BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

36	rvice Appeal No. 1410 of 2023.			
Naseeb Daraz B.No 305, R/o Akhgarm, District Dir Upper.				
	(Appellant)			
	Versus			
1.	The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.			
2.	The Regional Police Officer, Malakand at Saidu Sharif Swat.			
3.	The District Police Officer, Upper Dir.			
	(Respondents)			

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Inspector Legal, Dir Upper.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR. Kinder Pakhtuling

	1 rabunal		
Service Appeal No.1410 of 2023.	Biory No. 7966		
Naseeb Daraz B.No 305 R/o Akhgram, District Dir Upper.	13 28/09/23		
	(Appellant)		
Versus			
1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.			
2. The Regional Police Officer, Malakand at Saidu Sharif Swat.			
3. The District Police Officer, Upper Dir.			
	(Respondents)		

PARA WISE REPLY BY RESPONDENTS.

Preliminary objections:

- 1. That the instant service Appeal is not maintainable in the present form and liable to be dismissed.
- 2. That the Appellant has got no cause of action and locus standi to file the instant Appeal.
- 3. That the Appellant is estopped due to his own conduct to file the instant appeal.
- 4. That the Appellant has concealed the material facts from the honorable Service Tribunal.
- 5. That jurisdiction of this honorable service Tribunal has wrongly been invoked.
- 6. That the Appeal is bad for mis-joinder and non-joinder of necessary parties.
- 7. That the Appeal is barred by law &limitation.

Respectfully Sheweth:.

ON FACTS:

- 1. Correct to the extent of appointment, the rest of Para is incorrect. The appellant throughout the service has taken no interest in his duty in it is evident from record Several times remain absence from duty and committed gross miss conduct that leads to his dismissal from service (bad entries daily diary report are annexed at "A").
- 2. Incorrect. If the mother of the appellant was ill, then he ought to approach the competent authority for grant of leave, but the appellant remains absent from his lawful duty without the permission from high-ups.

- 3. Incorrect. The charge sheet and statement of allegation issued to the appellant but his response to the charge sheet was not satisfactory as he failed to advance cogent reasons in self defense. The short service history of appellant shows that previously he was dismissed from service for several times. As discussed above that being member of police force he was required to seek leave or permission from his seniors, but he failed to do so (Charge sheet, statement of allegation and reply are annexed at "B").
- 4. Correct and needs no comments.
- 5. Incorrect, the enquiry officer recommended minor punishment but the competent authority is not found under the rules to follow the recommendations of enquiry officer in Toto. The competent authority is ample powers to pass any orders, he deem fit.
- 6. Correct and needs no comments.
- 7. Needs no comments.
- 8. Incorrect, the de-novo enquiry carried out through the SP Investigation swat and DSP Legal swat. The enquiry committees scrutinize the conduct of appellant, his previous service record and opportunities of personal hearing given to the appellant. The appellant failed to advance cogent reason in his defense the enquiry officer after careful scrutiny of the previous record found that the appellant is habitual absentee and recommended for major punishment (copy of De-novo enquiry annexed as C).
- 9. Incorrect. The reply to the show cause notice in respect of the appellant was not satisfactory.
- 10. Incorrect. A proper De-novo enquiry was carried out against the appellant and after completing all the codal formalities the appellant was dismissed from service. The departmental appeals filed by the appellant found groundless and rightly filed by the competent authority.
- 11. Incorrect, the appellant has got no cause of action to file the instant appeal on the following grounds.

GROUNDS:.

- A. Incorrect the order dated 23/02/2023 and 16/05/2023 is in accordance with law rules, and is not liable to be set aside.
- B. Incorrect the de-novo enquiry conducted against the appellant in compliance with judgment passed by the Honorable Service Tribunal vide order dated 29/09/2022. The previous record in respect of the appellant was perused with detail of absence. The appellant was provided opportunities of personal hearing to defend himself but he failed to advance any cogent reason. The committee carried out de-novo enquiry in accordance with the directions contained in judgment and recommended major punishment. No violation has been committed by the enquiry officer, while dealing the appellant. His absence period as per record is 11 months and 26 days.
 - C. As discussed above.
 - D. Incorrect. The absence period mentioned by enquiry officer in finding reports are based on facts and in accordance with record: No malafide exist on the part of respondents against the appellant.

- E. Discussed in Para 2'vide supra.
- Incorrect, the order of dismissal was passed after completing all codal formalities and no violation of law/rules has been committed by the respondents.
 - G. Incorrect. As the Appellant remain absent from the time of recruitment and later on for a long period. Therefore, the competent authority rightly imposed major punishment.
 - H. Incorrect. The appellant was treated in accordance with law/rules and he was heard in detail.
 - I. That the respondents seek permission of this Honorable Tribunal to advance other grounds and proofs at the time of hearing.

Prayer:.

It is therefore humbly prayed that on acceptance of this Para-wise comments the appeal of the appellant may please be dismissed with coast please.

District Police Officer, Upper Dia.

in the same fields of the particle.

Regional Police Officer, Malakand at Saidu Sharif, Swat.

> Regional Police Officer, Malakand Region, Saidu Sharif, Swat.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 1410 of 2023.
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(Appellant)
Versus
 The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar. The Regional Police Officer, Malakand at Saidu Sharif Swat. The District Police Officer, Upper Dir.
(Respondents)
Power of Attorney
We, the undersigned do hereby authorized Gul Zamin Khan, Inspector legal to appear on our behalf before the honorable Service Tribunal in the cited above case on each and every date. He is also authorized to file para wise comments/ reply, prefer appeal and
District Police Officer, Upper Dir. Regional Police Officer, Malakand at Saidu Sharif, Swat. Regional Police Officer, Malakand Region, Saidu Sharif, Swat.

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

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	(Appellant)
Versus	
 The Provincial Police Officer, Khyber Pak The Regional Police Officer, Malakand at The District Police Officer, Upper Dir. 	Saidu Sharif Swat.
Affidavi	t
I, Gul Zamin Khan, Inspector Legal declared that the contents of parawise is best of my knowledge and belief and nothis honorable Tribunal. It is further stacked on appeal the answering research meter Mace on Paoble needs. 28 SEP 2023	reply are true and correct to the

Mx 26 (405) 10 7 36,2014 NEV (viel pins by vicion) 5: 10:10 cis 107 107 60. لس السر دراز کا و کوسرفاری دراوی کیلے طلب کیا گیا- بازی ریاسی ج كسطال ادوك لعب البين فيل من كرك عدم المو الورائية مرست سول اللك علاق دلودي عنه عامري در الروزاد الم 14 07 3672 /2 /2 (1) Cvel Cos, Cog. 10 cog 14 7 10 00 Lo Covelo 12 no 10 m/0 07 36 ja) 14 no 1/5 of viloure 305 elonido de la la como de la colonido de la colonido de la colonido de la colonida del colonida de la colonida de la colonida del colonida de la colonida del co William 11- de la Cielo que de la constitue de constitue اسنی فرنور در کود کار کی مافتری در اور نافی سی ا debt jet ! de lip (3,00) (3) (5) Six Forwarded -PL-DIR-U 07-018 14-07-018 days absence period B NOS 405, leave without pay 07 018. DS HOT SIX (U) Affected

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28/5 3 15/15 15/16 10.703: 10:25 = 00 28/5 Por AMHC Siet 152 2010/20 0 1 10 (38 Elis 36) 3 8 8/5 no 2.1 عردانہ ہے کی اسلی میں ذیلے ہے۔ کی نہ تر بہا ہم کو ہاط فيسة A. وما هر هاميا أيردر . كارسكار الراهيم مسافكم منا _ قرا متر ملك ماه و رسته و لفت و از بر كالا ا مده هل آوري 25 (m) 34 libelle 22/5 P. 34 15 OB / 15 5 کا حتم ہوا ہے۔ مذکورہ کو ہوا کی مد جما دورنا فی 2 کے لا لیداز رمکوشن مربائی ضلورہ نے کہا تھا جا کہ کا تا کے کا نے کا کا کے ایک آپر درکے المولائي مين آني طعنري لقين بناع عردان تفرض أطلهاني قررت على المده مرفان مرف بحد والا درزاد مرا كان يا ي كاهدات كان الله والله الموره الا ي ور ع (No 10 me - 1 - 2) Solo 5 22/5 10 love 4 22/5 600 2 5 600 2 15 600 20/5 600 20/5 600 20/5 du-is layor Just Smith R. mill Teslec

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27 -18 13630 51 1 (467) 12 07200 (cg, 27 07 por Lo apple 16,25 51 When 323 35 305 : Le Cal pt Control En list with the list will be the will be 0/2/ 10 5,3/2 Cm. Will 993 PM 160 Jallan Sight of 01 08 13 bis) 13 Notes مر 13 مافری ما مورفر فران وفت 10 وفت 10 وقت الرون المراز فی الرون المراز الم المراز الم المراز الم المراز الم 305 mille 1 1 20 8 (1 m) 1 305 m 305 (13/50/olovie) Shah in m-m-pl-piR-u LO-PL-DIR-4 01-08-2018 Five days absence period Sie, Forwardal leave with out pay Ri-PC-DIA- U 01-08 2018 0B NO2467 DSPH ON Attested 30-08-18 DSP No. 14-02-018

7 July 260 -Coscul 5. 08:50 Cos 15 -18 20 MASI 6/18/10 30112 10 ركيس كانبل لغيد داز كان بهريم عالم برمطاني دُلون براج الحالي مَنَى عَلَى عَلَمُ اللَّهِ الللَّهِ الللَّهِ الللللَّا اللَّهِ اللَّهِ اللَّهِ الللَّهِ اللَّهِ اللَّهِ اللَّهِ اللَّا 263610170 21-18 36 jes 12 4 Jes Jib (508:45 (12 018 21 018 20 MBI 6 5184 12 Jine 15 -18 36 12 12 will o winder 305 ils ad سای هیک کر صرا والد محمد به رکا آسلومال ای مالی کو سال کی کا تعا برين وي منه ما فلره وي كالعرب أ- المجار أ كالم أو كالم الوستطانيراي miser de de 1993 31:10 Cristo co o de d'ils con كا يوائ ا منسران بال سے جمعرت ص ارسال کی بات mh ptz DIR forwarded. Loswarded For departmental action. 23.4.018 Attestet 05P HON DIY (4) 23-4-2018 OB NOT 260 Min 10-05-2018 Dig Horon

4-18 36- 2 1200 ليولس لآس 1/2 de (102) J. 10:05 Cio 4/2 Per Le Opplaine 1919 20 وفت رانوط كشل لعسب دراز 505 كو رطرى ويوسى كلا طلب ساسًا ما ما در سوست ما وره بخالف الورط المراطوي درج روز ما في الله 6 18 2 11/10 es! dois 08.50 (in 67 es le cis) الروب كرا العباد ورز 305 عنرطام را الماله ور الارفاج على مع طافراز بياني هيك ميل ساله وفات باحقاتها - بيس وج دروافر من المراه المعاملة المراع المون والمواقع الوسكان المست 518, Forwarded e pol alubé lés mm. Pl-Dir(u) Lo. ph Diren 07-02-2018 Allested & D · Tow deep count with 18 MOITOR out perly 14-02-2018

03 78 · 36 50 ja lis الأثين ما ترجنه وقت دفير 80.45 اس وقت دفير ASi مريالاس الى تربى كروام مومول موكر ذبل محدمت المن رفسر مهم وبرال Use PTS June 26 26 719 310/E / 13/0/ 113. ورخ ماته اس آمره درور روز الازالي المراع جون كسسل مراه المنافرات مقل مفرس مناس عام احظام الفسران بالا Liberty consider 5 016 PS 11/18 NES مريدا طامزي ها هورخ طاق في 1210 عربي المري ها المري نفی دوار ده و عامنر میره مجوالم مر 10 روزنا فیم 8 ده سے عامنر آگر سانی جسکے میں بسیار تھا سنر سیں جھٹی تعلیم بیشنی کار جھٹی منی سلی مين وج عرصام ره وغ رس بوايس سنر حار مثل ما كان اي اي والحديد طامعرى كري اب طامز را ما يون مسل طاميري كي ما وي العندي والمستى سی ترکیمی میشیلی ماهای حاصری درج رامزنافی کا تعظیم بوش مناسب كارواني اخدان مالا ي صربت مين اسال ي حاربي afthe delpa ja Cooley porwarded MM Line Dive Line withou angumy file. 06/8/016 Lo pri y, 0-8-06 A. Testad 07/8/16

23 8 016 2 6/9/10 J1 5. 10:15 CES 23 8 018 ASI CIPO XE Jab sur seli 305 1 205 1 20 868 305 I de los oches o och for the line of or fire من دستاب مر کا و سرس کری دان کا کا فالی ایسی 3/2/5 Cu in ip de les 2/3/1/2/ 7.15/6/2 (e) 10 00 our our (100 of 01) 1 dla - lip cap 36 160 (ve) الالوبان MM line Dn v. w 23/8 200 015 5 23-8-016 O /si Le is love / sur n ではいいいとだが OB NO 578 30/8/2016 Atlested

DISTRICT POLICE OFFICERA UPPER DIR

FINAL SHOW CAUSE NOTICE.

03

/02/2023. /EB, Dated Upper Dir the: 07

- 1. Whereas, you Ex-Constable Naseeb Daraz No.305 while posted in \ Police Lines, committed gross misconduct under section of Police (E&D) Rules, 1975(amended 2014) (defined under rule-4(b)), resultantly Charge Sheet/Statement of Allegation were issued to you and the following Enquiry Committee was constituted to conduct proper De-novo departmental enquiry.
 - i. Mr. Shah Hassan SP/Investigation Swat.
 - ii. Mr. Naseem Hussain DSP/Legal Swat.
 - 2. Whereas, The Enquiry Committee finalized the Enquiry proceeding and given you full opportunities of defense. The Enquiry Committee held you guilty of the charge leveled against you as per charge sheet.
 - 3. And whereas, Ongoing through the finding and recommendation of Enquiry Committee, the material placed on record and other connected papers including your defense before the said Enquiry Officer. I am satisfied you have committed the misconduct and are guilty of the charge leveled against you as per statement allegation conveyed to you vide this Office Memo: No. 92-93/EB, dated 23.12.2022 which stand proved and render you liable to be awarded punishment under the said rule.
 - 4. Now therefore, I Tariq Sohail Marwat, PSP, District Police Officer Upper Dir, as competent authority has tentatively decided to impose upon you, any one or More penalties, including the penalty of Dismissal from service under the said rule.

You are therefore, required to show cause within seven days of the receipt of this notice, as to why the aforesaid penalty should not be imposed upon you, failing it shall be presumed that you have no defense to offer and ex-parte action shall be taken against you. Meanwhile also intimate whether you desired to be heard in person or otherwise.

(Torinsolail Marwat), PSP

District Police Officer.

Allested

CS CamScanner

Brief facts of the case are that Ex-Constable Nasceb Daraz No. 305 while posseduo Police Lines, Dir Upper absented himself from his lawful duty with effect from 13/19/2017 to till the date of dismissal from Police service. He was also repatriated from Police Training School, Kohat to his parent District as unqualified due to his absence. He was proceeded departmentally and subsequently dismissed from service vide OB No. 549 dated 02/10/2018 after completing all codal formalities under the law/rules. Later on, he preferred Service Appeal No.881/2020 before the Service Tribunal which was set aside by honorable Tribunal vide Judgment dated 29/09/2022, wherein the honorable Tribunal directed the respondent department to conduct Denovo departmental enquiry. In compliance of the judgment dated 29/09/2022 of Service Tribunal, the appellant was reinstated into service vide OB No. 799 dated 12/12/2022 for the purpose of Denovo departmental enquiry and as per direction of worthy AIG/Enquiry letter No.1775-79/CPO/Lab dated 15/12/2022, SP Investigation. Swat and DSP/Legal Swat were appointed as Enquiry Officers to conduct Denovo Departmental Enquiry against the appellant in accordance with law/rules.

PROCEEDINGS:

In compliance of Judgment dated 28/01/2022 in Service Appeal No.881/2022, Denovo departmental enquiry was conducted against the appellant wherein charge sheet coupled with statement of allegations was issued to the appellant. He was called to appear before the Enquiry Officers and was also heard in person. The appellant also recorded his statement which is as under:

STATEMENT OF CONSTABLE NAMES DARAZ (APPELLANT)

On 29/12/2022, the concerned official got recorded his statement, wherein he stated that he is FA qualified recruited in Police department and on 14/05/2018 selected for Recruit Training Course Kohat Center. On 22/05/2018 he was informed through an emergency call from his home about the illness of his mother. He further stated that he appeared before Commandant Recruit Training School for granting of leave in respect of his mother illness, however no leave was granted to him, hence he left his training and preceded to Temargara Hospital, Later on, he showed his presence in Police Line Dir Upper on 29/05/2018 from where he came to know that he was repatriated to the district as unqualified. He further stated he did not intentionally absented himself from official duty rather than it was due to his mother illness.

FINDINGS:

After completing enquiry proceedings against the delinquent Constable: by observing all codal formalities under the law/rules and providing opportunity of

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personal hearing to the delinquent Constable, it was found that the delinquent Constable could not produced any cogent reason in his defense. Previous Service record of delinquent Constable was also perused which reveals that the delinquent constable was twice dismissed from Police Service vide OB No. 282, dated 26/03/2015 and OB No. 30, dated 18/01/2018. Furthermore, previous record of delinquent constable also reveals that he is not interesting in discharging his official duty and keeping such indiscipline man will put negative impact on other personal of the force.

In view of above facts and circumstances, the Enquiry Officers are of the opinion that the delinquent Constable is guilty of misconduct as he left the training School without permission of his high ups and absented himself from official duty due to which is against the norms of discipline force. The Enquiry Officers also observed that the delinquent official dismissed twice from service, thereby meaning that he is a habitual absentee and did not mend his way, therefore retention of such irresponsible official in discipline force will last negative impact on other Police official, therefore, the delinquent Constable is recommended for major punishment, please.

Submitted if approved, please.

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SP Investigation, Swat

Deputy Superintendent of Police, Legal Swat

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بحوالہ مشمولہ فائنل شوکاز نوٹس نمبر 03/EB0 مور خد 07.02.2023 بجاریہ وفتر جناب DPO سافیہ دیر بالا معروض خدمت ہوں کہ میں FA کوالیفائیڈ ہوکر اللہ تعالیٰ کے فضل وکرم سے محکمہ پولیس میں ابلائی کر کے بحثیت کششیدل بحرتی ہوکر ابنی ڈیوٹی کر تارہا۔ ای دوران مور خد 14.05.2018 کو میں ٹریننگ ریکروٹ کیلئے مختب ہوکر کوہاٹ سفر چلا گیا مور خد 2018.2018 کو میں ٹریننگ ریکروٹ کیلئے مغتب ہوکر کوہاٹ سفر چلا گیا مور خد 2018.2018 کو میں ٹریننگ ریکروٹ کیلئے تیار ہے ہنگای طور میں نے اپنے کمپنی حولدار کے نوٹس میں التے ہوئے پر نیل صاحب کو پیٹی ہوئی لیکن اجازت بہیں میں ۔ اپندہ بھی مور خد 2018.2018 کو بیار کی جہ سے میں نے بجورائرینگ سفر چھوڑ کر آئی تیارداری کیلئے ہیتال تیمر گرہ آیا ۔ بعدہ بھی مور خد 2018.2018 کے بیار الائن میں بوجہ ان کوالیفائیڈ حاضری کی ۔ جلفا کہ رہاہوں کہ ہے۔ علمان معالجہ کے بعد میں نے اپنے ضلع کے پولیس لائن میں بوجہ ان کوالیفائیڈ حاضری کی ۔ جلفا کہ رہاہوں کہ فیر حاضری میں نے قصد آخر آئیس کی ہے۔ لیکن ہا مر بجوری ماں کے علاق میر اکوئی دیگر ذریعہ معاش نہیں ہے۔ تاکہ اپنے مور حاضری میں نے قصد آخر آئیس کی ہے۔ لیکن ہا مر بجوری ماں کے علاق میر اکوئی دیگر ذریعہ معاش نہیں ہے۔ تاکہ اپنے ہوں۔ میں ایک غریب گھرانے کی کھارت کر میا کے علاوہ میر اکوئی دیگر ذریعہ معاش نہیں ہے۔ تاکہ اپنے اسٹن میں دور نے تھے کہ میں دوبارہ نوٹس کی جائی ہو کہ ایک ہو کہ ایک ہو کہ کہ بنگل کھارت کی جو گوں نے بھے اسٹنے قرض بیے دیئے تھے کہ میں دوبارہ نوٹر کری پر بھال ہو کہ ایک بیار بر خور نوٹس بیے دیئے تھے کہ میں دوبارہ نوٹر کری پر بھال ہوں کے مال بیوں کے حال پر رخم فرما کہ شوائی نوٹس بیے دیئے تھے کہ میں دوبارہ نوٹر کوئی کی جوئی کے اس بیوں کے جائی کی جاؤی ہے کہ مہدگائی کے اس دور اس کی کہاؤی کی جائیں۔

سلمار النهر 1326 لنسٹيبل نصيب دراز نمبر 1326 متعينه يوليس لائن دير بالا۔

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