

Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
<p style="text-align: center;">H awin</p>	30.10.2017	<p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></p> <p style="text-align: center;">Service Appeal No. 701/2016</p> <p style="text-align: center;">Date of Institution ... 30.06.2016 Date of Decision ... 30.10.2017</p> <p>Bakhtzada, Ex-Constable No. 350, R/O Shakh No. 6, District & Tehsil Charsadda.</p> <p style="text-align: right;">Appellant</p> <p style="text-align: center;">Versus</p> <p>1. The Provincial Police Officer, KPK, Peshawar. 2. The Capital City Police, Officer, Peshawar. 3. The Senior Superintendent of Police, Traffic, Peshawar.</p> <p style="text-align: right;">Respondents</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p><u>MUHAMMAD HAMID MUGHAL, MEMBER:</u> - Learned counsel for the appellant present. Learned District Attorney on behalf of the official respondents present.</p> <p>2. The appellant has filed the present appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the respondents and made impugned order dated 10.05.2016 of respondent No. 3 whereby the appellant was awarded major penalty of Dismissal from Service on the ground of absence from duty. The appellant has also challenged order dated 13.06.2016 whereby the departmental appeal of the appellant was rejected by the respondent No. 2.</p>

3. Learned counsel for the appellant argued that he impugned order of dismissal of service is illegal and void. Further argued that the impugned order was issued without observing the codal formalities and is also harsh. Further argued that vide the impugned order, the competent authority has also regularized the absence period of appellant as leave without pay hence the impugned order of dismissal from service is not tenable in the eyes of law hence liable to be struck down.

4. As against that learned District Attorney while opposing the present appeal argued that the appellant remained willfully absent without any application or permission and codal formalities were also completed, as such the impugned orders do not warrant any interference.

5. Arguments heard. File perused.

6. Perusal of the impugned order dated 10.05.2016 would show that the competent authority (respondent No. 3) while awarding the major punishment of dismissal of service on the charge of absence from duties, also treated the period of absence of appellant as leave without pay. The concluding para of the impugned order dated 10.05.2016 is reproduced as under:-

Keeping in view recommendation of the enquiry officer as well as his previous service record and verbal explanation to the undersigned, I am of the opinion that he is a habitual absentee; therefore, he is awarded major punishment of dismissal from service under the Khyber Pakhtunkhwa Police Rules 1975 with immediate effect. His absence period is treated as leave without pay.

7. The authority while passing the order of dismissal of the

Dr. Amin

appellant from service on the ground of absence from duty, treated the period of absence of the appellant as leave without pay, hence by regularizing the absence period, the very ground has vanished on which the appellant had been proceeded against. When appellant was treated on leave without pay then he could not have been considered absent. In this regard judgment of august Supreme Court of Pakistan titled LAHORE DEVELOPMENT AUTHORITY and others---Petitioners Versus MUHAMMAD NADEEM KACHLOO and another---Respondents (2006 S C M R 434) may be quoted as a reference. Consequently the present appeal is accepted and the impugned orders to the extent of punishment of Dismissal of appellant from service are set aside and resultantly the appellant is reinstated. The intervening period shall be treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.

(GUL ZAFAR KHAN)
MEMBER(E)


(Muhammad Hamid Mughal)
MEMBER (J)

ANNOUNCED
30.10.2017

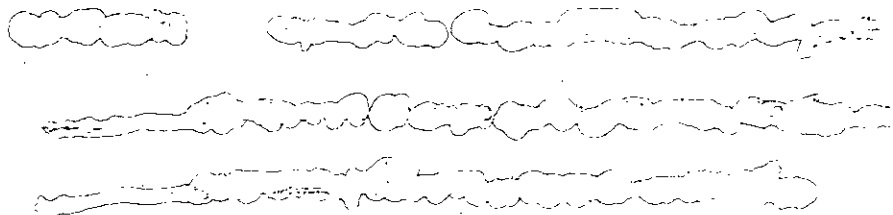
30.10.2017

Learned Counsel for the appellant present.
Learned District Attorney on behalf of the official respondents present. Vide separate judgment of this Tribunal of today, the present appeal is accepted and the impugned orders to the extent of punishment of Dismissal of appellant from service are set aside and resultantly the appellant is reinstated. The intervening period shall be treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.


(GUL ZEB KHAN)
MEMBER(E)


(Muhammad Hamid Mughal)
MEMBER (J)

ANNOUNCED
30.10.2017



04.04.2017

Counsel for the appellant and Mr. Bashir Ahmad ASI (Legal) alongwith Mr. Adeel Butt, Addl: AG for the respondents present. Argument could not be heard due to incomplete bench. To come up for final hearing on 09.06.2017 before D.B.


Chairman

09.06.2017

Appellant alongwith his counsel present. Mr. Bashir Ahmed, S.I (legal) alongwith Mr. Muhammad Adeel Butt, Additional AG for the respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 22.08.2017 before D.B.


(GUL ZEB KHAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

22/8/2017

Clerk of counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Clerk of counsel for the appellant requested for adjournment as his counsel is not available due to strike of the bar. To come up for arguments on 30/10/2017 before DB.


(GUL ZEB KHAN)
MEMBER

19.09.2016

Counsel for the appellant and Mr. Hayat Muhammad, HC
alongwith Addl: AG for respondents present. Written reply
submitted. To come up for rejoinder and final hearing on
21.11.2016.


Member

21.11.2016

Counsel for the appellant and Addl:AG for respondents
present. Rejoinder submitted. To come up for arguments on
22.02.2017.


(ABDUL LATIF)
MEMBER

(MUHAMMAD AAMIR NAZIR)
MEMBER

22.02.2017

Clerk to counsel for the appellant and Mr. Naseer
Khan Sub Inspector alongwith Assistant, AG for
respondents present. Argument could not be heard due to
general strike of the bar. To come up for arguments on
04.04.2017 before D.B.


(AHMAD HASSAN)
MEMBER

(MUHAMMAD AAMIR NAZIR)
MEMBER

04.07.2016

Counsel for the appellant present. Learned counsel for the appellant submitted that the appellant was enlisted as Police Constable in the year 2002. That appellant was dismissed from service vide impugned order dated 10.5.2016 on the ground of absence from duty for only two days on 10.4.2016 and 11.4.2016. He submitted that the penalty is one of the harshest which was awarded to the appellant. He further submitted that the said absence was not willful but unfortunately mother in law of the appellant died on 10.4.2016 therefore the unavoidable circumstances stood in way of the appellant to perform duty. It was further argued that the inquiry officer has been deliberately and malfidely ignored this plausible ground of the appellant for absence. He also contended that this appeal is within time.


Appellant Deposited
Security & Process Fee

Points urged at the bar need further consideration. Admit. Subject to deposit of security and process fee within 10 days whereafter notice be issued to the respondents for written reply/comments for 16.08.2016 before S.B.


Member

16.08.2016

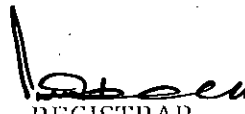

Clerk to counsel for the appellant and Addl. AG for respondents present. Clerk to counsel for the appellant requested for adjournment. Request accepted. To come up for written reply/comments on ~~29.08~~ 17.09.2016 before S.B.


Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 701/2016

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	30/06/2016	<p>The appeal of Mr. Bakht Zada presented today by Mr. Muhammad Asif Yousafzai 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</p>
2-	01-07-2016	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on. <u>04-07-2016</u></p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 701 /2016

Bakhtzada

V/S

Police Deptt:

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5.	Copy of show cause	-D-	8
6.	Copy of order dated 10.5.2016	-E-	9
7.	Copy of departmental appeal	-F-	10-11
8.	Copy of rejection order	-G-	12
9.	Copy of comments of DSP/Legal	-H-	13
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APPELLANT

THROUGH:


M.ASIF YOUSAFZAI


&
TAIMUR ALI KHAN


&
SYED NOMAN ALI BUKHARI
(ADVOCATES, PESHAWAR)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 701/2016

Khyber Pakhtukhwa
Service Tribunal

Diary No. 684

Dated 30-6-2016

Bakhtzada, Ex- Constable No. 350,

R/O Shakh No.6, District & Tehsil Charsadda.

(APPELLANT)

VERSUS

1. The Provincial Police Officer, KPK, Peshawar.
2. The Capital City Police, Officer, Peshawar.
3. The Senior Superintendent of Police, Traffic, Peshawar.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974 AGAINST THE ODER DATED 13.06.2016, WHEREBY THE DEPARTMENT APPEAL OF THE APPELLANT AGAINST THE ORDER DATED 10.05.2016, WHEREIN, PENALTY OF DISMISSAL FROM SERVICE HAS BEEN IMPOSED UPON APPELLANT HAS BEEN REJECTED FOR NO GROUNDS.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDER DATED 13.06.2016 AND 10.05.2016 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED IN TO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. AND ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

Filed to-day

Registrar

30/6/16.

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant joined the police force in the year 2002 and completed all his due training etc and also have good service record throughout.
2. That the aunty/mother in law of the appellant was died on 10.4.2016 and due to engagement in the funeral ceremony of his aunty/mother in law, he remained absent from his duty on 10.4.2016 and 11.4.2016 i.e 2 days.
3. That the charge sheet and statement of allegations were issued to the appellant which was duly replied by the appellant and explain the reason of his absence and denied the allegation therein, however the appellant did not keep the copy of reply to the charge sheet with himself which may be requisitioned from the Department. (Copies of charge sheet and statement of allegations are attached as Annexure-A&B)
4. That the inquiry was conducted against the appellant in which no proper opportunity of defence was provided to the appellant and despite that the inquiry officer held the appellant responsible and recommended harsh punishment for the appellant on only 2 days absent. (Copy of the inquiry report is attached as Annexure-C)
5. That show cause notice was issued to the appellant which was duly replied by the appellant and once again he denied all allegations leveled against him, however the appellant did not keep the copy of reply to the show cause with himself which may be requisitioned from the Department.(Copy of show cause notice is attached as annexure-D)
6. That the appellant was dismissed from service vide order dated 10.5.2016 on the basis of 2 days absence and his absence period is treated as leave without pay. (Copy of order dated 10.5.2016 is attached as annexure-E)
7. That against the order dated 10.5.2016, the appellant filed departmental appeal on 13.5.2016 which was also rejected on dated 13.6 2016 for no good grounds. (Copies of departmental appeal and rejection order are attached as Annexure-F&G).

8. That now the appellant come to this august tribunal on the following grounds amongst others.

GROUNDS:

- A) That the impugned order dated 13.06.2016 and 10.05.2016 are against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.
- B) That the department asked comments from the DSP/Legal on the departmental appeal of the appellant in which the DSP/Legal clearly mentioned "*that perusal of record reveals that the appellant during course of inquiry has taken the plea that his absence was not intentional but it was because of engagement in funeral ceremony of his aunty who was died on 10.4.2016. The E.O was supposed to authenticate plea of the appellant which he ignored and recommended him for major punishment on the charge of 02 days absence. Therefore appeal merits consideration please.*" which means that the inquiry officer did not conducted the inquiry according to prescribed procedure and recommend harsh punishment in slipshod manner which is not permissible in the law. (Copy of Comments of DSP/Legal is attached as Annexure-H)
- C) That the CCPO Peshawar did not consider the remarks of the DSP/Legal Peshawar on the departmental appeal of the appellant and rejected the departmental appeal in slipshod manner without giving any cogent reason.
- D) That the appellant has been condemned unheard and has not been treated according to law and rules.
- E) That the inquiry was not according to the prescribed procedure as no proper chance of defence was proved to the appellant by the inquiry officer before recommendation of harsh punishment, which is violation of norms of justice and law and rules.
- F) That the absence period of the appellant has already been treated as leave without pay, therefore there remains no ground to penalize the appellant for same cause of action.

- G) That for the past omissions of the appellant if any, the appellant was punished for that and a person cannot be punished twice for the same offence and would amount to double jeopardy which is prohibited under the Constitution of Pakistan,
- H) That the penalty of dismissal from service is very harsh which did not commensurate with the guilt of the appellant i.e 2 days absence and, therefore, the same is not sustainable in the eyes of law.
- I) That the appellant did not intentionally absented himself from his duty as aunty/mother in law was died and he engaged in funeral ceremony of his aunty/mother in law, therefore the appellant was compelled to remain absent from his duty for 2 days due to unavoidable circumstances of engagement in the funeral ceremony of his aunty/mother in law.
- J) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.



APPELLANT

Bakhtzada

THROUGH:



M. ASIF YOUSAFZAI



TAIMUR ALI KHAN



S. NOMAN ALI BUKHARI
(ADVOCATES, PESHAWAR)

A (5)

CHARGE SHEET

1. WHEREAS I am satisfied that a formal enquiry as contemplated by Police Rules 1975 is necessary and expedient.

2. AND whereas, I am of the view that the allegations if established would call for major/minor penalty, as defined in Rule-3 of the aforesaid Rules.

3. Now therefore, as required by Rule 6 (1) (a) & (b) of the said Rules I, **SADIQ HUSSAIN**, Senior Superintendent of Police, Traffic, Peshawar hereby charge you **FC Bakht Zada No.350** under Rules 5 (4) of the Police Rules 1975 on the basis of following allegations:-

i) That you were found absent from duty from 10.04.2016 to 12.04.2016 (total 02-days) without leave/permission of the competent authority. From perusal of your service record, it was found that you were earlier issued minor punishment of censure with last warning for ~~12~~ times to mend your way but you did not bother the warnings.

ii) This habit of regularly absenting yourself from duty amounts to gross misconduct on your part and renders you liable for punishment.

4. By doing this you have committed gross misconduct on your part.

5. AND I hereby direct you further under Rule 6 (1) (b) of the said Rules to put-in written defence within 07-days of the receipt of this Charge Sheet as to why the proposed action should not taken against you and also state whether you desire to be heard in person.

6. AND in case your reply is not received within the stipulated period to the enquiry officer, it shall be presumed that you have no defence to offer and in that case, ex-parte action will be taken against you.

(SADIQ HUSSAIN) PSP
Senior Superintendent of Police,
Traffic, Peshawar.

(Competent Authority)

طابع شد 10/4/16
مکمل

10/4/16
10:40 AM

ATTESTED
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BCG

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DISCIPLINARY ACTION

1. **I, SADIQ HUSSAIN**, Senior Superintendent of Police, Traffic, Peshawar as competent authority, am of the opinion that **FC Bahat Zada No.350** has rendered himself liable to be proceeded against, as he committed the following acts/omission within the meaning of section 03 of Police Rules 1975.

SUMMARY OF ALLEGATIONS

2. i) That he was found absent from duty from 10.04.2016 to 12.04.2016 (total 02-days) without leave/permission of the competent authority. From perusal of his service record, it was found that he was earlier issued minor punishment of censure with last warning for 02 times to mend his way but he did not bother the warnings.

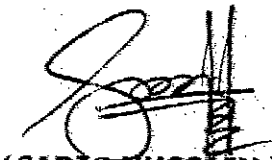
ii) This habit of regularly absenting himself from duty amounts to gross misconduct on his part and renders him liable for punishment.

3. For the purpose of scrutinizing the conduct of the said accused official with reference to the above allegations, an Enquiry Committee comprising of the following officer(s) is constituted:-

a. Mr. Aziz Khan Afridi, SP/HO's. Traffic, Peshawar.

b. _____

4. The enquiry committee/officer shall in accordance with the provision of the Police Rules 1975 provide reasonable opportunity of hearing to the accused officer/official and make recommendations as to punishment or any other appropriate action against the accused.


(SADIQ HUSSAIN) PSP
Senior Superintendent of Police,
Traffic, Peshawar.

(Competent Authority)

ATTESTED
A

7

منجانب: ایس ایس پی پشاور

بخدمت: جناب ایس ایس پی ٹریفک پشاور

حوالہ نمبر 219 ریڈر مورخہ 26.04.2016

عنوان: انکوائری بر خلاف کنٹینر بخت زادہ 350

الزام:- کنٹینر بخت زادہ نمبر 350 پر الزام عائد ہوا کہ آپ مورخہ 10.04.2016 سے 12.04.2016 تک کسی مجاز

افسر سے چھٹی یا اجازت کے بغیر غیر حاضر ہوئے اور سروس ریکارڈ کے مطابق پایا جاتا ہے کہ آپ متعدد بار بوجہ غیر حاضری سزایاب ہو چکے ہیں اور علاوہ ازیں 12 بار آپ کو آخری وارننگ دی جا کر آئندہ محتاط رہنے کی ہدایت کی گئی تھی لیکن اس کے باوجود پھر بھی آپ غیر حاضر ہوئے جس سے ظاہر ہوتا ہے کہ آپ عادی غیر حاضریاں ہیں جو سنگین خلاف ورزی کے زمرے میں آتا ہے۔

کاروائی:-

دوران انکوائری کنٹینر بخت زادہ 350 کا سروس ریکارڈ چیک کیا گیا جس کے مطابق مذکورہ کنٹینر بخت زادہ 29 بار بوجہ غیر

حاضری سزایاب ہو چکا ہے اور قبل ازیں 12 بار آخری وارننگ دی جا کر محتاط رہنے کی ہدایت کی گئی۔ علاوہ ازیں بحوالہ O.B نمبر

818 مورخہ 28.02.2013 آپ کو تین ماہ 12 دن غیر حاضر رہنے پر دو سال کیلئے Time Scale کیا گیا۔ بحوالہ

OE نمبر 1355 مورخہ 23.04.2016 ایک سال کا انکریمینٹ روکا گیا۔

کنٹینر بخت زادہ نمبر 350 کا باضابطہ انکوائری میں بیان قلمبند کیا جا کر صفائی کا موقع دیا گیا۔ مذکورہ پراسی غیر حاضری کے

حوالے سے سوالات کئے گئے۔ مگر مذکورہ اپنی غیر حاضری کے حوالے سے کوئی تسلی بخش جواب نہ دے سکا۔

مخبرشات:-

پشاور ٹریفک اور وارڈن پولیس میں صرف 7 گھنٹے کی شفٹ ڈیوٹی ہے جس کے بعد 17 گھنٹے ان ملازمان پر کسی قسم کی کوئی ذمہ داری یا

ماضر رہنے کی پابندی نہیں۔ ہفتہ میں ہر ملازم ایک چھٹی (شب باشی) گزارتا ہے۔ علاوہ ازیں ضرورت پڑنے پر باقاعدہ افسران

لا رخصت التفاقیہ اور رخصت کلاں بھی منظور کرتے ہیں۔ مگر اسکے باوجود کنٹینر بخت زادہ نمبر 350 کی اتنی بڑی تعداد میں غیر حاضری

مجھ سے بالاتر ہے۔ جبکہ بار بار آخری وارننگ اور محتاط رہنے کی ہدایات کے باوجود مذکورہ کی غیر حاضری میں کمی واقع نہیں ہوئی۔

جس سے ظاہر ہوتا ہے کہ کنٹینر بخت زادہ نمبر 350 ملازمت میں دلچسپی نہیں رکھتا اور نہ ہی مستقبل میں اسکے سدھرنے کا کوئی

مکان ہے۔ اسکی وجہ سے دیگر ملازمان پولیس پر بھی برا اثر پڑ رہا ہے۔ مذکورہ کے سروس ریکارڈ میں سزایابیوں کے علاوہ اچھی کارکردگی کا کوئی

یک اندراج بھی موجود نہیں۔ اس وجہ سے کنٹینر بخت زادہ نمبر 350 کیلئے سنگین سزا تجویز کی جاتی ہے تاکہ باقی ماتحت نفری پر اس کا اچھا اثر

پسے اور وارڈن پولیس کا ڈسپلن مزید بہتر ہو۔

Show-cause notice

ATTESTED

(عبدالعزیز انوری)

ایس پی ہیڈ انکوائری ٹریفک پشاور

21/04


Issue final

02/05/16

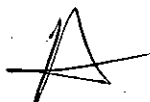
FINAL SHOW CAUSE NOTICE

(Under Rules 5 (3) KPK Police Rules 1975)

1. That you (FC Bakht Zada No.350) have rendered yourself liable to be proceeded under Rules 5(3) for the following misconducts:-
 - i) He you were found absent from duty from 10.04.2016 to 11.04.2016 (total two day) without leave/permission of the competent authority.
 - ii) From perusal of your service record, it has also been found that you were earlier issued minor punishment of censure with last warning for 12-times to mend your way but you did not bother the written warnings.
2. That by reason of above, as sufficient materials is placed before the undersigned; therefore, it is decided to proceed against you in general police proceedings without aid of enquiry officer.
3. That the misconduct on your part is prejudicial to good order of discipline in the police force.
4. That your retention in the police force will amount to encourage inefficient and unbecoming of good police officer.
5. You are, therefore, called upon to show cause as to why you should not be dealt strictly in accordance with the Khyber Pakhtunkhwa Police Rules 1975 for the misconduct referred to above.
6. You should submit reply to Show Cause Notice within 07-days of the receipt of the notice failing which an ex-parte action shall be taken against you.
7. You are further directed to inform the undersigned that you wish to be heard in person or not.


(SAAD HUSSAIN) PSP
Senior Superintendent of Police,
Traffic, Peshawar.

ATTESTED



ORDER


This is an order on the departmental enquiry initiated against Constable Bakhtzada No.350/1844 for absenting himself from duty from 10.04.2016 to 11.04.2016 (total 02-days) without leave/permission of the competent authority besides issuing last warning for 12 times during last 04 months. He was issued charge sheet and statement of allegations and Mr. Abdul Aziz Afridi, SP/Hqrs. Traffic was nominated as enquiry officer to conduct proper departmental proceedings and submit his report in this regard.

During the enquiry proceedings, the accused official submitted his written reply stating therein that he remained engage in the funerals of a nearest relative and not able to perform duty. From perusal of his previous serviced record, it was also found that he has been previously issued punishments of time scale and one annual increment was also stopped due to his habitual absence. The Enquiry Officer in his findings recommended him for major punishment as he failed to produce cogent reason in support of his absence.

The accused official was issued Final Show Cause Notice but his written reply was found not convincing therefore, he was called for personal hearing. He was heard in person and asked about his habitual absence but failed to produce evidence in support of his willful absence.

Keeping in view recommendation of the enquiry officer as well as his previous service record and verbal explanation to the undersigned, I am of the opinion that he is a habitual absentee, therefore, he is awarded major punishment of dismissal from service under the Khyber Pakhtunkhwa Police Rules 1975 with immediate effect. His absence period is treated as leave without pay.

Order announced.


(SADIQ HUSSAIN) PSP
Senior Superintendent of Police,
Traffic, Peshawar.

No. 436-44/PA, Dated Peshawar the 10/05/2016.

Copies for necessary action to the:-

1. SP/Hqrs. CCP, Peshawar.
2. DSP/Hqrs. Traffic, Peshawar.
3. Accountant
4. OSI
5. SRC (along with complete enquiry file) Encl: (13)

ATTESTED
A

To

The Deputy Inspector General of Police,
C.C.P., Peshawar.

F (10)

**SUBJECT: DEPARTMENTAL APPEAL AGAINST THE ORDER
DATED 10.05.2016, WHEREBY THE APPELLANT
WAS DISMISSED FROM THE SERVICE.**

Respected Sir,

The Appellant very earnestly submits as under:

1. That the appellant was working as constable in Traffic Police. The appellant performed his duty up to the entire satisfaction of his superiors and no complaint has been filed against him.
2. That the charge sheet was issued to the appellant which was duly replied by the appellant and explain the reason of his absence and denied the allegation.
3. That the inquiry was conducted against the appellant in which the appellant gave the reason of his absence to the inquiry officer but despite that the inquiry held responsible the appellant and recommended the major punishment of dismissal from service.
4. That the appellant was issued Final Show Cause Notice to which he submitted written reply and once again denied all the allegations leveled against him.
5. That on the recommendations of Enquiry Officer the Appellant was awarded MAJOR PUNISHMENT OF DISMISSAL from service vide order dated 10.05.2016. Copy of the order dated 10-05-2016 is attached as Annex-A.
6. That now the appellant files the departmental appeal on the following grounds:

GROUND:

- A) That the impugned order dated 10.05.2016 is against the law, rules and material on record, therefore liable to be set aside.

ATTESTED

A

- B) That no regular inquiry was conducted against the appellant before imposing major penalty of dismissal from service which is not permissible in law.
- C) That no codal formalities were followed by the department before imposing the penalty which is violation of Superior courts judgment.
- D) That no opportunity of personal hearing was provided to the appellant which is violation of Law and Rules.
- E) That the attitude and conduct of the Department shows that they were bent upon to remove the appellant at any cost.
- F) That the appellant has been condemned unheard and has not been treated according to law and rules.
- G) That for past leaves (if any) the Appellant was issued punishments and under the law of land a person cannot be punished twice for the same offence.

It is therefore, most humbly requested that impugned order dated 10.05.2016 may be set aside and the appellant may be reinstated with all back and consequential benefits.

Date: 13.05.2016


Appellant

Ex. Constable Bakhtzada No: 350
R/o: Shakh No 6
Distt: Charsadda
Mob: 0313-8150157

ATTESTED




OFFICE OF THE
CAPITAL CITY POLICE OFFICER,
PESHAWAR

Phone No. 091-9210989

Fax No. 091-9212597

ORDER

This order will dispose off departmental appeal preferred by ex- constable Bakhtzada No. 350/1844 who was awarded the major punishment of Dismissal from service under Police Rules-1975 by SSP/Traffic Peshawar vide H's No. 436-40/PA dated 10.5.2016.

2- Short facts of the instant appeal are that the appellant while posted to Traffic Unit Peshawar was proceeded against departmentally on the charge of 02-days absence from duty w.e.f 10.4.2016 to 11.4.2016.

3- Proper departmental proceedings were initiated against him and Mr. Abdul Aziz Afridi, SP-HQRs: Traffic was appointed as the E.O. The E.O mentioned in his report that the defaulter official was awarded major/minor punishment on different occasions on the charge of un-authorized absence. Besides, 12 time he was warned to be careful but he did not turn up from his bad habit. The E.O found him guilty of the allegations levelled against him and recommended him for award of major punishment. On receipt of the findings of the E.O, the SSP-Traffic Peshawar issued him FSCN to which he replied. The same was perused and found unsatisfactory. He was also heard in person in O.R. by SSP-Traffic but he failed to produce any cogent reason in support of his absence. As such awarded him the above major punishment.

4- He was called in O.R. on 10.6.2016, and heard in person. The enquiry file and punishment order was perused. It transpired from perusal of enquiry file and his service record that he is a habitual absentee and has more than 35 bad entries in his service record, mostly for absence. He has been censured and warned on a number of occasions including award of major punishment of time scale constable. However, he failed to prove any improvement and leave his bad habit. He is a highly indisciplined Police official and does not seem interested in his job. During personal hearing he failed to produce any cogent reason in his support except of lame excuses. His retention in Police service is not justifiable. There is no need to interfere in punishment order passed by SSP-Traffic Peshawar. Therefore, his appeal for re-instatement in service is rejected/filed.

(MUBARAK ZEB)

CAPITAL CITY POLICE OFFICER,
PESHAWAR.

No. 1278-84 /PA dated Peshawar the 13/06/2016.

Copies for Information and n/a to the:-

1. SSP-Traffic, Peshawar.
2. SP/HQRs: Peshawar.
3. PO/OASI/ CRC along with his S.Roll for making necessary entry in S.Roll.
4. FMC along with FM
5. Official concerned.

ATTESTED

COMMENTS ON DEPARTMENTAL APPEAL.

HA (13)

Sir,

This is departmental appeal filed by ex-constable Bakhtzada No.350 of Traffic Unit Peshawar against the punishment order of **Dismissal from Service** passed by SSP/Traffic Peshawar vide order endst: No:436-40/PA dated 10.05.2016.

Short facts behind the instant appeal are that appellant while posted to traffic unit Peshawar was proceeded departmentally on the charge of his 02 days absence from duty w.e.f. 10.04.2016 to 11.04.2016. Mr.Abdul Aziz Afridi, SP/H.Qrs: Traffic was appointed as enquiry officer. After conducting enquiry into the charge, the E.O recommended the appellant for award of major punishment. As such the competent authority after fulfillment of codal formalities awarded him major punishment of **Dismissal from Service** vide order dated 10.05.2016.

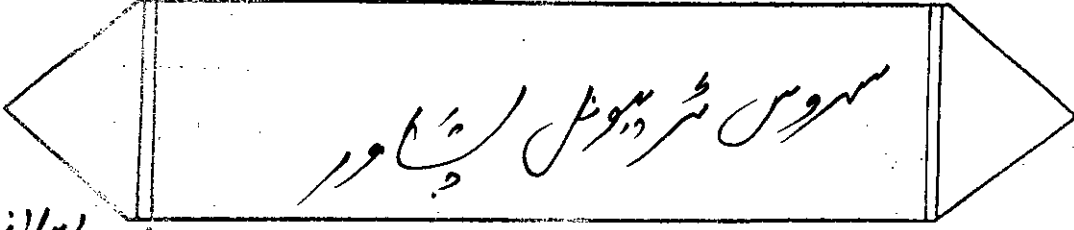
Perusal of record reveals that the appellant during the course of enquiry has taken the plea that his absence was not intentional but it was because of engagement in funeral ceremony of his aunty who was died on 10.4.2016. The E.O was supposed to authenticate plea of the appellant which he ignored and recommended him for major punishment on the charge of 02 days absence. Therefore appeal merits consideration please.

Bakhtzada
DSP/Legal,
Peshawar.

ATTESTED

A

بعد الت



بجانب ایپرائزمنٹ (محنت مزاج)
محنت مزاج بنام محکمہ پولیس

موزخہ
مقدمہ ایپیل
دعویٰ
جرم

باعث تحریر آنکھ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام کپٹان محمد آصف بوسفرنی اور محمد مولیٰ خان اہل پولیس کیلئے

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثبات ہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا ایپل کی برادگی اور منسوخی
نیز دائر کرنے ایپل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ نیا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ سند ہے۔

الرقوم _____ ماہ _____ 20 _____

_____ واہ الع

_____ کے لئے منظور ہے۔

Accepted
Accepted

بمقام

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No701/2016.

Bakhtzada Ex- Constable No.350 Police Line Peshawar.....Appellant.

VERSUS.

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Senior Superintendent of Police, Traffic, Peshawar.....Respondents.

Reply on behalf of Respondents No. 1, 2, &3.

Respectfully shewth:.

PRELIMINARY OBJECTIONS.

1. That the appeal is badly time barred.
2. That the appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.
3. That the appellant has not come to this Hon'able Tribunal with clean hands.
4. That the appellant has no cause of action.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from Honorable Tribunal.
7. That this Hon'able Tribunal has no jurisdiction to entertain the appeal.

Facts:-

- (1) Para No.1 pertains to record, hence needs no comments.
- (2) Para No.2 is incorrect. In fact the appellant absented himself wilfully from his lawful duty without taking permission/leave.
- (3) Para No.3 is correct to the extent that the appellant submitted his reply to charge sheet but his reply was found unsatisfactory.
- (4) Para No.4 is incorrect. In fact proper departmental enquiry was conducted against appellant. He was given full opportunity of defence. He was issued charge sheet and summary of allegations. However the appellant being a habitual absence was awarded major punishment of dismissal from service.(copy of charge sheet, statement of allegations is annex A & B and enquiry report is annexure C)
- (5) Para No.5 is already replied in detail in para No.3.
- (6) Para No.6 is correct to the extent of his dismissal from service. However he had a blemished service record and was warned 12 times.
- (7) Para No.7 is correct to the extent of filing departmental appeal, however after due deliberation his appeal was filed/rejected because the charges leveled against him were stand proved.

- (8) That appeal of the appellant being devoid of merits may kindly be dismissed with cost.

GROUND:-

- (A) Incorrect. The punishment orders are in accordance with law/rules. Hence liable to be upheld.
- (B) Incorrect. First part of para pertains to record while rest of para is denied on the ground that the appellate authority is not bound to the opinion of DSP/Legal.
- (C) Incorrect. The CCPO being appellate authority is not bound to the opinion of DSP/Legal.
- (D) Incorrect. The appellant was given full opportunity of defence. He was also called and heard in person in OR on 10.06.2016 but he failed to defend himself.
- (E) Incorrect. As above.
- (F) Incorrect. The appellant was awarded punishment order on wilfull absence from duty.
- (G) Incorrect. The appellant was awarded major punishment in accordance with law/rules.
- (H) Incorrect. The punishment order is in accordance with law/rules, hence liable to be upheld.
- (I) Incorrect. The appellant wilfully absented himself from his lawful duty without taking permission or leave from his seniors.
- (J) That respondents also seek permission of this Honorable Service Tribunal to raise additional grounds at the time of arguments.

PRAYER.

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


Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.


Capital City Police Officer,
Peshawar.


Senior Superintendent of Police,
Traffic, Peshawar.

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No701/2016.


Bakhtzada Ex- Constable No.350 Police Line Peshawar.....Appellant.

VERSUS.

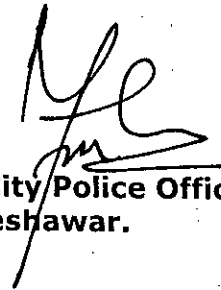
1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Senior Superintendent of Police, Traffic, Peshawar.....Respondents.

AFFIDAVIT

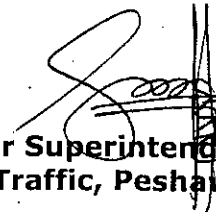
We respondents No. 1 ,2 & 3 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal.



**Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.**



**Capital City Police Officer,
Peshawar.**




**Senior Superintendent of Police,
Traffic, Peshawar.**

FINAL SHOW CAUSE NOTICE

(Under Rules 5 (3) KPK Police Rules 1975)

1. That you (FC Bakht Zada No.350) have rendered yourself liable to be proceeded under Rules 5(3) for the following misconducts:-
 - i) He you were found absent from duty from 10.04.2016 to 11.04.2016 (total two day) without leave/permission of the competent authority.
 - ii) From perusal of your service record, it has also been found that you were earlier issued minor punishment of censure with last warning for 12-times to mend your way but you did not bother the written warnings.
2. That by reason of above, as sufficient materials is placed before the undersigned; therefore, it is decided to proceed against you in general police proceedings without aid of enquiry officer.
3. That the misconduct on your part is prejudicial to good order of discipline in the police force.
4. That your retention in the police force will amount to encourage inefficient and unbecoming of good police officer.
5. You are, therefore, called upon to show cause as to why you should not be dealt strictly in accordance with the Khyber Pakhtunkhwa Police Rules 1975 for the misconduct referred to above.
6. You should submit reply to Show Cause Notice within 07-days of the receipt of the notice failing which an ex-parte action shall be taken against you.
7. You are further directed to inform the undersigned that you wish to be heard in person or not.


(SADIO HUSSAIN) PSP
Senior Superintendent of Police,
Traffic, Peshawar.

u

CHARGE SHEET

1. WHEREAS I am satisfied that a formal enquiry as contemplated by Police Rules 1975 is necessary and expedient.

2. AND whereas, I am of the view that the allegations if established would call for major/minor penalty, as defined in Rule-3 of the aforesaid Rules.

3. Now therefore, as required by Rule 6 (1) (a) & (b) of the said Rules I, **SADIQ HUSSAIN**, Senior Superintendent of Police, Traffic, Peshawar hereby charge you **FC Bakht Zada No.350** under Rules 5 (4) of the Police Rules 1975 on the basis of following allegations:-

i) That you were found absent from duty from 10.04.2016 to 12.04.2016 (total 02-days) without leave/permission of the competent authority. From perusal of your service record, it was found that you were earlier issued minor punishment of censure with last warning for 02 times to mend your way but you did not bother the warnings.

ii) This habit of regularly absenting yourself from duty amounts to gross misconduct on your part and renders you liable for punishment.

4. By doing this you have committed gross misconduct on your part.

5. AND I hereby direct you further under Rule 6 (I) (b) of the said Rules to put-in written defence within 07-days of the receipt of this Charge Sheet as to why the proposed action should not taken against you and also state whether you desire to be heard in person.

6. AND in case your reply is not received within the stipulated period to the enquiry officer, it shall be presumed that you have no defence to offer and in that case, ex-parte action will be taken against you.



(SADIQ HUSSAIN) PSP
Senior Superintendent of Police,
Traffic, Peshawar.

(Competent Authority)

طابع وقتی لکھنؤ پولیس
مکملہ

الہ
20/4/16
10:40 AM

DISCIPLINARY ACTION

1. **I, SADIQ HUSSAIN**, Senior Superintendent of Police, Traffic, Peshawar as competent authority, am of the opinion that **FC Bakht Zada No.350** has rendered himself liable to be proceeded against, as he committed the following acts/omission within the meaning of section 03 of Police Rules 1975.

SUMMARY OF ALLEGATIONS

2. i) That he was found absent from duty from 10.04.2016 to 12.04.2016 (total 02-days) without leave/permission of the competent authority. From perusal of his service record, it was found that he was earlier issued minor punishment of censure with last warning for 02 times to mend his way but he did not bother the warnings.


ii) This habit of regularly absenting himself from duty amounts to gross misconduct on his part and renders him liable for punishment.

3. For the purpose of scrutinizing the conduct of the said accused official with reference to the above allegations, an Enquiry Committee comprising of the following officer(s) is constituted:-

a. Mr. Aziz Khan Afridi, SP/HQrs. Traffic, Peshawar.

b. _____

4. The enquiry committee/officer shall in accordance with the provision of the Police Rules 1975 provide reasonable opportunity of hearing to the accused officer/official and make recommendations as to punishment or any other appropriate action against the accused.


(SADIQ HUSSAIN) PSP
Senior Superintendent of Police,
Traffic, Peshawar.

(Competent Authority)

5

منجانب: ایس۔ پشاور
بخدمت: جناب ایس ایس پی ٹریفک پشاور
حوالہ نمبر 219 ریڈر مورخہ 26.04.2016
عنوان: انکوائری برخلاف کنشٹیبل بخت زادہ 350

الزام:- کنشٹیبل بخت زادہ نمبر 350 پر الزام عائد ہوا کہ آپ مورخہ 10.04.2016 سے 12.04.2016 تک کسی مجاز افسر سے چھٹی یا اجازت کے بغیر غیر حاضر ہوئے اور سروس ریکارڈ کے مطابق پایا جاتا ہے کہ آپ متعدد بار بوجہ غیر حاضری سزایاب ہو چکے ہیں اور علاوہ ازیں 12 بار آپ کو آخری وارننگ دی جا کر آئندہ محتاط رہنے کی ہدایت کی گئی تھی لیکن اس کے باوجود پھر بھی آپ غیر حاضر ہوئے۔ جس سے ظاہر ہوتا ہے کہ آپ عادی غیر حاضر باش ہیں جو سنگین خلاف ورزی کے زمرے میں آتا ہے۔

کارروائی:-

دوران انکوائری کنشٹیبل بخت زادہ 350 کا سروس ریکارڈ چیک کیا گیا جس کے مطابق مذکورہ کنشٹیبل بخت زادہ 29 بار بوجہ غیر حاضری سزایاب ہو چکا ہے اور قبل ازیں 12 بار آخری وارننگ دی جا کر محتاط رہنے کی ہدایت کی گئی۔ علاوہ ازیں بحوالہ O.B نمبر 818 مورخہ 28.02.2013 آپ کو تین ماہ 12 دن غیر حاضر رہنے پر دو سال کیلئے Time Scale کیا گیا۔ بحوالہ OB نمبر 1355 مورخہ 23.04.2016 ایک سال کا انکریمینٹ روکا گیا۔

کنشٹیبل بخت زادہ نمبر 350 کا باضابطہ انکوائری میں بیان قلمبند کیا جا کر صفائی کا موقع دیا گیا۔ مذکورہ پراسیکی غیر حاضری کے حوالے سے سوالات کئے گئے مگر مذکورہ اپنی غیر حاضری کے حوالے سے کوئی تسلی بخش جواب نہ دے سکا۔

سفارشات:-

پشاور ٹریفک اور ڈن پولیس میں صرف 7 گھنٹے کی شفٹ ڈیوٹی ہے جس کے بعد 17 گھنٹے ان ملازمان پر کسی قسم کی کوئی ذمہ داری یا حاضر رہنے کی پابندی نہیں۔ ہفتہ میں ہر ملازم ایک چھٹی (شب باشی) گزارتا ہے۔ علاوہ ازیں ضرورت پڑنے پر باقاعدہ افسران بالا رخصت اتفاقیہ اور رخصت کلاں بھی منظور کرتے ہیں۔ مگر اسکے باوجود کنشٹیبل بخت زادہ نمبر 350 کی اتنی بڑی تعداد میں غیر حاضری سمجھ سے بالاتر ہے۔ جبکہ بار بار آخری وارننگ اور محتاط رہنے کی ہدایات کے باوجود مذکورہ کی غیر حاضری میں کمی واقع نہیں ہوئی۔

جس سے ظاہر ہوتا ہے کہ کنشٹیبل بخت زادہ نمبر 350 ملازمت میں دلچسپی نہیں رکھتا اور نہ ہی مستقبل میں اسکے سدھرنے کا کوئی امکان ہے۔ اسکی وجہ سے دیگر ملازمان پولیس پر بھی برا اثر پڑ رہا ہے۔ مذکورہ کے سروس ریکارڈ میں سزایابیوں کے علاوہ اچھی کارکردگی کا کوئی ایک اندراج بھی موجود نہیں۔ بدیں وجہ کنشٹیبل بخت زادہ نمبر 350 کیلئے سنگین سزا تجویز کی جاتی ہے تاکہ باقی ماتحت نفری پر اس کا اجھا اثر پڑے اور وارڈن پولیس کا ڈسپلن مزید بہتر ہو۔

(عبدالعزیز آفریدی)
ایس پی ہیڈ کوارٹرز ٹریفک پشاور
27/04/16

OR
Issue final

Show-cause notice
02/05/16

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 701/2016

Bakhtzada

VS

Police Deptt:

.....

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

- (1-7) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

1. Admitted correct by the respondents as the service record is present with the respondent department.
2. Incorrect. The appellant did not remain willfully absent, but due to the death of his aunty/mother in law he was compelled to remain absent which was also admitted by DSP/legal in his comments.
3. First portion of para is admitted correct hence no comments while the rest of para is incorrect as the appellant explained the genuine reason of his absence in reply to charge sheet that his aunty/mother in law was died and due to that reason he was compelled to remain from his duty for 2 days.
4. Incorrect. No proper chance of defence was provided to the appellant by the inquiry officer and recommended harsh punishment of dismissed from service for only 2 days absent.
5. In correct. As already replied in detail in para 3.

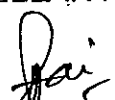

6. First portion of para is admitted correct, hence no comments while the rest of para is incorrect as for past omission of the appellant if any, the appellant was punished for that and a person cannot be punished twice for the same offence and would amount to double jeopardy which is prohibited under the Constitution of Pakistan.
7. First portion of para is admitted correct hence no comments while the rest of para is incorrect as the appellant did not remain willfully absent but due to the death of his aunty/mother in law he was compelled to remain absent for but despite the genuine reason of his absence the department imposed harsh punishment of dismissal from service for only 2 days absent. Therefore he filed departmental appeal against the dismissal order which was also rejected for no good ground.
8. Incorrect. The appellant has good cause of action and may kindly be accept with cost.

GROUND:

- A) Incorrect. The impugned orders are not in accordance with law, facts, norms of justice and material therefore not tenable and liable to set aside.
- B) Incorrect. If the CCPO is not bound to the opinion of DSP/legal then why he wants comments from DSP/legal.
- C) Incorrect. If the CCPO is not bound to the opinion of DSP/legal then why he wants comments from DSP/legal.
- D) Incorrect. The appellant was not given full opportunity of defence as the respondents did not consider the reason of absence which was given by the appellant in his reply to charge sheet and show cause which was also endorsed by the DSP/legal in his comments on the departmental appeal of the appellant as the appellant did not remain willfully absent but due to the death of his aunty/mother in law he was compelled to remain absent but despite that harsh punishment of dismissal from service was imposed upon the appellant just only for 2 days absence which means that the department was bend to punish the appellant at any cost.
- E) Incorrect. As above.

- F) Not replied according to para F of the appeal. Moreover para F of the appeal is correct.
- G) Incorrect. While para G of the appeal is correct.
- H) Incorrect. While para H of the appeal is correct.
- I) Incorrect. The appellant did not remain willfully absent but due to the death of his aunty/mother in law he was compelled to remain absent which was also admitted by DSP/legal in his comments.
- J) Legal.

It is, therefore, most humbly prayed that the appeal of appellant may kindly be accepted as prayed for.

APPELLANT
Through: 
(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT,
& 
(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.




DEPONENT

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 2423/ST

Dated 08/11/2017


To

The Senior Superintendent of Police Traffic,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: **JUDGEMENT IN APPEAL NO. 701/16, MR. BAKHT ZADA.**

I am directed to forward herewith a certified copy of Judgment dated 30/10/2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.