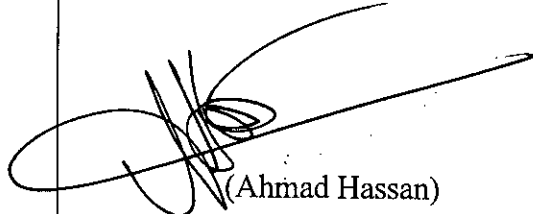


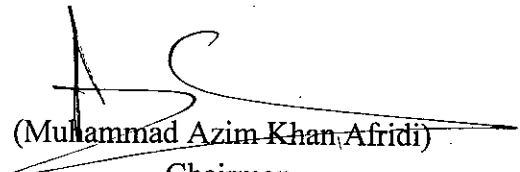
S. No.	Date of Order or proceedings.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	08.03.2017	<p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, CAMP COURT SWAT</u></p> <p style="text-align: center;">Appeal No. 233/2015</p> <p style="text-align: center;">Farman Ali Versus the Regional Police Officer, Malakand Region at Saidu Sharif Swat and another.</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:</u></p> <p>Counsel for the appellant and Mr. Muhammad Zubair, Senior Government Pleader alongwith Imranullah, Inspector (Legal) for respondents present.</p> <p>2. Farman Ali Ex-Constable No. 1664 District Police Swat hereinafter referred to as the appellant has preferred the instant service appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against original order dated 14.07.2016 vide which he was compulsorily retired from service and recovery of outstanding amount was ordered and where-against his departmental appeal was also rejected vide final order dated 06.11.2014 communicated to the appellant on 24.2.2015 and hence the instant service appeal.</p> <p>3. We have heard arguments of learned counsel for the appellant as well as learned Senior Government Pleader and perused the record.</p> <p>4. The respondents have pressed into service statement of the appellant recorded by the enquiry officer wherein he had admitted that he was transferred from Police Station Kalkot to Police Station Rahim Abad District</p>

[Handwritten signature]
08.03.17

Swat and that he did not join his duty at P.S Rahim Abad and used to collect his salaries from Police Lines on the second or third day of each month. Appellant present before us admitted the said statement before us.

5. In view of the afore-stated position we are left with no option but to maintain the punishment awarded to the appellant to the extent of compulsory retirement. The order in respect of recovery is an order amounting to punishing the appellant twice on the same allegations as such the impugned order to the extent of recovery is set aside. The appeal is disposed of in the above terms. Parties are left to bear their own costs. File be consigned to the record room.


(Ahmad Hassan)
Member


(Muhammad Azim Khan Afridi)
Chairman
Camp Court, Swat.
08/03/17

ANNOUNCED
08.03.2017

05.12.2016

Appellant with counsel and Mr. Khawas Khan,

SI (Legal) alongwith Mr. Muhammad Zubair, Sr.GP for

the respondents present. Due to incomplete bench

arguments could not be heard. To come up for final

hearing on 08.03.2017 before D.B at camp court, Swat.

Chairman
Camp court, Swat.

(Chairman)
Camp Court Swat

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(Mirrored bleed-through text from the reverse side of the page, including the name of the court.)

02.11.2015

Appellant in person and Mr. Khawas Khan, S.I (legal) alongwith Mr. Muhammad Zubair, Sr.G.P for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 7.3.2016 at Camp Court Swat.


Chairman
Camp Court Swat

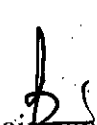
07.03.2016

Appellant with counsel and Mr. Iqbalullah, Inspector (legal) alongwith Mr. Muhammad Zubair, Sr.G.P for respondents present. Rejoinder submitted. Due to non-availability of D.B, arguments could not be heard. To come up for final hearing before D.B on 2.8.2016 at Camp Court Swat.


Chairman
Camp Court Swat

02.08.2016

Appellant with counsel and Mr. Khawas Khan, S.I (Legal) alongwith Mr. Muhammad Zubair, Sr.GP for the respondents present. Rejoinder submitted. Due to non-availability of D.B arguments could not be heard. To come up for final hearing on 05.12.2016 before D.B at camp court, Swat.


Chairman
Camp court, Swat.

18.05.2015

Clerk of counsel for the appellant and Asstt: AG for the respondents present. Clerk of counsel for the appellant requested for adjournment. Adjourned to 11.06.2015 for P.A. before S.B. E.E.H


Member

5 11.06.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Constable when vide impugned order dated 14.7.2014 he was compulsorily retired from service on the allegations of wilful absence from duty. That the appellant preferred departmental appeal which was rejected on 6.11.2014 but communicated to the appellant on 24.2.2015 whereafter the appellant preferred the instant service appeal on 19.3.2015.

That the appellant was performing his duty during the dispute period and, furthermore, no opportunity of hearing was afforded to appellant nor the inquiry was conducted in the prescribed manners.

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 for 7.9.2015 at Camp Court Swat as the matter pertains to the territorial limits of Malakand Division.


Chairman

07.09.2015

Appellant in person and Mr. Khawas Khan, S.I (legal) alongwith Mr. Muhammad Zubair, Sr. GP for respondents present. Requested for adjournment. To come up for written reply/comments on 2.11.2015 before S.B at Camp Court Swat.


Chairman
Camp Court Swat

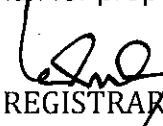


Appellant Deposited
Security & Process Fee



Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 233 /2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	19.03.2015	<p>The appeal of Mr. Farman Ali resubmitted today by Mr. Ashraf Ali Khattak 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 Bench <u>III</u> for preliminary hearing to be put up thereon <u>30-3-15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2	30.3.2015	<p>Counsel for the appellant present and submitted that vide impugned order dated 14.07.2014, the appellant has been compulsory retired from service, against which the appellant submitted departmental appeal, which is not available on the file, however, the same has been rejected on 06.11.2014, hence the present appeal on 09.3.2015. Apparently, the appeal seems to be time barred. A pre-admission notice be issued to the learned Addl. AG to assist the Tribunal. To come up for preliminary hearing on 18.05.2015.</p> <p style="text-align: right;"> MEMBER</p>

The appeal of Mr. Farman Ali Ex-Constable No. 1664 of Swat received to-day i.e. on 09.03.2015 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 departmental appeal 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.
- 4- Memorandum of appeal may be got signed by the appellant.

No. 309 /S.T,

Dt. 10/3 /2015


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Ashraf Ali Khattak Adv. Pesh.

Re-submitted

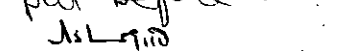
① No charge sheet, statement of allegation, show cause Notice has been served upon the appellant therefore, no copy of the same is available. the inquiry has been conducted in the absence and at the back of the appellant and no inquiry report has been provided to the appellant, hence no copy.

② Copy of deptl appeal is also not available; it could be judged from the impugned final Order that the appellant has filed departmental within due course of time period.

③ Objection No. 3 has been complied.

④ objection No. 4 has also been complied.

It is requested that appeal may kindly be put before the Bench of the Tribunal.


Ashraf Ali Khattak
Advocate

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PEHSAWAR

Service Appeal No. 233 /2015

Farman Ali Ex-Constable No.1664 of Swat**Appellant**


VERSUS

The Regional Police Officer & another.....**Respondents**

I N D E X

S.N	Description of Documents	Annex	Pages
1.	Service Appeal		1-5
2.	Application for condonation of delay		6-7
3.	Copy of order dated 14/7/2014	A	8
4.	Copy of Order dated 6/11/2014	B	9
5.	Application for reinstatement		10
6.	Wakalatnama		

Appellant
Through


Ashraf Ali Khattak
Advocate, Peshawar

Dated 07.3.2015

BEFORE THE KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 233 /2015

Farman Ali Ex-Constable No.1664 of Swat District
.....Appellant.

E.W.P. Province
Service Tribunal
Diary No. 201
Date 09/3/2015

Versus

1. The Regional Police Officer, Malakand Region at Saidu Sharif Swat.
2. The District Police Officer, SwatRespondantts.

Service Appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 read with Rule 19 of the Govt Servant (Efficiency and Discipline) Rules, 2011 and also read with Police Disciplinary Rules 1975 against the impugned final order of respondent No.1 dated 06-11-2014 passed on the department appeal of the appellant preferred against the order of respondent No.2 dated 14-07-2014, wherein he has imposed major penalty of Compulsory retirement upon the appellant.

Prayer:-

On acceptance of the instant Service Appeal this Honourable Tribunal may graciously be pleased to declare the impugned orders of respondent No.1 & 2 is illegal, unlawful and without lawful authority and set aside the same and also re-instate the appellant with all back benefits.

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. That appellant is the ex-employee of respondent Force. He has long standing service at his credit.
2. That appellant has been allegedly marked absent from his lawful duty w.e.from 05-08-2011 till the date of impugned order dated 14-07-2014 for

Filed to the

Registrar

9/3/15

re-submitted to-day
and filed.

Registrar

19/3/15

reasons best known to the respondents.

3. That it is pertinent to mention here that appellant has never been remained absent during the alleged entire period but was on his active service and has also received his salaries for the said entire course.
4. That in absence of the appellant an alleged inquiry has been conduct without serving the appellant with any charge sheet and statement of allegation and without providing him with opportunity of defense and on the score of alleged inquiry; appellant has been penalized with major penalty of compulsory retirement along with recovery of salaries received during the alleged period of absence i.e w.e.from 05-08-2011 till dated 14-07-2014 vide order dated 14-07-2014 (Annexure-A).
5. That appellant being aggrieved of major penalty preferred departmental appeal before respondent No.1, who vide impugned order dated 06-11-2014 (Annexure-B) rejected the same and up-hold the order of respondent No.2.
6. That appellant now being aggrieved of both the impugned orders prefers the instant Service Appeal inter alias on the following grounds.

Grounds:-

- A. That the respondents have not treated the appellant in accordance with law, rules and policy and thus acted in violation of Article 4 of the Constitution, 1973. Section 16 of the Civil Servant Act, 1973 provides that every Civil Servant is liable for

prescribed disciplinary actions and penalties only through prescribed procedure. In the instant case no prescribed procedure has been adopted by respondents and inquiry officer, therefore, the impugned order is against the basic law and rules and policy and therefore liable to be set aside.

- B. That appellant has neither been served with any charge sheet and statement of allegation and nor has been provided with fair and equitable opportunity of defense. The whole action and proceeding has been conducted in the absence and without the active participation of the appellant. The action of the respondent is not only against the spirit and provision of prescribed procedure of the concerned statutes but also against Article 10 A of the Constitution of Pakistan, 1973.
- C. That under Rule No.5 of the Khyber Pakhtunkhwa appeal Rules, 1986 the appellate authority was under legal obligation to scrutinize the original impugned order on the touch stone of the rules *ibid*. The appellate authority has failed to scrutinize the factum of absence and non absence and the fact that appellate has received salaries during the alleged entire course of absence. How it is possible to receive salaries without performing duty and that too for such long period. On this score the impugned order is liable to be set aside.
- D. That major penalty has been imposed without giving reason for disregarding appellant's defense constitute violation of Section 24A of the General

Clauses Act, 1897, therefore, the impugned orders are not sustainable in the eyes of law and liable to be struck down.

- E. That the Honourable Supreme Court of Pakistan has in thousand of cases has held that no major punishment could be imposed without regular inquiry, the subject impugned order based on slipshod inquiry has therefore, no base in the light of the decision of the Apex Court, thus liable to be set aside.
- F. That factual controversy is involved in the subject case, therefore, regular inquiry was absolutely necessary as per law laid down by the Honourable Supreme Court of Pakistan, the same has been ignored in toto, therefore, on this score, the impugned order is also liable to be set aside.
- G. That so called slipshod inquiry has been conducted in the absence and at the back of the appellant. Appellant active participation during inquiry proceeding has been willfully and deliberately ignored. Inquiry proceedings are of judicial in nature in which participation of accused civil servant as per law condition sine qua non. On this ground the impugned orders are coarm non judice and liable to be set back.
- H. That the well-known principle of law " Audi altram Partem" has been violated. This principle of law was always deemed to have embedded in every statute even though there was no express specific or express provision in this regard.

....An adverse order passed against a person without affording him an opportunity of personal hearing was to be treated as void order. Reliance is placed on 2006 PLC(CS) 1140. As no proper personal hearing has been afforded to the appellant before the issuing of the impugned order, therefore, on this ground as well the impugned order is liable to be set aside.

- I. That appellant is jobless since the impugned order from service, therefore entitled to be re instated with all service benefits.
- J. That appellant would like to seek the permission of this Honourable Tribunal to advance some more grounds at the time of arguments.

It is therefore humbly prayed that the appeal may kindly be allowed as prayed for above.

فرمان علی
APPellant

Through

اشرف علی خٹک
Ashraf Ali Khattak,
Advocate, Peshawar.

Dated: _____ / 03/ 2015

Affidavit.

Farman Ali Ex-Constable No:1664 of Swat District ,
do hereby solemnly affirms on Oath that the contents of
the instant service appeal are true to the best of my
knowledge and belief and nothing has been concealed
from this Honourable Tribunal.

فرمان علی
Deponent.



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

SERVICE APPEAL NO. _____/2015

Farman Ali Ex-Constable No.1664 of Swat District
.....Appellant.

Versus

The Regional Police Officer, Malakand Region at Saidu
Sharif Swat and others..... Respondants.

Application for Condonation of delay.

Respectfully Sheweth,

Facts giving rise to the present application are as under:-

- I. That appellant is the ex-employee of respondent Force. He has long standing service at his credit.
- II. That impugned final order has not been communicated to the appellant till the date; appellant has acquired the same through his own efforts on 24-02-2015.
- III. That limitation runs from the date of communication. Reliance is placed on Appeal....
Limitation ... Civil servant had the choice either to file service appeal on expiry of 90 days from the date of filing departmental appeal or to wait till the decision of the departmental appeal. Appeal filed after decision of departmental appeal within 30 days even after lapse of 120 is competent. (1995 SCMR 776- 2013 SCMR 1053) Limitation runs from the date of communication of order. [PLJ 1991 Tr. C (Service) 90+ 1984 PLC (CS) 1254+ 1987 SCMR 110+ 1986 SCMR 962+ PLJ 1990 Tr. C (Service) 17+1989 PLC (CS) 262+ 1988 PLC (CS) 846].

- IV. That law encourage adjudication on merits rather on technicalities including limitation.
- V. That matter relates to financial benefits, which is recurring cause of action and no limitation runs in financial matters.

In view of the above submissions, it is therefore, humbly prayed that delay if any may kindly be condoned in the best of justice, fair play and equity.

فرمان علی

Applicant/Appellant

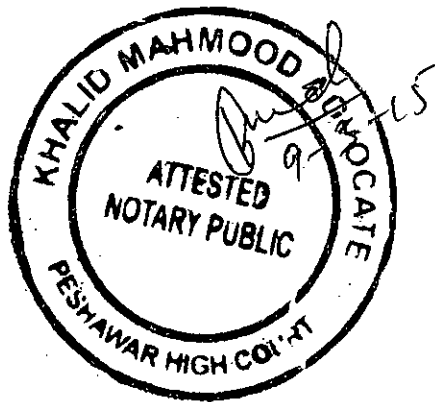
Through

اشرف علی خٹاک

Ashraf Ali Khattak
Advocate, Peshawar

Affidavit.

I, Farman Ali Ex-Constable No.1664 of Swat District , do hereby solemnly affirms on Oath that the contents of the instant application are true to the best of my Knowledge and belief and nothing has been concealed from this Honourable Tribunal.



فرمان علی
Deponent.

ORDER

This order will dispose off the departmental enquiry against Constable Farman Ali No.1674 who while posted to Police Station Rahimabad, absented himself from his lawful duty w.e.f 05-08-2011 up till now without prior permission or leave as per report of SHO Police Station Rahimabad dated 14-08-2014.

He was issued Charge Sheet / statement of allegations and DSP Ch. Swat was appointed as Enquiry Officer to conduct proper departmental Enquiry and submit finding report. The Enquiry Officer conducted proper departmental Enquiry against the delinquent officer, recorded the statements of all the concerned officers. The delinquent constable was provided ample opportunity to defend himself but he could not submit any plausible reasons for his lawful absence. After conducting proper departmental enquiry, the Enquiry Officer submitted his findings report recommended the above named constable for appropriate punishment. He was heard in Orderly Room but, he could not present any plausible defense for the charges leveled against him. Having perused his service record, it was pertinently evident that the delinquent officer Constable Farman Ali No.1674 is addicted to chronic absence and is not interested to continue his service.

Having gone through the statement of concerned officer and findings report of the Enquiry Officer, the undersigned is of considered opinion that there is no chance of constable Farman Ali No. 1674 becoming an efficient Police Officer and his further retention in service is bound to affect the discipline of the entire force. Therefore, in exercise of the powers vested in the undersigned under Rules 2 (iii) of Police Disciplinary Rules-1975, I, Sialkot, Sd/- P.S.P, District Police Officer, Swat as a competent authority, am constrained to award him the punishment of Compulsory Retirement from Service with immediate effect. The recovery outstanding against the above named constable should be made from his pension.

Order announced.

District Police Officer, Swat

O.S. No.

122

Dated

14/7/2014

Attested
True Copy

ORDER

This order will dispose off the departmental enquiry against constable Farman Ali No.1674 who while posted to Police Station Rahimabad absented himself from his lawful duty w.e.f 05.08.2011 up till now without prior permission or leave as per report of SHO Police station Rahimabad dated 14-05-2014.

He was issued Charge Sheet/Statement of allegations and DSP City, Swat was appointed as Enquiry Officer to conduct proper departmental Enquiry and submit finding report. The Enquiry Officer conducted proper departmental Enquiry against the delinquent officer, recorded the statements of all the concerned officer. The department constable was provided ample opportunity to defend himself but he could not submit any plausible reasons for his lawful absence. After conducting proper department enquiry, the Enquiry Officer submitted his findings report recommended the above named constable for appropriate punishment. He was heard in Orderly Room but, he could not present any placidity defense for the charge leveled against him. Having perused his service record, it was pertinently evident that the delinquent officer constable Farman Ali No.1674 is addicted to chronic absence and is not interested to continue his service.

Having gone through the statement of concerned officer and findings report of the Enquiry Officer, the undersigned of considered opinion that there is no chance of constable Farman Ali No.1674 becoming an efficient police officer and his further detention in service is bound to affect the discipline of the entire force. Therefore in exercise of the powers vested in the undersigned under Rules 2 (iii) of police Disciplinary Rules-1975, I, Sher Akbar, ___ P.S.P, District Police Officer, Swat as a competent authority, am constrained to award him the punishment of compulsory Retirement from service with immediate effect. The recovery outstanding against the above named constable should be made from his pension.

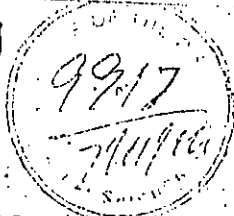
Order announced

Sd/-
District Police Officer, Swat

O.5.No.122
Dated 14/7/2014

Amx-B

P-9



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

ORDER:

This order will dispose off appeal of Ex-Constable Farman Ali No. 1674 of Swat District for reinstatement in service.

Brief facts are that Ex-Constable Farman Ali No. 1674 while posted to Police Station Rahim Abad absented himself from lawful duty with effect from 05/08/2011 to 14/07/2014 without prior permission of the high-ups as per report of SHO Police Station Rahim Abad. DSP City was appointed as Enquiry Officer to conducted proper departmental enquiry against the appellant. After completion of enquiry the Enquiry Officer recommend him for appropriate punishment. He was also heard in Orderly Room by District Police Officer, Swat, but he could not present any possible defence for the charges levelled against him. After completion of codal formalities of the enquiry he was found guilty of the charges, hence he was awarded punishment of compulsory retirement from service vide OB No. 123 dated 14/07/2014.

The appellant was called in Orderly Room on 31/10/2014 and heard him in person, but he did not produce any substantive materials in his defense. Therefore I uphold the order of District Police Officer, Swat, whereby the appellant has been awarded major punishment of compulsory retirement from service. His appeal is filed.

Order announced.

Abdullah Khan
(ABDULLAH KHAN) PSP
Regional Police Officer,
Malakand at Saidu Sharif Swat
Naqvi

No. 9092 /E,

Dated 5-11 /2014.

Copy to District Police Officer, Swat for information and necessary action with reference to his office Memo: No. 14616/E, dated 17/09/2014.

Attested
True Copy

Seen/ABC

DPS Swat
06/11/14

*Copy of the order not
endorsed to Constable
Farman Ali*
Ali
24.2.2015

*Received through clerk
dated 24.02.2015 on Thursday*
فرمان علی

Copy provided
24.2.2015

Ali
24.2.2015

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

ORDER:

This order will dispose off appeal of Ex-Constable Farman Ali No.1674 of Swat District for reinstatement in service.

Brief facts are that Ex-Constable Farman Ali No.1674 while posted to Police Station Rahim Abad absented himself from lawful duty with effect from 05/08/2011 to 14/07/2014 without prior permission of the high-ups as per report of SHO Police Station Rahim Abad, DSP City was appointed as Enquiry Officer to conducted proper departmental enquiry against the appellant. After completion of enquiry the Enquiry Officer recommend him for appropriate punishment. He was also heard in Orderly Room by District Police Officer, Swat, but he could not present any possible defence for the charges levelled against him. After completion of codal formalities of the enquiry he was found guilty of the charges, hence he was awarded punishment of compulsory retirement from service vide OB No.122 dated 14/07/2014.

The appellant was called in Orderly Room on 31/10/2014 and heard him in person, but he did not produce any substantive materials in his defense. Therefore I uphold the order of District Police Officer, Swat, whereby the appellant has been awarded major punishment of compulsory retirement from service. His appeal is filed.

Order announced.

Sd/-
(ABDULLAH KHAN) PSP
Regional Police Officer,
Malakand Saidu Sharif Swat
Naqi

No.9092/E,

Dated 6-11-2014

Copy to District Police Officer, Swat for information and necessary action with reference to his office Memo: No.14616/B, dated 17/09/2014.

P- (10) (10)

From: The District Police Officer, Swat

To: The Regional Police Officer,
Malakand Region, Saidu Sharif Swat.

No. 14616/E, dated Gulkada the 18/09-2014

Subject: APPLICATION FOR REINSTATEMENT IN SERVICE.

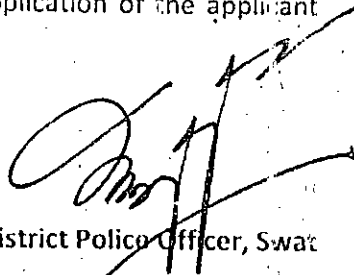
Memorandum:

Kindly refer to your office Endst: No. 6228/E, dated 08-09-2014.

Facts of the case are that Ex Constable Farman Ali No. 1674 while posted to Police Station Rahim Abad absented himself from lawful duty w.e from 05-08-2011 to 14-07-2014 without prior permission of the high ups as per report of SHO Police Station Rahim Abad.

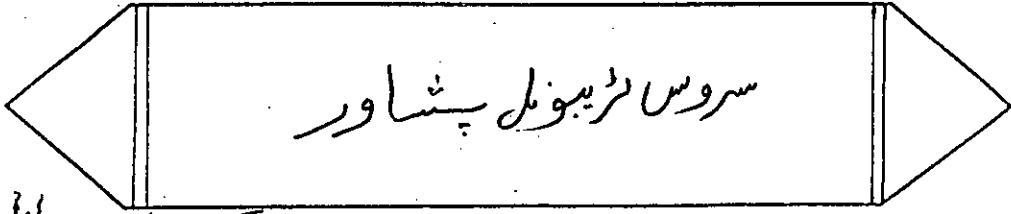
DSP City conducted proper departmental enquiry against the appellant. After completion of enquiry the E/O recommend him for appropriate punishment. He was also heard in orderly room, but he could not present any possible defence for the charges leveled against him. After completion of codal formalities of the enquiry he was found guilty of the charges, hence awarded him ... punishment of compulsory retirement from service vide OB No. 122 dated 14-07-2014.

In view of the above facts and circumstances the application of the applicant may kindly be filed.


District Police Officer, Swat

Attested
True Copy

بعدالت



2015ء پنجاب سائبل
فرمان علی بنام PPO

مورخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام پشاور کیلئے اشرف علی عثمانی کیلئے

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک دروپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
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 بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔
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 لکھ دیا کہ سندر ہے۔

Accepted
2015

المرقوم

ماہ _____

2015

کے لئے منظور ہے۔

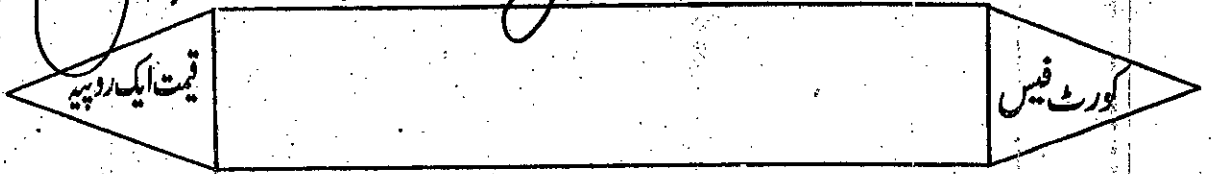
بمقام

Farman Ali

فرمان علی

بعد الت

فہر سہدوں کے منظور لکھنے کے لیے ایک روپیہ



مورخہ 2 نومبر ۱۹۷۳ء منجانب اسٹیشنر
 مقدمہ فیضان علی بنام صاحبہ صاحبہ
 دعویٰ سرکار اہل ذمہ ۲۳۳/۲۰۰۳
 جرم باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب وہی وکل کارروائی متعلقہ آن مقام کیس کے سوا کے لیے / عزیز نیر ادریس صاحبہ اور ان کے وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیاط ہوگا۔ نیز وکیل صاحب کو راضی نامہ و تقرر ثالث و فیصلہ پر حلف دینے جواب دی اور اقبال دعویٰ اور درخواست ہر قسم کی تصدیق زرا اور اس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری ایک طرف یا اپیل کی برآمد ہوگی اور منسوخ مذکور کے نسل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقررہ شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اس کا ساختہ برواختہ منظور و قبول ہوگا۔ اور دوران مقدمہ میں جو خرچہ و ہرجانہ التوا ایسے مقدمہ کے سبب سے ہوگا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا و خرچہ کی وصولی کرتے وقت کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ ہر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہونگے کی پیروی مقدمہ مذکور لہذا وکالت نامہ لکھ دیا کہ سند رہے

المرقوم ۵۲ ماہ نومبر ۱۹۷۳ء

فہر سہدوں کے منظور لکھنے کے لیے ایک روپیہ

واہ شاہدہ العبدہ

سرکار اہل ذمہ کیس کورٹ سوا ۲۱

کے لئے منظور ہے

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BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No. 233/2015

Farman Ali.....

Appellant

VERSUS

1. Regional Police Officer, at Malakand Saidu Sharif, Swat.
2. District Police Officer, Swat.

Respondents

WRITTEN REPLY ON BEHALF OF RESPONDENTS

1. PRELIMINARY OBJECTIONS

1. That the appellant has got no cause of action and locus standi to file the present appeal.
2. That the appeal is bad due to misjoinder and nonjoinder of necessary parties.
3. That the appeal is time barred.
4. That the appellant has not come to the Tribunal with clean hands.
5. That this honorable Tribunal has got no jurisdiction to entertain the present appeal.
6. That the instant appeal is not maintainable in its present form.
7. That the appellant has concealed the material facts from this honorable Tribunal.
8. That the appellant has been estopped by his own conduct to file the appeal.

2. REPLY ON FACTS

1. First part of Para No. 01 is correct while rest of Para pertains to record. Hence needs no comments.
2. Para No. 02 is correct to the extent that the appellant while posted at Police Station Rahim Abad deliberately absented himself from his lawful duty w.e.f 05-08-2011 to 14-07-2014 without prior permission of the high ups. In this a proper departmental enquiry was conducted against him and DSP City was appointed as enquiry officer. The enquiry officer after completing all codal formalities recommended him for a suitable punishment. As the charges of deliberate absence were stand proved against him. Hence, he was awarded major punishment of compulsory retirement from service vide OB No. 122 dated 14-07-2014 under Police disciplinary Rules 1975.
3. Para No. 03 is totally incorrect and is based on surmises and conjectures. In fact the appellant remained absent for the said period. As per report of SHO Police Station Rahim Abad, the appellant was marked absent w.e.f 05-08-2011 till 14-07-2014.
4. Para No. 04 is totally incorrect and is denied on the ground that the appellant is a habitual absentee from his lawful duty. He remained absent for a long period without tabbing permission or leave from his high ups. It is worth to mention here that a proper departmental enquiry was conducted against him. He was awarded ample opportunity to defend himself. He was also called and heard in person in OR but he could not produced any plausible reason to defend himself. Hence, after fulfilling all codal formalities he was awarded major punishment of compulsory retirement from service under Police disciplinary rules 1975.


5. Para No. 05 is correct to the extent that the appellant filed a departmental appeal but after due consideration was rejected/field because the charges leveled against him were stand proved.
6. Appeal of appellant being devoid of merits may kindly be dismissed.


GROUND:

- A) Incorrect. The appellant was treated as per law and rules. A proper departmental enquiry was conducted against him and after fulfilling all codal formalities, he was awarded major punishment of retirement from service vide OB No. 122 dated 14-07-2014 under Police disciplinary Rules 1975.
- B) Incorrect. The appellant was provided full opportunity to defend himself. A Proper departmental enquiry was conducted against him. He was called & heard in person in OR by DPO Swat but he failed to defend his deliberate absentee.
- C) Incorrect. The appellant remained absent w.e.f 05-08-2011 to 14-07-2014 without any permission or leave. The charges of deliberate absence were stand proved against him.
- D) Incorrect. As the charges of deliberate absence were stand proved against him hence, he was rightly awarded the punishment order.
- E) A proper enquiry was conducted against him. The appellant was awarded full opportunity to defend himself but he failed to satisfy the EO about deliberate absence.
- F) Incorrect. Para already explained in detail above.
- G) Incorrect. Proper enquiry was conducted against the delinquent official and after fulfilling all codal formalities, he was awarded major punishment of compulsory retirement from service.
- H) Incorrect. No law has been violated by the replying respondents. The appellant was treated as per law and rules.
- I) Incorrect. The appellant is a habitual absentee and does not deserve any leniency.
- J) That the respondents also seeks permission of this honorable Service Tribunal to raise additional grounds at the time of arguments.

PRAYERS

It is therefore, most humbly prayed that in light of above facts and submissions, the appeal of appellant being devoid of merits and legal footing may kindly be dismissed.


Regional Police Officer,
Malakand at Saidu Sharif, Swat.
(Respondent No. 01)


District Police Officer, Swat
(Respondent No. 02)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No. 233/2015


Farman Ali Ex Constable Appellant

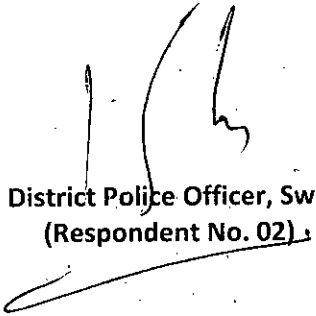
VERSUS

1. Regional Police Officer, at Malakand Saidu Sharif, Swat. Respondents
2. District Police Officer, Swat

POWER OF ATTORNEY

We, the undersigned No. 01 to 02 do hereby appoint Muhammad Ilyas Inspector Legal Swat as Special representative on our behalf in the above noted appeal. He is authorized to represent us before the Tribunal on each and every date fixed and to assist the Govt: Pleader attach to Tribunal.


Regional Police Officer,
Malakand at Saidu Sharif, Swat.
(Respondent No. 01)


District Police Officer, Swat
(Respondent No. 02)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No. 233/2015


Farman Ali Ex Constable Appellant

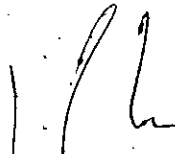
VERSUS

1. Regional Police Officer, at Malakand Saidu Sharif, Swat. Respondents
2. District Police Officer, Swat

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/behalf and nothing has been kept secret from the honorable Service Tribunal Khyber Pakhtunkhwa, Peshawar.


Regional Police Officer,
Malakand at Saidu Sharif, Swat.
(Respondent No. 01)


District Police Officer, Swat
(Respondent No. 02)

FINDING REPORT

ENQUIRY AGAINST CONSTABLE FARMAN ALL NO. 1674 P.S RAHIM ABAD

It is an enquiry initiated against Constable Farman All No. 1674, entrusted to the undersigned for enquiry and report by competent authority vide order No. 77/EB, dated 14/05/2014.

ALLEGATIONS:

It is alleged that Constable Farman All No. 1674 while posted to Police station Rahim Abad swat absent yourself from duty w.e.f 05-08-2014 till date as per report of SHO Police Station Rahim Abad swat dated: 14-5-2014.

PROCEDURE:

In this regard the relevant statements were taken (recorded), perused and placed on file.

1. Statement of INSF/SHO Ibrahim Khan P.S Rahim Abad.
2. Statement of the then MASI Rahim Khan P.S Rahim Abad Now I/C P.P Asraray.
3. Statement of MASI Fozil Rahim P.S Rahim Abad.
4. Statement of Alam Khan the then PAY Officer swat.
5. Statement of Akbar Ali Khan PAY Officer swat.
6. Statement of the then OASI Ayaz Khan now Acting C/O P.S Madyana.
7. Statement of the then MHC Kalaket Abdullah Khan Now OASI Swat.
8. Statement of Head Constable Bacha Khan No. 21 Naib Cashier swat.
9. Statement of Head Constable Bakht Zamin No. 1293 Naib Cashier swat.
10. Statement of Constable Fazal Rahman No. 87/SPF P.S Rahim Abad.
11. Statement of alleged Constable Farman All No. 1674 P.S Rahim Abad.

FINDINGS:

From perusal of statements and relevant record the alleged constable was found guilty. Moreover from perusal of statements and relevant record being an enquiry officer I have observed the following points:

- 1) That OASI Swat issued a parwana of transfer of alleged Constable Farman All No. 1674, when MHC Abdullah Khan P.S Kalaket received parwana, he made departure report of alleged constable vide D.D No. 14 dated: 08-05-2014. The alleged constable instead of making his arrival report in P.S Rahim Abad went back to home.
- 2) When MASI Rahim Khan received parwana of alleged constable then it was the duty of MASI to inform the alleged constable to show your arrival report in P.S Rahim Abad, if he didn't do so then it was the duty of MASI to write report of absentee against alleged constable and send the same report to OASI Branch for information, but MASI was badly failed to do so.
- 3) When OASI Branch received departure report of alleged constable from P.S

Abad then it was the duty of OASI Branch to bring into the notice of MASI Rahim Abad that arrival report of alleged constable is not yet received to OASI Branch or issued him reminder under the rules, but OASI Branch also failed to do so.

- 4) Beside this it was the duty of PAY Branch that when they received parwana of transfer of any police official then automatically PAY Branch will transfer his salary to concerned P.S, but the pay branch also did not make any efforts in this regard.

From above it can be concluded that in my opinion they all have no knowledge of Police Rules 14-54 and this is the reason that they all have performed their duty in a wrong manner and if they have the knowledge of the said rules they will not perform such like act, So it seems that there were no malafide intention behind this.

RECOMMENDATION :

The MASI Staff, OASI Branch and Pay Branch may be warned to be careful in future and must be aware from police rules. Beside this the alleged constable is recommended for appropriate punishment and recovery may be made in installment, if agreed.

Submitted please.



(SADDIQUE AKBAR DSP)
SDPO City Circle, SWAT.
23/06/2014.



SR. No. 142
17-7-2014

B

CHARGE SHEET

I Mr. Sher Akbar S.St. P.S.P. District Police Officer, Swat as competent authority, hereby charge you, Constable Farman Ali No.1674 while posted to Police Station Rahimabad, Swat as follows:-

It has been reported that you committed the following act / acts, which is / are gross misconduct on your part as defined in Rules 2 (iii) of Police Disciplinary Rules 1975.

You Constable Farman Ali No.1674 while posted to Police Station Rahimabad, Swat absent yourself from duty w.e. from 05-08-2011 till date as per report of SHO Police station Rahimabad Swat dated 14-05-2014.

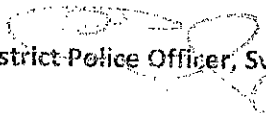
2. By reasons of the above, you appear to be guilty of misconduct and rendered yourself liable to all or any of penalties specified in Rule-4 of the Disciplinary Rules 1975.

3. You are, therefore, required to submit your written reply within seven (7) days of the receipt of this Charge Sheet to the Enquiry officer.

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

5. Intimate as to whether you desire to be heard in person or not.

6. A statement of allegations is enclosed.


District Police Officer, Swat

No. 177 /E.

Dated: 17/5 /2014

G

DISCIPLINARY ACTION

I Mr. Sher Akbar S.St. P.S.P. District Police Officer, Swat as competent authority, is of the opinion that he Constable Farman Ali No.1674 while posted to Police Station Rahimabad, Swat has rendered himself liable to be proceeded against departmentally as he has committed the following acts/omissions as defined in Rule 2 (iii) of Police Rules 1975, as per Provincial Assembly of Khyber Pukhtunkhwa Notification No. PA/Khyber Pukhtunkhwa/ Bills/2011/44905 dated 16/09/2011 and C.P.O, K.P.K Peshawar Memo: No. 3037-62/Legal, dated 19/11/2011.

STATEMENT OF ALLEGATIONS

It has been reported that he while posted to Police Station Rahimabad, Swat committed the following act / acts, which is / are gross misconduct on his part as defined in Rules 2 (iii) of Police Rules 1975:

That he Constable Farman Ali No.1674 while posted to Police Station Rahimabad, Swat absent himself from duty w.e. from 05-08-2011 till date as per report of SHO Police station Rahimabad Swat dated 14-05-2014.

2. For the purpose of scrutinizing the conduct of the said officer with reference to the above allegations, D.S.P/City Circle, Swat is appointed as Enquiry Officer.

3. The enquiry officer shall conduct proceedings in accordance with provisions of Police Rules 1975 and shall provide reasonable opportunity of defense and hearing to the accused officer, record its findings and make within twenty five (25) days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused officer.

4. The accused officer shall join the proceedings on the date, time and place fixed by the enquiry officer.


District Police Officer, Swat

No. 77 /EB, Dated Gulkada the, 14/5 2014

Copy of above is forwarded to the:-

1. D.S.P/City Circle, Swat for initiating proceeding against the accused Officer/ Official namely Constable Farman Ali No.1674 under Police Rules, 1975.
2. Constable Farman Ali No.1674 of Police Station Rahimabad, Swat:-
With the direction to appear before the enquiry officer on the date, time and place fixed by the enquiry officer for the purpose of enquiry proceeding.

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قائم رحم آباد نقل عد 28 قانہ رحم آباد
14.05.14

قلعہ

لوٹ محمد ابراہیم خان ایسٹریٹ #40 وقت 13:50 ء مورخ 14⁵ 14¹⁴ دئے تھے
دفتر پولیس سے ہدایت موصول ہوئی۔ کہ قانہ میں موجود پولیس اہلکاران
کی پولیس سیکورٹی کنڈرلس فارم پر گئے لوٹ کرے۔ اندر میں سلسلہ
حدود قانہ میں موجود جملہ پولیس اہلکاران کی مذکورہ فارم ہائے
پر گئے دفتر OASI بھیجئے گئے۔ مذکورہ فارم پر سلسلہ میں تین کیٹلان
فضل اللہ 624، کیٹلان 1322 اور فرمان علی 1674 کے متعلق معلوم
ہوا۔ کہ فریض علی مذکورہ تین نفر کیٹلان قانہ کے ریکارڈ پر موجود ہیں
جبکہ OASI کے آفسس کے ریکارڈ پر ہر تینوں قانہ کے ریکارڈ پر موجود
ہوئے ہیں۔ اندر میں سلسلہ مورخ 14⁵ 14¹⁴ کو مذکورہ کسان قانہ کے
ریکارڈ سے نکوانے کے خاطر تبدیل کرنے کی کڑی پوری استدعا کی گئی۔
اور مذکورہ کیٹلان کی تلاش و پتہ برداری شروع کی گئی۔ اس دوران
کیٹل فرمان علی 1674 کو پولیس کرے معلوم ہوا۔ کہ کوالم OB
160 قانہ کالاوٹ سے کیٹل فرمان علی مذکور کا تدارک ہو کر
30.7.11 کوالم عد 14 قانہ کالاوٹ سے قانہ رحم آباد کیلئے روانہ کیا گیا تھا۔
5.8.11 لیکن کیٹل مذکور قانہ رحم آباد میں حاضری کرنے کے جائے سیدھا گھر فور
حلا گیا تھا۔ امروز کیٹل مذکور کو قانہ خدا طلب کرے ان کے زبانی معلوم ہوا
کہ واقعی وہ قانہ رحم آباد میں حاضری کے جائے گھر فور حلا گیا تھا۔ اور
پولیس لائن سے تھو اس وصول کرنا چاہا۔ لہذا حالات کو افسران بالائے

۱۶۷۴ ۱۱ ۵

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۱۶۷۴ ۱۱ ۵

بیان اذان کبیل فرمان علی بر 1674 ہجری
 نے بیان کیا کہ میں تھانہ کالاکوٹ میں
 ڈیوٹی سرانجام دے رہا تھا کہ میرا متبادل
 تھانہ کالاکوٹ سے تھانہ رحیم آباد ہو گیا۔ میں
 نے تھانہ کالاکوٹ سے روانہ کرتے ہوئے رحیم آباد
 میں حاجری کے بجائے گھر چلنے کا رخ اختیار کیا
 جس پر عینے کے دیو یا منہ قانع کو لوٹنے لاس
 حاکم وہاں سے تھوڑے وقت میں فرما دیا۔ اسے اسے
 حاکم اور تھوڑے وقت میں کسی کی سپورٹ حاصل نہیں
 لیں یہی میرا بیان ہے جو درج ذیل ہے

x x x x

سوال: تم بلا اجازت حاجری تھانہ رحیم آباد

حاجری تک طویل کر رہے تھوڑے وقت میں
 لپٹے ہوئے۔ عطا لقا رولر سٹریٹ سے
 باغیچہ چلے گئے؟
 ج: غلطی ہوئی ہے جو حاجری رکھا جا رہا ہے۔ تھانہ رحیم آباد سے باغیچہ چلے گئے۔

قائم مقام آزاد عوان درخواست دربارہ حکمانہ انوائری ضلع سوگ

خانی

معروضہ حذفت ہونے کے کسٹل فرمان علی 1674

خلاف لفیصلی رپورٹ کے والد مد 28 درج روزانہ
14.5.14

یوکر تظہیر ہے۔

مذکورہ کے خلاف حکمانہ انوائری کی سٹارٹس

کی جاتی ہے۔

INSP. SHO (R. Abad)

14.05.14

SW

Departmental proceeding
may be initiated against him

DSP. city

14-5-2014

عنوان: درخواست دربارہ ٹرانسفر کرنے کنسٹیبلان تھانہ رحیم آباد سے پولیس لائن

جناب عالی!

معرض خدمت میں۔ کہ بطابق ریکارڈ OASI صاحب کنسٹیبلان
 (۱) فضل اکبر 624 (۲) پهلوان 1322 (۳) فرمان علی 1674 کئی عرصہ سے تھانہ ہذا کے سٹریٹھ پر
 چلے آ رہے ہیں۔ جبکہ یہی کنسٹیبلان فزیکلی طور پر تھانہ ہذا میں موجود نہیں۔ ہو سکتا ہے۔ کہ یہی کنسٹیبلان کسی دوسری جگہ کسی خاص
 ڈیوٹی پر متعین ہو۔ ان کنسٹیبلان کا تھانہ کے ریکارڈ پر موجود ہونے سے کنسٹیبلان کے موجودہ تعداد میں کمی واقعہ ہو رہی ہیں۔

لہذا بذریعہ درخواست استدعا ہے۔ کہ درج بالا کنسٹیبلان کا پولیس لائن جاوید اقبال شہید یا ان کے

جائے تعیناتی تبادلے کے احکامات صادر فرمایا جائیں۔

العارضہ 07.05.14
 محترم فضل رحیم ASI تھانہ رحیم آباد

Forwarded PL

Sir,

Forwarded for your kind
 perusal and appropriate
 order pl.

WSP. SHOC(R. Abad)
 07.05.14
 WSP. SHOC(R. Abad)
 09.05.14

QRN 082

14-5-14

Change sheet
 WSP. SHOC(R. Abad)
 09.05.14

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 596 /ST Dated 28 / 3 / 2017

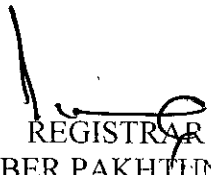
To

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

Subject: - JUDGMENT

I am directed to forward herewith a certified copy of Judgement dated 8.3.2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.