

(Atiq-Ur-Rehman Wazir)  
Member (E)

17.02.2021

The learned Member Judicial Mr. Muhammad Jamal Khan is under transfer, therefore, the case is adjourned. To come up for the same before S.B on 29.06.2021.

  
**Reader**

29.06.2021

Counsel for the appellant present.

During the course of arguments, a question arised as to whether in particular circumstances of the case, the acquittal relied upon by the appellant can be jtreated as honourable acquittal or not. Learned counsel seeks time. Adjourned. To come up for arguments on the point on 23.09.2021 before the S.B.

  
Chairman

06.04.2020

Due to public holiday on account of COVID-19, the case is adjourned to 30.06.2020 for the same. To come up for the same as before S.B.

  
Reader

30.06.2020

Learned counsel for the appellant present and seeks adjournment. Adjourned to 22.09.2020 before S.B in order to avail the outcome of cases pending before Larger Bench of this Tribunal, regarding retrospective punishment.

  
Member (J)

22.09.2020

Counsel for the appellant present.


On the last date of hearing instant matter was adjourned to avail the outcome of cases pending before the Larger Bench and having similar nature. The Larger Bench has not yet concluded the proceedings before it, therefore, instant matter is adjourned to 02.12.2020 before S.B.

  
Chairman

02.12.2020

Counsel for appellant is present.

Learned counsel requests for adjournment to a date after the decision of proposition regarding retrospective punishment by a Larger Bench of this Tribunal. Adjourned to 17.02.2021 before S.B.

  
(MUHAMMAD JAMAL KHAN)  
MEMBER (JUDICIAL)

20.09.2019

Counsel for the appellant present.

The issue regarding punishment with retrospective effect is still before the Larger Bench which is to be taken up on 14.11.2019. Instant matter is, therefore, adjourned to 25.11.2019 before S.B.

  
Chairman

25.11.2019

Junior to counsel for the appellant present.

Requests for adjournment on account of general strike of the Bar. Adjourned to 22.01.2020 before S.B.

  
Chairman

22.01.2020

Junior to counsel for the appellant present.

Requests for adjournment due to general strike of the Bar. Adjourned to 20.02.2020 in order to avail the outcome of case(s) pending before the Larger Bench regarding retrospective punishment.

  
Chairman

20.02.2020


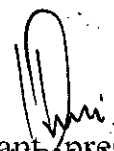


Counsel for the appellant present and seeks adjournment. Adjourned to 06.04.2020 in order to avail the outcome of case (s) pending before the Larger Bench regarding retrospective punishment.

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

Form- A  
FORM OF ORDER SHEET

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

Case No. 623/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	14/05/2019	<p>The appeal of Mr. Gulab Sher resubmitted today by Roeeda Khan 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 - 14/5/19</p>
2-	15/05/19	<p>This case is entrusted to touring S. Bench for preliminary hearing to be put up there on <u>28/06/19</u></p>
	28.06.2019	<p>Learned counsel for the appellant present and. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for preliminary hearing including hearing on the issue of limitation/maintainability on 20.08.2019 before S.B.</p> <p style="text-align: right;"> CHAIRMAN</p>
	20.08.2019	<p>Counsel for the appellant present.</p> <p>Learned counsel states that a Larger Bench has been constituted regarding determination of issue pertaining to retrospective operation of penalty, in many cases. In order to avail the outcome of proceedings of Larger Bench she requests for adjournment of instant matter to a subsequent date.</p> <p style="text-align: center;">Adjourned to 20.09.2019 before S.B.</p> <p style="text-align: right;"> Member</p>
		<p> Chairman</p>




The appeal of Mr. Gulab Sher Ex-Constable No. 716 FRP Head Quarter Peshawar received today i.e. on 08.05.2019 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

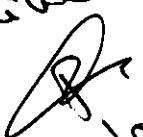
- 1- Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.
- 2- Copy of revision petition which was rejected by the authority is not attached with the appeal which may be placed on it.
- 3- Annexure-b of the appeal is illegible which may be replaced by legible/better one.

No. 924 /S.T,

Dt. 10/5 /2019.

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Roeeda Khan Adv. Pesh.

*I Remove observation No 3  
which copy of 17a is not  
received by the appellant  
  
14/5/19*

**BEFORE THE HON'BLE SERVICE TRIBUNAL**  
**PESHAWAR**

In Re S.A No. 623 /2019

Gulab Sher

**VERSUS**

Deputy Commandant Frontier Reserve Police Khyber  
Pakhtunkhwa Peshawar and Others

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8.	Wakalatnama		

*Gulab*  
APPELLANT

Through

*R*

**Roeeda Khan**  
Advocate, High Court  
Peshawar.

Dated: 07/05/2019

**BEFORE THE HON'BLE SERVICE TRIBUNAL**  
**PESHAWAR**

In Re S.A No. \_\_\_\_\_/2019

Gulab Sher Ex-Constable No.716 FRP Head Quarter  
Peshawar.

**Appellant**

***VERSUS***

1. Deputy Commandant Frontier Reserve Police  
Khyber Pakhtunkhwa Peshawar.
2. Commandant Frontier Reserve Police Khyber  
Pakhtunkhwa Peshawar.
3. Inspector General of Police Khyber Pakhtunkhwa.

**Respondents**

**APPEAL U/S-4 OF THE KHYBER**  
**PAKHTUNKHWA SERVICES TRIBUNAL ACT**  
**1974 AGAINST THE ORDER DATED 02/10/2014**  
**WHEREBY THE APPELLANT HAS BEEN**  
**AWARDED MAJOR PUNISHMENT OF**  
**DISMISSAL FROM SERVICE AND AGAINST**  
**THE APPELLATE ORDERS DATED 16/04/2019 &**  
**19/04/2019 PASSED BY RESPONDENTS HAS**  
**BEEN REJECTED ON NO GOOD GROUNDS**

**Prayer:-**

**ON ACCEPTANCE OF THIS APPEAL**  
**THE IMPUGNED ORDERS DATED**

02/10/2014 MAY KINDLY BE SET ASIDE  
AND THE APPELLANT MAY KINDLY BE  
REINSTATED IN SERVICE WITH ALL  
BACK BENEFITS. ANY OTHER REMEDY  
WHICH THIS AUGUST TRIBUNAL  
DEEMS FIT THAT MAY ALSO BE  
ONWARD TRIBUNAL DEEMS FIT THAT  
MAY ALSO BE GRANTED IN FAVOUR  
APPELLANT.

Respectfully Sheweth,

1. That the Appellant has been initially appointed as Constable in Police department.
2. That the appellant performed his duty regularly and with full devotion and no complaint whatsoever has been made against the appellant.
3. That during performing his duty the Respondent department the appellant has been charged in the false and fabricated Criminal case vide FIR No. 67 dated 19/01/2014 U/S 406 PPC at PS Gulberg.
4. That the appellant has been arrested in the said Criminal Case by the local police on 07/02/2014 and later on bail out on 20/02/2014.

5. That the appellant belongs to a respectable family and due to charge the said false and fabricated criminal case created many problems and mental torture and was engaged to solve the matter with complainant and to show his innocence to complainant as well as to department and to his family.
6. That due to the reason above the appellant was unable to perform his duty with the Respondent department and later on the matter has been solved with the complainant.
7. That the appellant has been acquitted in the above criminal case on 19/03/2019. (Copy of acquittal order is annexed as annexure "A")
8. That after acquittal the appellant visited with Respondent department for joining his duty where the appellant came to know that the appellant has been dismissed from service on 02/10/2014 by the Respondent department on the ground of absentee. (Copy of dismissal order is annexed as annexure "B")

9. That the appellant file departmental appeal on 21/03/2019 against the dismissal order dated 02/10/2014 which has been rejected on 16/04/2019 by the Respondent department. (Copy of departmental appeal and rejection order are annexed as annexure "C & D")
10. That the appellant submitted 11-A petition on 17/04/2019 which has been rejected on 19/04/2019. (Copy of Rejection order is annexed as annexure "E")
11. That feeling aggrieved the Appellant prefers the instant service appeal before this Hon'ble Tribunal on the following grounds inter alia:-

**GROUND:-**

- A. That the impugned order 02/10/2014 is void and abinitio order because it has been passed with retrospective effect which is a void order in this respect the appellant relied upon a judgment of this Hon'ble Service Tribunal Service appeal No. 542/2014 decided on 01/01/2018 and reported SCMR 1985 page:1178 so in the light of judgment of this Hon'ble Tribunal

absence period of the appellant is also being treated as leave without pay it is also an illegal order.

G. That no opportunity of cross examination has been provided to the appellant.

H. That the punishment has been given by the Respondent department is harsh one.

I. That the Respondent department without fulfilling the codal formality passed the impugned order which is void and illegal.

J. That the absence of appellant was not deliberately or intentionally but due to the reason above.

K. That any other ground not raised here may graciously be allowed to be raised at the time full of arguments on the instant service appeal.

*It is therefore, most humbly prayed that on acceptance of this appeal the impugned order dated 20/10/2014 may kindly be set aside and the appellant may kindly be reinstated in service with all back benefits.*

*Any other relief not specifically asked for may also graciously be extended in favour of the Appellant in the circumstances of the case.*

*Gruels*

APPELLANT

Through

*Roeeda Khan*

**Roeeda Khan**  
Advocate, High Court  
Peshawar.

Dated: 07/05/2019

NOTE:-

As per information furnished by my client, no such like appeal for the same petitioner, upon the same subject matter has earlier been filed, prior to the instant one, before this Hon'ble Tribunal.

*R*

Advocate.



**BEFORE THE HON'BLE SERVICE TRIBUNAL**  
**PESHAWAR**

In Re S.A No. \_\_\_\_\_/2019


Gulab Sher

**VERSUS**

Deputy Commandant Frontier Reserve Police Khyber  
Pakhtunkhwa Peshawar and Others


**AFFIDAVIT**

I, Gulab Sher Ex-Constable No.716 FRP Head Quarter  
Peshawar, do hereby solemnly affirm and declare that all the  
contents of the **instant appeal** are true and correct to the best of  
my knowledge and belief and nothing has been concealed or  
withheld from this Hon'ble Court.



DEPONENT

*Identified by:*

  
Rozeeda Khan  
Advocate High Court  
Peshawar.

**BEFORE THE HON'BLE SERVICE TRIBUNAL**  
**PESHAWAR**

In Re S.A No. \_\_\_\_\_/2019

Gulab Sher

**VERSUS**

Deputy Commandant Frontier Reserve Police Khyber  
Pakhtunkhwa Peshawar and Others

**ADDRESSES OF PARTIES**

***PETITIONER.***

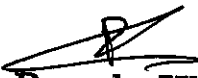
Gulab Sher Ex-Constable No.716 FRP Head  
Quarter Peshawar.

**ADDRESSES OF RESPONDENTS**

1. Deputy Commandant Frontier Reserve Police  
Khyber Pakhtunkhwa Peshawar.
2. Commandant Frontier Reserve Police Khyber  
Pakhtunkhwa Peshawar.
3. Inspector General of Police Khyber Pakhtunkhwa.

  
APPELLANT

Through

  
Roeda Khan  
Advocate, High Court  
Peshawar.

Dated: 07/05/2019

**BEFORE THE HON'BLE SERVICE TRIBUNAL**  
**PESHAWAR**

In Re S.A No. \_\_\_\_\_/2019

Gulab Sher

**VERSUS**

Deputy Commandant Frontier Reserve Police Khyber  
Pakhtunkhwa Peshawar and Others

**APPLICATION FOR CONDONATION OF DELAY (if any)**

*Respectfully Sheweth,*

Petitioner submits as under:

1. That the above mentioned appeal is filing before this Hon'ble Tribunal in which no date is fixed for hearing so far.
2. That the appellant has been charged in false and Criminal case in which the appellant has been arrested on 07/02/2014 and later on bail out on 20/02/2014.
3. That the appellant belongs to a respectable family and due to charge the said false and fabricated criminal case created many problems and mental torture and was engaged to solve the matter with complainant and to show his innocence to complainant as well as to department and to his family.
4. That due to the reason above the appellant was unable to perform his duty with the Respondent department and later on the matter has been solved with the complainant.

5. That the appellant has been acquitted in the above criminal case on 19/03/2019

**Grounds:**

- A. That the impugned orders are void order and no limitation run against the void orders because it has been passed from the retrospective effect.
- B. That the impugned order dated 02/10/2014 was communicated to the appellant in the year 2019.
- C. That there are number of precedents of the Supreme Court of Pakistan which provides that the cases shall be decided on merits rather than technicalities.

It is, therefore, requested that the limitation period (if any) may kindly be condone in the interest of justice.

*Guet*

APPELLANT

Through

*R*

**Roeeda Khan**

Advocate, High Court

Peshawar.

Dated: 07/05/2019

Handwritten notes at the top of the page: "406", "19/1/14", "67", and "Amir A" with a checkmark. There is also some illegible handwriting in Urdu.

ORDER...18  
19/03/2019

SPP Mir Wali for state present. Accused Gulab Sher and Ilyas Khan on bail present. Complainant not present despite repeated notices. Arguments on application u/s 249-A Cr.P.C filed by accused Gulab Sher and Ilyas Khan already heard and record perused.

Brief facts of the case are that complainant Abdul Haq submit the written application to SHO of PS Gulberg on 19-01-2014 by submitting that he was owner of motorcar corolla bearing registration No. WY-221/Islamabad, Model 1995, Color White, Chases No. AE100-3289978, Engine No. 877833. He used to for his vehicle at Izzat Khan Chowk in Malik Amjid parking stand and hand over the keys to the Chokidar namely Tilawat Shah s/o Hikmat Shah. On the day of occurrence, he asked for the key from the chokidar, to which he replied that he has handed over the keys to someone else, who claimed himself to be his relative. He has taken away the vehicle and same is unknown. Complainant nominated the chokidar for the commission of offence in the instant case. Resultantly instant case FIR No. 67 dated 19-01-2014 was registered u/s 406 PPC at PS Gulberg.

Investigation was started and accused Tilawat Shah was arrested. During the investigation complainant Abdul Haq recorded his statement u/s 164 Cr.P.C on 22-01-2014

Handwritten signature and notes at the bottom: "249-A" and other illegible marks.

Handwritten notes on the left margin: a large scribble, "728", "2", "28", and "17".

wherein he alongwith accused Tilawat Shah also charged one Gulab Sher. On 24-01-2014 SHO of PS Gulberg got a spy information that vehicle required in the instant case is parked unattended within the territorial Jurisdiction of PS Umar. SHO alongwith police officials proceeded to the spot and found the vehicle which was taken into possession through recovery memo dated 24-01-2014. DD No. 7 dated 24-01-2014 is available in this regard. Accused Gulab Sher was employee of police department who was arrested in the instant case on 07-02-2014. IO also added other sections of law 411-380 and 381-A PPC in the instant case against the accused. Both the accused Tilawat Shah and Gulab Sher were later released on bail. The third accused Ilyas Khan was implicated in the instant case on the basis of suspicion who was also released on bail.

After completion of investigation complete challan in the instant case was submitted by the prosecution. During the proceeding accused Tilawat Shah died and proceeding to his extent stood abated vide order dated 16-02-2019. Complaine u/s 241-A Cr.P.C was made and case was fixed for framing of formal charge but complainant Abdul Haq on the same date appeared before the court and submitted that he has affected compromise with accused Gulab Sher and is no more interested in further prosecution to his extent.

Accused Gulab Sher submitted instant application in this regard. In the meanwhile as complainant had not affected any compromise with the other accused Ilyas Khan, charge was to be framed however while going through the record no charge was made out against this accused on the basis of record. So notice to the prosecution was given as to why accused Ilyas Khan be not acquitted u/s 249-A Cr.P.C in the instant case.

I would first taken the application of accused Gulab Sher with whom the complainant has not only affected compromise at the bail stage but also at the trial stage.

Perusal of record shows that accused Gulab Sher has not been charged by the complainant in his initial report rather he has been implicated by the complainant in his statement u/s 164 Cr.P.C, however no source of information or satisfaction has been provided by the complainant. No direct recovery of vehicle has been affected from the possession of accused Gulab Sher. There is also a fact of compromise between complainant and accused Gulab Sher.

The offence u/s 406/380/381-A/411 PPC are though not compoundable but the complainant who is star witness of prosecution resiled from his allegation therefore, the statement of other PWs, even if recorded, would not lead the case to conviction. The complainant despite his service stood

absent which also suggest that he is no more interested with the prosecution of accused because of compromise already executed with the accused. Moreover, non-compoundability of a section of law cannot be read in isolation but it has to be read in background of each case after giving it beneficial interpretation. When the parties had earnestly decided to live with peace by forgetting all their differences then it would be the need of hour to acquit the accused on the basis of compromise despite of non-compoundability of the offence. Wisdom drawn from dictum of Hon'ble Peshawar High Court, Peshawar reported as *2016 PLD 26 Peshawar and 2015 PLD 223 Peshawar*.

As far as the case of accused Ilyas is concerned, perusal of record shows that instant case has been registered on the application of the complainant against deceased accused, and co-accused Gulab Sher later on, however accused Ilyas Khan has never been implicated by the complainant in the instant case. The local police during investigation has arrested the accused facing trial namely Ilyas Khan on the basis of suspicion. No recovery has been affected from his possession. The local police also failed to collect any circumstantial evidence against the accused facing trial which could connect him with the commission of offence. No eye witness or private witness has witnessed of



the alleged offence. After completion of investigation complete challan has been submitted by the prosecution against the accused facing trial, however there is nothing on record to show the involvement of accused facing trial in the instant case. There is no chance of the conviction of accused in the instant case on the basis of available record. Further proceedings in the instant case would be a futile exercise.


Hence in view of the above, instant application of accused Gulab Sher is allowed and the *accused Gulab Sher and Ilyas Khan charged in case FIR No. 67 dated 19/01/2014 U/S 406/380/381-A/411 PPC PS Gulberg stand acquitted under section 249-A Cr.P.C. Their sureties are also discharged from the liabilities of bail bonds.*

*Case property has already been handed over to the complainant and would be treated as order u/s 517 Cr.P.C.*

File be consigned to record room after necessary completion and compilation.

**ANNOUNCED**

19/03/2019

  
SALIM UR RAHMAN  
Judicial Magistrate-VIII, Peshawar

Order:-

This office order so far it relates to the disposal of departmental inquiry against Constable Gulab Sher NO.716 FRP/HQRS Peshawar involved in a Criminal Case Vide FIR NO.67 dated 19/01/2014, U/S 406/411/380 PPC PS Gulberg District Peshawar and remained absent from duty w.e.f 25/02/2014 till to date without taking any leave permission of the competent authority in this regard formal departmental proceeding were initiated against him and DSP FRP Headquarter Peshawar was nominated as inquiry officer he conducted inquiry in to the matter and submitted his report.

upon the findings of inquiry he was issued final show cause notice to which he received his reply was not received in the prescribed period. Accordingly he was summoned to appear before the undersigned in orderly room but failed to do so.

Keeping in view the recommendation of the inquiry officer and other material available on record it has come crystal clear that the delinquent official is a habitual absentee and does not take entrust in official duty his service record also shows that previously he has repeatedly absented from official duties prolong periods in his short span of service. It is evident that he is not fit for police service. Which requires discipline could not found punctual performing official duty especially in the prevailing law and order \_\_ therefore constable Gulab Sher No.716 FRP/HQRS dismissed from service under police rules 1975 from the date of first absence i.e. 25/02/2014 and the period of absence is treated as leave without pay.

Order announced

**Deputy Commandant,**

Frontier reserved police  
Khyber Pakhtunkhwa Peshawar  
NO.1075-80/PA/FRP/HQS: dated Peshawar the 02/10/2014

Copy of the above is forwarded for information and action to:

1. The additional IGP/commandant FRP Khyber Pakhtunkhwa.
2. The accountant /FRP/HQRS: Peshawar
3. The FRP/HQRS: Peshawar .
4. The SRC/FRP/HQRS: Peshawar
5. The \_\_ FRP/HQRS: Peshawar
6. The FMC/ERP/HQRS: Peshawar with original enquiry file.

This Office Order so far it relates to the Disposal of Departmental Enquiry against Constable Gulab Sher No. 716 of FRP/HQrs. Peshawar, involved in a criminal case vide FIR No. 67 dated 19.01.2014 u/s 406/411/380/PPC PS Gulbarga district Peshawar and remained absent from duty w.e from 25.02.2014 till to date without taking any leave/permission of the Competent Authority.

In this regard formal departmental proceedings were initiated against him and DSP /FRP/HQrs. Peshawar was nominated as Enquiry Officer. He conducted enquiry into the matter and submitted his report.

Upon the findings of Enquiry Officer he was issued Final Show Cause Notice to which he received. His reply was not received in the prescribed period. Accordingly he was summoned to appear before the undersigned in Orderly Room but failed to do so.

Keeping in view the recommendations of the Enquiry Officer and other material available on record it has come crystal clear that the delinquent Official is a habitual absentee and does not take interest in official duty. His service record also shows that previously he has repeatedly absented from official duties for long periods in his short span of service. It is evident that he is not fit for Police service, which requires discipline coupled with punctual performance of official duty especially in the prevailing Law & Order milieu. Therefore Constable Gulab Sher No.716 of FRP/HQrs is dismissed from Service under Police Rules 1975 from the date of first absence i.e. 25.02.2014 and the period of absence is treated as leave without Pay.

Order announced.

Deputy Commandant,  
Frontier Reserve Police,  
Khyber Pakhtunkhwa Peshawar.

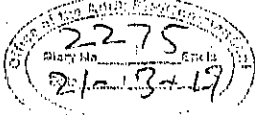
No. 1075-30/PAM/FRP/HQrs: dated Peshawar, the 02/10/2014.

Copy of the above is forwarded for information & reaction to:

- 1. The Addl. IGP/Commandant, FRP Khyber Pakhtunkhwa.
- 2. The Accountant /FRP/HQrs. Peshawar.
- 3. The FRP/HQrs. Peshawar.
- 4. The SKC/FRP/HQrs. Peshawar.
- 5. The OST/FRP/HQrs. Peshawar.
- 6. The RPT/FRP/HQrs. Peshawar.
- 7. The SKC/FRP/HQrs. Peshawar.
- 8. The OST/FRP/HQrs. Peshawar.
- 9. The I/MC/FRP/HQrs. Peshawar with original Enquiry file.

Encl 10/1

(C) - Ann



بخدمت جناب لہذا ڈسٹ صاحب ایف آئی پی ضیاء الحق گواہ  
عنوان = درخواست بمراد بجمالی سروس  
جناب عالی!

تزارشیں جیکہ سائل 2013 کو عملے پر لکھو میں، بلور کنسٹیبل بھری  
ہوا تھا۔ سائل اپنی ڈیوٹی نہایت خوش اسلوبی سے انجام دے رہا تھا۔ دوران  
ڈیوٹی سائل پر بے بنیاد و معروف درج ہوا۔ جس کی بنا پر سائل کو حوالہ جیل  
دیا بند کیا گیا۔ بعد ازاں سائل کو جناب ڈیپٹی کمشنر صاحب نے بحوالہ آرڈر  
نمبر 80-2075، بموقع 02/16/2014 کو عملے پر سے درخواست کیا گیا۔ سائل کا  
ٹرائل 6 مہینہ دراز سے چل رہا تھا اور 19/03/2019 کو سائل عدالت سے باعزت طور پر  
بھری ہوا۔ (عدالت فیصلہ ہمراہ لف ہے)

اپنے سائل کی بگناہی مفلسی، الا چاری کو مدد کر رکھتے ہوئے سائل کو محکمہ پولیس  
میں اپنی ڈیوٹی پر دوبارہ بحال کرنے کا حکم ہوا اور غرہا کر مشکو عرف فائیس سائل اور  
اسکا خاندان تا عیان ڈیما گو رہتا ہے

عین لوازیشن ہوگی

الحق

آپکا تاج الحکم سابقہ کنسٹیبل ڈاٹو گلان شیر بلک نمبر 716 FRP/149000 بشا اور

0304-8993006 Calab

~~Si/legat  
for majid~~  
21/3

Amr (D)

ORDER

This order will dispose of the departmental appeal preferred by ex-constable Gulab Sher No. 716 of FRP HQrs, against the order passed by Deputy Commandant FRP, Khyber Pakhtunkhwa, Peshawar vide Order Endst; No. 1075-80/PA dated 02.10.2014, wherein he was awarded major punishment of dismissal from service. The applicant was proceeded against on the allegations that he was found involved in a criminal case vide FIR No. 67, dated 19.01.2014 U/S 406/411/380 PPC, Police Station Gulbarg District Peshawar and remained absented himself from duty with effect from 25.02.2014 till the date of dismissal from service i.e 02.10.2014, without taking any leave/permission of the competent authority.

In this regard formal departmental proceedings were initiated against him and DSP FRP HQrs, Peshawar was nominated as Enquiry Officer to conduct enquiry against him. After completion of enquiry the Enquiry Officer submitted his findings, wherein the applicant was found guilty of the charges leveled against him.

Upon the findings of Enquiry Officer he was issued Final Show Cause Notice to which he received. His reply was not received in the prescribed period. Accordingly he was summoned to appear before the competent authority in orderly room, but he failed to turn up.

In the light of the above narrated facts and other material available on record, he was awarded major punishment of dismissal from service vide office Order Endst; No. 1075-80/PA, dated 02.10.2014.

Feeling aggrieved against the impugned order of Deputy Commandant FRP, Khyber Pakhtunkhwa, Peshawar the applicant preferred the instant appeal. The applicant was summoned and heard in person in Orderly Room held on 03.04.2019.

During the course of personal hearing, the applicant failed to present any justification regarding to his prolong absence.

From perusal of relevant record it has been found that the applicant was involved in a criminal case vide FIR No. 67, dated 19.01.2014 U/S 406/411/380 PPC, Police Station Gulbarg, District Peshawar then he was arrested from FRP HQrs; by local Police on 07.02.2014, later on he was released on bail on 20.02.2014. He report arrival for duty to FRP HQrs; on 24.02.2014, on next date i.e 25.02.2014 he absented himself from lawful duty till the date of dismissal from service i.e 02.10.2014 for period of 06 months & 07 days without prior permission of the competent authority.

He was issued Charge Sheet and Summary of Allegation on his home address and served upon his father namely Bahadar sher.

During the course of enquiry it has also known that the applicant was found involved another same nature criminal case vide FIR No. 72, dated 07.03.2014 U/S 381-A/34 PPC Police Station Sardheri, District Charsadda. In this regard he was suspended on 07.03.2014 and closed to FRP HQrs; Police Line. While he was arrested by local police on 20.03.2014. Later on, released on bail on 28.03.2014, but he failed to report arrival for duty. Therefore, he was dismissed from service from the date of his first absence i.e 25.02.2014 vide order Endst; No. 1075-80/PA, dated 02.10.2014.

Subsequently, he was acquitted from the 1<sup>st</sup> criminal case by the Court of Judicial Magistrate VIII Peshawar vide judgment dated 19.03.2019, while in 2<sup>nd</sup> criminal case he acquitted the Court of Additional Session Judge II Charsadda vide judgment dated 31.01.2018.

Although Police Rules 16.3 gives benefit to any accused police officer alleged for committing a crime, however in the Instant case the alleged in addition to the criminal charge were absenteeism as well. The forgoing provision of law provides the quashment of departmental action if accused officer is acquitted; but since the charge of absenteeism still stands and there are no grounds for the same, this act of the appellant is amounting the misconduct which could squarely be brought under the mischief of Police Disciplinary Rules 1975. The punishment awarded does not need interferes benefits under Police Rules 16.3 are only meant to be extended in case of acquittal of police officer from the criminal charges.

Thus the applicant has been found to be an irresponsible person in utter disregard the discipline of the force. Therefore any leniency or complacency would further embolden the accused officer and impinge upon the adversely on the over all discipline and conduct of the force. There doesn't seem any infirmity in the order passed by the competent authority, therefore no ground exist to interfere in same.

Based on the findings narrated above, I, **Sajid Ali PSP** Commandant FRP Khyber Pakhtunkhwa, Peshawar, being the competent authority, has found no substance in the appeal, therefore, the same is rejected and filed being badly time barred and meritless.

Order Announced.

**Commandant**  
Frontier Reserve Police  
Khyber Pakhtunkhwa, Peshawar

No 3417-18 /EC, dated Peshawar the 15/04/2019.

Copy of above is forwarded for information and necessary action to the:-

1. Deputy Commandant FRP KP, Peshawar. His service record alongwith D-file sent herewith.
2. Ex-constable Gulab Sher No. 716 S/O Bahadar Sher, Police Station Charsadda, Village Umar Abad, Sardheri, District Charsadda.

Ami 'E'

OFFICE OF THE  
INSPECTOR GENERAL OF POLICE  
KHYBER PAKHTUNKHWA  
Central Police Office, Peshawar.

No. SI / 1223 /19; dated Peshawar the 18/04/2019.

To : The Commandant,  
Frontier Reserve Police,  
Khyber Pakhtunkhwa, Peshawar.

Subject: REVISION PETITION.

Memo:

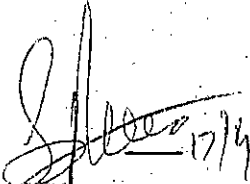
The Competent Authority has examined and filed the revision petition submitted by Ex-Constable Gulab Sher No. 716 of FRP, HQrs: Peshawar against the punishment of dismissal from service awarded by Deputy Commandant, FRP, Khyber Pakhtunkhwa, Peshawar vide order Indst: No. 1075-80/PA, dated 02.10.2014, being badly time barred.

The applicant may please be informed accordingly.


bc/silegal

18/04/19

17/4/19

  
(SYED ANIS-UL-HASSAN)  
Registrar,  
For Inspector General of Police,  
Khyber Pakhtunkhwa,  
Peshawar.  
17/4/19

OFFICE OF COMMANDANT FRP, KP PESHAWAR  
NO. 3734 /SI LEGAL, Dated Peshawar the 23/04/2019  
Copy of above is forwarded to Dy. Commandant  
for necessary action and information.

  
For Commandant FRP, KP

بعد الت مناجح سولاب لادینو نام



مورثہ

مقدمہ

دعویٰ

جرم

2019 پنجاب

فلاحی نام

ابنوش

لوہا سہاگہ

### باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ

آن مقام کے لئے رجسٹرڈ وکیل

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز

وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی چیک و نو پیہار عرضی دعویٰ اور درخواست ہر قسم کی تصدیق

زراریں پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی براندگی

اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت

مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے

تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو کبھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے

اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے

سب سے دہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں

گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھد یا کہ سندر ہے۔

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الرقوم

العہدہ العہدہ العہدہ

مقام کے لئے منظور ہے۔



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 623/2019.

Ex-constable Gulab Sher No. 716, FRP Head Quarter Peshawar  
.....Appellant.

**VERSUS**

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar &  
others.....Respondents

S. NO	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGES
1.	Para-wise Comments		04
2.	Charge Sheet	Annexure "A"	01
3.	Charge Sheet Reply	Annexure "B"	01
4.	Show Cause Notice	Annexure "C"	01
5.	Affidavit		01
6.	Index		01
<b>Total</b>			<b>09</b>

  
**RESPONDENTS**

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No. 623/2019.**

**Ex-constable Gulab Sher No. 716, FRP Head Quarter Peshawar  
.....Appellant.**

**VERSUS**

**Inspector General of Police, Khyber Pakhtunkhwa, Peshawar &  
others.....Respondents**

**PARAWISE REPLY BY RESPONDENTS.**

**RESPECTFULLY SHEWETH.**

**PRELIMINARY OBJECTIONS**

1. That the appeal is badly barred by law & limitation.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has no cause of action to file the instant appeal.
4. That the appellant has not come to this Honorable Tribunal with clean hands.
5. That the appellant is estopped due to his own conduct to file the instant Service Appeal.
6. That the appellant is trying to conceal the material facts from this Honorable Tribunal.

**FACTS:-**

1. Para No. 1 is pertain to the appellant record needs no comments.
2. Incorrect. The appellant being a member of discipline force involved himself in a criminal case vide FIR No. 67, dated 19.01.2014 U/S 406/411/380 PPC, Police Station Gulbarg District Peshawar and remained willfully absented himself from duty with effect from 25.02.2014 till the date of dismissal from service i.e 02.10.2014, without taking any leave/permission of the competent authority. Besides, during the course of enquiry it has been known that he has found involved in another same nature criminal case vide FIR No. 72, dated 07.03.2014 U/S 381-A/34 PPC Police Station Sardheri, District Charsadda.
3. Incorrect. On the allegations of above criminal cases as well as willful absence from duty, the appellant was proceeded against departmentally and the allegations leveled against the appellant was fully established against him without any shadow of doubt.
4. Correct to the extent that the appellant was arrested by local police in the above criminal case on 07.02.2014 and released on bail on 20.02.2014. He reported arrival at his place of posting on 24.02.2014, but however, on the very next day i.e 25.02.2014 he was again remained absent from duty till the date of dismissal from service i.e 02.10.2014, without taking any leave or prior permission of the competent authority.



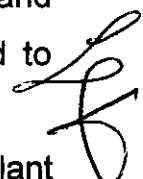
5. Incorrect. Being involved in a criminal case the appellant was proceeded against proper departmentally. It is pertinent to mention here that during the course of enquiry, it has also been found that the appellant was found involved in another criminal case of same nature vide case FIR No. 72, dated 07.03.2014 U/S 381-A/34, PPC Police Station Sardheri District Charsadda. Besides, he was continuously remained absent from duty till the date of his dismissal from service.
6. Incorrect. As explained above the appellant was found involved in another criminal case, in which he was declared proclaimed offender.
7. Correct to the extent that the appellant was acquitted from criminal case 19.03.2019 on the basis of compromise with the complainant party.
8. Incorrect. The appellant was acquitted from the criminal case on the basis of compromise, but since the charges of absenteeism was still stands and there are no grounds for the same, which is amounting to gross misconduct, could squarely be brought under the mischief of Police Disciplinary Rules 1975. After fulfillment of all codal formalities, the appellant was awarded major punishment of dismissal from service.
9. Correct to the extent that departmental appeal submitted by the appellant was thoroughly examined and rejected on sound grounds.
10. Correct to the extent that mercy petition submitted by the appellant was thoroughly examined and rejected on the ground of time barred.
11. The appellant has no cause of action to file the instant appeal.

**GROUND:-**

- A. Incorrect. The appellant is trying to mislead this Honorable Tribunal by producing false and baseless grounds. In facts the appellant being a member of disciplined force, has been found a jailbird as he is repeatedly involved himself in moral turpitude nature offences, which he was dealt with proper departmentally as per law/rules. Thus order of the competent authority dated 02.10.2014 is legally justified and in accordant with law/rules. Moreover, the judgments of this Honorable Tribunal mentioned by the appellant in the Para are not at par with the case of the appellant.
- B. Incorrect. The appellant was involved in criminal case as well as absented himself from lawful duty with effect 25.02.2014 till the date of his dismissal from service i.e 02.10.2014 for the period of 07 months 07 days, without prior permission of the competent authority. He was issued Charge Sheet with Summary of Allegations and an Enquiry Officer was nominated to conduct enquiry against him. The Charge Sheet was served upon by the enquiry officer on his father namely Bhadar Sher at his home address through special messenger, to which he replied, but his reply was found unsatisfactory by the



enquiry officer. (Copies of Charge Sheet and his reply are attached herewith as annexure "A" & "B")

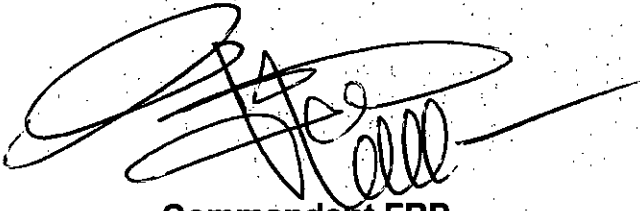
- C. Incorrect. On the allegation of willful absence as well as involvement in a moral turpitude nature criminal case, the appellant was proceeded against proper departmentally as explain above. After completion of enquiry, the Enquiry Officer submitted his findings report, wherein the applicant was found guilty of the charges leveled against him and recommended for major punishment. Upon the findings report of Enquiry Officer he was issued Final Show Cause Notice by the competent authority but reply of appellant was not received in the prescribed period. Accordingly he was summoned for personal hearing to appear before the competent authority in orderly room, but he did not turn up.
- D. Incorrect. Upon the findings report of Enquiry Officer, a Final Show Cause Notice was issued and served upon the appellant accordingly, but he failed to submit his reply or appear before the competent authority and after fulfillment of all codal formalities he was awarded major punishment of dismissal from service as per law/rules. (Copy of Show Cause Notice is attached herewith as annexure "C")
- E. Incorrect. The appellant was absolutely treated in accordance with law/rules within the meaning of Article 4 of the constitution by giving him sufficient and proper opportunities at every level of defense but he deliberately failed to avail these opportunities.
- F. Incorrect. Proper departmental enquiry was conducted against the appellant and statements of all concerned witness were recorded by the enquiry officer during the course of enquiry. After fulfillment of all codal formalities the appellant was awarded major punishment of dismissal from service from the date which the appellant absent from official duty.
- G. Incorrect. That a sufficient opportunity of cross examination has already been provided to the appellant during the course of enquiry, but he did not appear before the enquiry officer to avail this opportunity.
- H. Incorrect. The punishment of dismissal from service awarded to the appellant commensurate with the gravity of his misconduct.
- I. Incorrect. The appellant was treated in accordance with law/rules as after fulfillment of all codal formalities a suitable and speaking order of dismissal from service of the appellant was passed by the competent authority in accordance with law/rules.
- J. Incorrect. The appellant being a member of discipline force involved himself in a moral turpitude nature offence. Due to his criminal attitude his further retention in the Police Department shall be impinged upon adversely on the
- 

overall discipline and conduct of the force. Thus the reason produced by the appellant in regard of his absence is not sufficient and not considerable.

K. The respondents may also be permitted to raise additional grounds at the time of argument.

**PRAYERS:-**

Keeping in view the above facts and circumstances, it is most humbly prayed that the instant service appeal being not maintainable may kindly be dismissed with costs please.



**Commandant FRP,**  
Khyber Pakhtunkhwa, Peshawar  
(Respondent No 01.02)



**Provincial police officer,**  
Khyber Pakhtunkhwa, Peshawar  
(Respondent No. 03)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 623/2019.

Ex-constable Gulab Sher No. 716, FRP Head Quarter Peshawar  
.....Appellant.

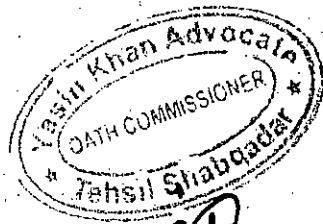
**VERSUS**

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar &  
others.....Respondents

**AFFIDAVIT**

I, Ghasan Ullah ASI FRP HQ: do hereby solemnly affirm and declare on oath that the contents of the accompanying Para-wise Comments on behalf of Respondents No. 1 & 2 is correct to the best of my knowledge and belief that nothing has been concealed from this Honorable Court.

**ATTESTED**



*[Handwritten signature]*

**Deponent**  
**Ghasan Ullah**  
17101-9891560-3