

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR

**SERVICE APPEAL NO. 472/2015**

Date of institution ... 22.05.2015

Date of judgment ... 12.03.2018

Dost Muhammad Ex-Constable No. 771, District Police Nowshera  
R/O Dheri Kati Kheel District Nowshera.

... (Appellant)

**VERSUS**

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police, Mardan Region-I, Mardan.
3. District Police Officer, Nowshera.

... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974,  
AGAINST THE ORDER DATED 13.03.2015, WHEREBY THE  
APPELLANT HAS BEEN AWARDED MAJOR PUNISHMENT  
OF DISMISSAL FROM SERVICE, AGAINST WHICH HIS  
DEPARTMENTAL APPEAL HAS ALSO BEEN REJECTED  
VIDE ORDER DATED 04.05.2015, COMMUNICATED TO THE  
APPELLANT ON 08.05.2015.

Mr. Yasir Saleem, Advocate. .. For appellant.

Mr. Riaz Ahmed Painsa Kheil, Assistant Advocate General .. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI .. MEMBER (JUDICIAL)

MR. MUHAMMAD HAMID MUGHAL .. MEMBER (JUDICIAL)

**JUDGMENT**

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Learned counsel

for the appellant present. Mr. Riaz Ahmed Painsa Kheil, Assistant Advocate  
General for the respondents also present. Arguments heard and record perused.

2. Brief facts of the case as per appeal are that the appellant was serving in  
Police Department and during service he was imposed major penalty of

*M. Amin*  
*12.3.2018*

dismissal from service by the competent authority vide order dated 13.03.2015 on the allegation of his absence from duty without any leave/permission of the competent authority. The appellant filed departmental appeal (undated) but the same was also dismissed on 04.05.2015 hence, the present service appeal on 22.05.2015.

3. Respondents were summoned who contested the appeal by filing written reply/comments.

4. Learned counsel for the appellant contended that the appellant was serving in Police Department. It was further contended that the appellant was dismissed from service on the allegation of absence from duty but neither proper inquiry was conducted nor any absence notice was issued by the respondents at his home address. It was further contended that only a show-cause notice (undated) was issued to the appellant wherein it was stated that the appellant was absent from duty with effect from 21.11.2014. It was further contended that in the impugned dismissal order it was mentioned that the show-cause notice was issued on 09.12.2014 meaning thereby that his absence was less than one month therefore, the punishment of dismissal from service is not in commensurate with the charge and is very harsh. It was further contended that the appellant was dismissed from service from the date of absence i.e retrospectively therefore, the impugned order is void and the appellant has sixteen years service in his credit. It was also contended that the appellant was ill and due to illness he was unable to attend the duty therefore, requested for acceptance of the appeal.


5. On the other hand, learned Assistant Advocate General for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was absent from duty without any leave/permission of the competent authority. It was further contended that there are sufficient


*AC Appan  
12-3-2018*

material on record to show that the appellant remained absent from duty therefore, there was no need of proper inquiry and the competent authority was competent to issue show-cause notice under the departmental proceedings therefore, the competent authority has rightly dismissed the appellant from service and prayed for dismissal of the appeal.

6. Perusal of the record reveals that the impugned order of dismissal of the appellant has been passed retrospectively therefore, the impugned order is void. Furthermore, the record also reveals that the appellant was also allegedly absent from duty with effect from 21.11.2014 and he was issued show-cause notice for alleged absence on 09.12.2014 meaning thereby that the absence period of the appellant was less than one month. The record also reveals that the appellant also claimed in the departmental appeal that he was seriously ill and got treatment from doctors meaning thereby that the absence of the appellant was not deliberate. Furthermore, the appellant has also more than sixteen years service in his credit therefore, the major penalty of dismissal from service appear to be harsh. As such we partially accept the appeal, set-aside the impugned order and convert the major penalty of dismissal from service into withholding of two increments for two years and his absence period as well as the intervening period will be treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.


ANNOUNCED  
12.03.2018


  
(MUHAMMAD HAMID MUGHAL)  
MEMBER

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

15.01.2018

Appellant in person present. Mr. Zia Ullah, DDA for the respondents present. Lawyer-community on strike on the call of Khyber Pakhtunkhwa Bar Council. Adjourned. To come up for arguments on 12.03.2018 before D.B.

  
(Gul Zeb Khan)  
Member

  
(M. Hamid Mughal)  
Member

12.03.2018

Learned counsel for the appellant present. Mr. Riaz Ahmed Pinda Kheil, Assistant Advocate General for the respondents also present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of three pages placed on file, we partially accept the appeal, set-aside the impugned order and convert the major penalty of dismissal from service into withholding of two increments for two years and his absence period as well as the intervening period will be treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
12.03.2018

  
(MUHAMMAD HAMID MUGHAL)  
MEMBER

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

24.03.2017

Appellant with counsel and Mr. Kabir Ullah Khattak, Assistant AG for the respondents present. Argument could not be heard due to incomplete bench. To come up for final hearing on 31.07.2017 before D.B.

Chairman

31.07.2017


Counsel for the appellant Mr. Yasir Saleem, Advocate present and submitted fresh Wakalatnama. Mr. Kabirullah Khattak, Assistant AG for the respondents also present. Learned Assistant AG requested for adjournment. Adjourned. To come up for arguments on 30.10.2017 before D.B.


30.10.2017

Counsel for the appellant present. Mr. Zia Ullah, Deputy District Attorney for the respondents present. Counsel for the appellant seeks adjournment. To come up for arguments on 15.01.2018 before D.B.

30.10.2017

Counsel for the appellant present. Mr. Zia Ullah, Deputy District Attorney for the respondents present. Counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 15.01.2018 before D.B.

  
(Gul Zeb Khan)  
Member (E)

  
(Muhammad Hamid Mughal)  
Member (J)

25.04.2016

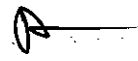
Counsel for the appellant and Wisal Ahmad, Inspector alongwith Mr. Adeel But, GP for official respondents present. The learned Judicial Members is on official tour to D.I. Khan, therefore, case is adjourned to 28.7.2016 before D.B.

  
Chairman

28.07.2016

Counsel for the appellant and Mr. Ejaz Hussain, S.I (legal) alongwith Mr. Ziaullah, GP for respondents present. Rejoinder submitted, copy whereof handed over to learned GP. To come up for arguments on 30.11.16 before D.B.

  
Member

  
Member

30.11.2016

Mr. Saleem Abdullah; Advocate for the appellant Assistant AG for respondents present. Learned counsel for the appellant requested for adjournment. Adjournment granted. To come up for arguments on 24.3.17 before D.B.

  
(ABDUL LATIF)  
MEMBER

  
(PIR BAKHSH SHAH)  
MEMBER

28.05.2015

Appellant with counsel present. Learned counsel for the appellant argued that the appellant was serving as constable when vide impugned order dated 13.03.2015 dismissed from service on the ground of wilful absence from duty regarding which he preferred departmental appeal which was rejected on 04.05.2015 where-after the instant service appeal was filed on 22.05.2015.

That the punishment is un-warranted as the appellant was having 15 years service to his credit and, furthermore, the enquiry was not conducted in the prescribed manners and the appellant was not afforded opportunity of hearing.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 25.08.2015 before S.B.

Appellant Deposited  
Security & Process Fee



  
Chairman

25.08.2015

Counsel for the appellant and Mr. Wisal Ahmed, Inspector (legal) alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 11.11.2015 before S.B.

  
Chairman

11.11.2015

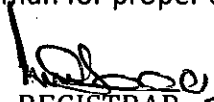

Counsel for the appellant and Mr. Muhammad Fayaz, H.C alongwith Addl: A.G for respondents present. Para-wise comments submitted. The appeal is assigned to D.B for rejoinder and final hearing for 25.4.2016.

  
Member

Form- A  
FORM OF ORDER SHEET

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

Case No. 472 22015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	22.05.2015	<p>The appeal of Mr. Dost Muhammad presented today by Mr. Sajjid Amin Advocate, may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>28-5-2015</u></p> <p style="text-align: right;"> CHAIRMAN</p>



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

Appeal No. 472 /2015

Dost Muhammad Ex-Constable No. 771, District Police Nowshera  
R/O Dheri Kati Kheel District Nowshera.

(Appellant)

**VERSUS**

The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and  
others.

(Respondents)

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8	Vakalatnama.		

*D Muhammad*  
Appellant

Through

*S. Amin*  
**SAJID AMIN**  
Advocate, Peshawar.

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

A.W.P. Province  
Service Tribunal

Diary No. 533

Dated 22-5-2015

Appeal No. 472/2015

Dost Muhammad Ex-Constable No. 771, District Police  
Nowshera R/O Dheri Kati Kheel District Nowshera.

(Appellant)

**VERSUS**

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police, Mardan Region- I, Mardan.
3. District Police Officer, Nowshera.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 13.03.2015, whereby the appellant has been awarded major punishment of Dismissal from service, against which his Departmental Appeal has also been rejected vide order dated 04.05.2015, communicated to the appellant on 08.05.2015.

Prayer in Appeal: -

On acceptance of this appeal both impugned orders dated 13.03.2015, and 04.05.2014, may please be set-aside and the appellant may please be re-instated in service with full back wages and benefits of service.

Filed to-day  
15/5/15  
Registry  
22/5/15

Respectfully Submitted:

1. That the appellant was enlisted as Constable in the District Police Nowshera in the year 1998, ever since his enlistment the appellant performed his duties as assigned with great zeal and devotion and there was no complaint whatsoever regarding his performance.
2. That while post at Police Lines Nowshera, in November 2014, the appellant got seriously ill, therefore he could not join his duty, however he telephonically informed his department about his illness.

3. That a Show Cause Notice was issued but never communicated to the appellant containing the allegation of wilful and deliberate absence from duty w.e.f 21.1.2014. *(Copy of the Show Cause Notice and grounds of action dated 09.12.2014, are attached as Annexure A & B)*
4. That without conducting any inquiry or allowing any opportunity of personal hearing to the appellant, the competent authority awarded the appellant the major punishment of **Dismissal from Service** vide order dated 13.03.2015. *(Copy of the Dismissal order dated 13.03.2015, is attached as Annexure C)*
5. That aggrieved from the order dated 13.03.2015, the appellant also submitted his departmental appeal, however the departmental appeal has also been rejected vide order 04.05.2014, copy of the rejection order was however communicated to the appellant on 08.05.2015. *(Copies of the departmental appeal and rejection order dated 04.05.2015, is attached as Annexure D & E)*
6. That the impugned orders are illegal unlawful, without lawful authority and against the law and facts hence liable to be set aside inter alia on the following grounds:

**GROUND OF SERVICE APPEAL:**

- A. That the appellant has not been treated in accordance with law, hence his rights secured and guaranteed under the law are badly violated.
- B. That no proper procedure has been followed before awarding the penalty of Dismissal from Service to the appellant, neither has he been served with any charge sheet, statement of allegations or any absence notice nor any inquiry has been conducted, the whole proceedings were conducted ex-parte, the appellant has not been allowed opportunity to defend himself thus proceedings so conducted are liable to be set aside.
- C. That the appellant has not been allowed opportunity of personal hearing before the imposition of penalty upon him, thus he has been condemned unheard.
- D. That no charge sheet, statement of allegation or show cause notice has ever served upon the appellant before awarding him the penalty of dismissal from service hence he has not been provided opportunity to defend himself against the charges leveled.

- E. That the appellant has been awarded the penalty of dismissal from service with retrospective effect, since no penalty order can be made with retrospective effect, therefore, on this score alone the impugned dismissal order is not tenable in the eye of law and is thus liable to be set aside. ***Reliance is placed on 1993 PLC C.S 308.***
- F. That the superior courts have always held that punishment must commensurate with the magnitude of guilt, in the instant case the appellant has been treated quite harshly, he had at his credit more than 16 years service, while he had also leave in his account, his absence of few days too was because of his illness thus awarding punishment of dismissal from service is too harsh and liable to be set aside. ***Reliance is placed on 2006 SCMR 1120, 2013 SCMR 817 and 2013 SCMR 372.***
- G. That the appellant has never committed an act or omission which could be termed as misconduct, albeit he has been awarded the penalty. His absence was never willful but was due to his serious illness. Since the appellant was on bed, therefore he could not reach to his office to seek leave, however he duly informed his duty place about his illness.
- H. That the appellant belongs to a poor family, his whole family is dependent upon him, since the appellant has no other source of income, therefore his whole family is suffering due the illegal dismissal of the appellant.
- I. That the appellant has at about 17 years spotless service career at his credit, the penalty imposed upon him is too harsh and liable to be set aside.
- J. That the appellant is jobless since his illegal dismissal from service.
- K. That the appellant seeks permission of this Honourable Tribunal to rely on additional grounds at the hearing of the appeal.

***It is, therefore, humbly prayed that on acceptance of this appeal both impugned orders dated 13.03.2015, and 04.05.2014, may please be set-aside and the appellant may please be re-instated in service with full back wages and benefits of service.***

*D. Khan*  
Appellant

Through

*Su*  
SAJID AMIN  
Advocate, Peshawar

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

Appeal No. \_\_\_\_\_/2015

Dost Muhammad Ex-Constable No. 771, District Police Nowshera  
R/O Dheri Kati Kheel District Nowshera.

(Appellant)

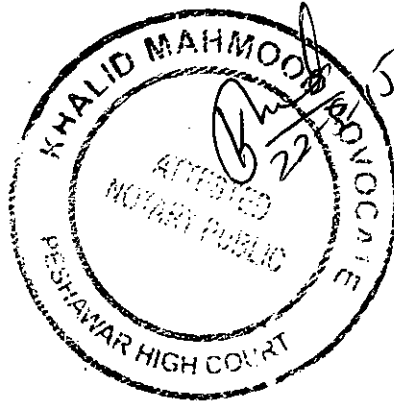
**VERSUS**

The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and  
others.

(Respondents)

**AFFIDAVIT**

I, *Dost Muhammad Ex-Constable No. 771, District Police Nowshera R/O Dheri Kati Kheel District Nowshera*, do hereby solemnly affirm and declare on oath that the contents of the above noted appeal are true and correct and that nothing has been kept back or concealed from this Honourable Tribunal.



*D Muhammad*  
Deponent

(5) ANNEX "A"

**OFFICE OF THE DISTRICT POLICE OFFICER, NOWSHERA**

**SHOW CAUSE NOTICE**

**(Under Rule 5 (3) KPK Police Rules, 1975)**


1. That you FC Dost Muhammad No. 771 while posted to Police Lines, Nowshera have rendered yourself liable to be proceeded under Rule 5 (3) of the Khyber Pakhtunkhwa Police Rules 1975 for following misconduct:-

Willfully & deliberately absented yourself from lawful duty w.e. from 21.11.2014 & is still absent without any leave or prior permission of the competent authority.

2. That by reason of above, as sufficient material is placed before the undersigned; therefore it is decided to proceed against you in general Police proceeding without aid of enquiry officer;
3. That the misconduct on your part is prejudicial to good order of discipline in the Police force;
4. That your retention in the Police force will amount to encourage an efficient and unbecoming of good Police officers;
5. That by taking cognizance of the matter under enquiry, the undersigned as competent authority under the said rules, proposes stern action against you by awarding one or more of the kind punishments as provided in the rules.
6. You are, therefore, called upon to show cause as to why you should not be dealt strictly in accordance with the Khyber Pakhtunkhwa Police Rules, 1975 for the misconduct referred to above.
7. You should submit reply to this show cause notice within 07 days of the receipt of the notice failing which an ex-parte action shall be taken against you.
8. You are further directed to inform the undersigned that you wish to be heard in person or not.
9. Grounds of action are also enclosed with this notice.

Received by \_\_\_\_\_

Dated: \_\_\_/\_\_\_/2014

  
**(Rabnawaz Khan)**  
**District Police Officer,**  
**Nowshera.**



6

ANNEXI B

**OFFICE OF THE DISTRICT POLICE OFFICER,**  
**NOWSHERA**

**GROUND'S OF ACTION**

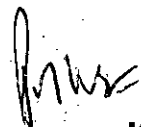
That you FC Dest Muhammad No. 771 while posted to Police Lines, Nowshera committed following misconducts:-

Willfully & deliberately absented yourself from lawful duty w.e. from 21.11.2014 & is still absent without any leave or prior permission of the competent authority.

By reasons of above you have rendered yourself liable to be proceeded under Khyber Pakhtunkhwa Police Rules, 1975, hence these grounds of action.

No. 178 /PA,

Dated: 09/12/2014

  
(Rabnawaz Khan)  
District Police Officer,  
Nowshera.



DISMISSAL ORDER

Constable Dost Muhammad No: 771, while posted at Police Lines Nowshera, remained absent from duty without any leave/permission of the competent authority vide daily diary No. 9 dated 21.11.2014. Police Lines, till date.

In this connection, he was served with a Show Cause Notice on 15.02.2015, issued vide this office No. 178/PA dated 09.12.2014 and in compliance, he was bound to submit his reply within the stipulated time of seven days, but neither, he has submitted his reply nor joined duty till date indicating his negligencē, disinterest in service and disobedience towards Senior Officers on his part.

Service Record

From perusal of his service record, he was enlisted on 01.09.98 and during his short service, he has earned 09 bad entries, also indicating his disinterest in Police Services.

Therefore, in the light of his such misconduct, I am of the considered opinion that Constable Dost Muhammad No. 771 of Police Lines Nowshera is not interested in Police Service, hence, dismissed from Police Force with effect from 21.11.2014, in exercise of the powers vested to me under the Rules, 1975.

OB  
Date: 13/1/2015.

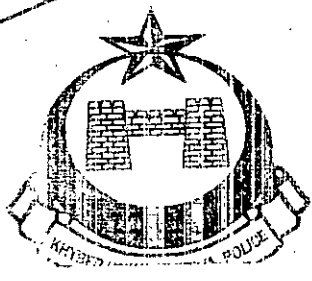
(RABNAVAZ KHAN)  
District Police Officer,  
Nowshera.

178/PA, dated Nowshera, the 13/1/2015.  
Copy for information and necessary action to the:-

1. DSP Hqs: Nowshera.
2. Pay Officer.
3. E.C.
4. OHC.
5. FMC with relevant papers ( 07 sheets).

*AD*





OFFICE OF THE SUPERINTENDENT OF POLICE INVESTIGATION NOWSHERA

Tel: 0923-9220233, Fax: 0923-644102

Better Copy

POLICE DEPARTMENT

NOWSHERA DISTRICT

**DISMISSAL ORDER**

Constable Dost Muhammad No. 771, while posted at Police Lines Nowshera, remained absent from duty without any leave/permission of the competent authority vide daily diary No. 39 dated 21.11.2014 Police Lines, till date.

In this connection. he was served with a Show Cause Notice on 15.02.2015, issued vide this office No. 178/PA dated 09.12.2014 and in compliance, he was bound to submit his reply within the stipulated time of seven days, but neither, he has submitted his reply nor joined duty till date, indicating his negligence, disinterest in service and disobedience towards Senior Officers on his part.

**Previous Record**

From perusal of his service record, he was enlisted on 08.07.1998 and during his short service, he has earned 09 bad entries, also indicating his disinterest in Police Services

Therefore, in the light of his such misconduct, I am of the considered opinion that Constable Dost Muhammad No. 771 of Police Lines, Nowshera is not interested in Police Service, hence, dismissed from Police Force with effect from 21.11.2014, in exercise of the powers vested to me under Police Rules, 1975.

OB \_\_\_\_\_

Dated \_\_\_\_\_ 2015.

(RABNAWAZ KHAN)  
District Police Officer,  
Nowshera.

No. \_\_\_\_\_ /PA, dated Nowshera, the \_\_\_\_\_ 2015.

Copy for information and necessary action to the:-

- 1 DSP Hqrs: Nowshera.
- 2 Pay Officer.
- 3 E.C.
- 4 OHC.
- 5 FMC with relevant papers (07 sheets).



8

ANNEX-D"

To: - Deputy Inspector General of Police,  
Mardan Region-I Mardan.

Subject: - **APPEAL FOR REINSTATEMENT IN SERVICE**

Respected Sir,

With due respect I beg to submit that I have been awarded a Major punishment of Dismissal from service by the District Police Officer Nowshera on 13/3/2015 (photo copy attached) for the allegation of absence from duty from 21/11/2014, against I am going to submit the present Appeal on the following grounds/justifications for favorable and sympathetic consideration:-

1. While posted to Police Lines Nowshera, I fell ill seriously and got treatment from the private doctor.
2. I was issued show cause notice but I was lying on bed and was unable to submit reply.
3. Neither any departmental enquiry was conducted nor I was given any opportunity of personal hearing was given as required under the rules and I was dismissed from service straight away.
4. I have served the department for 16 years and am a trained soldier. I intend to serve the department.
5. I had performed my duties up to the entire satisfaction of my superiors and there was no complaint of any kind against me during my whole service. Moreover, there is no entry of punishment of any kind at my discredit. As regarding 9 bad entries shown in the dismissal order are of very simple nature i.e. 1/2 days absence/leave without pay and nothing more.
6. I have passed various courses including A-I Examination and my name was also brought on promotion list A-I.
7. Due to this impugned order, I was put to great financial loss and my service career has also been damaged.



9

8. I have no other source of income and am the only dependant of a large family due to which I am in continuous and constant tension.

Therefore, I approach your good self to kindly accept my Appeal and the order of punishment of my Dismissal from service awarded by the DPO Nowshera on 13/3/2015 may kindly be withdrawn. I may be re-instated in service for which I shall be highly obliged and will pray for your long life and prosperity.

Yours Obediently,

*D Muhammad*

**(Dost Muhammad)**

**Ex-Constable No.771**

**S/o Irshad Ahmad (late)**

**r/o Dheri Kati Khel**

**District Nowshera**

*Ad*

10 ANNOUNCEMENT

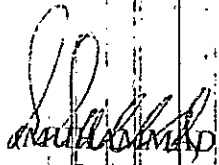
ORDER

This order will dispose off the appeal preferred by Ex- Constable Post Muhaattad No. 771 of Nowshera District Police against the order of District Police Officer, Nowshera, wherein he was dismissed from service vide District Police Officer, Nowshera OB No. 406 dated 13.08.2015

Brief facts of the case are that, he while posted at Police Lines Nowshera remained absent from duty without any leave/permission of the competent authority vide daily diary No. 39 dated 21.11.2014 till the date of dismissal. In this connection he was served with Show Cause Notice on 15.02.2015, he was bound to submit his reply within the stipulated time of seven days, but neither he has submitted his reply nor joined duty till date indicating negligence disinterest in service and disobedience towards senior Officer on his part. From perusal of his service record he was enlisted as Constable in Police department on 08.07.1988 during his service he has earned 09 bad entries also indicating his disinterest in Police service. Therefore in the light of his such misconduct, he was dismissed from service.

The aforesaid Ex- Constable was called in orderly to attend in this office on 22.04.2015, for personal hearing but he failed to appear in Orderly Room, he was marked absent. Therefore I MUHAMMAD SAEED Deputy Inspector General of Police Mardan Region-I, Mardan in exercise of the powers conferred upon me reject the appeal and do not interfere in the order passed by the competent authority, thus the appeal is filed.

BY ORDER

  
MUHAMMAD SAEED)PSP  
Deputy Inspector General of Police,  
Mardan Region-I, Mardan.

26/30 /ES. Dated Mardan the 09/5 /2015.

Copy to District Police Officer Nowshera for information and necessary action to his office against No. 406/A dated 13.08.2015. His service book is returned to him with for record in your office.



POWER OF ATTORNEY

In the Court of Before the Chief Justice

Service Tribunal Peshawar

Dost Muhammad Ex-Constable

} For  
} Plaintiff  
} Appellant  
} Petitioner  
} Complainant

VERSUS

Provincial Police Officer WPK

Peshawar and others.

} Defendant  
} Respondent  
} Accused  
}

Appeal/Revision/Suit/Application/Petition/Case No. \_\_\_\_\_ of \_\_\_\_\_  
Fixed for \_\_\_\_\_

I/We, the undersigned, do hereby nominate and appoint

**IJAZ ANWAR ADVOCATE, SUPREME COURT OF PAKISTAN**

and Sajid Amin Advocate

my true and lawful attorney, for me in my same and on my behalf to appear at Peshawar to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits. Compromises or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or subpoena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

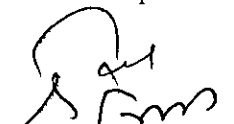
AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at \_\_\_\_\_  
the \_\_\_\_\_ day to \_\_\_\_\_ the year 2011

Executant/Executants \_\_\_\_\_

Accepted subject to the terms regarding fee \_\_\_\_\_

  
**SAJID AMIN**  
ADVOCATE HIGH COURT

Legal Advisor Services & Labour Laws Consultants  
FR-3-4, Fourth Floor, Bilour Plaza Peshawar Cantt.  
Ph: 091-5272054, Mob: 0333-4584986, 03339155956

  
**Ijaz Anwar**

Advocate High Courts & Supreme Court of Pakistan

ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT  
FR-3-4, Fourth Floor, Bilour Plaza, Saddar Road, Peshawar Cantt  
Ph: 091-5272054 Mobile: 0333-91107225

**BEFORE THE HONOURABLE SERVICE TRIBUNAL, KHYBER  
PAKHTUNKHWA, PESHAWAR**

Service Appeal No. 472/2015

Dost Mohammad Ex-Constable No. 771, District Police Nowshera,  
R/O Dheri Kati, Kheel District Nowshera.

.....Appellant

**V E R S U S**

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police, Mardan Region-I, Mardan.
3. District Police Officer, Nowshera.

.....Respondents

**PARAWISE REPLY ON BEHALF OF RESPONDENTS No. 1,2&3**

**Respectfully Sheweth: -**

**PRELIMINARY OBJECTIONS**

1. That the appellant has got no cause of action.
2. That the appeal is badly time-barred.
3. That the appellant has been estopped by his own conduct to file the appeal.
4. That the appeal is not maintainable in its present form.
5. That the appellant has not come to the Honourable Tribunal with clean hands.

**On Facts**

1. Para to the extent of enlistment of appellant in Police Department, pertains to record, need no comments. while rest of the para is incorrect hence, denied because the service record of the appellant is tainted with bad entries.
2. Para incorrect. The appellant while posted at Police Lines, Nowshera willfully and deliberately absented himself from his lawful duty with effect from 21-11-2014 till his dismissal without any leave or prior permission of the competent authority.
3. Incorrect. The appellant was issued show cause notice which was duly received by him and in this regard he has acknowledged the receipt of show cause notice by signing a copy of the same. (Copy of show cause notice bearing signature of appellant is annexed as "A").
4. Incorrect. Show cause notice was issued to appellant vide dated 15-02-2015 which was duly received by him wherein he was given full-fledge opportunity of submitting his reply to the show cause notice. The appellant was bound to submit his reply within the 07 days of the receipt of the said notice, but despite laps of 26 days he failed to submit his reply because he had no ground/defense to advance in his favour, therefore, plea taken by the appellant is liable to be set at naught. The appellant deliberately avoided to join

departmental proceeding against him. He cannot raise the plea of deficient proceedings against him as he himself was bound to join the proceedings hence, he is estopped by his conduct to raise this plea at this stage.

5. The appellate authority extended the opportunity of personal hearing to the appellant on his departmental appeal. The delinquent was called for personal hearing before the appellate authority on 22-04-2015 but he did not obey the order and even remained unappeared before the authority. Thus the appellant is estopped by his conduct to file this appeal. (Order showing the detail is annexed as "B").

6. Incorrect. The order passed by the competent as well as appellate authorities are legal, lawful and in consonance with law and facts, hence, liable to be maintained.

### On grounds

A. Para incorrect. The appellant has been treated in accordance with law. Moreover, neither his secured nor guaranteed rights under the law have been violated because the respondent department had no grudges against the appellant nor done any unlawful act against him.

B. Incorrect. Law favours the law abiding and vigilant and not the idollant and fugitives. Proper procedure was adopted by issuing show cause notice vide dated 15-02-2015 which was duly received by him wherein he was given full-ledge opportunity of submitting his reply to the show cause notice. The appellant was bound to submit his reply within the 07 days of the receipt of the said notice, but despite lapse of 26 days he failed to submit his reply because he had no ground/defense to advance in his favour, therefore, plea taken by the appellant is liable to be set at naught. Moreover, appellant was issued show cause notice which was duly received by him and in this regard he has acknowledged the receipt of show cause notice by signing a copy of the same.

C. Incorrect. The appellant was provided full-ledge opportunity of personal hearing by both the competent as well as appellate authorities of defending himself but he did not bother to appear for the reasons best known to him.

D. Incorrect. Para already explained in para "B".

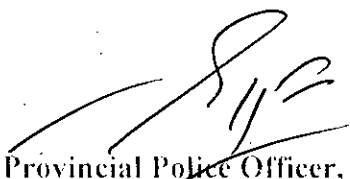
E. Incorrect. The appellant was dismissed from service from the date when he willfully and deliberately absented himself from his lawful duty without proper permission from his high ups.

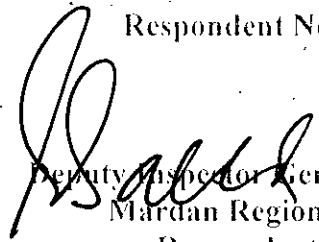
F. Incorrect. The punishment awarded to the appellant does commensurate with the magnitude of his guilt. If he had leave in his account, he should have properly applied for leave which he did not bother to do. The appellant did not remain absent for few days rather remained absent for months which is against the norms of disciplined force.

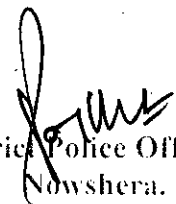


- G. Incorrect. Willful absence is gross misconduct. The plea of illness is concocted and pretended one. If he was ill; he would have acted on prescribed procedure.
- H. Para not related, needs no comments.
- I. Incorrect. The entire service record of the appellant is tainted with bad entries hence, the punishment order is liable to be maintained.
- J. Para not related, needs no comments.
- K. That the respondents also seek permission of this Honourable Tribunal to adduce additional grounds at the time of arguments.

It is, therefore, most humbly prayed that keeping in view the above submissions, appeal of the appellant may very graciously be dismissed with cost.

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

  
Deputy Inspector General of Police,  
Mardan Region-I, Mardan  
Respondent No. 02

  
District Police Officer,  
Nowshera.  
Respondent No. 03

**BEFORE THE HONOURABLE SERVICE TRIBUNAL, KHYBER  
PAKHTUNKHWA, PESHAWAR**

Service Appeal No. 472/2015

Dost Mohammad Ex-Constable No. 771, District Police Nowshera,  
R/O Dheri Kati Kheel District Nowshera.

.....Appellant

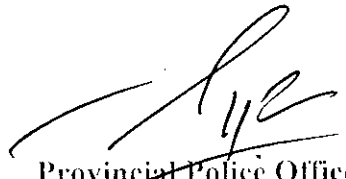
**V E R S U S**

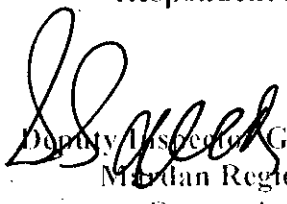
1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police, Mardan Region-I, Mardan.
3. District Police Officer, Nowshera.

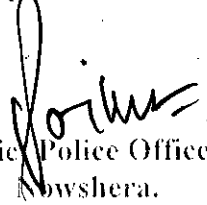
.....Respondents

**AFFIDAVIT**

We the respondents No. 1,2 & 3 do hereby solemnly affirm and declare on Oath that the contents of parawise comments to the appeal are true and correct to the best of our knowledge and belief and nothing has been concealed from the Honourable tribunal.

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

  
Deputy Inspector General of Police,  
Mardan Region-I, Mardan  
Respondent No. 02

  
District Police Officer,  
Nowshera.  
Respondent No. 03

«A»

**OFFICE OF THE DISTRICT POLICE OFFICER, NOWSHERA**

**SHOW CAUSE NOTICE**

**(Under Rule 5 (3) KPK Police Rules, 1975)**

1. That you FC Dost Muhammad No. 771 while posted to Police Lines, Nowshera have rendered yourself liable to be proceeded under Rule 5 (3) of the Khyber Pakhtunkhwa Police Rules 1975 for following misconduct:-

Willfully & deliberately absented yourself from lawful duty w.e. from 21.11.2014. & is still absent without any leave or prior permission of the competent authority.

2. That by reason of above, as sufficient material is placed before the undersigned; therefore it is decided to proceed against you in general Police proceeding without aid of enquiry officer;
3. That the misconduct on your part is prejudicial to good order of discipline in the Police force;
4. That your retention in the Police force will amount to encourage an efficient and unbecoming of good Police officers;
5. That by taking cognizance of the matter under enquiry, the undersigned as competent authority under the said rules, proposes stern action against you by awarding one or more of the kind punishments as provided in the rules.
6. You are, therefore, called upon to show cause as to why you should not be dealt strictly in accordance with the Khyber Pakhtunkhwa Police Rules, 1975 for the misconduct referred to above.
7. You should submit reply to this show cause notice within 07 days of the receipt of the notice failing which an ex-parte action shall be taken against you.
8. You are further directed to inform the undersigned that you wish to be heard in person or not.
9. Grounds of action are also enclosed with this notice.

Received by DJ Khan

Dated: 15/2/2015

Rab Nawaz Khan  
(Rab Nawaz Khan)  
District Police Officer,  
Nowshera.

271  
15/2/15

«B» ①

فای  
771 EX  
در دست

ORDER.

This order will dispose-off the appeal preferred by Ex- Constable Dost Muhammad No. 771 of Nowshera District Police against the order of District Police Officer, Nowshera, wherein he was dismissed from service vide District Police Officer, Nowshera OB No. 406 dated 13.03.2015

Brief facts of the case are that, he while posted at Police, Lines Nowshera remained absent from duty without any leave/permission of the competent authority vide daily diary No. 39 dated 21.11.2014 till the date of dismissal. In this connection he was served with Show Cause Notice on 15.02.2015, he was bound to submit his reply within the stipulated time of seven days, but neither he has submitted his reply nor joined duty till date indicating negligence disinterest in service and disobedience towards senior Officer on his part. From perusal of his service record he was enlisted as Constable in Police department on 08.07.1998 during his service he has earned 09 bad entries also indicating his disinterest in Police service, therefore in the light of his such misconduct, he was dismissed from service

The aforesaid Ex- Constable was called in orderly room held in this office on 22.04.2015, for personal hearing but he failed to appear in Orderly Room, he was marked absent. Therefore, I MUHAMMAD SAEED Deputy Inspector General of Police, Mardan Region-I, Mardan in exercise of the powers conferred upon me reject the appeal and do not interfere in the order passed by the competent authority, thus the appeal is filed.

ORDER ANNOUNCED

*Muhammad Saeed*  
MUHAMMAD SAEED (PSP)  
Deputy Inspector General of Police,  
Mardan Region-I, Mardan. ✓

No. 2680 /ES. Dated Mardan the 04/5 /2015.

Copy to District Police Officer Nowshera for information and necessary action w/r to his office Memo: No. 1338/TA dated 13.03.2015. His service

roll is returned herewith for record in your office.

EC. OBC. P.A.  
For M. adnan.

*M. adnan*  
DPO-NSR  
5/5/15

(OB No 648  
6/5/15)

Dy No: 1270  
P.A. D.P.O. NSR  
dt 6/5/2015  
Encls: \_\_\_\_\_

Dy. Supdt. of Police  
Akora

15-2-10

تاریخ 10



97563

ایڈووکیٹ  
رابطہ نمبر:  
پشاور بار ایسوسی ایشن نمبر:

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب:

مخائب: اسلانتے	دعویٰ:
دوست محمد	علت نمبر:
بنام	مورخہ:
لو لیس	جرم:
	تھانہ:

**بابت تحریر آگہ**

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ  
آن مقام لیسٹ ہڈ کیلئے لا سسر مسلم (لا سسر مسلم) کو سبیل مقرر  
کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کمال اختیار ہوگا، نیز وکیل صاحب کو  
راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق  
زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز  
دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی  
کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب  
مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا  
دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے  
باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم:

المقام لیسٹ ہڈ کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی کوئی کاپی ناقابل قبول ہوگی۔

Alleged  
Accused

مستند

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

No 730 /ST

Dated 11/04/2018


To

The District Police Officer,  
Government of Khyber Pakhtunkhwa,  
Nowshera.

Subject: **ORDER/JUDGEMENT IN APPEAL NO. 472/2015, MR. DOST MUHAMMAD.**

I am directed to forward herewith a certified copy of Judgment/Order dated 12/03/2018 passed by this Tribunal on the above subject for strict compliance.

**Encl: As above**

  
**REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.**

