

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT D.I.KHAN.

SERVICE APPEAL NO. 461/2013

Date of institution ... 17.01.2013
Date of judgment ... 26.09.2016

Muhammad Ismail, Ex-Constable # 8170, FRP
R/o Ama Khel, Tehsil & District Tank.

... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Home, Civil Secretariat, Peshawar.
2. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. Commandant, Frontier Reserve Police/Additional Inspector General of Police, Peshawar.
4. Superintendent of Police, Frontier Reserve Police, D.I.Khan.
5. Gul Manan, the then Line Officer/Inquiry Officer, FRP D.I.Khan.
6. Alao-ud-Din, Line Officer/Inquiry Officer, FRP, D.I.Khan.

... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER BEARING # 3630 DATED 13.12.2012 OF RESPONDENT-2 AND ORDER BEARING # 994-95/EC DATED 15.02.2012 PASSED BY RESPONDENT-3 VIDE WHICH APPEAL OF THE APPELLANT FOR REINSTATEMENT IN SERVICE AGAINST THE ORDER BEARING # OB# 801/FRP DATED 23.08.2011 PASSED BY RESPONDENT-4 WAS REJECTED/FILED.

Mr. Gul Tiaz Khan Marwat, Advocate.
Mr. Farhaj Sikandar, Government Pleader

.. For appellant.
.. For official respondents No. 1 to 4.

MR. MUHAMMAD AAMIR NAZIR
MR. ABDUL LATIF

.. MEMBER (JUDICIAL)
.. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AAMIR NAZIR, MEMBER:- Muhammad Ismail, ex-

Constable Frontier Reserve Police, District Tank hereinafter called the appellant, through instant appeal under Section-4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974 has impugned order dated 23.08.2011 vide which the appellant was awarded major punishment of removal from service and his absence period with effect from 06.06.2011 was treated as leave without pay. Against the impugned order referred above, the appellant filed a

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26.09.16

departmental appeal which was also rejected by the Appellate Authority vide order dated 15.02.2012.

2. Brief stated facts giving rise to the appeal are that the appellant was appointed as constable in Frontier Reserve Police, D.I.Khan and was performing his duty to the satisfaction of his superiors. That on 06.06.2011 the appellant fell ill and the doctor advised him for one month bed rest. That the appellant was bed ridden but the respondents issued him charge-sheet alongwith statement of allegations on the charges of absence from duty. That the appellant submitted reply to the charge-sheet and statement of allegations accompanied by medical certificates. That thereafter, a one sided inquiry was conducted and the competent authority, on the basis of one sided inquiry awarded him major punishment of removal from service vide and his absence period was treated as leave without pay vide order dated 23.08.2011. That against the impugned order, the appellant filed a departmental appeal which was also rejected by the Appellate Authority vide order dated 15.02.2012, hence the instant service appeal.

3. We have heard the arguments of learned counsel for the appellant and learned Government Pleader for official respondents No. 1 to 4 and have gone through the record available on file.

4. Learned counsel for the appellant argued before the court that despite the facts that the appellant was ill and was bed ridden, he was proceeded against without taking into consideration his medical certificates. That a one sided inquiry was conducted against the appellant and Competent Authority without any justification ordered his removal from service and also treated his absence period as leave without pay which fall within the preview of double jeopardy. That since the impugned order is illegal, therefore the same may be set-aside and the appellant be reinstated into service with all back benefits.

5. The learned Government Pleader on contrary argued before the court that the appellant was rightly removed from service as he willfully absented himself from duty. That the Competent Authority has adopted all the legal requirements before awarding him major punishment. That the appeal in hand is without any merits, hence may be dismissed.

6. Perusal of the case file reveals that the appellant while serving as Frontier Reserve Police, D.I.Khan was issued charge sheet alongwith statement of allegations on the ground

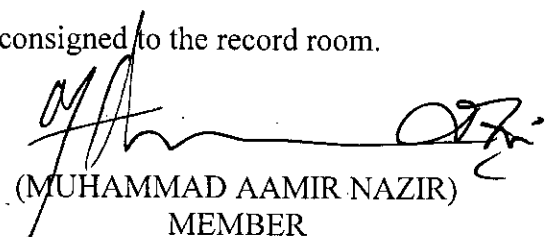
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26.09.16

of his willful absence from duty with effect from 06.06.2011 till date. The appellant in response to charge-sheet and statement of allegations, submitted a reply stating therein that due to serious ailment, the doctor had advised him complete bed rest. Though the application of appellant was supported medical certificate yet, the Competent Authority initiated an inquiry against the appellant. The inquiry officer conducted a one sided inquiry without associating the appellant with inquiry proceedings. The inquiry officer has also not taken into consideration of plea of illness of the appellant and recommended him for major punishment. Similarly, the Competent Authority while considering the defective inquiry report, awarded the appellant major punishment of removal from service and has also treated the absence period of the appellant as leave without pay which is not justifiable under the law as it comes within the preview of double jeopardy. The Appellate Authority has also not considered the plea of ailment of the appellant and has rejected the departmental appeal vide order dated 15.02.2012. The respondents were bound to have associated the appellant with the inquiry proceedings while providing him full opportunity of defense and there-after should have passed an appropriate order justifiable under the law. The impugned removal order suffered illegality on two scores, Firstly, the impugned order is based on one sided inquiry and secondly in the impugned order, appellant was awarded two punishment for single act of absence, one removal from service and other treating his absence period as leave without pay which is illegal and not warranted under the law. Hence, we are inclined to set-aside the impugned order dated 23.08.2011 and reinstate the appellant in service, while remand the case to the Competent Authority to conduct a de-novo inquiry against the appellant within two months for the date of receipt of this order by providing him full opportunity of defense and thereafter passed an appropriate order. The issue of salary and back benefits of the appellant will be subject to the de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
26.09.2016



(ABDUL LATIF)
MEMBER



(MUHAMMAD AAMIR NAZIR)
MEMBER

23.05.2016

Counsel for the appellant and Mr. Muhammad Asif, H.C alongwith Mr. Farkhaj Sikandar, GP for respondents present. Arguments partly heard. Since the enquiry report is not available on file, therefore, representative of the respondents is directed to submit enquiry report alongwith all relevant record on the next date. To come up for such record and further arguments on 26.09.2016 at camp court D.I. Khan.



Member



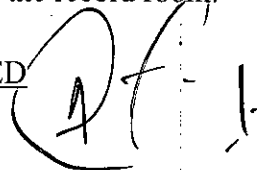
Member
Camp Court D.I.Khan

26.09.2016

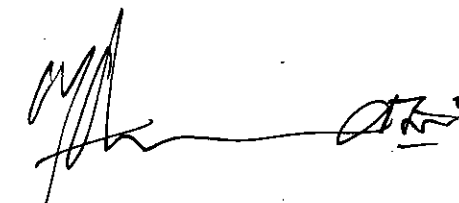
Counsel for the appellant and Mr. Farhaj Sikandar, Government Pleader for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today consist of three pages placed on file, we are inclined to set-aside the impugned order dated 23.08.2011 and reinstate the appellant in service, while remand the case to the Competent Authority to conduct a de-novo inquiry against the appellant within two months for the date of receipt of this order by providing him full opportunity of defense and thereafter passed an appropriate order. The issue of salary and back benefits of the appellant will be subject to the de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
26.09.2016



(ABDUL LATIF)
MEMBER



(MUHAMMAD AAMIR NAZIR)
MEMBER
Camp Court D.I.Khan

461/2013

26.10.2015


Appellant with counsel and Mr. Farhaj Sikandar, GP for the respondents present. The Bench is incomplete, therefore, case to come up for arguments at camp court, D.I.Khan on 29-12-15.


MEMBER
Camp court, D.I.Khan

25.04.2016

Counsel for the appellant and Mr. Imtiaz Khan, DSP (Legal) alongwith Mr. Farkhaj Sikandar, GP for respondents present. Arguments heard. To come up for order on 23.05.2016 at camp court D.I Khan.


Member


Member
Camp Court D.I. Khan

30-9-14. Counsel for the appellant and M. Nazir, H.C.
for respondents with G.P. present. Case adjourned
to 25-11-2014 for rejoinder at Camp Court, D.I.K.

L.S.O.
Registrar
Camp Court, D.I.K.

25-11-2014

Present as before on 30-9-14. Since the
Tribunal is incomplete, therefore, this case is adjourned
to 24-2-2015 for rejoinder at camp court, D.I.K.

L.S.O.
Registrar
Camp Court, D.I.K.

24-2-15.

Appellant in person and Nazir Ahmed, H.C.
for respondents with G.P. present. Rejoinder
received, copy whereof is handed over to
G.P. for arguments on 26-5-2015 at camp court,
D.I.Khan.

Member
Camp Court, D.I.K.

26.05.2015

Clerk of counsel for the appellant and Mr. Farhaj
Sikandar, GP for the respondents present. Due to general strike of
the legal fraternity, counsel for the appellant is not available. To
come up for arguments on 26.10.2015 at camp court, D.I.Khan.

MEMBER
Camp court, D.I.Khan

29-10-2013

Appellant's counsel for the appellant and G.F. present. Arguments with not be heard due to incomplete bench. Case adjourned to 25-2-2014 at Camp Court D.F. Khan for separate arguments.

Members
Camp Court, D.F. Khan

Present as before i.e. 29-10-2013. Minutes of 5.1. and G.F. filed application for restoration of separate arguments against respondents. Separate arguments may not be heard due to incomplete bench. To come up for separate arguments on 25-3-2014 at Camp Court, D.F. Khan.

Members
Camp Court, D.F. Khan

25-2-2013

Appellant with counsel and G.F. the respondents present. Application for setting aside separate order accepted and respondents are restored. Written reply on behalf of respondents received, copy whereof is handed over to appellant for respondent, if any. To come up for separate arguments on 24-6-2014 at Camp Court, D.F. Khan.

25-3-2014

Members
Camp Court, D.F. Khan

Appellant with counsel and G.F. the respondents present. Respondent not received. To come up for separate arguments on 30-7-14 at Camp Court, D.F. Khan.

Members
Camp Court, D.F. Khan


24-7-14

The appeal of Mr. Muhammad Ismail Ex-constable received today i.e. on 17/01/2013 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days:-

Copies of departmental appeal/representations mentioned in memo of appeal are not attached with the appeal which may be placed on it.

No. 129 /S.T,

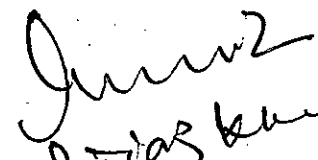
Dt. 17-1 /2013.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

MR. GUL TIAZ KHAN MARWAT ADV.
HIGH COURT D. J. KHAN

Re submitted with the remarks
that the appellant is not in a
possession of the documents in
question and in this respect application
to dispense with the same is
attached with the appeal.

19.2.2013


Gul Tiaz Khan
Mowat
Advocate
D. J. Khan

BEFORE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal # 461 /2013

Muhammad Ismail(Appellant)

Versus

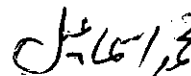
Government of Khyber Pakhtunkhwa & others.... (Respondents)

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Dated: 15/01/2013

Your Humble Appellant


Muhammad Ismail,

Through counsel


GUL TIAZ KHAN MARWAT,
Advocate High Court

26-3-2013.

Appellant with counsel present. No one is present on behalf of respondents despite proper service upon them. However Court, Pleader is present. He is directed to ensure attendance of respondents No. 1 to 4 on next date. Private respondents no. 546 also absent despite proper service on them, proceeded against ex parte. To come up for written reply on 23-4-13 at Camp Court, D.I. Khan.

Member
Camp Court, D.I. Khan

23-4-2013.

Appellant with counsel present. No one is present on behalf of respondents No. 1 to 4, proceeded against ex parte. Respondents No. 546 has already been proceeded against ex parte. To come up for ex parte arguments on 28-5-2013 at Camp Court, D.I. Khan.

Member
Camp Court, D.I. Khan

28-5-13.

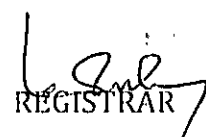



Counsel for the appellant present. The B/Bench could not proceed to D.I. Khan owing to promulgation of KPK ordinance no. 11 of 2013. Case adjourned to 29-10-2013 for ex parte arguments at Camp Court, D.I. Khan.

Registry
Camp Court, D.I. Khan

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 461/2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	20/02/2013	<p>The appeal of Mr. Muhammad Ismail resubmitted today by Mr. Gul Tiaz Khan Marwat Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	22-2-2013	<p>This case is entrusted to touring Bench D.I.Khan for preliminary hearing to be put up there on <u>25-2-2013</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
<p style="font-size: small;">Appellant deposited security of process fee Rs. 240/- Bank receipt is attached with file</p> <p style="font-size: small;">26.02.2013.</p> <p style="font-size: small;"></p>	<p>Appellant with counsel present and heard. The learned counsel for the appellant contended that the appellant has not been treated in accordance with the law. He was removed from service only on account of absence from duty and the absence period has ^{been} also treated as leave without pay. The learned counsel further contended that the appellant was not associated with the enquiry. He was also condemned unheard. Thus the appellant has been discriminated. Points raised need consideration. Admit subject to all just exceptions, including limitation. Process fee and security be deposited within 10 days. Thereafter notices be issued to the respondents for submission of written reply on 26.3.2013 at camp court, D.I.Khan.</p> <p style="text-align: right;"> MEMBER Camp Court, D.I.Khan</p>	

BEFORE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal # 461 /2013

Muhammad Ismail, Ex-Constable # 8170, FRP, resident of Ama
Khel, Tehsil & District Tank.....(Appellant)

~~Case No~~ **16 - 03439395237**
Versus

~~W.P. No~~
~~148~~
~~17-1-2013~~

*Ex-parte vide
order dt: 23-4-13*

- ① Government of Khyber Pakhtunkhwa through Secretary Home, Civil Secretariat, Peshawar.
- ② Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- ③ Commandant, Frontier Reserve Police/Additional Inspector General of Police, Peshawar.
- ④ Superintendent of Police, Frontier Reserve Police, D.I.Khan.
- ⑤ Gul Manan, the then Line Officer/Inquiry Officer, FRP Dera Ismail Khan.
- ⑥ Alao ud Din, Line Officer/Inquiry Officer, FRP Dera Ismail Khan.....(Respondents)

*Ex-parte vide
order dt 26-3-13*
*Ex-parte against
respondents restored vide
order sheet dt 25-3-14.*

17/1/2013

~~re-submitted to~~
~~and filed.~~

20/2/13

Appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order bearing # 3630 dated 13.12.12 of respondent-2 and order bearing # 994-95/EC dated 15.02.2012 passed by respondent-3 vide which appeal of the appellant for reinstatement in service against the order bearing # OB # 801/FRP dated 23.08.2011 passed by respondent-4 was rejected/ filed.

Respectfully Sheweth:

Guinn

- 1\ That the appellant was appointed in Frontier Reserve Police, D.I.Khan and after joining the service, the appellant was performing his duty to the entire satisfaction of his superiors.

- 2\ That the appellant fell-ill on 06.06.2011 and he was examined by Dr. Falak Naaz, Medical Officer, Frontier Constabulary/Police Hospital, Tank and was advised bed rest for one month and after lapse of one month, the appellant was again appeared before the aforesaid doctor on 06.07.2011 and he was again advised by the aforesaid doctor for one month and four days bed rest. Copies of medical certificates are enclosed as **Annex-A&B** respectively.
- 3\ That the appellant while on bed ridden, respondent-4 issued charge sheet and statement of allegations to him vide order/letter bearing # 1312-13/FRP dated 27.07.2011 wherein the appellant has been charge sheeted for absence from duty w.e.f 06.06.2011 and directions were made to respondents-5 for conducting inquiry against the appellant. Copies of charge sheet and statement of allegations under the Provisions of Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 are enclosed as **Annex-C&D** respectively.
- 4\ That the appellant submitted reply to the charge sheet and statement of allegations accompanied by medical certificates. Copy of reply is enclosed as **Annex-E**.
- 5\ That thereafter the Inquiry Officer/respondent-6 submitted inquiry report/ findings on 13.08.2011 but the aforesaid report was not communicated to the appellant and thereafter the appellant was served with final show cause notice under the Provisions of Removal from Service (Special Powers) Ordinance, 2000 issued by respondent-4 which bearing no dispatch number and date too. Copy of final show cause notice is enclosed as **Annex-F**.
- 6\ That thereafter the appellant submitted reply to the final show cause notice on 22.08.2011 wherein the appellant relied on the earlier reply of charge sheet and statement of allegations and sought indulgence of respondents to consider the medical certificates of the appellant. Copy of reply to final show cause notice is enclosed as **Annex-G**.

Annex

- 7\ That thereafter without providing an opportunity of personal hearing, respondent-4 announced order bearing # OB 801/FRP dated 23.08.2011 vide which the appellant was punished twice as on one hand major penalty of removal from service from the date of absence i.e., 06.06.2011 till passing order and also the absence period was ordered to be treated as leave without pay. Copy of order dated 23.08.2011 is enclosed as **Annex-H.**
- 8\ That after the issuance of order of removal from service, the appellant then submitted representation to the next Higher Authority, i.e., respondent-3 which was rejected vide order dated 994-95/EC dated 15.02.2012 vide which representation of the appellant was rejected as barred by 77 days. Copy of order of respondent-3 dated ~~15.08~~ 15.02.2012 is enclosed as **Annex-I.**
- 9\ That the appellant then submitted departmental appeal to the next Higher Authority, i.e., respondent-2, who is head of Police of the Province in Police Hierarchy which has been filed without assigning any reason on 13.12.2012. Copy of letter/order dated 13.12.2012 is enclosed as **Annex-J.**
- 10\ That having no other remedy, the appellant is obliged to seek indulgence of this learned Tribunal under its appellate jurisdiction for redressal of his grievance inter alia on the following grounds amongst others:-

GROUND:

- A) That the impugned action/order of respondent-4 to initiate proceedings under Special Powers Ordinance, 2000 is illegal, unconstitutional, malafide as the appellant was not associated in the inquiry and the material produced by the appellant was not considered as neither the doctor, who issued the medical certificates, was examined by the Inquiry Officer nor the original record of medical certificates was requisitioned or exhibited during the inquiry proceedings.
- B) That the impugned action/order of respondent-4 to issue order of removal from service and treating the absence period as leave

Grant

without pay is not sustainable under the law as no government servant can be punished without holding regular inquiry and without providing an opportunity of personal hearing but the appellant was punished without observing all the legal and mandatory formalities and requirements of law.

- C) That the major penalty of removal from service imposed by the appellant by respondent-4 is against law and facts as neither the appellant was associated in the so-called inquiry proceedings nor the appellant was asked to produce witnesses and inquiry was conducted in slipshod manner and even the original medical certificates produced the appellant was not considered by the respondents.
- D) That the inquiry report was not supplied to the appellant along with the final show cause notice which is against law as laid down by the august Supreme Court of Pakistan in a case report as PLD 1981 SC = 176 - and followed by superior courts till today.
- E) That the final show cause notice is also defective for the reasons that the same do not bear any date and number and the proposed major penalty which was to be proposed has not been specified and without specification of major penalty the final show cause notice is purposeless and of no effect and further the appellant was not asked to be heard in person and on this score alone the order of imposition of major penalty of removal from service is liable to be set aside/recalled.
- F) That the order of imposition of major penalty of removal from service is tantamount to double jeopardy as on one hand the appellant has been deprived of his lost piece of morsel by ousting him from service as a consequence of imposition of major penalty while on the other hand the period of absence from duty has been order to be treated as leave without pay and on this score alone, the impugned order of respondent-4 is liable to be set aside.

Qureshi

- G) That the appellant has been meted out discriminatory treatment and he has not been treated under the law as required under the Provisions of Fundamental Rights granted under the constitution of Islamic Republic of Pakistan.
- H) That the appellant has been penalized on the pretext of so called absence from duty for the period from 06.06.2011 to 10.08.2011 which is the period when the appellant was ill and confined to bed and the circumstances were beyond his control.
- I) That besides all these legal defects, the appellant has not been provided an opportunity of personal hearing which is must under the law.
- J) That the action/order of the competent authorities/ respondents-2 & 3 of disposal of representation/departmental appeal without assigning any reason is also against the provisions of General Clauses Act and the law as laid down by the august Supreme Court of Pakistan.
- K) That the initial order of constitution of Inquiry under the Provisions of Special Powers Ordinance, 2000 and all subsequent actions taken against the appellant are void, ab-initio, illegal and without jurisdiction and it is a settled principal of law that when the initial order is void, then the superstructure built thereon shall have to fall on the ground automatically.
- L) That the appellant is jobless from the date of his removal from service and he has never been gainfully employed elsewhere.
- M) That counsel for the appellant may please be allowed to raise additional grounds during the course of arguments.

In view of the submissions made above, it is respectfully prayed that on acceptance of this appeal, the order of removal from service of appellant bearing # OB 801/FRP dated 23.08.2012 may graciously be set aside/recalled and appellant may please be reinstated into the service with all full back benefits as the appellant is jobless till today.

Amir

Any other relief if this Hon'ble Court deems fit may also be awarded.

Your Humble Appellant

Muhammad Ismail
Muhammad Ismail,

Dated: 15/01/2013.

Through Counsel

Gul Tiaz Khan Marwat

Gul Tiaz Khan Marwat,
Advocate High Court

Certificate


Certified at Dera Ismail Khan today on 15th Jan 2013 that the contents of the appeal are true and correct.

Muhammad Ismail
APPELLANT

AFFIDAVIT

I, Muhammad Ismail, Ex-Constable # 8170/appellant do hereby swear on Oath that all parawise contents of this appeal are true and correct to the best of my knowledge, belief and information and that nothing has been kept secret from this Honourable Court.

Muhammad Ismail
DEPONENT

Ali Akbar


BEFORE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA, PESHAWAR

CM # _____/

In

Service Appeal # _____/2013

Muhammad Ismail(Appellant)

Versus

Government of Khyber Pakhtunkhwa & others....(Respondents)

APPLICATION UNDER SECTION 5/14 OF LIMITATION
ACT FOR CONDONATION OF DELAY

Respectfully Sheweth:

1. That the appeal is being filed in this Honourable Tribunal.
2. That the impugned order of rejection of appeal bearing # OB 801/FRP dated 23.08.2012 by respondent-4 was never communicated to the appellant after its issuance and as and when the appellant came to know about the impugned order of respondent-4, the appellant then submitted representation before respondent-3 which was rejected on 15.02.2012 as barred by 77 days.
3. That the aforesaid order dated 15.02.2012 passed by respondent-3 was also not communicated to the appellant officially therefore the appellant was not in knowledge of the impugned order of rejection of representation by respondent-3 and when he came to know the appellant there and then sought the indulgence of respondent-2/Inspector General of Police, Khyber Pakhtunkhwa, who is Provincial Head of Police Department and filed further appeal before him which was filed on 13.12.2012 and the order dated 13.12.2012 was received by the appellant on 19.12.12 hence the instant service appeal.

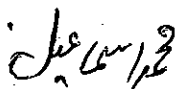
Guind

4. That the Provincial Police Officer/Inspector General of Police, respondent-2 is the Highest Departmental Authority in the Police Hierarchy and ~~the~~ right and remedy or revision/review is also provided under the Civil Servants Act and Rules, therefore, filing of further appeal by the appellant before respondent-2 is fully competent for redressal of grievances of the appellant.
5. That being ordinary citizen residing in the backward area/village of District Tank and due to lack of information and knowledge about the disposal of representations/departamental appeal, could not seek the remedies within time as the circumstances were beyond the control of the appellant.
6. That this Honourable Tribunal has vast powers and jurisdiction to condone the delay in filing of appeal as delayed has already been ~~done~~ ^{condone} by this learned Tribunal in various reported judgments and unreported judgments which will be referred by the counsel for the appellant at the time of hearing.

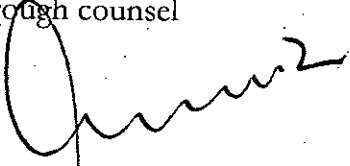
It is therefore, prayed that on acceptance of instant application, this Honourable Tribunal may graciously be pleased to condone the delay in filing of instant appeal, in the interest of justice.

Dated: 15/01/2013

Your Humble Appellant


Muhammad Ismail,

Through counsel


Gul Tiaz Khan Marwat,
Advocate High Court

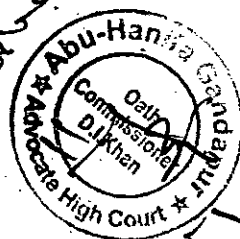
Affidavit:

I, Muhammad Ismail, Ex-Constable # 8170/appellant do hereby swear on Oath that all parawise contents of accompanying application are true and correct to the best of my knowledge,

belief and information and that nothing has been kept secret from
this Honourable Court.

Abu Hanifa

DEPONENT

Abu Hanifa

78/11/13

BEFORE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA, PESHAWAR

CM # _____/

In

Service Appeal # _____/2013

Muhammad Ismail(Appellant)

Versus

Government of Khyber Pakhtunkhwa & others....(Respondents)

APPLICATION UNDER SECTION 151 C.P.C
CONTAINING THE REQUEST TO DISPENSE WITH
THE PRODUCTION OF ORDER OF REJECTION/
DISMISSAL OF DEPARTMENTAL APPEAL

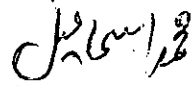
Respectfully Sheweth:

1. That the appeal is being filed in this Honourable Tribunal.
2. That the copies of representation to respondent-3 and appeal to respondent-2 are not available with the appellant, therefore, the same could not be annexed with the appeal.

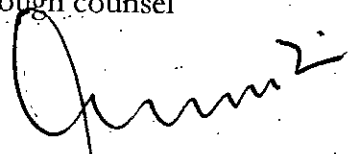
It is therefore, requested that production of order of rejection/dismissal of representation of department appeal may please be dispensed with and the appeal may please be decided on the available record.

Dated: 15/01/2013

Your Humble Appellant


Muhammad Ismail,

Through counsel

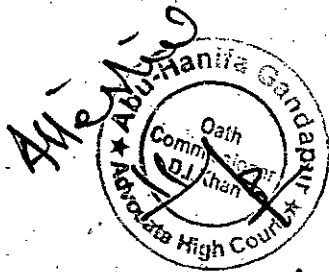

Gul Tiaz Khan Marwat,
Advocate High Court

Affidavit:

I, Muhammad Ismail, Ex-Constable # 8170/appellant do hereby swear on Oath that all parawise contents of accompanying application are true and correct to the best of my knowledge, belief and information and that nothing has been kept secret from this Honourable Court.

Muhammad Ismail

DEPONENT



5/11/13

12

Annex - A

①

OUT DOOR PATIENT TICKET

~~Dr. F. Hospital~~

District TAMIL

Sent To:

Facility Name 101/2

Name 8170

Age:

Sex:

Father's / Husband's Name Faizal

Yearly OPD No. 313

Monthly OPD No. 15

Provisional Diagnosis: Infective Hepatitis

Date 6/6/2011

Clinical Findings / Investigations / Treatment / Referred

Re - conf. visit 15/1/13

- Conf. 10/10/11

- Conf. 2/2/12

- Conf. 2/2/12

Admitted to hospital Home
for one month.

Dr. Falak Nazki
M.Y.O.P.C. & Public Health
15/1/13

NHIRC-MOH-GOP-DHIS-1-5(6)

Attested
Jumz
Advocate
15/1/13

B

13

OUT DOOR PATIENT TICKET

Shree Hospital

Health Department

Date

District: TANK

Sent To:

Facility Name: Juni 3

Name: 8170 134 Age: Sex:

Father's / Husband's Name: Police Const. B. B.

Yearly OPD No. 394 Monthly OPD No. 15

Provisional Diagnosis: Infective Hepatitis

Date	Clinical Findings / Investigations / Treatment / Referred
6/2/2011	<p>Rp - esp. essential 0.6 0.1 x 14 - sup. jct. 0.2 0.6 0.1 x 2+2+2 - Col. 0.2 0.1 x 2+2+2</p> <p>Admitted bed rest at Home for one month & Follow up</p> <p><u>Juni</u> B. Dr. Falg. 102 M/O F. 102 Hospital Tank</p>

Attested
Juni
 Adv. 15/1/13

C
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CHARGE SHEET

I, MR. AMAN ULLAH KHAN, SUPERINTENDENT OF POLICE

FRP D.I.KHAN RANGE, D.I.KHAN, as competent authority, hereby charge you
Constable Ismail No.8170/FRP as follow:

That according to Daily Diary Report Mad No.10 dated 06.06.2011, of Police Line FRP, D.I.Khan, you absented your self from law-full duties with effect from 06.06.2011 to till date with out any leave or permission.

This act on your part reflects lack interest towards the performance of your duties and also gross misconduct, which is punishable under the rules.

2. By reasons of the above, you appear to be guilty of misconduct under section-3 of the NWFP (Removal From Service) Special Powers, Ord, 2000 and have rendered yourself liable to all or any of penalties in section-3 of the ordinance ibid.

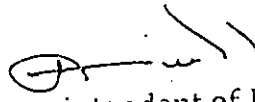
3. You are therefore required to submit your written defence within seven days of the receipt of this charge sheet to the Enquiry Officer.

4. Your written defence, if any should reach the enquiry officer/committee within the specified period failing which if shall be presumed that you have no defence to put in and in that case ex-parte action shall follow against you.

5. Intimate whether you desire to be heard in person.

6. A statement of allegation is enclosed.

Ahmad
D. I. Khan (K.P.K)
Bur
D. I. Khan (K.P.K)
15/1/13


Superintendent of Police,
FRP, D.I.Khan Range D.I.Khan.

D
1.5

DISCIPLINARY ACTION

I, MR. AMAN ULLAH KHAN SUPERINTENDENT OF POLICE FRP, D.I.KHAN RANGE, as competent authority am of opinion that .
You Constable Ismail No.8170 /FRP, have rendered yourself liable to be proceeded against and committed the following acts/omissions within the meaning of section-3 of the NWFP removal from service (Spl: power) Ord: 2000.

STATEMENT OF ALLEGATION.

That according to Daily Diary Report Mad No.10 dated 06.06.2011, of Police Line FRP, D.I.Khan, you absented your self from law-full duties with effect from 06.06.2011 to till date with out any leave or permission.

This act on your part reflects lack interest towards the performance of Your duties and also gross misconduct. which is punishable under the rules.

Hence the statement of allegation.

2. For the purpose of scrutinizing the said defaulter with reference to the above allegation Mr. GUL MANAN KHAN LINE OFFICER/FRP D.I.Khan is appointed as Enquiry Officer to conduct proper Departmental Enquiry under section-3 of the ordinance.
3. The enquiry officer shall in accordance with the provision of the ordinance, provide reasonable opportunity of the hearing to the defaulter, record its findings and make with in twenty five days of the receipt of this order recommendations as to punishment or other appropriate action against the defaulter.
4. The defaulter and a well conversant representative of the department shall join the proceedings on the date time and place fixed by the Enquiry Officers.

(Signature)
(Gul Tiaz Khan (Marwa)
Advocate High Court
Dera Ismail Khan
Dera Ismail Khan (K.P.K.)

(Signature)
Superintendent of Police,
FRP, D.I.Khan Range, D.I.Khan.

No. 1312-13 FRP, dated D.I.Khan the 27/07 /2011.

Copy to:-

1. Mr. GUL MANAN KHAN LINE OFFICER /FRP D.I.Khan, the enquiry officer Initiating proceedings against the defaulter under the provision of NWFP Removal from Service Special Ordinance-2000, enquiry papers counting ___ pages are enclosed.
2. Constable Ismail No.8170 /FRP, with the direction to appear before the E.O on the date, time and place fixed by the E.O for the purpose of enquiry proceeding.

FINAL SHOW CAUSE NOTICE.

I, MR. AMAN ULLAH KHAN, Superintendent of Police, FRP, D.I.Khan as competent authority under the NWFP, removal from service (Special Powers) Ordinance-2000 (Amendment 2005), do hereby served you Recruit Constable Ismail No.8170/FRP, as follow :-

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1. (i) That consequent upon the completion of enquiry conducted against you by the Enquiry Committee/ Officer for which you were given opportunity of hearing vide this office Communicator No.1312-13/FRP, dated 27.07.2011.
(ii) On going through the findings and recommendation of the enquiry officer, the material on record and other connected papers including your defense before the said committee.

I am satisfied that you have committed the following acts/omissions specified in section-3 of the said ordinance.

According to Daily Diary report vide Mad No.10, dated 06.06.2011 of FRP Police Line, Distt: D.I.Khan, you absented your-self from law-full duties with effect from 06.06.2011 to till date, with-out any leave or permission.

This act on your part reflect lack of interest towards the performance of official duties, which is punishable under the rules.

2. As a result thereof, I MR. AMAN ULLAH KHAN, Superintendent of Police, FRP, D.I.Khan Range, D.I.Khan as competent authority have tentatively decided to impose upon you the penalty of Major/ Minor punishment U/S 3 of the said ordinance.

3. You are, therefore, required to Show Cause as to why the aforesaid penalty should not be imposed upon you.

4. If no reply to this notice is received within 15-days of its deliver, in the normal course of circumstances. It shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

5. The copy of finding of the Enquiry Officer is enclosed.

Attested
Signature
Date 15/1/13

Superintendent of Police,
FRP, D.I.Khan Range, D.I.Khan.

فہرست

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18

مہاراجہ

معمول ہوں کہ میرا وی بیان ہے۔ تم ہاں اس کا
7:15 بجے بیان کیا ہے معافی کا طلبہ مار ہوں اس
دی ہوا ہے سن R کنٹیل فرم اسماء FRP 8170
پولیس اس آر

Attest
Gul Tiaz Khan

محمد اسماعیل خان

22-8-2011

Gul Tiaz Khan (Marwat)
Advocate High Court
Distt: Bar
Dera Ismail Khan (K. P.K.)

15/1/13

ORDER:-

This Order will dispose off departmental enquiry conducted against Recruit Constable Muhammad Ismail No.8170/ FRP, of FRP, D.I.Khan Range, on the Charges that according to Daily Diary reports vide Mad No.10, dated 06.06.2011, of FRP Police Line, Distt: D.I.Khan, he absented himself from law-full duties with effect from 06.06.2011 to till date, with-out any leave or permission.

On the basis of his above, he was proceeded against departmentally and served with proper Charge Sheet and Statement of allegations. Mr. ALLOU-UD-DIN KHAN LINE OFFICER/FRP D.I.KHAN, was appointed as Enquiry Officer. After completion of all codal formalities, the Enquiry Officer submitted his finding report along-with other relevant papers, where in he recommended the said Constable for Major Punishment i.e Removal from service from the date of absence i.e 06.06.2011. He was served with Final Show Cause Notice on 17.08.2011, reply received which was not satisfactory.

Keeping in view the facts stated above, as well as recommendation of enquiry officer, I MR. AMAN ULLAH KHAN, Superintendent of Police FRP D.I.Khan Range, D.I.Khan, in exercise of powers conferred upon me under the NWFP Removal from Service (Special Powers) Ord:- 2000 Amendment Act- 2005, hereby award Recruit Constable Muhammad Ismail No.8170/FRP, Major Punishment of Removal from service from the date of absence i.e 06.06.2011, and his period of absence i.e 06.06.2011 to till date, is treated as leave with-out pay.

ORDER ANNOUNCED.

Dated. 22.08.2011.

OB No. 801 /FRP

Dated 23 /08/2011.

(AMAN ULLAH KHAN)
Superintendent of Police,
FRP, D.I.Khan Range, D.I.Khan.

Gul Tiaz Khan (Marwal)
Advocate
Distt: Dera Ismail Khan
Dera Ismail Khan

15/1/13

H
19

ORDER.

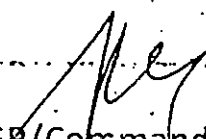
9

-- This order shall dispose off on the appeal of Ex- Recruit constable Mohammad Ismail No. 8170 of FRP DIKhan Range against the order of SP FRP DIKhan Range wherein he was removed from service.

20

Brief facts of the case are that he absented himself from duty with effect from 06.06.2011, till the date of removal from service for a total period of 77 days, without any leave permission of the competent authority. He was issued charge sheet/statement of allegation and LO of FRP DIKhan Range was appointed as enquiry officer. After enquiry the enquiry officer submitted his finding and recommended the recruit defaulter for major punishment. He was issued final show cause but his reply found not satisfactory. Therefore he was removed from service by SP FRP DIKhan vide OB No. 801 dated 23.08.2011. His appeal Too time barred.

However from the perusal of record and finding of Enquiry officer there are no cogent reason to interfere in the order of SP FRP DIKhan Range. Therefore his appeal is rejected.

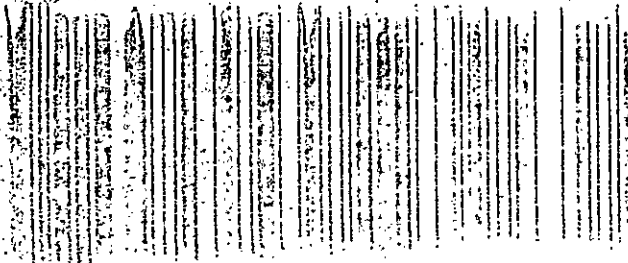

Addl: IGP/Commandant
Frontier Reserve Police
Khyber Pakhtunkhwa Peshawar.

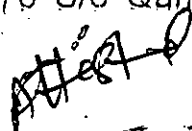
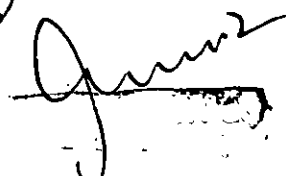
No. 994-95 /IEC dated Peshawar the 15 / 02 / 2012.

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

1. Superintendent of P. FRP DIKhan Range, w/r to his Memo. No. 212 dated 09.02.2012. Service record and departmental Enquiry file are returned herewith for record in your office.

✓ Ex-Constable Mohammad Ismail No. 8170 S/o Qamar Zaman R/o



15/1/13

From: - The Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.

To: - The Addl: IGP/Commandant,
FRP Khyber Pakhtunkhwa,
Peshawar.

No 7832 /Legal Dated Peshawar the, 13-12- /2012.


Subject:- APPLICATION FOR REINSTATEMENT IN SERVICE.

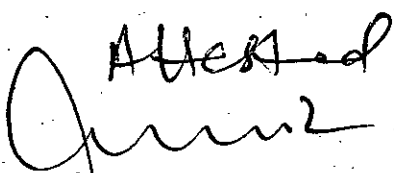
Memo:-

Please refer to your office letter No. 6404/EC, dated 27.11.2012 on the case noted above in the subject.

Application of ex-constable Muhammad Ismail No. 8170 of FRP DIKhan Range for re-instatement in service was examined by the competent authority and filed.

His Service record along with departmental enquiry file is sent herewith being no more required by this office.


(MOHAMMAD FAYAZ KHAN)
AIG/LEGAL,
For Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.

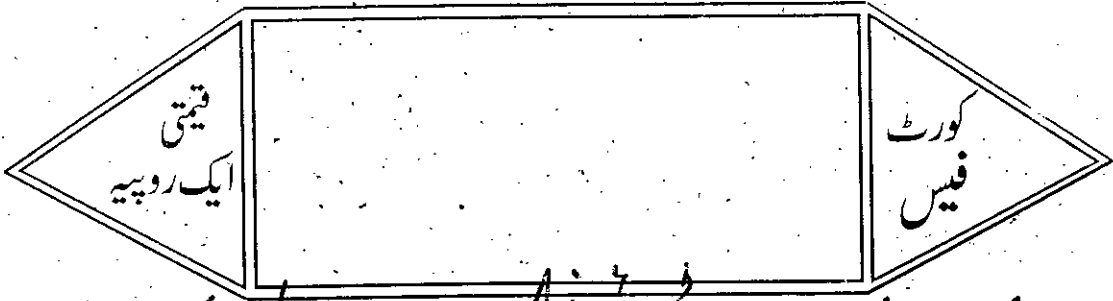

Attested

Adl. J. Court
Peshawar

15/1/13

وکالت نامہ

22



بعد ازاں جناب سر جسٹس فیروز خان کراچی نے اپنی عدالت میں ایک روپیہ کی قیمت پر دعویٰ یا جرم

تفصیل دعویٰ یا جرم

مقدمہ مندرجہ بالا عنوان میں اپنی طرف واسطے برودی و جواب دہی برائے پیشوا تصفیہ مقدمہ ملک تمام ڈیرہ / لٹا اور

کو حسب ذیل شرائط پر وکیل مقرر کیا ہے کہ میں پیشی پر خود یا ہذا بذریعہ رو برو عدالت حاضر ہوتا رہوں گا اور ہر وقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر عدالت کروں گا اگر پیشی پر منظر حاضر نہ ہو اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے نیز وکیل صاحب موصوف صدر مقام کچہری کے علاوہ یا کچہری کے اوقات سے پہلے یا پچھے یا بروز تعطیل برودی کرنے کے ذمہ دار نہ ہوں گے اور مقدمہ صدر کچہری کے علاوہ اور جگہ ساعت ہونے یا بروز تعطیل یا کچہری کے اوقات کے آگے یا پچھے پیش ہونے پر منظر کوئی نقصان پہنچے تو اس کے ذمہ دار یا اسکے واسطے کسی معاوضہ کے ادا کرنے یا عمت نہ دہاں کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے مجھ کو کل ساختہ پر واخذت صاحب موصوف مش کردہ ذات خود منظور قبول ہوگا اور صاحب موصوف کو عرض دعویٰ یا جواب دعویٰ یا درخواست اجراء اسمائے ذگری نظرہانی اہل گمرانی و ہر قسم درخواست ہر قسم کے بیان دینے اور پر خالی یا راشنی نامہ فیصلہ بر حلف کرنے اقبال دعویٰ کا بھی اختیار ہوگا اور بصورت مقرر ہونے تاریخ پیشی مقدمہ مذکور بیرون از کچہری صدر برودی مقدمہ مذکور نظرہانی اہل گمرانی و درآمدی مقدمہ یا مشوقی ذگری یک طرفہ یا درخواست حکم اتمامی یا قرنی یا گرفتاری قبل از فیصلہ اجراء ذگری جن صاحب موصوف کو بشرط ادائیگی علیحدہ ضمانت برودی کا اختیار ہوگا اور تمام ساختہ پر واخذت صاحب موصوف مش کردہ از خود منظور قبول ہوگا اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہو کہ مقدمہ مذکورہ یا اس کے کسی جزو کی کارروائی یا بصورت درخواست نظر خالی اہل گمرانی یا دیگر معاملہ و مقدمہ مذکورہ کسی دوسرے وکیل یا ایڈووکیٹ کو اپنے بجائے یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانون کو بھی ہر امر میں وہی اور ویسے اختیارات حاصل ہوں گے جیسے صاحب موصوف کو حاصل ہیں اور دوران میں جو کچھ ہر جانہ التواء پڑے گا وہ صاحب موصوف کا حق ہوگا مگر صاحب موصوف کو برودی فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی برودی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔

لہذا وکالت نامہ لکھ دیا ہے تاکہ سند ہے مورخہ 15/1/2012

مضمون وکالت نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے

Attested & Accepted
Gurmit Advokat
15/1/2013

محمد اسماعیل

حسن کاہرہ سینٹر اندرون سین زرار کیٹ ڈیرہ اسماعیل

فائل انٹرنی ریورٹ

۱۱۶
صناعتی

R کیس میں ۵۱۷۵ عرصہ $\frac{8}{11}$ کا کھری سہ ماہی ہے اور
یولس لائن FRP میں لائن ہے

یہ کہ R کیس میں ذکرہ عرصہ $\frac{6}{11}$ کا یولس لائن FRP ذرا سے باقاعدہ پر مشور
غیر حاضر ہے جسکی آمدنی MHA حقواری نے کی ہے نقد غیر جاری
میرا لف ہے جس پر ذکرہ کی خواہ بند اور جاری شدہ کر کے ہوا
طلب کیا گیا وہاں سے بیان میں اپنے آپ کو بیمار بتلانا ہے کہ
سری عرصہ $\frac{6}{11}$ کو امانت طبعی قرار ہوگی۔ سوال کے ذرا کہ ہمارے
بند آپ لرا یا تو ڈاکٹر پہلے پرمان کی بیماری میں مبتلا ہے ہونے والی ٹولز
کی بعد ساہ عرصہ $\frac{6}{11}$ کا $\frac{7}{11}$ کا $\frac{8}{11}$ کا $\frac{30}{11}$ کا
پروگرام MR کی بنیاد کی MC کی اصل کا پی میرا لف ہے قبل ازین
۵۰ کل منان فان EO مقرر کیا گیا تھا۔ وہ تبدیل ہو کر من ۵۰ اعلیٰ والدین فان
مقرر کیا ہے

فائل

فائل یولس لائن ڈسپن فورس ہے ذکرہ کا کل عرصہ ۷ ماہ ۵ دن
ہے R میں ذکرہ عرصہ $\frac{6}{11}$ کا کو یولس لائن FRP ذرا سے پر مشور غیر جاری
میرا ہے ذکرہ نے واصل کی گئی جاری شدہ کے جواب میں اپنے آپ کو بیمار
بیان کیا ہے اور ساہ ہی ہے MC پیش کیجئے میرا لف ہے
ذکرہ اگر واقعی بیمار تھا تو مشور لائن سے رجسٹر بیماریاں لے کر ہسپتال جانا

اور علاج معالجہ کرنا اور میڈیکل لیٹراچر لیکن مذکورہ نے البصا
 نہ کیا۔ میڈیکل فزیکس کا دور سابقہ ہے اور لیٹریٹ سے حاصل
 نہیں کیا ہے۔ مذکورہ کا بیان چھوٹے پیمانے پر مشی لگتا ہے۔ یہ حالات
 واقعات سے پایا جاتا ہے کہ R کیٹیل مذکورہ ملوث پولیس کو
 مشی اظہارِ خیال کے بغیر چھوڑ کر ~~گھوڑا~~ ^{گھوڑا} چلا گیا ہے اور
 اے عنقریب محکمہ پولیس میں دوبارہ عاظمیٰ کی کوئی امید نہیں باقی رہی
 مذکورہ کے سابقہ ریکارڈ سے معلوم ہوا ہے کہ قبل ازیں یوم غیر عاظمیٰ
 ان کو البقاہ ^{PTC} سٹیٹو سے منع والیس ہو چکا ہے۔ دس دن سروس
 30 یوم غیر عاظمیٰ کر چکا ہے۔ مذکورہ عادی غیر عاظمیٰ باس ہے۔ سرکس اور
 پیمانہ خوب فریبی اور غیر ڈسپلن ہے۔ ان حالات میں فورس میں ملوث چھوڑنے
 کے قابل نہیں ہے

ایزا R کیٹیل محمد اسماعیل 8170 تاریخ غیر عاظمیٰ مورخہ 06/11/06 سے بدستور غیر
 عاظمیٰ جو پانچ سروس سے (Remove) کی گئی ہے اور ضرور سفارش کی جانی ہے
 اور رپورٹ ہو کر پیش گزارنی ہے

Almasud
 (علی والی خان 10)
 EO/FRP, DTK
 13-08-11

مشی عثمان
 RSP
 H2
 OHC

Issue Final
 Show Cause Notice

[Handwritten Signature]
 SP
 13/8

BEFORE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA, PESHAWAR

CM # _____/

In

Service Appeal # _____/2013

Muhammad Ismail(Appellant)

Versus

Government of Khyber Pakhtunkhwa & others....(Respondents)

APPLICATION UNDER SECTION 151 C.P.C
CONTAINING THE REQUEST TO DISPENSE WITH
THE PRODUCTION OF ORDER OF REJECTION/
DISMISSAL OF DEPARTMENTAL APPEAL

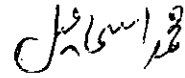
Respectfully Sheweth:

1. That the appeal is being filed in this Honourable Tribunal.
2. That the copies of representation to respondent-3 and appeal to respondent-2 are not available with the appellant, therefore, the same could not be annexed with the appeal.

It is therefore, requested that production of order of rejection/ dismissal of representation of department appeal may please be dispensed with and the appeal may please be decided on the available record.

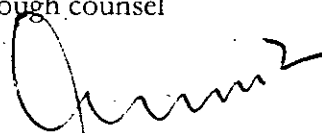
Dated: 15/01/2013

Your Humble Appellant



Muhammad Ismail,

Through counsel




Gul Tiaz Khan Marwat,
Advocate High Court

Affidavit:

I, Muhammad Ismail, Ex-Constable # 8170/appellant do hereby swear on Oath that all parawise contents of accompanying application are true and correct to the best of my knowledge, belief and information and that nothing has been kept secret from this Honourable Court.

Muhammad Ismail
DEPONENT

Affirmed

5/11/13

A
12

OUT DOOR PATIENT TICKET

①
Rajpura Hospital

District TANNA

Facility Name Joshi's

Name 81706 Age: Sex:

Father's / Husband's Name Poojit Dada

Yearly OPD No. 313 Monthly OPD No. 15

Provisional Diagnosis: Infective Hepatitis

Date
6/6/2011

Clinical Findings / Investigations / Treatment / Referred
Pr - cap. vitamin B12
- cap. subcutaneous
oc as + 100
- sup. [unclear]
oc as + 2+2+2
- colonsch. D
2+2+2
Admitted bed rest at home
for one month.

Dr. Falak Naz
M/O R.C.S. [unclear]
[unclear]

B 13

OUT DOOR PATIENT TICKET

Mirza F. e Hospital Health Department

District TANK Sent To:

Facility Name June 13

Name 8170 130 Age: 5 Sex: M

Father's /Husband's Name Police Const. Raza

Yearly OPD No. 394 Monthly OPD No. 15

Provisional Diagnosis: Infective Hepatitis

Date	Clinical Findings / Investigations / Treatment / Referred
6/2/2011	<p>RP - esp. essential 0.6 0.1 x 14 5</p> <p>- esp. jell m/z 0.6 0.1 x 2+2+2 5</p> <p>- Colonos. Di. 2+2+2</p>
<p>Admitted bed rest at Home for one month & Follow up</p>	
<p><i>[Signature]</i> Dr. Falek Naz M/O Hospital Tank</p>	

C
14

CHARGE SHEET

I, MR. AMAN ULLAH KHAN, SUPERINTENDENT OF POLICE

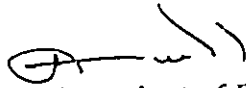
FRP D.I.KHAN RANGE, D.I.KHAN, as competent authority, hereby charge you

Constable Ismail No.8170 /FRP as follow:

That according to Daily Diary Report Mad No.10 dated 06.06.2011, of Police Line FRP, D.I.Khan, you absented your self from law-full duties with effect from 06.06.2011 to till date with out any leave or permission.

This act on your part reflects lack interest towards the performance of your duties and also gross misconduct, which is punishable under the rules.

2. By reasons of the above, you appear to be guilty of misconduct under section-3 of the NWFP (Removal From Service) Special Powers, Ord: 2000 and have rendered yourself liable to all or any of penalties in section-3 of the ordinance ibid.
3. You are therefore required to submit your written defence within seven days of the receipt of this charge sheet to the Enquiry Officer.
4. Your written defence, if any should reach the enquiry officer/committee within the specified period failing which it shall be presumed that you have no defence to put in and in that case ex-parte action shall follow against you.
5. Intimate whether you desire to be heard in person.
6. A statement of allegation is enclosed.


Superintendent of Police,
FRP, D.I.Khan Range D.I.Khan.

D 15

DISCIPLINARY ACTION

I, MR. AMAN ULLAH KHAN SUPERINTENDENT OF POLICE FRP, D.I.KHAN RANGE, as competent authority am of opinion that You Constable Ismail No.8170/FRP, have rendered yourself liable to be proceeded against and committed the following acts/omissions within the meaning of section-3 of the NWFP removal from service (Spl: power) Ord: 2000.

STATEMENT OF ALLEGATION.

That according to Daily Diary Report Mad No.10 dated 06.06.2011, of Police Line FRP, D.I.Khan, you absented your self from law-full duties with effect from 06.06.2011 to till date with out any leave or permission.

This act on your part reflects lack interest towards the performance of Your duties and also gross misconduct. which is punishable under the rules.

Hence the statement of allegation.

2. For the purpose of scrutinizing the said defaulter with reference to the above allegation Mr. GUL MANAN KHAN LINE OFFICER/FRP D.I.Khan is appointed as Enquiry Officer to conduct proper Departmental Enquiry under section-3 of the ordinance.

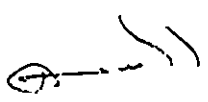
3. The enquiry officer shall in accordance with the provision of the ordinance, provide reasonable opportunity of the hearing to the defaulter, record its findings and make with in twenty five days of the receipt of this order recommendations as to punishment or other appropriate action against the defaulter.

4. The defaulter and a well conversant representative of the department shall join the proceedings on the date time and place fixed by the Enquiry Officers.

Superintendent of Police,
FRP, D.I.Khan Range, D.I.Khan.

No 1312-13 FRP, dated D.I.Khan the 27/07 /2011.

Copy to:-

1. Mr. GUL MANAN KHAN LINE OFFICER/FRP D.I.Khan, the enquiry officer Initiating proceedings against the defaulter under the provision of NWFP Removal from Service Special Ordinance -2000, enquiry papers counting ... pages are enclosed.
 2. Constable Ismail No.8170/FRP, with the direction to appear before the E.O on the date, time and place fixed by the E.O for the purpose of enquiry proceeding.
- 

FINAL SHOW CAUSE NOTICE.

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I, MR. AMAN ULLAH KHAN, Superintendent of Police, FRP, D.I.Khan as competent authority under the NWFP, removal from service(Special Powers), Ordinance-2000 (Amendment 2005), do hereby served you Recruit Constable Ismail No.8170/FRP, as follows :-

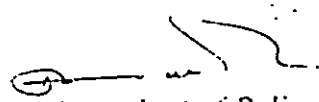
1. (i) That consequent upon the completion of enquiry conducted against you by the Enquiry Committee/ Officer for which you were given opportunity of hearing vide this office Communicator No.1312-13/FRP, dated 27.07.2011.
(ii) On going through the findings and recommendation of the enquiry officer, the material on record and other connected papers including your defense before the said committee.

I am satisfied that you have committed the following acts/omissions specified in section-3 of the said ordinance.

According to Daily Diary report vide Mad No.10, dated 06.06.2011 of FRP Police Line, Distt: D.I.Khan, you absented your-self from law-full duties with effect from 06.06.2011 to till date, with-out any leave or permission.

This act on your part reflect lack of interest towards the performance of official duties, which is punishable under the rules.

2. As a result thereof, I MR. AMAN ULLAH KHAN, Superintendent of Police, FRP, D.I.Khan Range, D.I.Khan as competent authority have tentatively decided to impose upon you the penalty of Major/ Minor punishment U/3 of the said ordinance.
3. You are, therefore, required to Show Cause as to why the aforesaid penalty should not be imposed upon you.
4. If no reply to this notice is received within 15-days of its deliver, in the normal course of circumstances. It shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.
5. The copy of finding of the Enquiry Officer is enclosed.


Superintendent of Police,
FRP, D.I.Khan Range, D.I.Khan.

جلد نمائش

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جلد نمائش

مقاموں میں کہ ...
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 ...
 ...

...

22-8-2011

ARTMENT

ORDER:-

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This Order will dispose off departmental enquiry conducted against Recruit Constable Muhammad Ismail No.8170/ FRP, of FRP, D.I.Khan Range, on the Charges that according to Daily Diary reports vide Mad No.10, dated 06.06.2011, of FRP Police Line, Distt: D.I.Khan, he absented himself from law-full duties with effect from 06.06.2011 to till date, with-out any leave or permission.

On the basis of his above, he was proceeded against departmentally and served with proper Charge Sheet and Statement of allegations. Mr. ALLOU-UD-DIN KHAN LINE OFFICER/FRP D.I.KHAN, was appointed as Enquiry Officer. After completion of all codal formalities, the Enquiry Officer submitted his finding report along-with other relevant papers, where in he recommended the said Constable for Major Punishment i.e Removal from service from the date of absence i.e 06.06.2011. He was served with Final Show Cause Notice on 17.08.2011, reply received which was not satisfactory.

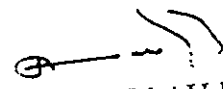
Keeping in view the facts stated above, as well as recommendation of enquiry officer, I MR. AMAN ULLAH KHAN, Superintendent of Police FRP D.I.Khan Range, D.I.Khan, in exercise of powers conferred upon me under the NWFP Removal from Service (Special Powers) Ord:- 2000 Amendment Act- 2005, hereby award Recruit Constable Muhammad Ismail No.8170/FRP, Major Punishment of Removal from service from the date of absence i.e 06.06.2011, and his period of absence i.e 06.06.2011 to till date, is treated as leave with-out pay.

ORDER ANNOUNCED.

Dated. 22.08.2011.

OB No. 801 /FRP

Dated 23 /08/2011.


(AMAN ULLAH KHAN)
Superintendent of Police,
FRP, D.I.Khan Range, D.I.Khan.

ORDER.

This order shall dispose off on the appeal of Ex- Recruit constable Mohammad Ismail No. 8170 of FRP DIKhan Range against the order of SP FRP DIKhan Range wherein he was removed from service.

Brief facts of the case are that he absented himself from duty with effect from 06.06.2011, till the date of removal from service for a total period of 77 days, without any leave permission of the competent authority. He was issued charge sheet/statement of allegation and LO of FRP DIKhan Range was appointed as enquiry officer. After enquiry, the enquiry officer submitted his finding and recommended the recruit defaulter for major punishment. He was issued final show cause but his reply found not satisfactory. Therefore he was removed from service by SP FRP DIKhan vide OB No. 801 dated 23.08.2011. His appeal Too time barred.

However from the perusal of record and finding of Enquiry officer there are no cogent reason to interfere in the order of SP FRP DIKhan Range. **Therefore his appeal is rejected.**

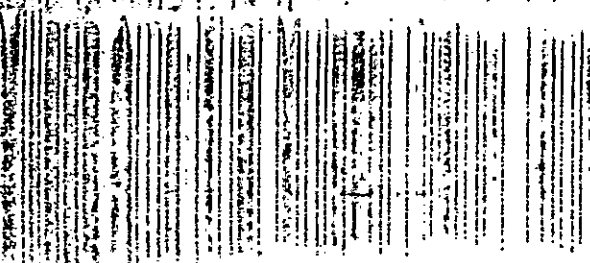
.....
Addl: IGP/Commandant
Frontier Reserve Police
Khyber Pakhtunkhwa Peshawar.

No. 994-95-IEC dated Peshawar the 15/02/2012.

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

Superintendent of P. FRP DIKhan Range, w/r to his Memo. No. 212 dated 09.02.2012. Service record and departmental Enquiry file are returned herewith for record in your office.

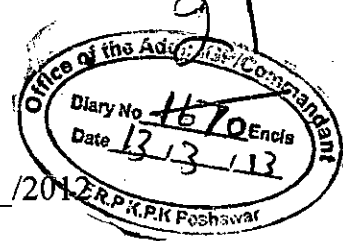
Ex-Constable Mohammad Ismail No. 8170 S/o Qamar Zaman R/o



From: - The Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.

To: - The Addl: IGP/Commandant,
FRP Khyber Pakhtunkhwa,
Peshawar.

No 76370 /Legal Dated Peshawar the, 13-12- 2012




Subject:- APPLICATION FOR REINSTATEMENT IN SERVICE.

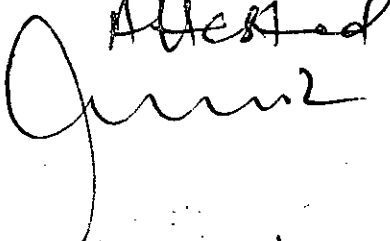
Memo:-

Please refer to your office letter No. 6404/EC, dated 27.11.2012 on the case noted above in the subject.

Application of ex-constable Muhammad Ismail No. 8170 of FRP DIKhan Range for re-instatement in service was examined by the competent authority and filed.

His Service record along with departmental enquiry file is sent herewith being no more required by this office.


(MOHAMMAD FAYAZ KHAN)
AIG/LEGAL,
For Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.

Attested


15/1/13

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA

Service Appeal No. 461/2013

Mr. Muhammad Ismail vs Govt.

APPLICATION FOR SETTING ASIDE EX- PARTE PROCEEDING AND GRANTING
INFORMATION TO FILE WRITTEN REPLY ON BEHALF OF RESPONDENTS.

Respectfully Sheweth,

The petitioner/respondent submit as under

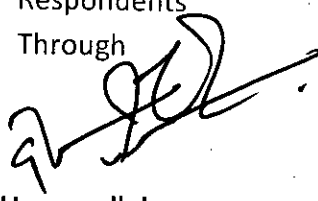
That the above mentioned appeal is fixed before the honorable tribunal for 25-2-2014.

That on 23-4-2013, the petitioner was proceeded Ex- Parte which is liable to be set-aside on the following grounds.

- a. That the absence of the petitioner was not willfully.
- b. That if the Ex- Parte is not set-aside the public interest at large will suffer irreparable loss.
- c. That the petitioner may kindly be given a chance to defend himself and the case may be decided on merit rather than technicalities.
- d. That the petitioner will attend the proceeding in future.
- e. That the applicant recently came to know about Ex- parte Proceeding therefore the application is within time.
- f. That valuable right of defendants are involved in the instant appeal, hence requires to be decided on merits.

It is, therefore, requested that the Ex- parte proceeding may graciously be set-aside and petitioner may be permitted to file written reply.

Respondents
Through


Usmanullah
S.I.Legal.

Dated: 20-02-2014

AFFIDAVIT

Stated on oath that contents of the application correct the best of my knowledge and belief and nothing concealed from this honorable Tribunal.


Deponent

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 461/2013.

Muhammad Ismail Ex- Constable Appellant

VERSUS

1. **Government of Khyber Pakhtunkhwa**, through Secretary Home, Civil Secretariat, Peshawar.
2. **Inspector General of Police**, Khyber Pakhtunkhwa, Peshawar.
3. **Commandant**, frontier Reserve Police/**Additional Inspector General of Police**, Peshawar.
4. **Superintendent of Police**, Frontier Reserve Police D I Khan.
5. **Gul Manan**, the then line officer/Inquiry Officer, FRP D I Khan
6. **Alao ud Din**, Line Officer/Inquiry Officer, FRP D I Khan..... Respondents

PRELIMINARY OBJECTIONS:

1. That the appeal is badly time-barred.
2. That the appellant has approached the Hon'ble Tribunal not with clean hands.
3. That the appeal is bad for mis-joinder and non-joinder of necessary parties?
4. That the appellant has no cause of action.
5. That the appellant is estopped due to his own conduct to file the instant appeal.

WRITTEN REPLY ON BEHALF OF RESPONDENTS IS AS UNDER:-

ON FACTS.

1. Pertains to the appellant record needs no comments.
2. Incorrect, the appellant absented himself from lawful duties with out prior permission of his superior with effect from 06.06.2011 till to date of his removal from service i.e 23.08.2011 for total period of 77 days.
3. Incorrect, on the allegation of absence the appellant was served Charge Sheet along with summary of allegation by the competent Authority and Enquiry Officer was nominated.
4. Correct to the extant that the appellant submitted reply of Charge Sheet, but the Enquiry Officer found him guilty of Charges leveled against him.
5. Correct to the extant that after fulfillment of all codal formalities the Enquiry Officer submitted findings report before the competent authority in which the appellant recommended for major punishment. The Competent Authority i.e respondent No. 4 served the appellant with Final Show Cause Notice as per law/Rules.
6. Correct to the extant that the reply of Final Show Cause Notice submitted by the appellant was found unsatisfactory.


7. Incorrect that after fulfilling all codal formalities the competent Authority removed the appellant from service.
8. Correct to the extent that Departmental Appeal submitted by the appellant was thoroughly examined and rejected on sound grounds.
9. Pertains to record. However, there is no provision of 2ND Appeal in Law.
10. Incorrect, the appellant not come to this Service Tribunal with clean hands.

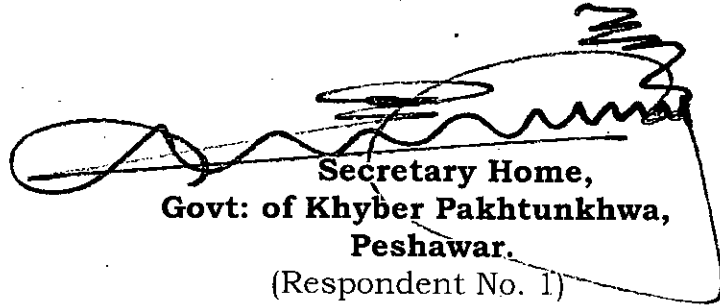
GROUND.

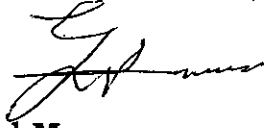
- A. Incorrect, the order of the respondents is legal and in accordance with law. Moreover the appellant was will associated with the enquiry proceedings and it is evident from Charge Sheet and Final Show Cause Notice, However the medical certificates produced by the appellant before the enquiry officer legally not considerable as the same were not issued by countersigned Authority.
- B. Incorrect, after adopting of all the codal formalities the Competent Authority correctly passed the order of removal from service of the appellant as commensurate with the gravity of his gross miss conduct.
- C. Incorrect, the Para has already explain in the preceding pares.
- D. Incorrect, the plea taken by the appellant regarding the enquiry report was supposed to take before the Competent Authority during the enquiry Proceedings. Moreover the case mentioned in the Para is not at par with case of the Appellant.
- E. Incorrect, that final Show Cause Notice was issued and served upon the appellant and his signature was obtained as token on duplicate copy of Final Show Cause Notice to which he replied but his reply was found unsatisfactory, an opportunity of personal hearing was also provided by the Competent Authority. But the appellant failed to avail the opportunity of personal hearing, Therefore the order of respondent is legally justified and in accordance with law rules.
- F. Incorrect. According to R.S.O, the Competent Authority can award one or more punishment to the guilty officials.
- G. Incorrect, the allegations are false and base less.
- H. Incorrect, that a baseless story propounded by the appellant in-fact the appellant was absented himself from lawful duty with effect from 06.06.2011 till to 23.08.2011 with out prior permission of his seniors and the Competent Authority found him guilty of the charges leveled against him.
- I. Incorrect, the Para has already explained in the preceding Para.
- J. Incorrect, that the rejection order of respondents No. 2 and 3 are legally justified and in accordance with law.
- K. Incorrect, the allegation are false and baseless, as after conducting all the codal formalities provided by law, the competent Authority issued the order of his removal from service.
- L. Incorrect, that the appellant was found guilty of charges leveled against him therefore, he was removed from service from the date of absence
- M. The respondents may also permitted to create Additional grounds at the time of arguments.

PRAYERS:

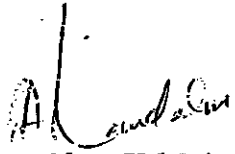
Keeping in view of above mentioned facts/submission the instant appeal may very kindly be dismissed with cost.



**Superintendent of Police FRP,
D I Khan Range.**
(Respondent No.4)


**Secretary Home,
Govt: of Khyber Pakhtunkhwa,
Peshawar.**
(Respondent No. 1)


**Gul Manan,
The then Line Officer,
FRP, D I Khan**
(Respondent No.5)


**Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar.**
(Respondent No.2)


**Alao Ud Din
Line Officer FRP, D I Khan.**
(Respondent No. 6)


**Addl:IGP/Commandant,
Frontier Reserve Police
Khyber Pakhtunkhwa Peshawar.**
(Respondent No. 3)

I

**Before the Service Tribunal Khyber
Pakhtunkhwa Peshawar Camp at D.I.Khan**

Service Appeal NO.461/2013

Muhammad Ismail..... **Appellant**

VS

Govt. of KPK through Secretary Home and others

Respondents

**REPLICATION ON BEHALF OF APPELLANT TO THE REPLY
OF RESPONDENTS**

Respected Sir,

PRELIMINARY OBJECTIONS:

1. This para is incorrect and baseless as there is an application for condonation of delay.
2. That this para is incorrect and mis-conceived.
3. That this para is incorrect and mis-conceived.
4. That this para is incorrect, the appellant being aggrieved from the order of removal from service has filed the appeal, hence the appellant has the cause of action and vested right of appeal given to him by the law
5. That this para is incorrect and mis-conceived.

Replication on Facts:

1. That this para needs no reply.
2. That his para incorrect and baseless keeping in view the averments made in the appeal.
3. That this para is also incorrect and baseless.
4. That this para is incorrect as no opportunity was provided to the appellant by the enquiry officer.

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5. That this para is also incorrect and baseless. The appellant was neither allowed to file reply to the final show cause notice nor the appellant was provided an opportunity of personal hearing before the imposition of the Major penalties of removal from service.
6. That this para is incorrect and mis-conceived.
7. That this para is incorrect and mis-conceived.
8. That this para is also incorrect and mis-conceived, the appeal was not decided in accordance with law as no reasons was communicated to the appellant on the basis of which the appeal was dismissed.
9. That this para is incorrect. There is another authority over and above the competent authority in shape of Provincial Head who is called Inspector General of Police.

ON GROUNDS:

- A) Incorrect and baseless keeping in view the material on record of appeal in the shape of Medical Certificate of illness.
- B) Incorrect and mis-conceived
- C) Incorrect and mis-conceived as explained above.
- D) Incorrect and mis-conceived as explained above.
- E) Incorrect and mis-conceived as explained above.
- F) Incorrect and mis-conceived as explained above.
- G) Incorrect and mis-conceived as explained above.
- H) Incorrect and mis-conceived as explained above, the absence of the appellant was due to circumstances which was beyond the control of appellant.
- I) Incorrect and mis-conceived as explained above.
- J) Incorrect and mis-conceived as explained above.
- K) Incorrect and mis-conceived. The appellant has been punished twice as on one hand the appellant removed from service while on the other hand the period of absence from duty w.e.f 06-06-2011 has been treated as leave without pay and on this score alone the appeal is to be liable to be accepted as this act of respondents is against

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the provisions of fundamental rights guaranteed under the constitution of Islamic Republic of Pakistan.

L) Incorrect and mis-conceived as explained in para "K" above.

M) That this para needs no reply.

It is therefore humbly prayed that appeal of the appellant may please be accepted and the appellant may please be reinstated into service with all back benefits as the appellant has not been gainfully employed and is jobless from the date of removal from service till today.

Your humble petitioner

Muhammad Ismail
Muhammad Ismail
Through Counsel

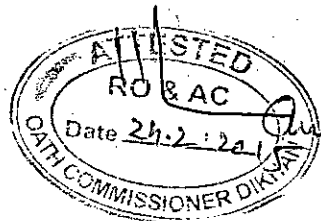
Dated: 24/02/2015

Gul Tiaz Khan Marwat
Gul Tiaz Khan Marwat
Advocate High Court
Dera Ismail Khan

AFFIDAVIT

I, Muhammad Ismail the appellant, do hereby solemnly affirm declared on oath that contents of the above Petition are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honorable court.

Muhammad Ismail
Deponent



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT D.I.KHAN

APPEAL NO. 757/2011

Date of institution ... 13.4.2011
Date of judgment ... 25.9.2012



Muhammad Ilyas, Ex-Constable No.160 Tank Police District Tank,
R/o Amakhel Tehsil & District Tank. ... (Appellant)

VERSUS

1. The District Police Officer, Tank.
2. The Deputy Inspector General of Police, D.I.Khan Range D.I.Khan. ... (Respondents)

APPEAL U/S 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT
1974 AGAINST THE ORDER OF RESPONDENT No.2 DATED 15.3.2011
VIDE WHICH DEPARTMENTAL APPEAL OF THE APPELLANT AGAINST
THE ORDER OF HIS DISMISSAL FROM SERVICE WAS FILED.

Mr. Gul Tiaz Khan Marwat,
Advocate.

For appellant
For respondents

Mr. Sultan Mehmood Khattak,
Mr. Faridullah Khan.

Member
Member

JUDGMENT

SULTAN MEHMOOD KHATTAK, MEMBER:- Appellant, Muhammad Ilyas, Ex-

Constable, has lodged this appeal against the order dated 15.3.2011 of respondent No.2, whereby his departmental appeal against the order of dismissal from service passed by respondent No.1 was filed/rejected.

2. In his appeal, the appellant alleged that he was appointed as Constable on 30.4.2002 and after completion of necessary training, he while posted as Constable in District Police Tank was performing his duties, but on 16.2.2009, he became ill and was admitted in DHQ Hospital Tank. He remained there under treatment till his discharge on 24.4.2009, whereas, according to daily diary report dated 16.2.2009, submitted by the Line Officer, he was reported to be absent from duty and on the basis of the said report, he was charged sheeted by respondent No.1 since 16.2.2009 under the provisions of Removal from Service (Special Powers) Ordinance, 2000. The appellant submitted his detailed reply to the charge sheet and statement of allegations accompanied by medical documents and his statement but even then he was penalized. The appellant further alleged that a final show cause notice dated 29.6.2009 was served upon him

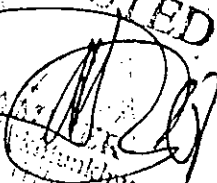
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

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which was also replied to by him, but without affording him opportunity of personal hearing. respondent No.1 vide his order dated 6.4.2010 imposed major penalty of dismissal from service on the appellant against which he preferred departmental appeal before respondent No.2 which was also filed on 15.3.2011, which, according to the appellant was not communicated to him so far and he came to know about the same through private source and accordingly obtained copy of the order dated 15.3.2011, hence this appeal, inter-alia, on the grounds that all the proceedings initiated against him by respondent No.1 under the provisions of RSO 2000 are illegal, void ab-initio, without lawful authority, without jurisdiction and in-operative upon the rights of the appellant as the appellant being an employee of the disciplined force was supposed to be proceeded against departmentally under the provisions of Police Rules, 1975 instead of RSO 2000; that both the impugned orders are against law and facts because the appellant has been paid salaries of the whole period during which he has been marked as absent from duties; that neither regular inquiry was held nor opportunity of personal hearing was provided to the appellant to defend himself, therefore, the impugned action of respondent No.1 is not sustainable in law; and that the appellant has been meted out discriminatory treatment and has not been treated in accordance with law as required under the provisions of fundamental rights guaranteed by the Constitution of Islamic Republic of Pakistan.

3. The respondents contested the appeal by filing their written reply, wherein, several legal and factual objections have been raised. They contended that the appellant wilfully absented himself from lawful duty since 16.2.2009 till the date of his dismissal from service i.e. 6.4.2010 which showed his lack of interest in service/duty. The respondents further contended that proper departmental inquiry was conducted against the appellant but even during the inquiry he remained absent till the date of passing the impugned order. They also alleged that the appellant failed to lodge a departmental appeal/representation within the stipulated period and he lodged a mercy petition which was dismissed vide memo.No. 2387/ES, dated 23.7.2010 in which he was personally heard but he concealed this fact from the Tribunal and his second application was examined and filed on 15.3.2011, as such, the present appeal is badly time barred. The respondents maintained that RSO was applicable to the police force.

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4. The appellant also filed rejoinder to the written reply/comments of the respondents, where-after arguments of the learned counsel for the appellant and learned AGP heard, and record perused.

5. The learned counsel for the appellant mainly argued that the appellant was an employee of the disciplined force and he was required to be proceeded against departmentally on the charge of his absence from duty under Police Rules, 1975 instead of RSO, 2000; that the appellant remained under treatment in DHQ Hospital Tank during the period in-question as is evident from the discharge slip, but this fact has not been taken into consideration either by the Inquiry Officer of the Authority and that he also received pay/salary for the said period, meaning thereby that he was on duty, therefore, the question of his wilful absence from duty does not arise. The learned counsel further argued that the appellant was neither associated with the so-called inquiry proceedings nor he was provided copy of the inquiry report but even then major penalty of dismissal from service was imposed on him without conducting regular inquiry and providing him opportunity of defence and personal hearing (2009 SCMR 329). The learned counsel also contended that the appellant has not been treated in accordance with article 4 of the Constitution and, as such, the impugned order of dismissal from service of the appellant in the circumstances is too harsh and liable to be reversed.

6. On the contrary, the learned AGP argued that being an employee of the disciplined force no proper application for grant of leave was submitted by the appellant and he wilfully absented himself from duty; that the appellant concealed material facts from the Tribunal; that there is no provision of second appeal and the present appeal is badly time barred; that the appellant has properly been proceeded against under the NWFP (Khyber Pakhtunkhwa) Removal from Service (Special Powers) Ordinance, 2000; and that proper departmental inquiry was conducted, therefore, the impugned action has rightly been taken against him.

7. The record would show that that the appellant was charged only on the basis of his wilful absence from duty since 12.9.2009 resulting in his dismissal from service despite the fact that he was admitted in DHQ Hospital Tank during the period in-question as is evident from the discharge slip and also received salaries which fact was required to be determined in accordance with law by holding a regular inquiry and providing full opportunity of defence and hearing to the appellant which has not been done so by the respondent-department in the instant case.

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EXAMINER
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According to the contention of the appellant, he was neither associated with the so-called departmental inquiry proceedings nor provided a chance of personal hearing. Copy of the said inquiry report has also not been made available before us either by the appellant or by the respondent-department during the course of arguments. Moreover, the period of absence of the appellant from duty on different dates mentioned in the impugned order of dismissal from service of the appellant dated 6.4.2010 has not been shown in the charge sheet and statement of allegations. Besides, the impugned order of dismissal from service of the appellant dated 6.4.2010 has been passed with immediate effect, whereas, the absence period was counted without pay, which is also not tenable under the law. Like-wise, the order dated 15.3.2011 of respondent No.2 is also not a speaking one as no reason, whatsoever, has been furnished by the appellate authority for rejecting/filing of the appeal/application of the appellant for his reinstatement in service. In the circumstances, the impugned penalty of dismissal from service being harsh in nature, is not sustainable in law.

8. Resultantly, the impugned order dated 15.3.2011 of respondent No.2 is set aside and the appellant is reinstated in service with all consequential/back benefits from the date of his dismissal i.e. 6.4.2010. However, the respondent-department may conduct a denovo inquiry into the matter strictly in accordance with law/rules by providing fair and just opportunity of hearing and defence to the appellant and then pass an appropriate order within sixty days of the receipt of this order, where-after if the appellant still feel aggrieved of the same order, he may have recourse to legal remedy available to him under the law. The appeal is accepted in the above terms. Parties are, however, left to bear their own costs. File be consigned to the record.

ANNOUNCED
25.09.2012

(FARIDUZZAMAN KHAN)
MEMBER

(SULTAN AHMAD KHATTAK)
MEMBER

Certified to be true copy
MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of receipt of Application 12-10-2012
 No. 1500
 Copy 10
 Urgent 2
 Total 12
 Name [Signature]
 Date of submission of Copy 12-10-2012
 Date of delivery of Copy 12-10-2012

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR


No. 1695 /ST Dated 13 / 10 / 2016

To The S.P,
F.R.P,
D.I. Khan Range D.I. Khan.

Subject: - JUDGMENT

I am directed to forward herewith a certified copy of Judgement dated 26.9.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


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