


8th Sep. 2023

1. Junior to counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

2. Reply/comments on behalf of respondents submitted which are placed on file. Copy of the same handed over to learned counsel for the appellant. To come up for arguments on 08.01.2024 before D.B. P.P given to the parties.

SCANNED
KPDT
Peshawar


(Muhammad Akbar Khan)
Member (E)

15/09/2023
13/09/2023

SA 116/19

16th June, 2023

01. Counsel for the appellant present.

02. Last chance was given for preliminary hearing but today learned counsel for the appellant was not prepared and sought further time. Another chance is given but it will not be extended further. To come up for preliminary hearing on 31.07.2023 before the S.B. Parcha Peshi given to learned counsel for the appellant.

SCANNED
KPOT
Peshawar

(FARESHA PAUL)
Member (E)

Fazle Subhan, P.S

31st July, 2023

Learned counsel for the appellant present and stated that similar nature service appeals have already been admitted for regular hearing and had been fixed on 18.09.2023. Therefore, this appeal is also admitted for regular hearing subject to all just and legal objections by the other side. Appellant is directed to deposit security fee within ten days. Respondents be summoned through TCS, the expenses of which shall be deposited by the appellant. To come up for reply/comments on 18.09.2023 before S.B. P.P given to learned counsel for the appellant.

SCANNED
KPOT
Peshawar

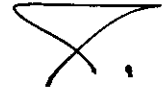

(Rashida Bano)
Member (J)

KaleemUllah

07.06.2023

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

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation. Adjourned. Last opportunity granted. To come up for preliminary hearing on 15.06.2023 before the S.B. Parcha Peshi given to learned counsel for the appellant.



(Salah-Ud-Din)
Member (J)

Naeem Amin

15th June, 2023

1. Clerk of learned counsel for the appellant present.
2. Lawyers are on strike. Therefore, case is adjourned to 16.06.2023 for preliminary hearing before the S.B. P.P given to the clerk of counsel for the appellant.



(Kalim Arshad Khan)
Chairman


**Mutazem Shah **

SA 116/19

13th March., 2023

Junior to counsel for the appellant present and Mr. Asad Ali Khan, Assistant Advocate General alongwith Mr. Hikmat Khan, ASI for the respondents present.

Junior to learned counsel for the appellant stated that learned counsel for the appellant has been appointed as Additional Advocate General and requested for time to submit amended memo. of appeal as well as fresh wakalatnama on the next date. Adjourned. To come up for amended memo. of appeal as well as preliminary hearing on 03.05.2023 before the S.B. Paracha Peshigiven to the parties.


(Farzeen Paul)
Member(E)

3rd May, 2023

1. Mr. Baseer Ahmad Shah, Advocate present on behalf of the appellant.
2. Learned counsel for the appellant has submitted wakalatnama as well as amended service appeal which is found placed on file. To come up for preliminary hearing on 07.06.2023 before S.B. P.P given to the learned counsel for the appellant .p


(Kalim Arshad Khan)
Chairman

Adnan Shah, PA

SCANNED
KPST
Peshawar

SCANNED
KPST
Peshawar

10.01.2023

Counsel for the appellant present and requested for adjournment. Request accepted. To come up for preliminary hearing on 30.01.2023 before S.B.



(Kalim Arshad Khan)
Chairman

30.01.2023

Counsel for the appellant present. Muhammad Adeel Butt learned Additional Advocate General for respondents present.

At the very outset an application seeking permission to file amended appeal was submitted which application was not objected to by learned AAG hence, stands accepted. To come up for arguments on amended appeal on 13.03.2023 before S.B.



(Rozina Rehman)
Member (J)

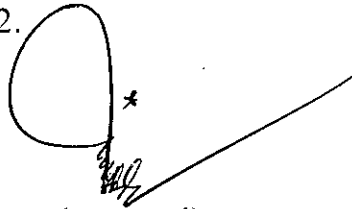
SCANNED
KPST
Peshawar

SCANNED
KPST
Peshawar

25.10.2022

Junior of learned counsel for the appellánt present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

On perusal of case file, it transpired that the appeal in hand has not yet been admitted for regular hearing and has been inadvertently placed for arguments before the D.B. The appeal in hand is, therefore, sent to S.B for preliminary hearing on 01.12.2022.



(Mian Muhammad)
Member (E)



(Salah-Ud-Din)
Member (J)

SCANNED
KPJT
Peshawar

01.12.2022

Learned counsel for the appellant present and requested for adjournment on the ground that he has not made preparation for preliminary hearing. Adjourned. To come up for preliminary hearing on 10.01.2023 before the S.B.




(Salah-Ud-Din)
Member (J)

SCANNED
KPJT
Peshawar

20th June, 2022

Counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Asstt. AG for the respondents present.


Learned counsel for the appellant seeks adjournment in order to prepare the brief. Last chance is given, failing which the case will be decided on the basis of available record without the arguments. To come up for arguments on 08.07.2022 before the D.B.


(Fareeha Paul)
Member(E)


(Kalim Arshad Khan)
Chairman

6-7-2022

Due to Holidays of Eid Ul Azha
the case is adjourned to 25-10-2022


Reader

31.01.2022


Junior of learned counsel for the appellant present.

Former requests for adjournment on the ground that learned senior counsel is busy before the Peshawar High Court, Peshawar. Adjourned but as a last chance. To come up for preliminary hearing on ~~10.03~~ 10.03.2022 before S.B.


(Mian Muhammad)
Member(E)

10.03.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 13.06.2022 for the same as before.


Reader.

13th June, 2022

Clerk to counsel for the appellant present.

Counsel are on strike. To come up for preliminary hearing on 20.06.2022 before S.B.


(Kalim Arshad Khan)
Chairman

18.11.2021

Learned counsel for the appellant present.

Learned counsel for the appellant seeks adjournment on the ground that he has not prepared the brief. Adjourned. To come up for preliminary hearing before the S.B on 02.12.2021.


(MIAN MUHAMMAD)
MEMBER (E)

02.12.2021

Junior of learned counsel for the appellant present.

Former requests for adjournment on the ground that learned senior counsel is busy before the Peshawar High Court, Peshawar. Adjourned. To come up for preliminary hearing on 31.01.2022 before S.B.


(MIAN MUHAMMAD)
MEMBER (E)

31.01.2022

Junior of learned counsel for the appellant present.

Junior of learned counsel for the appellant seeks adjournment as learned senior counsel is busy before the Peshawar High Court, Peshawar. Adjourned. To come up for preliminary hearing on 31.03.2022 before S.B.

(MIAN MUHAMMAD)
MEMBER (E)

18.02.2021

The learned Member Judicial Mr. Muhammad Jamal Khan is under transfer, therefore, the case is adjourned. To come up for the same before S.B on 30.06.2021.


Reader

30.06.2021

Counsel for appellant present.

He made a request for adjournment. Adjourned by way of last chance. To come up for preliminary hearing on 28.09.2021 before S.B.


(Rozina Rehman)
Member(J)

28.09.2021

Junior of counsel for the appellant present.

Junior of learned counsel for the appellant submitted cause list of august Supreme Court of Pakistan wherein learned counsel for the appellant is engaged in some other cases and requested for adjournment. Adjourned. To come up for preliminary hearing before the S.B on 18.11.2021.


(MIAN MUHAMMAD)
MEMBER (E)


07.04.2020

Due to public holiday on account of COVID-19, the case is adjourned to 01.07.2020 for the same. To come up for the same as before S.B.


Reader

01.07.2020

Counsel for appellant present and seeks adjournment. Adjourned to 23.09.2020 before S.B in order to avail the outcome of cases pending before the Larger Bench of this Tribunal, regarding retrospective punishment.


Member (J)

23.09.2020

Counsel for the appellant present.

On the last date of hearing instant matter was adjourned to avail the outcome of cases pending before the Larger Bench and having similar nature. The Larger Bench has not yet concluded the proceedings before it, therefore, instant matter is adjourned to 03.12.2020 before S.B.


Chairman

03.12.2020

Counsel for the appellant present.

The proposition regarding retrospectivity of penalty has not been decided by the Larger Bench as yet. Instant case is, therefore, adjourned to 18.02.2021 before S.B.


Chairman

11.09.2019

Mr. Wali Khan Advocate on behalf of learned counsel for the appellant present.

Request for adjournment is made on the ground that learned counsel is not available due to his engagement before the Apex Court.

Adjourned to 25.11.2019 before S.B.


Chairman

25.11.2019

Appellant present in person.

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


Chairman

22.01.2020

Appellant present in person.

Requests for adjournment due to general strike of the Bar. Adjourned to 21.02.2020 before S.B.


Chairman

21.02.2020

Appellant present. Junior to counsel for the appellant present and seeks adjournment as senior learned counsel is not available. Adjourn. To come up for preliminary hearing on 07.04.2020 before S.B.


Member

30.04.2019

Junior to counsel for the appellant present.

Learned senior counsel for the appellant is stated to be unavailable due to his appearance before Darul Qaza at Swat today. Adjourned to 18.06.2019 before S.B.


Chairman

18.06.2019

Counsel for the appellant present and requested for adjournment. Adjourned to 05.08.2019 for preliminary hearing before S.B.


(Muhammad Amin Khan Kundi)
Member

05.08.2019

Counsel for the appellant present.

Learned counsel states that on 26.08.2019, other cases involving the proposition regarding retrospective effect of penalty awarded to a civil servant are fixed. Instant matter is, therefore, shall be adjourned to a date thereafter.

Adjourned to 11.09.2019 before the S.B.






Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. _____ 116/2019 _____

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	25/1/2019	<p>The appeal of Mr. Muhammad Ghaffar resubmitted today by Mr. Fazal Shah Mohmand Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 25/1/19</p>
2-	11.03.2019	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>11-3-19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	16.04.2019	<p>Clerk to counsel for the appellant present and seeks adjournment on the ground that learned counsel for the appellant is not available. Adjourn. To come up for preliminary hearing on 16.04.2019 before S.B</p> <p style="text-align: right;"> Member</p> <p>Appellant in person present and seeks adjournment as his counsel is not in attendance. Adjourn. To come up for preliminary hearing on 30.04.2019 before S.B.</p> <p style="text-align: right;"> Member</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Amended Service Appeal # 116/2019

Amended Service Appeal No _____/2023

Muhammad Ghaffar.....Appellant

V E R S U S

RPO & others.....Respondents

I N D E X

S. No	Description of Documents	Annexure	Pages
1.	Amended Service Appeal with Affidavit		1-4
2.	Application for condonation of delay with Affidavit		5-6
3.	Copy of FIR	A	7
4.	Notification dated 14-04-2008	B	8
5.	Order dated 18-06-2011	C	9
6.	departmental appeal & Order dated 27-01-2020	D & E	10-11
7.	Orders/Judgments	F	12-21
8.	Vakalat Nama		22

Dated: -03-05-2023

Appellant

Through

BASEER AHMAD SHAH
Advocate, Peshawar

OFFICE: Cantonment Plaza Flat No 3/B Khyber Bazar Peshawar.

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Amended Service Appeal # 116/2019
Amended Service Appeal No _____/2023

Muhammad Ghaffar S/O Gul Aziz, Ex Constable No 606 District Police Swat.Appellant

V E R S U S

1. Regional Police Officer, Malakand at Saidu Sharif, Swat.
2. District Police Officer, Swat.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
.....Respondents

AMENDED SERVICE APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 27-01-2020 WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT FILED AGAINST THE ORDER DATED 18-06-2011, HAS BEEN FILED.

PRAYER:-

On acceptance of this appeal the impugned Orders dated 27-01-2020 of respondent No 1 and order dated 18-06-2011 of respondent No 2 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

Respectfully Submitted:-

1. That the appellant had earlier filed the above titled Service Appeal No 116/2019 by which time the departmental appeal of the appellant was not decided, however during the pendency of titled appeal, departmental appeal of the appellant was filed vide order dated 27-01-2020, copy of which was obtained by the appellant through his own efforts on 11-01-2023, where after the appellant after filing application for amended appeal was filed, was allowed to file amended service appeal on the last date of hearing, hence this amended service appeal.
2. That the appellant was enlisted as Constable in respondent department on 01-01-1991 and since enlistment the appellant

performed his duties with honesty and full devotion and to the entire satisfaction of his high ups.

3. That in the year 2007 when militancy in Swat was at its peak, the appellant was threatened by the terrorists and was also threatened by the Local commander of terrorists to vacate his house for their commander namely Abdu Rehman but even then the appellant was performing his duties.
4. That on 28-12-2007, the appellant along with others while on duty was targeted by the terrorists and got seriously injured to which effect FIR No 1487 was registered at Police Station Mingora. **(Copy of FIR is enclosed as Annexure A).**
5. That the appellant was again threatened where after he requested respondents for three years Ex-Pakistan leave i.e till 22-04-2011 which was accordingly granted vide Notification dated 14-04-2008. **(Copy of Notification dated 14-04-2008 is enclosed as Annexure B).**
6. That the appellant after availing leave when came his village, he was consistently threatened, thus was unable to have performed his duties and was accordingly dismissed from service by respondent No 2 vide Order dated 18-06-2011. **(Copy of Order dated 18-06-2011 is enclosed as Annexure C).**
7. That the appellant filed departmental appeal before respondent No 1 on 28-06-2018 which was not decided within the statutory period of ninety days and the appellant filed the titled Service Appeal and during the pendency of which departmental appeal of the appellant was filed vide order dated 27-01-2020, copy of which was obtained by the appellant through his own efforts on 11-01-2023, where after the appellant filed application before this honorable Tribunal for permission to file amended appeal, was allowed. **(Copy of departmental appeal & Order dated 27-01-2020 is enclosed as Annexure D & E).**
8. That the impugned order of respondent No 1 dated 27-01-2020 & order dated 18-06-2011 are against the law, facts and principles of justice on grounds inter-alia as follows:-

GROUND S:-

- A. That the impugned orders are illegal and void ab-initio.

- B. That mandatory provisions of law and rules have badly been violated by the respondents and the appellant has not been treated according to law and rules and the appellant did nothing that amounts to misconduct.
- C. That no Charge Sheet & Show cause Notice were communicated to the appellant.
- D. That Ex-parte action has been taken against the appellant and he has been condemned unheard.
- E. That no inquiry has been conducted to have find out the true facts and circumstances.
- F. That the impugned Orders are void and not maintainable being passed with retrospective effect.
- G. That even otherwise the absence from duty was not wilful nor deliberate rather the same was because of circumstances compelling in nature and were beyond the control of the appellant as well.
- H. That the impugned order is not speaking order thus not tenable in the eyes of law as per good number of Judgments of the Apex Court and as per Section 24 of the General Clauses Act.
- I. That the like employees have been reinstated by the respondents under the given policy as well as by the honorable tribunal, hence the appellant deserve the same treatment as per Article 4 and 25 of the Constitution and law of the land. **(Copies of Orders/Judgments are enclosed as Annexure F).**
- J. That the appellant did nothing that could amount to misconduct.
- K. That the appellant was not afforded the opportunity of meaningful personal hearing.
- L. That the appellant has about 20 years of service with unblemished service record.
- M. That the appellant seeks the permission of this honorable tribunal for further/additional grounds at the time of arguments.

It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for in the heading of the appeal.

Any other relief not specifically asked for and deemed appropriate in the circumstance of the case may also be granted in favor of the appellant.

Dated: 03-05-2023

Appellant

Through

BASEER AHMAD SHAH
Advocate, Peshawar

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Shah
Basen

LIST OF BOOKS

- 1. Constitution 1973.
- 2. other books as per need

CERTIFICATE:

Certified that as per instructions of my client, no other Service Appeal on the same subject and between the same parties has been filed previously or concurrently before this honorable Tribunal.

ADVOCATE

Basen

AFFIDAVIT

I, Muhammad GHaffar S/O Gul Aziz, Ex Constable No 606 District Police Swat, do hereby solemnly affirm and declare on oath that the contents of this **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

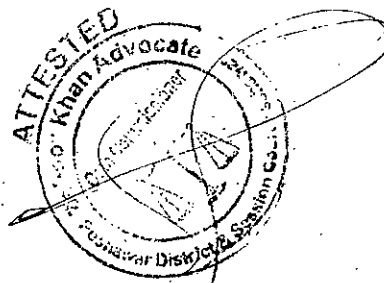
IDENTIFIED BY

BASEER AHMAD SHAH
Advocate Peshawar

Basen

DEPONENT

Bas



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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Amended Service Appeal No _____/2023

Muhammad Ghaffar.....**Appellant**

V E R S U S

RPO & others.....**Respondents**

APPLICATION FOR THE CONDONATION OF DELAY IF ANY

Respectfully Submitted:-

1. That the accompanying amended service appeal is being filed today in which no date of hearing has been fixed so far.
2. That the grounds of appeal may be considered as integral Part of this application.
3. That the impugned orders being void ab-initio, illegal and time factor becomes irrelevant in such case, furthermore copy of impugned original order was obtained by the appellant on 11-01-2023, besides the impugned order is void being passed with retrospective effect and the same is also in utter disregard of the law on the subject and the appeal is as such within time.
4. That the like employees have been reinstated in service by the department and this honorable tribunal have accepted the like service appeals, thus deciding the same law point, hence too the appellant deserve the same treatment.
5. That even otherwise law as well as the superior Courts dictas favors decision of cases on merit instead of technicalities.

It is therefore prayed, that on acceptance of this application, the delay if any in filing of instant appeal may kindly be condoned.

Dated: 13-05-2023

Appellant
Through

Baseer
BASEER AHMAD SHAH
Advocate, Peshawar

Baseer

AFFIDAVIT

I, Muhammad GHaffar S/O Gul Aziz, Ex Constable No 606 District Police Swat, do hereby solemnly affirm and declare on oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

IDENTIFIED BY

BASEER AHMAD SHAH
Advocate Peshawar

Baseer

DEPONENT

63
GHaffar



تاریخ و وقت 28 12 1987

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Attested

ATTESTED

Signature

SHO PS MINGORA

25-06-1987

139
Date 19/4/08
Malakand Range Swat

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

NOTIFICATION.

Dated: 14/4/2008.

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

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

He is allowed to proceed abroad.

MALIK NAVEED KHAN
Provincial Police Officer,
NWFP, Peshawar.

7783-85 /E-II Dated Peshawar the 14/4/2008.

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

Add: IGP/Investigation NWFP Peshawar with 2 spare copies for publication in the NWFP Gazette part-II.

Deputy Inspector General of Police: Malakand Region Swat with reference to his memo No. 1345/E dated: 03.04.2008. His Service Roll is returned herewith for record in your office.

DPO/Swat

Attested
e/c

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

Wt 1710 1500 21/4/08.

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

File: DPT Swat

Deputy Inspector General of Police
Deputy Inspector General of Police

EL SR Roll

OFFICE OF THE DISTRICT POLICE OFFICER, SWAT

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

ALLEGATION:-

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

RECOMMENDATION OF
ENQUIRY COMMITTEE:-

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

W/S

[Signature]
E.C
16/06/2011

FINAL DECISION
BY DPO SWAT:-

Siv

Attested
[Signature]

Submitted for H/o Rind
pursuant to order please.

W/S No. 130

[Large circular stamp]
Agreed
17/6/11
OB No. 130
20.6.11

Impressed side
18.6.2011

OB No 130

10
بھخور جناب ڈپٹی انسپکٹر جنرل صاحب پولیس ملاکنڈ ڈویژن سید و شریف سوات

عنوان: رقم درخواست

آداب:-

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

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

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

گور ہونگا۔

الحاضر

محمد عفا
سابقہ ہیڈ کانسٹیبل محمد عفا نمبر 606

ساکن آغل برتھانہ مٹہ سوات

موبائل نمبر 03473979929

مورخہ 28/06/2018

Attested

Department



محمد شریف

E 11

OFFICE OF THE
REGIONAL POLICE OFFICER, MALAKAND

AT SAIDU SHARIF SWAT.

Ph: 0946-9240381-88 & Fax No. 0946-9240390

Email: digmalakand@yahoo.com

ORDER:

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

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

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

Order announced.

Regional Police Officer,
Malakand, at Saidu Sharif Swat

No. 1133 /E,

Dated 27/01/2020.

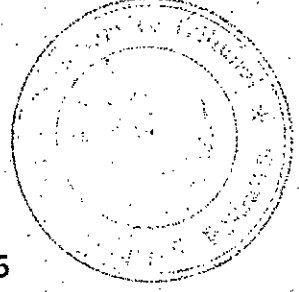
Copy to District Police Officer, Swat for information and necessary action please.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 562/2016

Date of Institution. ... 16.05.2016

Date of Decision. ... 02.03.2018



Rahim-ud-Din son of Syed Rehman, R/O Ajoo Talash, Tehsil Timergara,
 District Dir Lower. ... (Appellant)

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar anmd two
 others. ... (Respondents)

Mr. Sajjad Ahmad Khan, Advocate

Mr. Muhammad Asif Yousafzai, Advocate.

Arbab Saiful Kamal, Advocate

... For appellants.

Mr. Usman Ghani, District Attorney and

Mr. Muhammad Jan, Deputy District Attorney

... For respondents,

MR. NIAZ MUHAMMAD KHAN,

... Chairman.

MR. MUHAMMAD HAMID MUGHAL,

... Member.

MR. MUHAMMAD AMIN KHAN KUNDI,

... Member.

MR. AHMAD HASSAN,

... Member.

MR. GUL ZEB KHAN,

... Member.

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN-

The following appeals are also clubbed with this appeal for decision of
 common issue explained below:-

ATTESTED

EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

1. Appeal No. 1259/2011 Fazal Malik
2. Appeal No. 1994/2011, Mst. Zaitoon Bibi,
3. Appeal No. 1183/2014, Zafeerullah Khan,
4. Appeal No. 1186/2014, Muhammad Bashir,
5. Appeal No. 103/2015, Muhammad Raza.

FACTS.

1. In a number of appeals this tribunal (DB) delivered judgment as to void status of retrospective order of major punishment of removal/dismissal/compulsory retirement (for brevity "termination"). The mother ruling relied upon was *Noor Muhammad v The member Election Commission and others* (1985 SCMR 1178). One of such judgment of this tribunal is entitled "*Muhammad Ismail v Deputy Inspector General and another*" bearing Service Appeal # 463 OF 2012 decided on 22-11-2017. Another Judgment of this Tribunal is entitled "*Arif Khan v Inspector General of Police and three others*" bearing # 1213/2015 decided on 18-12-2017. In almost all these judgments of this tribunal it was decided that retrospective order being void could not be modified to give the same prospective effect under section 7 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. It was also decided that retrospective order being void order would not attract any limitation. All the present members of this Tribunal had delivered the same judgments. But during hearing of this appeal it was brought to the notice of the DB comprising of the Chairman and one Learned

ATTESTED

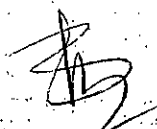
[Signature]
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

member that another bench (DB) of this tribunal had delivered a contrary opinion qua the modification of retrospective part of void order in service appeal No. 984/2013 entitled "*Muhammad Ayaz Vs. Government of Khyber Pakhtunkhwa through Secretary, E&SE, Peshawar and others*" decided on 14-11-2017. Going through this judgment it appeared that both the learned members of the bench had already delivered the former opinion in first two mentioned appeals above and now they have delivered contrary opinion while sitting not in larger bench and without discussing their earlier judgments. Perhaps the Learned members were not apprised of the earlier judgments neither the same judgments were pressed into service nor discussed. The bench (DB) hearing the present appeal could not decide the issue due to two contrary views of this tribunal. It was therefore, considered necessary to constitute a larger bench to decide the issue.

ARGUMENTS

2. All the lawyers for different appellants defended the first opinion while the DDA supported the second opinion. In favor of first opinion the judgments referred to in conclusion part were relied upon. In favour of second opinion the DDA relied upon judgments discussed also in conclusion part.

ATTESTED


Secretary
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

CONCLUSION.

3. This Tribunal is now to decide three questions. The first one is whether the retrospective order of termination in any form is a void order? And if so can void order be modified to make it operative prospectively? The third and final question would be that if prospective part of the order is held to be legal one after modification then whether limitation would be attracted to the legal portion of the order?
4. In the first opinion of this Tribunal as to void status of retrospective order and non modification of such order the reliance was placed only on the judgment reported as 1985 SCMR 1178 entitled "*Noor Muhammad v The member Election Commission and others*". This judgment declares retrospective order as void order. The other judgments relied upon by the lawyers for appellants also are based mainly on this mother judgment therefore, there is no need to discuss those judgments. But nothing is there in *Noor Muhammad* judgment as to modification of such void order and whether the order could be modified to make it prospective and legal. This tribunal is first to discuss *Noor Muhammad* case. In this case the issue before the august Supreme Court was not of a service matter but of disqualification of a candidate for elections who was in service and was terminated retrospectively. This Tribunal while delivering first opinion was not assisted anymore and it was opined that void order

could not be rectified. The second opinion of this tribunal as to rectification of void order is also not based on any supportive rulings or law. The august Supreme Court in the same judgment had referred to a judgment of Lahore High Court (PLD 1953 L 295). This judgment was delivered in a service matter declaring such retrospective order as void. Another judgment delivered in service matter by august Supreme court also held the same view [2002 PLC(C.S) 1027] relying mainly on mother judgment of 1985. A judgment of FST [2007 PLC (C.S) 5] has declared such retrospective order as void *ab initio* and the whole proceedings were declared to be nullity for being retrospective. But in all these judgments the question of separation of prospective part of the order is not discussed. A judgment referred to by the august Supreme Court in mother judgment is PLD 1964 Dacca 647 entitled "*Dr Muhammad Abdul Latif v The Province of East Pakistan and others*" which has touched this aspect of the issue though not decided conclusively. In this judgment the worthy High Court referred to some judgments from Indian Jurisdiction and held that such retrospective order could be legal to the extent of prospectivity and needed not be bad in toto. But their lordships did not reach a definite conclusion and in para. 9 of the judgment while discussing different judgments from Indian jurisdiction left the discussion unconcluded by holding that the counsel for the appellant requested that his client would be satisfied if declaration was given to the effect that the order

of dismissal covering the period prior to the order was bad. Their lordships wrote that they did not enter into detailed discussion of the aforesaid question and held for the purpose of the appeal that an order of dismissal of the nature might be supported to the extent it was found valid and need not be declared bad in toto. But in this judgment reliance was placed on judgments from Indian Jurisdiction. Now we are to see whether position in India qua the present law in this part of our country (Khyber Pakhtunkhwa particularly) is the same and whether after the judgment of *Dr Muhammad Abdul Latif* above any change in legal scenario emerged in Pakistan and for that matter this Province.

5. In order to appreciate this judgment and its relevance and applicability we would have to discuss position in India on the subject. This issue was raised and discussed in India in many cases including *Sudhir Ranjan Halder v State of West Bengal* referred to in *Dr Muhammad Abdul Latif* case above. The Kerala High Court has now finally decided this issue in a case entitled "*State of Kerala v A.P Janardhanan*" in WA # 2773 of 2007 decided on 29-03-2008 (<https://.indiankanoon/doc>). This judgment has traced the history of rulings on the subject and has finally decided that in India such retrospective order is not a void order for the reason that no legal precedent or law was available in India where under such order could be declared void. That in some Indian service laws express authority

was given to executive to pass such retrospective orders (Para 12 to 14 of the judgment). It was then finally held that in those cases where no express authority was given to executive to pass retrospective order of removal then that order would be illegal and not void and that prospective part can be separated from retrospective part and can be effective prospectively. The opinion in *Dr Muhammad Abdul Latif* case based on Indian jurisdiction had no relevance in Pakistan because at the time when this judgment was delivered we had a judgment of worthy Lahore High Court (PLD 1953 L 295) which had declared such retrospective order as void order. It was perhaps in this context that their lordships in *Dr Muhammad Abdul Latif* case did not deliver binding and conclusive judgment to be followed as ratio and left the matter undecided by giving just passing remarks which would be treated merely as *obiter*. And now in Pakistan two judgments of august Supreme Court referred to above have declared such order as void order. The first question is decided in positive.

6. Now this tribunal is to see whether a retrospective void order in this area can be modified and prospective portion be separated as effective and legal. This would need discussion and application of mind as we have failed to lay hand on any judgment which prohibited such severance. The first conclusion as drawn by this tribunal and the FST in case reported in [2007 PLC (C.S) 5] was based only on the status of void order. It was understood that since void order was a

nullity hence could not be rectified. One other judgment on the same point is 1993 PLC (C.S) 308 of FST entitled *Abbas Ali v The Executive Engineer and others*. We have also failed to lay hand on any judgment of superior courts which allows such rectification of void orders (Indian judgments and *Dr Muhammad Abdul Latif* judgment allow such severance but as discussed above in India such order is only illegal and not void. In *Dr Muhammad Abdul Latif* case the order was held illegal and not void on Indian pattern). We are now to come out of this imbroglio by applying juristic sense and prevalent rules of interpretation on the subject.

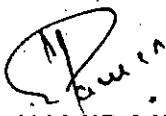
7. The assistance and help can be sought from jurisprudence of *vires* of laws. We know that Courts while declaring any law as *ultra vires* have a tool and technique to save valid portion of *ultra vires* laws. This is called rule of reading down and severance. This leads us to conclusion that if any law is declared *ultra vires* then legal portion if separable can be saved and need not be held to be *ultra vires* in toto due to its being solely in conjunction with bad law. Though this tool is available in saving statutes but on the same analogy it can be used in executive orders. Similarly if any legal portion of an executive order is separable then there seems no hurdle in not saving the same. Secondly the retrospective order is not held to void *ab initio* by august Supreme Court but only void. Only FST [2007 PLC(C.S)5] has declared it as such but without any reference to any form of jurisprudence. The

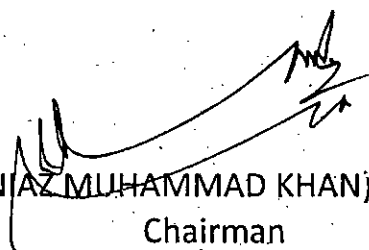
difference is that the former is invalid right from the foundation and cannot be corrected. But the latter is not invalid from the start but has been made invalid subsequently. In retrospective order the foundation is valid and whole proceedings are valid and only in the final order the termination is made retrospective. This tribunal is therefore, of the view that question no 2 as framed is decided in positively holding that such order can be modified.

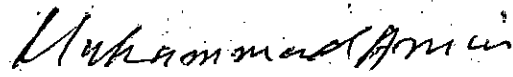
8. Coming to the third question this tribunal is of the view that since the retrospective order is held to be a void order no limitation would be attracted to challenge the same. If limitation is applied then how the tribunal would rectify the same as rectification would be made only after declaring the appeals to be within time. The tribunal cannot rectify any such order without assuming jurisdiction and no jurisdiction can be assumed without bringing the appeal within time.
9. In the last this tribunal deems it appropriate to discuss one judgments of Punjab Service Tribunal on subject. This is in case entitled "*Ihsanul Haq Chaudhery v The Deputy Commissioner*". (1988 PLC (C.S) 511). According to this judgment the error of retrospectivity can be modified. This opinion is based not on any ruling but on wordings used in *Noor Muhammad's* case. In *Noor Muhammad* case the Court observed that order would not operate retrospectively but prospectively. From this observation the Punjab Service Tribunal held that such retrospective order was not void and could be rectified. But


this tribunal with due deference is not inclined to accept the conclusion of the Punjab Service Tribunal about void status of the retrospective order as the august Supreme Court in Noor Muhammad's case has categorically held such order as void order. The Supreme Court did not discuss the rectification in this judgment. However the effect from prospective date as observed by august Supreme Court would strengthen our above conclusion that the prospective part can be severed and protected despite the nature of the order as void.

ANNOUNCED
02.03.2018


(M. HAMID MUGHAL)
Member


(NIAZ MUHAMMAD KHAN).
Chairman

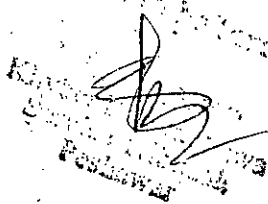

(M. AMIN KHAN KUNDI).
Member


(AHMAD HASSAN)
Member

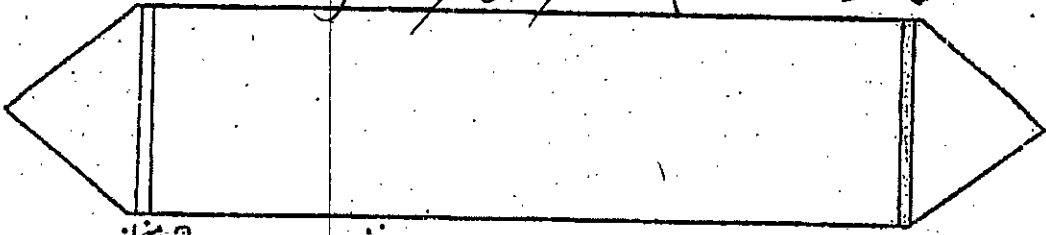

(GUL ZEB KHAN)
Member

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 Total 48-00
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 Date of Completion of 14-10-78
 Date of Delivery of Copy 14-10-78

(Approved for reporting)

Certified to be true copy


بعدالت جناب۔ سندھ سٹریٹجی بیورو کے لیے



صدر عفاار
2، منجانب

بنام ار. پی. او وغیرہ

مورخہ
مقدمہ
دعویٰ
بیم

باعث تحریر آنگہ

مقامہ سندھ ریجنل عدالت میں اپنی طرف سے واسطے پیروی و جواب دہی کی کارروائی متعلقہ
آن مقامہ کے لیے بصیر احمد شاہ اندر علیا و امین ایدو کے لیے

مقررہ کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا مکمل اختیار دیا گیا۔ نیز
وکیل صاحب کو رضی نامہ کرنے و تقرر ثالثیت فیصلہ برحلف دینے جواب دہی اور اقبال دعویٰ اور

باندورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائس پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی اور منسوخی

نیز دائر کرنے اپیل گمرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار

ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساتھ
پر داخلہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب 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
مذکورہ کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

المرقوم _____ ماہ _____ 20

Accepted by
BASCER AHMAD
SHA ADU

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

Service Appeal No. 116/2019

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

..... Appellant

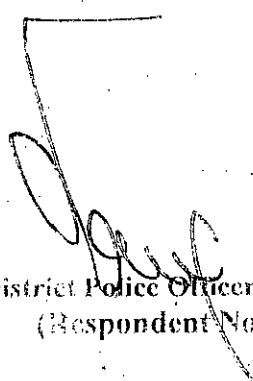
VERSUS

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

..... Respondents

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3	Authority Letter		5
4	Copy of Order No.1133/E dated 27/01/2020.	"A"	6
	Copy of service record.	"B"	
	Copy of Finding Report	"C"	


District Police Officer, Swat
(Respondent No.02)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 116/2019

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

..... Appellant

VERSUS

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

..... Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS

PRELIMINARY OBJECTIONS.

1. That the appeal is badly barred by Law & limitation.
2. That the appellant has got no cause of action and locus standi to file the present appeal.
3. That the appeal is bad due to misjoinder and nonjoinder of necessary parties.
4. That the appellant has not come to the Tribunal with clean hands.
5. That the instant appeal is not maintainable in its present form.
6. That the appellant has concealed the material facts from this Hon'ble Tribunal.

Respectfully Submitted:-

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

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

GROUND:

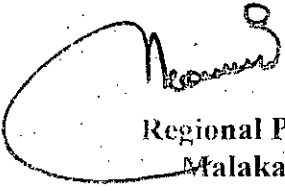
- A. Incorrect. That the order passed by the respondents is legal and in accordance with law/rules.
- B. Incorrect. The appellant has been treated in accordance with law/rules and no rules have been violated by the respondents.
- C. Incorrect. Charge Sheet coupled with statement of allegations were issued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

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

PRAYER:

Keeping in view the above facts and circumstances, it is humbly prayed that the appeal of appellant being devoid of legal force may kindly be dismissed with costs.


District Police Officer Swat
(Respondent No. 02)


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


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

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

Service Appeal No. 116/2019

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

..... Appellant

VERSUS

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

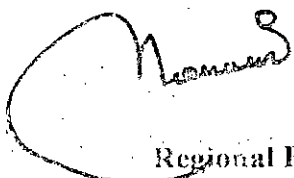
..... Respondents

AFFIDAVIT

We, the above respondents do hereby solemnly affirm an oath and declare that the contents of the appeal are correct/true to the best of our knowledge/ belief and nothing has been kept secret from the honorable Tribunal.


District Police Officer, Swat
(Respondent No.2)

ATTESTED


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




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

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

Service Appeal No. 116/2019

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

..... Appellant

VERSUS

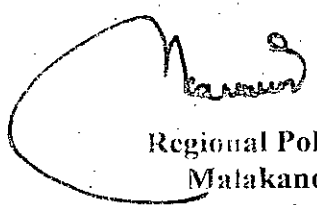
1. Regional Police Officer Malakand at Saidg Sharif Swat.
2. District Police Officer Swat.
3. Provincial Police Officer KPK Peshawar

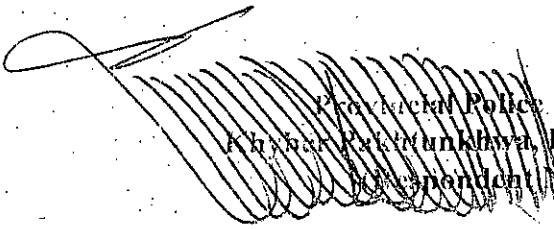
..... Respondents

AUTHORITY LETTER

We, the above respondents do hereby authorize Mr. Naeem Hussain DSP/Legal Swat to appear before the Tribunal on our behalf and submit reply etc in connection with titled Service Appeal.


District Police Officer, Swat
(Respondent No.2)


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


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



عقود

E 11

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

Ph: 0946-9240381-88 & Fax No. 0946-9240390
Email: dgmalakand@yahoo.com

ORDER

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

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

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

Order announced.

Regional Police Officer,
Malakand, at Saidu Sharif Swat

Handwritten signature and date 27/01

No. 1133 /E,

Dated 27/01 /2020.

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

ATTESTED

Handwritten signature of Deputy Superintendent

Deputy Superintendent
Swat.

CHARACTER AND SERVICE ROLL OF

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

According to S.L.C.

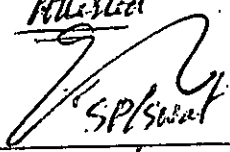
Name	Father's Name	Tribe or caste	Village or Town	Post and Telegraph Office	Police Station	District	Province	Date of Birth	Height	Chest Measurement	Date of Enrolment	Age on Enrolment	Distinctive Marks
Mohammad Ghafar		Gul Aziz	Alchawa	Alghal	Matta	Matta	Suist	N.W.F.P.	4.3.70	5'9 1/2	33 X 35	1-1-92	Scars on face

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

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



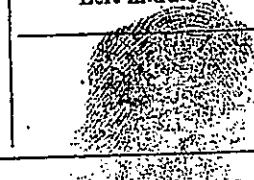


Name or department	Rank or grade	Pay of last Appointment	From	To	PERIOD			
					Year	Months	Days	
Reference to orders approving above service for pension service in the Police Department.					<p style="text-align: center;">ATTESTED</p> <p style="text-align: center;">[Signature]</p> <p style="text-align: right;">5/9/13</p>			

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

Attested

 S.P. Swat

Signature.

Impressions of fingers and thumb of left hand.

Little	Left ring	Left middle	Left index	Left thumb
				

میرنگور

1487	تاریخ 28 ¹² 1957	وقت 25-15
رٹ	28 ¹² 1957	وقت 25-16
ع و پندرہ سینیٹ	646	7
رہنما (نہ) حال اگر کچھ ایسا گیا ہو۔	324-353	7
رقمان سے اور دست	سید محمد حسین	سید محمد حسین
کے متعلق کی گئی اگر اطلاع دینے کے لئے	سید محمد حسین	سید محمد حسین
تاریخ و وقت	سید محمد حسین	سید محمد حسین

میرنگور کے علاقے میں سید محمد حسین کے گھر پر ایک شخص نے حملہ کیا اور اسے زخمی کر دیا۔ اس شخص کی شناخت سید محمد حسین کے والد سید محمد حسین سے ہوئی ہے۔ سید محمد حسین نے پولیس کو اطلاع دی اور پولیس نے سید محمد حسین کو گرفتار کیا۔ سید محمد حسین کو 1223 جیل میں رکھا گیا ہے۔ سید محمد حسین کے والد سید محمد حسین نے پولیس کو اطلاع دی ہے کہ سید محمد حسین کو گرفتار کرنے کے بعد ان کو کوئی اور شخص نے گھر پر حملہ کیا ہے۔ سید محمد حسین نے پولیس کو اطلاع دی ہے کہ ان کو کوئی اور شخص نے گھر پر حملہ کیا ہے۔ سید محمد حسین نے پولیس کو اطلاع دی ہے کہ ان کو کوئی اور شخص نے گھر پر حملہ کیا ہے۔

Attested

ATTESTED
Deputy Superintendent of Police Lower Swat
SHO PS MINGORA
25-06-1958

- 9 - C

OFFICE OF THE DISTRICT POLICE OFFICER, SWAT

**ORDER SHEET IN CONNECTION WITH ENQUIRY AGAINST
CONSTABLE GHAFFAR No. 606**

ALLEGATION:-

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

**RECOMMENDATION OF
ENQUIRY COMMITTEE:-**

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

o/s

E.C
16/06/2011

TESTED
Deputy Superintendent of Police Legal
Swat

**FINAL DECISION
BY DPO SWAT:-**

Siv

Submitted for H/o Rival
perusal & order please.

w/ DPO/Swat

Agreed

OB No. 130
20.6.11

17/6/11

606/11

Impugned order
18.6.2011

OB No 130

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

عنوان: رجم درخواست

آداب:-

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

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

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

العارض

سابقہ ہیڈ کانسٹیبل محمد غفار نمبر 606

ساکن اغل برتھانہ مٹہ سوات

موبائل نمبر 03473979929

مورخہ 28/06/2018

ATTESTED

گور ہونگا

Deputy Superintendent of Police Legal Swat

Attested

Departmental

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

C. M. No. _____ 2023

In

Service Appeal No116-2019

Muhammad Ghaffar.....Appellant

V E R S U S

DPO & others.....Respondents

I N D E X

S.No	Description of Documents	Annexure	Pages
1.	Application for interim relief with affidavit		1- 2
2.	Copy of Order dated 27-01-2020	A	3

Dated:-30-01-2023

Through

Applicant/Appellant

Fazal Shah Mohmand
Advocate,
Supreme Court of Pakistan

OFFICE:- Cantonment Plaza Flat
3/B Khyber Bazar Peshawar Cell#
0301 8804841
Email:-
fazalshahmohmand@gmail.com

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

C. M. No _____ 2023
In
Service Appeal No116-2019

Muhammad Ghaffar.....Appellant

V E R S U S

DPO & others.....Respondents

Application for permission to file Amended Appeal

Respectfully Submitted:-

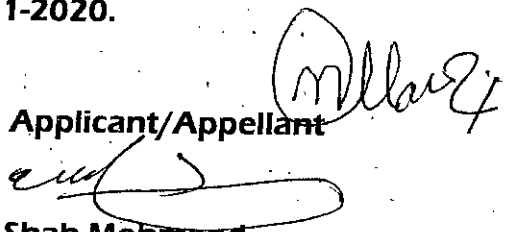
1. That the above titled Service Appeal is pending before this honorable Tribunal and is fixed for today i, e 30-01-2023.
2. That at the time of filing the titled Service Appeal, departmental appeal of the appellant was not decided which by now has been decided by the appellate authority on 27-01-2020, and copy of which was obtained by the appellant through his own efforts on 11-01-2023 whereby departmental appeal of the appellant has been filed. **(Copy of order dated 27-01-2020 is attached)**
3. That as the said order has not been impugned in the Service Appeal and challenging the same is necessary for the just disposal of titled appeal, hence the applicant seeks leave of this honorable Tribunal to amend the titled Service Appeal to such extent.
3. That the valuable rights of the applicant are at stake and the law as well as the dictums of Superior Courts also favors the amendment of cases for the interest of justice.
4. That if the applicant is not allowed to amend his appeal, the very purpose of his appeal would be lost resulting in multiplicity of litigation.

It is therefore prayed, that on acceptance of this application, the applicant may kindly be allowed to file amended appeal thereby impugning the appellate order dated 27-01-2020.

Dated:-30-01-2023

Through

Applicant/Appellant


Fazal Shah Mohmand
Advocate,
Supreme Court of Pakista

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

C. M. No _____ 2023

In

Service Appeal No116-2019

Muhammad Ghaffar.....Appellant

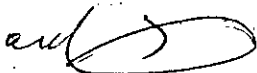
V E R S U S

DPO & others.....Respondents

AFFIDAVIT

I, Muhammad Ghaffar S/O Gul Aziz Ex Constable No 606, District Police Swat, do hereby solemnly affirm and declare on oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Identified by

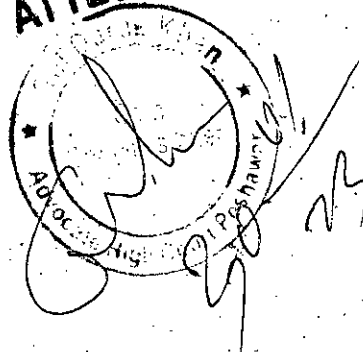


Fazal Shah Mohmand
Advocate Peshawar

DEPONENT



ATTESTED





محمد غفار

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

Ph: 0946-9240381-88 & Fax No. 0946-9240390
Email: dlpmalakand@yahoo.com

ORDER:

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

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

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

Order announced.

Regional Police Officer,
Malakand, at Saidu Sharif Swat

No. 1133 /E,

Dated 27/01/2020

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

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 116 /2019

Muhammad Ghaffar.....Appellant



V E R S U S

DPO & others.....Respondents

I N D E X

S.No	Description of Documents	Annexure	Pages
1.	Service appeal with affidavit		1-3
2.	Application for condonation of delay with affidavit		4
3.	Copy of FIR	A	5
4.	Copy of Notification dated 14-04-2008	B	6
5.	Copy of Order dated 18-06-2011	C	7
6.	Cop of Departmental Appeal	D	8
7.	Wakalat Namas		9

Dated-11-01-2019


Appellant
Through 

**Fazal Shah Mohmand
Advocate Peshawar.**

OFFICE:- Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell# 0301 8804841
Email:- fazalshahmohmand@gmail.com

- 1 -

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 116 /2019

Muhammad Ghaffar S/O Gul Aziz Ex Constable No 606 District Police Swat.....**Appellant**

Khyber Pakhtukhwa
Service Tribunal

V E R S U S

Diary No. 51

Dated 11-01-2019

1. District Police Officer Swat.
2. Reginald Police Officer Malakand, at Saidu Sharif Swat.
3. Provincial Police Officer KPK Peshawar.....**Respondents**

**APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974
AGAINST THE ORDER DATED 18-06-2011 PASSED BY
RESPONDENT NO 1 WHERE BY THE APPELLANT HAS BEEN
DISMISSED FROM SERVICE AGAINST WHICH
DEPARTMENTAL APPEAL OF THE APPELLANT HAS NOT
BEEN RESPONDED SO FAR DESPITE THE LAPSE OF MORE
THAN THE STATUTORY PERIOD OF NINETY DAYS.**

PRAYER:-

On acceptance of this appeal the impugned order dated 18-06-2011 of respondent No 1 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits **OR** the order of dismissal from service may kindly be converted into compulsory retirement.

Respectfully Submitted:-

1. That the appellant joined the respondent Department as constable on 01-01-1991 remained posted to various Police Stations and since then he performed his duties with honesty and full devotion.
2. That in the year 2007 when militancy in Swat was at its peak, the appellant was threatened by the local terrorists and was also threatened by the local commander of terrorists to vacate his house for their commander namely Abdu Rehman, but even then the appellant was performing his duties.
3. That the 28-12-2007, the appellant along with others while on duty was targeted by the terrorists and got seriously injured to which effect FIR No 1487 was registered at Police Station Mingora. **(Copy of FIR is enclosed as Annexure A).**
4. That the appellant was again threatened where after he requested for three years Ex Pakistan leave i,e till 22-04-2011, which was accordingly granted vide Notification dated 14-04-2008. **(Copy of Notification dated 14-04-2008 is enclosed as Annexure B).**

Filed to-day
Registrar
11/1/19

Re-submitted to-day
and filed.
Registrar
25/1/19

- 2 -
5. That the appellant after availing leave when came his village, he was consistently threatened, thus was unable to have performed his duties and was accordingly dismissed from service by respondent No 1 vide order dated 18-06-2011. **(Copy of Order dated 18-0-2011 is enclosed as Annexure C).**
 6. That the appellant filed departmental appeal before respondent No 2 on 28-06-2018 which has not been responded so far despite the lapse of more than the statutory period of ninety days. **(Copy of Departmental appeal is enclosed as Annexure D).**
 7. That the impugned order dated 18-06-2011 of respondent No 1 is against the law, facts and principles of justice on grounds inter alia as follows:-



GROUNDS:-

- A. That the impugned order is illegal and void ab-initio.
- B. That mandatory provisions of law and rules have badly been violated by the respondents and the appellant has not been treated according to law and rules and the appellant did nothing that amounts to misconduct.
- C. That no charge sheet and show cause notice were communicated to the appellant.
- D. That exparte action has been taken against the appellant and he has been condemned unheard.
- E. That no inquiry was conducted to find out the true facts and circumstances.
- F. That the impugned order is void and not maintainable being passed with retrospective effect.
- G. That even otherwise the absence from duty was neither willful nor deliberate rather the same was because of circumstances compelling in nature and were beyond the control of the appellant as well.
- H. That the impugned order is not speaking order and thus not tenable in the eyes of law as per the numerous judgments of the Apex Court and as per Section 24 of the General Clauses Act.
- I. That the appellant was not provided the opportunity of personal hearing and the impugned order is defective as well.
- J. That the appellant did nothing that would amount to misconduct.

- K. That the appellant has more than 20 years of service with unblemished service record and is jobless since his illegal dismissal from service.
- L. That the appellant seeks the permission of this honorable tribunal for further/additional grounds at the time of arguments.


It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for in the heading of the appeal.

Dated:-11-01-2019.

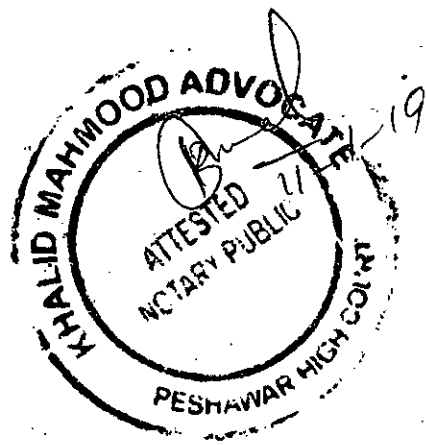

 Appellant
 Through 
Fazal Shah Mohmand
Advocate, Peshawar

AFFIDAVIT

I, Muhammad Ghaffar S/O Gul Aziz Ex Constable No 606 District Police Swat, do hereby solemnly affirm and declare on oath that the contents of this **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Identified by 
Fazal Shah Mohmand
Advocate Peshawar


DEPONENT



BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No _____/2019

Muhammad Ghaffar.....Appellant

V E R S U S

DPO & others.....Respondents

Application for the condonation of delay if any.

Respectfully submitted:-

1. That the accompanying appeal is being filed today in which no date of hearing has been fixed so far.
2. That the grounds of appeal may be considered as integral Part of this application.
3. That the impugned order being passed with retrospective effect is void ab-initio, illegal and time factor becomes irrelevant in such cases and the appeal is as such within time.
4. That the law as well as the dictums of the superior Courts also favors decisions of cases on merit.

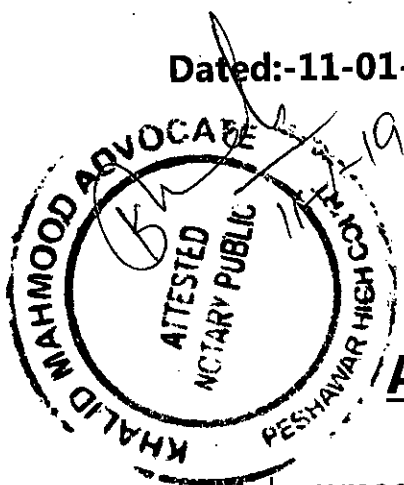
It is therefore prayed that on acceptance of this application, the delay if any in filing of appeal may kindly be condoned.

Dated:-11-01-2019.

Through

[Signature]
Appellant

[Signature]
Fazal Shah Mohmand,
Advocate, Peshawar



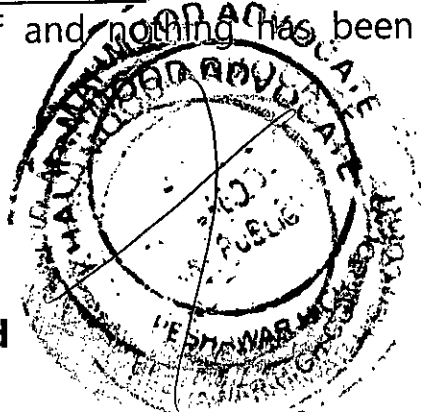
A F F I D A V I T

I, Muhammad Ghaffar S/O Gul Aziz Ex Constable No 606 District Police Swat, do hereby solemnly affirm and declare on oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Identified by

[Signature]

Fazal Shah Mohmand
Advocate Peshawar




[Signature]
DEPONENT

ابتدائی اطلاع پر تفتیشی دست اندازی پولیس رپورٹ شدہ زبردفعہ ۱۵۲ مجموعہ ضابطہ نو جداری

ضلع	مینگورہ
تاریخ	28 ¹² / 25-15
رٹ	1487
عہدہ مستغیث	28 ¹² / 25-15
رہنما (خالد اگر کچھ لیا گیا ہو)	324-353
رقمانہ سے اور سمت	مبارک سنگھ، نوید حسین، دوڑ، نزد گریں، جیون، صاحبہ، راجہ، ملک
کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو	برسہ گی مرزا، خود، قاسم، راجہ
لامتاریخ وقت	سول، رپورٹ

ابتدائی اطلاع نیچے درج کرو۔ تحریر مرزا صاحبہ صاحبہ عاتقہ صاحبہ شاہ اہل سطور
 ڈیڑھ برس سے منگورہ میں 4646 کوچوں، سکور، روڈ، پے، عمارت، آگے، اٹھارے، قمار،
 اطلاع کی بنا پر گرفتار کیا گیا۔ سید عبدالرشید صاحبہ 606 حقیقت کوئی نہ ہو
 قیادت یا کر ڈیڑھ گھنٹہ سے کہتا ہے کہ سید صاحبہ 837 - عمارت 1160
 1223 حسب احکم بالا مقام گریں کو لے گیا تھا۔ اور کہتا ہے کہ
 لے گیا اور لے گیا۔ سید صاحبہ میں خود تھی۔ کہ ایک شخص، اسم، مکن، نامعلوم، در
 جی ہوئی گلی سے بار بار میں نکل کر سید صاحبہ کی بار بار مذکورہ کو لے گیا۔ لست او
 ی۔ خود یہ مذکورہ نے اندازہ اور گرفتاری یا عمارت کا لفظ بلذکر، خود
 کو لے گیا اور وہ قتل وار کیا۔ سید صاحبہ سے میں بائیں طرف سرنگ کر رہی تھی
 نے تو سید صاحبہ مذکورہ شخص نے والا کہا کہ تم میرے ساتھ کھینچنے کے وقت اقبال
 کفار کو خوف عمارت کے چالی تھیالے آیا۔ میں نے اب یہ ارادہ کیا تھا کہ میں
 نے سید صاحبہ کو لے گیا۔ عمارت کے وقت وہی عمارت اور کہتا ہے کہ
 درزی کرنے کا برخلاف شخص مذکورہ اسم، مکن، نامعلوم، دیو، عمارت
 مذکورہ عمارت کے ساتھ آیا کوئی عمارت لے گیا۔ وہی عمارت کے ساتھ
 ہے اس کے وقت گرفتار کیا گیا۔ 606 اور 837

Attested


ATTESTED

 SHO PS MINGORA
 25-06-018

- 6 - B

No. 139 of
Date 14/4/08
Malakand Range Swat

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

NOTIFICATION.

Dated: 14/4/2008.

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

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

He is allowed to proceed abroad.

MALIK NAVEED KHAN
Provincial Police Officer,
NWFP. Peshawar.

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

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

Add: IGP/Investigation NWFP Peshawar with 2 spare copies for publication in the NWFP Gazette part-II.

Deputy Inspector General of Police, Malakand Region Swat with reference to his memo No. 1345/E dated: 03.04.2008. His Service Roll is returned herewith for record in your office.

DPO/Swat

Attested
edg

Muhammad Jawad
(KHURSHID ALAM KHAN)
Add: IGP/HQs.
For Provincial Police Officer,
NWFP. Peshawar.

El. SR Roll

No. 1710 /E-01, 21/4/08.

Copy along with Service Roll of the above named official is sent to DPO Swat for inspection.

Muhammad Habibullah
Deputy Inspector General of Police

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

NOTIFICATION

Dated 14/4/2008

No. 7782/E-IT LEAVE EX-PAKISTAN – LHC Ghaffar No. 60b of Swat District Police is hereby granted 1095 days leave Ex-Pakistan with the following format from the date of availing the Civil Servant Revised Leave Rules, 1981

i.	On full pay	=	120 days
ii.	On <u>half</u> pay	=	975 days
.	Total	=	1095 days

He is allowed in proceed abroad.

MALIK NAVEED KHAN
Provincial Police Officer
NWFP Peshawar

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

Copy forwarded for information and necessary action to the: -

1. Addl: JGP/Investigation NWFP Peshawar with 2 spare copies for publication in the NWFP Gazette part-II.
2. Deputy Inspector General of Police, Malakand Region Swat with reference to his memo No. 1345/E dated: 03.04.2008. His service roll is returned herewith for record in your office.

DPO/Swat

Altaf
el
CPes

(KHURSHID ALAM KHAN)
Addl: IGP/HQRs
For Provincial Police Officer
NWFP, Peshawar

"C"

-7-

OFFICE OF THE DISTRICT POLICE OFFICER, SWAT

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

ALLEGATION:-

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

RECOMMENDATION OF

ENQUIRY COMMITTEE:-

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

o/s

[Signature]
E.C
16/06/2011

FINAL DECISION

BY DPO SWAT:-

Siv

*Submitted for H/o Rimal
perusal & under process.*

W DPO/Hqrs

Agreed

17/6/11

*O.B. No. 130
20.6.11*

*Attested
cel*

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

عنوان:- رحم درخواست

آداب:-

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

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

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

گورہونگا۔

العارض

سابقہ ہیڈ کانسٹیبل محمد غفار نمبر 606 محمد غفار

ساکن آغل برتھانہ مٹہ سوات

موبائل نمبر 03473979929

مورخہ 28/06/2018

Attested
e

-9-

WAKALAT NAMA

IN THE COURT OF Service Tribunal KP Pesh

M. Ghaffar

VERSUS

DPO mothers

Accused/
Petitioner/
Appellant/
Plaintiff.

Respondent/
Defendant/
Complainant

FIR No. Dated: Police Station:
Charge U/s.

KNOW ALL to whom these presents shall come that I the undersigned appoint:

Fazal Shah Mohmand Advocate Supreme Court of Pakistan,
(herein after called the advocate) to be the Advocate for the appellant in the above mentioned case, to do all the following acts, deeds and things or any of them, that is to say:

- 1) To act and plead in the above mentioned case in this court or any other Court in which the same may be tried or heard in the first instance or in appeal or review or execution or in any other stage of its progress until its final decision.
- 2) To sign, verify and present pleadings, appeals, cross - objections, petitions for execution, review, revision, withdrawal, compromise or other petition or affidavits or other documents as shall be deemed necessary or advisable for the prosecution of said case in all its stages.
- 3) To withdraw or compromise in the said case or submit to arbitration any difference or dispute that shall arise touching or in any manner relating to the said case.
- 4) To receive money and grant receipts therefore and to do all other acts and things which may be necessary to be done for the progress and the course of the prosecution of the said case.
- 5) To engage any other Legal practitioner authorizing him to exercise the power and authorities hereby conferred on the Advocate whenever he may think fit to do so.


AND I hereby agree to ratify whatever the Advocate or his substitute shall do in the promises.


AND I hereby agree not to hold the Advocate or its substitute responsible for the result of the said case and in consequence of his absence from the court when the said case is called up for hearing

AND I hereby that in the event of the whole or any part of the fee agreed by me to be paid to the Advocate remaining unpaid, He shall be entitled to withdraw from the prosecution of the said case until the same is paid.

IN WITNESS WHEREOF I hereunto set my hand to these presents the contents of which have been explained to and understood by me, this _____ day of _____ 201__

Accepted By


Fazal Shah Mohmand,
Advocate Supreme Court of Pakistan


Signature / thumb impression
of party / parties.

محمد غفار ولد گل عزیز

3
To

- 1) Superintendent of Police FRP, Malakand Range,
Malakand at Saidu Sharif Swat
- 2) Commandant FRP, KP Peshawar.
- 3) Inspector General of Police, KP, Peshawar

APPLICATION FOR IMPLEMENTATION
OF JUDGMENT OF THE HON'BLE
SERVICE TRIBUNAL, PESHAWAR
CAMP COURT SWAT DATED 07.12.2017
PASSED IN S.A.No.959/2016

Sir,

Please comply the order/ judgment dated 07.12.2017 passed by
Hon'ble Service Tribunal, Peshawar Camp Court Swat passed in
S.A.No.959/2016 in letter, spirit and obliged. (Certified copy attached).

That the instant application may kindly also be considered as my
arrival report.

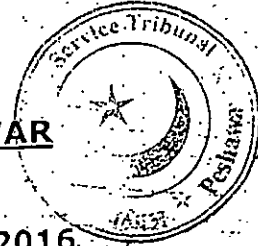
Applicant



Afzal Khan
S/O Mir Aslam Khan
R/o Islampur, Saidu Sharif Swat
Constable No.4767
Cell: 0348-0154647

Dated: 15.12.2017

BEFORE KPK SERVICE TRIBUNAL PESHAWAR



S.A No. 959 /2016

Afzal Khan S/o Mir Aslam Khan, R/o Islam Pur,
Saidu Sharif, Swat, Ex-Constable No. 4767, FRP.
Platoon No. 83, PS Mingawar, Swat. Appellant

Khyber Pakhtunkhwa
Service Tribunal

Versus

Diary No. 812

Dated 04-8-2016

1. Superintendent of Police FRP, Malakand Range, Malakand.
2. Commandant, FRP, KP, Peshawar.
3. Inspector General of Police, KP, Peshawar. Respondents

⊕<=>⊕<=>⊕<=>⊕<=>⊕

APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974 AGAINST OB NO. 975/EC, DATED 28.08.2008 OF R. NO. 1, WHEREBY APPELLANT WAS REMOVED FROM SERVICE FROM THE DATE OF ABSENCE FROM DUTY OR OFFICE ORDER NO. 2359-60/EC, DATED 01.04.2013 OF R. NO. 2 WHEREBY DEPARTMENTAL APPEAL OF APPELLANT WAS REJECTED OR OFFICE ORDER NO. DATED 10.05.2016 OF R. NO. 3 WHEREBY REVISION/REVIEW/APPEAL WAS REJECTED FOR NO LEGAL REASON.

⊕<=>⊕<=>⊕<=>⊕<=>⊕

Respectfully Sheweth:

ATTESTED

1. That appellant was enlisted as Constable on 25.07.2007 and thereafter he was deputed to Baloch Regiment Centre, Abbottabad for training which was successfully completed and he was declared as passed.

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

That due to the deteriorated situation of the Swat valley, all most all Govt. functionaries were helpless, miscreants were ruling the area and the Govt. Servants were not only kidnapped but were also beheaded.

Filed to-day

Registrar Re-submitted to -day and filed.

4/8/16

[Signature]

959/2016

07.12.2017

Afzal Khan vs Govt



Counsel for the appellant and Mr. Kabeerullah Khattak
Addl. AG for respondents present. Arguments heard and
record perused.

This appeal is accepted as per our detailed judgment of
today in connected service appeal No. 957/2016 entitled
"Shoukat Ali Vs. Superintendent of Police, FRP Malakand
Region, Malakand and two others". Parties are left to bear
their own costs. File be consigned to the record room.

Announced
07.12.2017 *sd/- Chairman*
Camp Court Swat

sd/- Member

Certified to be true copy
[Signature]
K. M. ...
Secretary, Peshawar

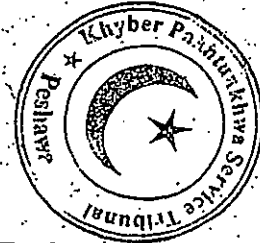
Date of Presentation of ... *13-12-17*
Number of ... *800*
Copy ... *6*
Urgent ...
Total ... *[Signature]*
Name ... *15-12-17*
Date ... *15-12-17*
Entered ...

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT SWAT

Service Appeal No: 957/2016

Date of Institution... 04.08.2016

Date of decision... 07.12.2017



Shoukat Ali son of Muhammad Shafiq, R/O Kokari Mingora Swat Ex-Constable
No. 4741, FRP Platoon No. 83, P.S Mingora Swat: (Appellant)

Versus

1. Superintendent of Police, FRP Malakand Region, Malakand and two others.
(Respondents)

ARBAB SAIFUL KAMAL,
Advocate

For appellant.

MR. KABIRULLAH KHATTAK,
Addl. Advocate General

For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. MUHAMMAD HAMID MUGHAL,

CHAIRMAN
MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - This judgment shall also
disposed of other connected appeals No. 697/2016 Muhammad Said, No.
958/2016 Fazal Yaseen, No. 959/2016 Afzal Khan, and No. 961/2016 Umar Ali
as in all the appeals common questions of law and facts are involved.

2. Arguments of the learned counsel for the parties heard and record perused.

FACTS

3. The appellant Shaukat Ali, Umar Ali and Afzal Khan were removed
from service on 28.08.2016, the appellant Fazal Yaseen was removed from

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service on 02.02.2009 and the appellant Muhammad Saeed was removed from service on 21.09.2009. The appellants then filed departmental appeals belatedly which were rejected then the appellant also approached this Tribunal belatedly not within the stipulated time.

ARGUMENTS

4. The learned counsel for the appellants argued that the very orders of removal from service are void because all these orders have been given retrospective effect. That in view of judgment reported as 1985-SCMR-1178 no limitation shall run against void order.

5. On the other hand the learned Addl. Advocate General argued that the departmental appeals are hopelessly time barred. That the revision within the meaning of Rule 11 -A of Khyber Pakhtunkhwa Police Rules, 1975 could not enlarge the period of limitation. That all the codal formalities were fulfilled by the department.

CONCLUSION

6. Regardless of other merits of the case it is an admitted position that all these orders have been given retrospective effect and in view of so many judgments delivered by this Tribunal on the basis of judgment reported in 1985-SCMR-1178 the retrospective order is a void order and no limitation shall run against void order.

7. Since no limitation runs against a void order, any successive appeals or revision would not curtail the rights of the appellants qua the limitation or in other

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