BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUAL, PESHAWAR

Appeal No. 1034/2016

Date of Institution ... 06.10.2016

Date of Decision ... 26.12.2018

Raees Khan son of Hazrat Khan, Ex-Constable No. 3466/4620, Elite Force, Khyber Pakhtunkhwa, Peshawar. ... (Appellant)

VERSUS

Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar and 3 others. ... (Respondents)

Present.

MR. ABDUL HAMEED,
Advocate. ... For appellant

MR. MUHAMMAD RIAZ KHAN PAINDA KHEL,
Asstt. Advocate General ... For respondents.

MR. HAMID FAROOQ DURRANI, ... CHAIRMAN
MR. AHMAD HASSAN, ... MEMBER(E)

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

The facts as laid down in the instant appeal are that the appellant was recruited as Constable in the Police Department Khyber Pakhtunkhwa on 19.07.2007. During the course of his service he was transferred to Elite Force Khyber Pakhtunkhwa Peshawar where he worked for about 10 years. The appellant, while working as constable in Police Station Nasir Bagh, Peshawar, fell ill and upon Medical checkup he was diagnosed with symptoms of Hepatitis-B,

therefore, was advised complete rest. As his condition did not improve, the appellant applied to the concerned Authority for grant of medical leave for a period of two months. He was referred to Police & Services Hospital, Peshawar and despite the fact that he was diagnosed positive with Hepatitis-B he was not granted requisite leave. Subsequently, departmental proceedings were initiated against the appellant and without affording him opportunity of being heard he was dismissed from service through order dated 30.11.2012. An appeal was preferred which was also rejected on 19.12.2013. Subsequently, a Review Petition was preferred by the appellant on 10.09.2014, which met the same fate and was dis-allowed on 15.09.2016, hence the appeal in hand.

2. We have heard learned counsel for the appellant and learned Asst. Advocate General on behalf of the respondents.

At the outset, learned Assistant Advocate General raised the objection regarding delay in filing departmental review petition by the appellant and stated that it was brought after a delay of about eight months, having been filed on 10.09.2014, while the rejection order of his appeal was issued on 19.12.2013. Attending to the objection, learned counsel for the appellant relied on judgments reported as 2004-PLC(C.S)1014, 2003-PLC(C.S)796, 986-SCMR-962, PLD 1959-Supreme Court-522 and stated that it was consistent view of Apex Court that decisions on merits were always to be encouraged instead of non-suiting litigants on technicalities, including limitation. He further stated that the order of dismissal of appellant was given retrospective effect i.e. having been passed on 30.11.2012 and was made effective since 06.06.2012, therefore, it was void and, as such, period of limitation would not run against a void order.

3. We have considered the averments by the learned counsels and have also gone through the available record with their assistance.

The record is depictive of the fact that on 19.04.2012 the appellant, after having been diagnosed of Hepatitis-B, applied for two months leave to respondent No. 1 but the application remained un-attended. On the other hand, it was noted in the impugned order of dismissal, passed by respondent No. 1 on 30.11.2012, that the appellant remained absent from duty since 06.06.2012 till the date of order. It was concluded therein that major penalty of dismissal from service was imposed upon the appellant from the date of absence. The departmental appeal preferred before respondent No. 3 was rejected on 19.12.2013 through a one liner order. The appellant, thereafter, preferred a Review Petition before respondent No. 4 which was decided on 15.09.2016. It was, however, conspicuously noted therein that the appellant was dismissed from service w.e.f. 07.01.2012 and the review petition was dismissed being barred by time.

4. It is also a fact that in the summary of allegations and the charge sheet it was recorded that the appellant remained absent w.e.f. 07.01.2012, contrary to the order of dismissal. The mentioning of discrepant dates of alleged absence in the charge sheet, the order of dismissal of appellant and the order of rejection of his review petition had rendered the appellant at loss in defending his cause aptly, besides, having been put in jeopardy of retrospective removal from service. It is also not ascertainable that whether the appellant was dismissed from service w.e.f. 07.01.2012 or from 6.6.2012. Had the effective date being 06.06.2012, the appellant had much prior to it submitted an application for medical leave on

19.04.2012 which remained un-dilated and undecided on the part of the respondents.

5. In view of the above we are of the considered view that the departmental proceedings against the appellant were taken in a slip-shod manner and he was made to confront with inconsistent charges/allegations. The said proceedings, therefore, are not sustainable in the eyes of law.

Resultantly, we dispose of the appeal in hand in terms that the impugned orders dated 30.11.2012, 19.12.2013 and 15.09.2016, passed by respondents are set aside. A denovo enquiry in the matter shall be undertaken by respondents but only in accordance with law/rules while providing an ample opportunity to the appellant in defending himself. Needless to note that his medical record and application for grant of leave shall also be kept in consideration while re-deciding the matter departmentally.

Parties are left to bear their respective costs. File be consigned to the record room.

(HAMID FAROOQ DURRANI)
CHAIRMAN

(AHMAD HASSAN)
MEMBER(E)

ANNOUNCED
26.12.2018

S.No.	Date of Order or proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	26.12.2018	Present. Mr. Abdul Hameed, Advocate .. For appellant Mr. M. Riaz Khan Paindakhel, Asstt. A.G .. For respondents Vide our detailed judgment of today, we dispose of the appeal in hand in term that the impugned orders dated 30.11.2012, 19.12.2013 and 15.09.2016, passed by respondents are set aside. A denovo enquiry in the matter shall be undertaken by respondents but only in accordance with law/rules while providing an ample opportunity to the appellant in defending himself. Needless to note that his medical record and application for grant of leave shall also be kept in consideration while re-deciding the matter departmentally. Parties are left to bear their respective costs. File be consigned to the record room. Member Chairman ANNOUNCED 26.12.2018

13.09.2018 Junior to counsel for the appellant and Mr. Riaz Khan Paindakhel Learned Assistant AG for the respondents present. Junior to counsel for the appellant seeks adjournment as his senior is not in attendance. Adjourned. To come up for arguments on 06.11.2018 before D.B

(Hussain Shah)
Member

(Muhammad Hamid Mughal)
Member

06.11.2018 Due to retirement of Hon'able Chairman, the Tribunal is defunct. Therefore, the case is adjourned for the same on 26.12.2018 before D.B.

Reader

01.01.2018 Appellant in person present. Mr. Muhammad Jan, Deputy District Attorney for respondents present. Appellant seeks adjournment as his counsel is not in attendance. Adjourned. To come up for arguments on 02.03.2018 before D.B.

(Ahmad Hassan)
Member(E)

(M.Amin Khan Kundi)
Member (J)

02.03.2018 Counsel for the appellant and Addl. AG for the respondents present. Learned counsel for the appellant seeks adjournment. To come up for arguments on 08.05.2018 before the D.B.

(Ahmad Hassan)
Member

Chairman

08.05.2018 The Tribunal is defunct due to retirement of Hon'ble Chairman. Therefore, the case is adjourned. To come on 23.07.2018

READER

23.07.2018 Appellant in person and Mr. Ziaullah, Deputy District Attorney alongwith Mr. Muqddar Khan, Inspector (legal) for the respondents present. Appellant requested for adjournment. Adjourned. To come up for arguments on 13.09.2018 before D.B.

Member

23.01.2017 Clerk to counsel for the appellant and Mr. Javed Iqbal, Inspector alongwith Assistant AG for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing on 16.03.2017.

Chairman

16.03.2017 Appellant in person and Mr. Muhammad Sheraz, H.C alongwith Mr. Muhammad Adeel Butt, Additional AG for respondents present. Appellant submitted rejoinder which is placed on file. To come up for arguments on 03.07.2017 before D.B.

(ASHFAQUE TAJ)
MEMBER

(MUHAMMAD AAMIR NAZIR)
MEMBER

03.07.2017 Appellant in person present. Mr. Zia Ullah, Deputy District Attorney alongwith Mr. Shiraz Khan, H.C for the respondents present. Appellant requested for adjournment due to non-availability of his senior counsel. Adjourned. To come up for arguments on 25.10.2017 before D.B.

(Muhammad Hamid Mughal)
Member

(Gul Zeb Khan)
Member

25.10.2017 Appellant in person and Addl AG alongwith Sheraz Khan, H.C for the respondents present. Counsel for the appellant is not in attendance. Seeks adjournment.Granted. To come up for arguments on 01.1.2018 before the D.B.

Member

Chairman

25.10.2016 Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Constable when subjected to enquiry on the allegations on the willful absence and dismissed from service vide impugned order dated 30.11.2012 where-against he preferred departmental appeal on 15.12.2012 which was rejected on 19.12.2013. That the appellant then submitted mercy petition under Rule-11-A which was also rejected vide impugned order dated 15.09.2016 and hence the instant service appeal on 06.10.2016.

That the appellant was indisposed and as such not in a position to perform duty. That the proceedings were not conducted in the prescribed manner.

The points raised at the bar need further consideration, therefore, admitted to regular hearing subject to limitation. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply. To come up for written reply/comments on 14.12.2016 before S.B.

Appellant Deposited Security & Process Fee

Chairman

14.12.2016 Agent of counsel for the appellant and Mr. Muhammad Sheraz, H.C alongwith Addl. AG for the respondents present. Requested for adjournment. To come up for written reply/comments on 23.01.2017 before S.B.

Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. **1034/2016**

S.No.	Date of order proceedings	Order or other proceedings with **signature** of judge or Magistrate
1	2	3
1	06/10/2016	The appeal of Mr. Raees Khan presented today by Mr. Abdul Hameed Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please. REGISTRAR
2-		This case is entrusted to S. Bench for preliminary hearing to be put up there on 25-10-16. MEMBER

BEFORE THE K.P.K. SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1034 / 2016

Raees Khan .....APPELLANT

VERSUS

Deputy Commandant, Elite Force,
K.P.K. Peshawar and others .....RESPONDENTS.

I N D E X

S.No.	Description of documents	Annexures	Pages
1.	Grounds of Appeal		1 - 7
2.	Application for condonation of delay with affidavit		8 - 9
3.	Copy of recruitment order dated 19-07-07	'A'	0 - 10
4.	Copies of test reports of Hospital	'B' B/1 to B/6'	11 - 17
5.	Copy of application dated 18-04-2012 for medical leave.	'C'	0 - 18
6.	Copy of statement of allegations/ charge sheet	'D' & 'D/1	19 - 20
7.	Copy of order dated 30-11-2012.	'E'	0 - 21
8.	Copy of appeal dated 15-12-2014 and rejection order dated 19-12-2013	'F&G'	22 - 23
9.	Copy of appeal dated 10-09-2014	'H'	0- 24
10.	Copy of revision petition and order dated 15-09-2016.	'I&J'	25 - 27
11.	Vakalat Nama		

Raees Khan
Appellant

PESHAWAR

6-10-2016

through

(Abdul Hameed)
Advocate, Supreme Court
Cell No. 0343-9025029

BEFORE K.P.K. SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1034 / 2016

Raees Khan son of Hazrat Khan,
Ex-Constable No. 3466/4620,
Elite Force, K.P.K. Peshawar
R/O village Tela Khel P.O. Sherkera District
Peshawar ..... APPELLANT

VERSUS

1. Deputy Commandant, Elite Force, K.P.K. Peshawar
2. Commandant, Elite Force, K.P.K. Peshawar
3. Additional Inspector General of Police, Elite Force, K.P.K. Peshawar
4. Inspector General of Police, K.P.K. Peshawar.

..... RESPONDENTS.

APPEAL U/S 4 OF K.P.K. SERVICE TRIBUNAL ACT, 1974, AGAINST OFFICE ORDER DATED 30-11-2012 OF RESPONDENT NO.1, WHEREBY THE APPELLANT HAS BEEN DISMISSED FROM SERVICE VIDE WHICH HIS DEPARTMENTAL APPEAL FOR RE-INSTATEMENT IN SERVICE WAS NOT ACCEPTED TO BY RESPONDENT NO.3 VIDE HIS ORDER DATED 19-12-2013 AND THUS THE REVISION PETITION U/S 11-A OF POLICE RULES, 1975 PREFERRED TO RESPONDENT NO.4 (I.G.P), FOR RE-INSTATEMENT IN SERVICE WAS ALSO REJECTED BY AN ORDER DATED 15-09-2016.

Filed to-day
Registrar
6/10/16

Prayer-in-Appeal

ON ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDER DATED 30-11-2012 OF RESPONDENT NO.1 REGARDING DISMISSAL FROM SERVICE MAY PLEASE BE SET ASIDE AND THE APPELLANT MAY PLEASE BE RE-INSTATED IN SERVICE WITH ALL BACK BENEFITS OR ANY OTHER RELIEF DEEMS FIT AND APPROPRIATE UNDER THE CIRCUMSTANCES OF THE CASE MAY ALSO BE GRANTED IN FAVOUR OF THE APPELLANT.

RESPECTFULLY SHEWETH:

SHORT FACTS giving rise to this appeal are as under :-

1. That the appellant was recruited as Constable in BPS-5 in Police Department, K.P.K. by an order of Superintendent of Police HQRs Peshawar and he was allotted No. 4620 vide order OB No. 2063 dated 19-07-2007. (Copy of recruitment order dated 19-07-2007 is attached as Annex: 'A').

2. That the appellant performed his duties with commitment and devotion, also passed all the requisite training and courses of Police Department and besides all this, since the appellant was dutiful, regular, energetic and highly efficient in performance of his duties, therefore, his services were transferred to Elite Force, K.P.K. Peshawar where he worked for about 10 years to the entire satisfaction of his superior Officers.

3. That the appellant while working as Constable at Police Station Nasir Bagh (Peshawar), suddenly fell ill and was unable to do his normal duties, therefore, he immediately went to Police Hospital, Peshawar for medical check up, whereafter thorough test and medical examination by the doctors concerned, the symptoms of Hipatatis "B" Virus(HBV) were found and it was diagnosed to be Hipatatis "B" disease for which the appellant was advised complete rest and light duty to be performed by him in the Police Station. (Copies of different test reports of the hospital are attached as Annexures 'B; 'B/1 'B/2, 'B/3, 'B/4, 'B/5, and B/6').

4. That as the appellant was suffering from Hipatatis "B" disease and his condition was daily deteriorating and there was no sign of his improvement herein the police station, therefore, the appellant applied to the concerned

authorities for grant of medical leave for a period of two months. The S.P. Headquarters, Peshawar instead of granting him medical leave for the period applied for, referred him to police Hospital, Peshawar for medical examination by the doctors concerned, but despite this fact that as per test obtained from this Hospital they opined that the patient is suffering from Hipatatis "B" disease but he was not granted medical leave for the reasons unknown to the appellant and thus the appellant was kept alone in a room of the Police Station at the mercy of the Officers concerned. (Copy of application dated 18-04-2012 is attached as Annexure 'C').

5. That the appellant was put in high tensionsand troubles faced by him at the Police Station as he was neither provided proper medicines nor proper food as was required to him, hence the appellant without waiting for sanction/approval of his medical leave, straight away went to his native village for rest and further treatment at his home with this expectation in mind that his medical leave would be sanctioned in due course of time as his application was based on facts, duly supported by medical certificates/tests. However, it was a matter of great surprise/shock to know that at his back the Department has initiated departmental proceedings against the appellant in order to get him dismissed from service. As a consequence thereof, statement of allegations/charge sheet were prepared and an Inquiry Officer was appointed to enquire into the sickness case/absence of the appellant. All these charge sheets/ statement of allegations or any other documents were neither served upon the appellant nor had he received any such documents nor he was afforded any opportunity to be heard in person before the Inquiry Officer or the authority and thus without conducting any so-called inquiry and without hearing the appellant, without

providing the inquiry report, show cause notice, statement of allegations/charge sheet, the Inquiry Officer in his report recommended major penalty in the form of dismissal to be inflicted upon the appellant. (Copies of statement of allegations/ charge sheet as prepared by the Department are attached as Annexures 'D' and 'D/1').

6. That it is pertinent to mention here that neither the so-called inquiry report as allegedly conducted by the Inquiry Officer concerned, nor any show cause notice, if any, was ever served upon the appellant nor the appellant had ever received any such documents from the authority, but on the basis of unilateral inquiry report submitted by the Inquiry Officer, the authority with one stroke of pen, without hearing and without observing all the codal formalities as laid down in Police Rules, 1975, by an order dated 30-11-2012 has dismissed the appellant from service from the date of absence/sickness period. (Copy of order dated 30-11-2012 is attached as Annexure 'E').

7. That as regards the limitation involved in the instant appeal, it is submitted that as per dictum laid down by the apex court of Pakistan in a judgment reported in 1986 SCMR 962(titled Mst. Rehmat Bibi and others Versus Punna Khan and others), principles of limitation: not applicable when order is nullity in law - if an impugned order has been passed without hearing and notice to a party whose presence is otherwise necessary before authorities concerned, such order will be nullity in eye of law and no question of limitation would arise.

8. That after gaining health and becoming capable to do police duties, the appellant submitted first an appeal to respondent No.2 for his re-instatement in service. However, this appeal was not accepted by the concerned authorities vide Additional I.G.P., EliteForce, K.P.K. Peshawar, orders dated 19-12-2013. (Copy of appeal dated 15-12-2013 and non-acceptance order dated 19-12-2013 are attached as Annexures 'F' & 'G' respectively).

9. That later on the appellant submitted second appeal on the same subject before C.C.P.O. Peshawar for re-instatement in service, but the same was not responded to. (Copy of appeal dated 10-09-2014 is attached as Annexure 'H').

10. That since the appellant was/is now quite fit, hale and hearty capable to perform his duties in police Department as was done by him previously, therefore, the appellant as a last resort submitted a'revision petition' under Rule-11-A of K.P.K. Police Rules, 1975 to respondent No.4 (I.G.P. KPK) for mercy and justice/re-instatement in service. This revision petition was however, also rejected by him on flimsy grounds vide order dated 15-09-2016. (Copy of revision petition and order dated 15-09-2016 are attached as Annexures 'I' and 'J' respectively). Hence this service appeal, inter-alia on the following grounds :-

G R O U N D S

A) That the appellant has not been treated in accordance with law, thus the impugned conduct by respondents and the subsequent arbitrary decisions are contrary to the Articles 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973.

B) That the impugned conduct of respondents is based on malafide in law and in fact. The appellant being patient of Hipatatis "B" was neither granted medical leave after his disease was diagnosed by the Hospital doctors, nor was he treated fairly and justly under the Rules during his illness. The departmental proceedings initiated against him during the period when his application for medical leave was pending, was illegal,

unlawful, without jurisdiction, based on malafide and hence the impugned order passed by the authority is a void order in the eye of law and is not sustainable and maintainable to be acted upon.

C) That no charge sheet/statement of allegations were ever served upon the appellant nor was he associated with the so-called inquiry proceedings. The whole departmental proceedings was conducted at his back in flagrant violation of law/Rules on the subject and on this basis the award of major penalty (dismissal) is illegal, unlawful and not sustainable in eye of law.

D) That the respondents have gone against the very principle of fundamental justice i.e. Audialteram partem. The appellant was not given any opportunity of hearing before passing the impugned order of dismissal from service.

E) That the appellant has never been served with any charge sheet or any statement of allegation, thus appellant has been denied a fair opportunity to defend himself against the charge of absence/sickness whereas in fact the appellant was confined to bed at home due to the disease /Virus caused to him.

F) That the appellant has spotless career of 10 years service rendered by him in Police Department and during all this period he did his duties regularly, honestly and diligently to the best of his capabilities and abilities and has never given any chance of complaint whatsoever to his superior Officers/Boss.

G) That now health of the appellant is improved and capable to resume his duty in case he be given a chance of service as at his credit there is a 10 years

service in Police Department and thus his absence from duty (in fact serious illness) was beyond his control for which the appellant is not liable to be penalized harshly as dismissal from service.

H) That the major penalty imposed upon the appellant is too harsh and is liable to be set aside as no hearing right has been provided to the appellant during the whole departmental proceedings.

It is, therefore, humbly prayed that on acceptance of this appeal, the impugned order dated 30-11-2012 of respondent No.1 may please be set aside and the appellant may please be re-instated in service with all back benefits or any other relief which deems fit and appropriate under the circumstances of the case may kindly be granted in favour of the appellant.

Rafees Ur Rehman
Appellant

through

Abdul Hameed
(Abdul Hameed)
Advocate, Peshawar

PESHAWAR

6-10-2016

VERIFICATION

Verified today on 6th September, 2016 at Peshawar that the contents of the accompanied appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Rafees Ur Rehman
Deponent

6/10/2016

BEFORE THE K.P.K. SERVICE TRIBUNAL, PESHAWAR

Appeal No. _____/ 2016

Raees Khan .....Versus .....Deputy Commandant, Elite Force, K.P.K. Peshawar and others

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APPLICATION FOR CONDONATION OF DELAY.

Respectfully sheweth:

1. That the applicant/appellant has filed this accompanied appeal before this Hon'ble Tribunal, wherein no date has yet been fixed.

2. That on 12-03-2012 the applicant/appellant was suffering from fever while performing his duty at Nasir Bagh Police Station, Peshawar and on being referred to Police Hospital Peshawar, his disease was diagnosed to be Hipatatis "B" and because of this illness the applicant was confined to bed rest and therefore, remained absent from duty as he was not granted sick leave by the Police Officer concerned and as a a result departmental proceedings on account of absence from duty was initiated against him and consequently he was dismissed from service due to long absence. Since the applicant was ill, belonging to a backward area situated far away from Peshawar, hence he could not calculate the limitation period for filing the appeal to the authorities against his dismissal in time and thus caused delay in the departmental proceedings with respect to preferring appeals to the authorities within the statutory period.

3. That this delay, if occurred, is neither wilfull nor deliberate but was due to serious illness and un-favourable circumstances faced by the applicant/appellant.

4. That accrued vested rights of the applicant/appellant are involved in this case and hence this appeal deserves to be decided on merits.

5. That since the applicant/appellant being involved in a chronic disease, therefore, the applicant could not receive the charge sheet/statement of allegation nor appeared before the Inquiry Officer nor was afforded an opportunity to be heard in person before the authority to defend his case, but the major penalty in the form of dismissal from service was inflicted upon the applicant, without observing the codal formalities as laid down in the Police Rules, 1975 and thus this void order passed by the authority has no value and per judgment of the apex court of Pakistan for void orders no limitation runs.

6. That it has been consistant view of the apex court of Pakistan that decision of the cases, on merits always to be encouraged instead of non-suiting the litigants on technical reasons, including grounds of limitation. Reliance is placed on the apex court judgment as reported in 2004 (CS) 1014, 2003 PLC(CS) 796, 1986 SCMR 962 and PLD 1969 SC 582.

It is, therefore, most humbly prayed that on acceptance of this application, the delay in filing the appeals to the concerned authorities, may be condoned.

Rees Khan
Applicant/Appellant
through Abdul Hameed
(Abdul Hameed)
Advocate, Peshawar

PESHAWAR
6-10-2016

KHALID MAHMOOD ADVOCATE
ATTESTED
NOTARY PUBLIC

AFFIDAVIT

I, Rees Khan, Ex-Constable No.3466/4620 Elite Force,K.P.K. Peshawar R/O village Tela Khel P.O. Sher Kera, District Peshawar do hereby solemnly affirm and declare on oath that the contents of the above application are true and correct to the best of my knowledge.

Rees Khan
Deponent

10

Annex: "A"

ENLISTMENT ORDER.

Recruit/Constable Rees Khan S/O Hazrat Khan

R/O Tola Sherkara Hattani PS Hattani

Distt: Peshawar is hereby enlisted as recruit/Constable in BPS-5 as selected by the recruitment Committee w.e.f _____ and allotted Constabulary No 4620

Height 5'-7½" Chest 34"x35½"

Education 10th D/O Birth 3 / 4 / 1984.

His service is purely on temporary basis and liable for termination at any time without any notice.

OB No. 2063

Dated 19 / 7 2007.

SUPERINTENDENT OF POLICE.
HQRS: PESHAWAR.

ATTESTED
ADVOCATE

11 Annex "B"

Dr. Fazal-ur-Rehman
MBBS, DCP, M. Phil (Haematology)

PATIENT ID	: 1202012451	DATE / TIME	: 08/02/12 18:29:47
PATIENT	: RAEES	AGE	: 26 Yr
SEX	: Male	SPECIMEN	: Blood
REFFERED BY	:		
TEST REQUIRED	: HBsAg		

RESULT

HBsAg ..... Reactive(249)
Cut of index for Non-Reactive HBsAg..... 2
METHOD: Microparticle Enzyme Immunoassay (MEIA)
(3rd Generation ELISA)

Remarks: This is Not a viral Quantitation test and the figures given have no prognostic significance. For quantitative viral load quantitative PCR recommended.

Haematologist
Dr.FAZAL-UR-REHMAN
M.B.B.S.,D.C.P.
M.Phil (Haematology)

ATTESTED
ADVOCATE

Note : See Reverse for Conditions

12

B/1

12-03-12

BLOOD COMPLETE

A.B.O

HBC Ag Positive

PLATELATE

B.D.

P.C.V

E.S.R.

D.L.C.

Neutrophils

Eosinophils

HBC Ag Repeat after to Elisa Method

Monocytes

Others

Laboratory Incharge
Dalas Hospital Peshawar

ATTESTED

ADVOCATE

13

B/2

20-5-12

BLOOD CHEMISTRY

S.B.S.

HBC Ag Positive

PLATELATE

B.D.

P.S.V.

E.S.R.

D.L.C.

Neutrophils

HBC Ag Reactive

Eosinophils

after to Elisa

Lymphocytes

Method

Others

Laboratory Incharge
Police Hospital Peshawar

تصدیق پولیس ہسپتال پشاور

ATTESTED

ADVOCATE

14 B/3

رئیس خان

26/11/2012

HBS - Positive +ve

HCV - negative -ve

Plz Confr HBS by ELISA

ٹیسٹ پولیس ہسپتال
پشاور

ATTESTED
ADVOCATE

15

B/4

Operator: AMJAD

Print Date&time: July 25, 2015 1:35 PM

Lab No: 1270507715

Test Date: 25-07-2015

OPD No: 4502507715

Name: RAEES (42/9369)

Age: 30 Sex: M Ref By: Medical Male

Test	Normal	Result
Bilirubin Total (SBR)	Up to 1.0	0.2 mg/dL

ATTESTED

ADVOCATE

L-R-H

پشاور

17 B/6

AL-SHAFI WELFARE

HOSPITAL

Near Speen Jumat, Badhaber, Peshawar.
Cell: 0313-7878883 - 0315-0576900

Patient Name: Raees Khan Sex: M Date: 6/9/12

HEMATOLOGY			SEROLOGY		BIOCHEMISTRY		
Test	Result	Normal	Test	Result	Test	Result	Normal
HB		12-14 F g/DL 14-18 M g/DL	Brucella Test		Bilirubin	0.8	Up to 1.0mgdl
			Abortus		ALT (SGPT)	42	Up to 40mgdl
					Alk. Phosphate	160	Adult 98-306 UL
TLC		/cmm (4000-11000)	Melitensis				Child 250-630 UL
DLC			Widal Test		Total Proteins		6.0-8.0 gdl
Neutrophils		%45-65	To	TH			
Lymphocytes		%25-45	Wida		Glucose Fasting		70-110mgdl
Monocytes		%0-10	Typhidot		Glucose Random		80-150mgdl
Esinophilis		%2-5			UricAcid		4.2-6.4mgdl
Basophils		%0-1	IgM				
Platelet Count		15,000-400000	IgG		Urea		15-45mgdl
ESR		01-15	HIV		Creatinine		0.6-1.6mgdl
Malaria			H. Pylori	negative	Serum Calcium		8-10.150mgdl
					Serum Cholesterol		15-250mg/dl
Blood Group			ICT for TB		Triglycerides		80-150mg/dl
R H Factor			Toxoplasma		HDL		>45 mgdl
CT			HBS Ag	positive	LDL		< 150mgdl
BT			HCV	Negative	Semen Analysis		
Urine Examination			RA Factor		Volume		
Color			A.S.O. Titer		Color		
Ph			Stool R.E.		Normal		
Albumin			Color		Abnormal		
Sugar			Consistency		Pus Cells		
Pus Cell			Mucus		RBCs		
RBCs			Blood		Active		
Epithelial Cell			Ova or cyst		Sluggish		
Casts			Other		Dead		
Cal Oxalate					Sperm Count		
Pregnancy Test							

ADVOCATE

Better Copy (18)

بخدمت جناب ڈپٹی کمانڈنٹ ایلیٹ فورس خیبر پختونخواہ پشاور

18

Annex: C"

955-R

10-4-

ATTESTED

ADVOCATE

[illegible]

455-R

19-4-2012

[illegible]

Dated 19-4-2012

جناب عالی:

4620 [illegible]

[illegible]

[illegible] 5-3-2012 [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

18/4/2012 [illegible]

[illegible]

[illegible]

A/I [illegible]

S.P. [illegible] 19/4/12

[illegible] Hospital [illegible] [illegible] head police officer [illegible] 20-4-2012

Sd:

Annex "D"

SUMMARY OF ALLEGATIONS

I, Muhammad Iqbal, Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar as competent authority am of the opinion that Constable Races Khan No. 4620 has rendered himself liable to be proceeded against as he has committed the following misconduct within the meaning of Police Disciplinary Rules (amended in 1975).

SUMMARY OF ALLEGATIONS

He was remained absent himself without any leave or prior permission w.e.from 07.01.2012 till this date.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations Inspector Javed Iqbal Elite Force Headquarters, Peshawar is appointed as Enquiry Officer.

3. The Enquiry Officer shall, in accordance with the provision of the said Ordinance, shall provide reasonable opportunity of hearing to the accused, record statements etc. and findings within (25 days) after the receipt of this order.

4. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the enquiry officer.

(MUHAMMAD IQBAL)
Deputy Commandant
Elite Force, Khyber Pakhtunkhwa, Peshawar

No. 6111-17 /EF, dated Peshawar the 17/07/2012

Copies to:

1. OS, Elite Force Khyber Pakhtunkhwa Peshawar
2. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar
3. RI, Elite Force Khyber Pakhtunkhwa Peshawar
4. Inspector Javed Iqbal Elite Force Headquarters Peshawar
5. OASI, Elite Force Khyber Pakhtunkhwa Peshawar
6. SRC, Elite Force, Khyber Pakhtunkhwa, Peshawar
7. Constable Races Khan No. 4620 of Elite Force

ATTESTED
ADVOCATE

(MUHAMMAD IQBAL)
Deputy Commandant
Elite Force, Khyber Pakhtunkhwa, Peshawar

20 D/1

CHARGE SHEET

I, Muhammad Iqbal, Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar as competent authority, hereby charge you Constable Raees Khan No. 4620 of Elite Force as follows.

You were remained absent without any leave or prior permission w.e.from 07-01-2012 till this date.

By reason of the above, you appear to be guilty of misconduct under the Police Disciplinary Rules (amended in 1975) and have rendered yourself liable to all or any of the penalties specified in the said rules.

2 You are, therefore, directed to submit your defense within seven days of the receipt of this Charge Sheet to the Enquiry Officer.

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

4 You are directed to intimate whether you desire to be heard in person.

5 A statement of allegation is enclosed.

6

(MUHAMMAD IQBAL)
Deputy Commandant,
Elite Force, Khyber Pakhtunkhwa, Peshawar.

ATTESTED
ADVOCATE

21

Annex: "E"

ORDER

You Constable Raees Khan No. 3466/4620 of Elite Force remained absent from duty since 06.06.2012 till this date.

Proper departmental enquiry was conducted against you by Inspector Javed Iqbal Khan of Elite Headquarters. You were given full opportunity but you did not appear before the enquiry officer. To ensure your appearance a notice was issued to you in daily newspaper "Express" dated 15.11.2012 and were directed to join the enquiry within 07 days after the publication of notice, but you neither joined the enquiry proceeding conducted against you nor appeared for duty. It seems that you have no interest in your official duty, the enquiry officer recommended you for major punishment.

I, Muhammad Iqbal Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar as competent authority, impose major penalty of dismissal from service upon you from the date of absence.

(MUHAMMAD IQBAL)
Deputy Commandant,
Elite Force, Khyber Pakhtunkhwa, Peshawar.

No. 10777-87 /EF, dated Peshawar the 30/11/2012.

Copy of above is forwarded to the:-

1. Capital City Police Officer, Peshawar.
2. Deputy Superintendent of Police, Elite Force Headquarters.
3. OS, Elite Force Khyber Pakhtunkhwa Peshawar.
4. RI, Elite Force Khyber Pakhtunkhwa Peshawar.
5. Inspector Javed Iqbal Khan of Elite Headquarters.
6. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
7. OASI / Incharge Kot Elite Force, Khyber Pakhtunkhwa, Peshawar.
8. SRC / FMC, Elite Force, Khyber Pakhtunkhwa, Peshawar.
9. Constable Raees Khan No. 3466/4620 of Elite Force.

ATTESTED
ADVOCATE

w/JC
3/12

Annex: F"

بخدمت جناب کمانڈنٹ ایلائٹ فورس (Elite Force) خیبر پختونخواہ پشاور

محکمانہ اپیل بخلاف حکم نمبر 87-10777 مورخہ 30-11-2012 جاری شدہ جناب محمد اقبال ڈپٹی کمانڈنٹ ایلائٹ فورس خیبر پختونخواہ پشاور جس کی رو سے صاحب موصوف نے بوجہ بیماری غیر حاضری کے سائل کو نوکری سے برخاست کرنے کا حکم صادر کیا ہے۔ یہ اپیل دادرسی اور بحالی نوکری کیلئے دائر کی جاتی ہے (Re-instatement)

جناب عالی! اپیلانٹ کے حالات حسب ذیل عرض رسان ہے۔

1:- یہ کہ اپیلانٹ عرصہ (8) سال سے محکمہ پولیس میں بطور کنسٹیبل عہدہ 4620 پوری امانداری اور دیانتداری سے خدمات انجام دے رہا ہے۔

2:- یہ کہ اپیلانٹ تھانہ ناصر باغ پشاور میں اپنی ڈیوٹی انجام دے رہا تھا کہ اچانک اپیلانٹ مورخہ 5-3-2012 کو ہیپاٹائٹس B HBs-Positive میں مبتلا ہو گیا اور مورخہ 8-4-2012 کو ڈپٹی کمانڈنٹ کی خدمت میں چھٹی کے لئے ایک درخواست پیش کی تھی کہ اپیلانٹ بوجہ موذی مرض ڈیوٹی انجام دینے سے قاصر ہے اور اپیلانٹ کو (2) ماہ کی چھٹی منظور کی جائے۔ اپیلانٹ کو سیدھا لکل چیک اپ کیلئے پولیس ہسپتال بھیجا گیا اور وہاں پر ہیپاٹائٹس ثابت ہوا۔ تاہم اس کے باوجود اپیلانٹ کو چھٹی منظور نہیں کی گئی اور بوجہ مسلسل علاج معالجہ گھر پر ہی رہا اور بوجہ بیماری غیر حاضر رہا اور محکمانہ کارروائی اسی دوران اپیلانٹ کے خلاف عمل میں لائی گئی ہے لیکن اس بیماری کے دوران اپیلانٹ نے کوئی جارج شیٹ وصول کیا ہے اور نہ انکوائری آفیسر کے سامنے پیش ہوا ہے اور یکطرفہ کارروائی عمل میں لاکر اپیلانٹ کو نوکری سے برخاست کیا گیا ہے۔ کیونکہ اپیلانٹ بیماری کی وجہ سے غیر حاضر تھا۔

3:- یہ کہ اپیلانٹ مسلمان غیر شیدہ کا باشندہ ہے۔ اور محکمانہ کارروائی سے لاعلم ہے اور نہ ہی اطلاع کے باوجود بوجہ بیماری کوئی جواب دہی اور نہ ہی انکوائری آفیسر کو پیش ہو کر حاضر تھا۔ اپیلانٹ بے غفلت اور سستی اور لاپرواہی اپیلانٹ کی قصداً عمداً نہ تھی۔ بالکل بوجہ بیماری تھی۔

4:- یہ کہ اب اپیلانٹ بیماری سے قدرے صحتیاب ہو چکا ہے اور نوکری کرنے کا قابل ہے۔ نیز اپیلانٹ کے خلاف محکمانہ کارروائی غلط ہے اور اپیلانٹ کے حقوق کے منافی ہے۔ اپیلانٹ بال بچے دار اور غریب ہے۔ لہٰذا استدعا ہے کہ منظوری اپیل ہذا اپیلانٹ کو دوبارہ نوکری بحال کرکے ڈیوٹی کا حکم (Re-instatement) کے حکم کو منسوخ اور کالعدم قرار دیا جائے۔ تاکہ اپیلانٹ دعا گو رہے گا۔

مورخہ 15-12-2012

کنسٹیبل رشید خان نمبر 4620 Elite Force KP پشاور

ATTESTED
ADVOCATE

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Annex G

Office of the Addl: Inspector General of Police
Elite Force Khyber Pakhtunkhwa Peshawar

No. 17226 /EF

Dated 18/12/2013.

To : Mr.Raees Khan S/O Hazrat Khan

Address: Village Tela Khel, P/O Sherkera Teh: & Distt: Peshawar
Contact No. 0306-5670062

Subject : **APPEAL FOR RE-INSTATEMENT IN SERVICE**

Your appeal for re-instatement in service has not been accepted and Filed by the Competent Authority.

OFFICE SUPERINTENDENT
For Additional Inspector General of Police
Elite Force Khyber Pakhtunkhwa Peshawar

ATTESTED
ADVOCATE

R.K

Annex: "H"

بخدمت جناب سی سی پی او پولیس صاحب کیپٹل

(درخواست برائے Re-Instatement in Service)

جناب عالی!

سائل حسب ذیل عرض رساں ہے

یہ کہ سائل محکمہ پولیس ایلیٹ فورس میں 4620 ایلیٹ نمبر 3466 عرصہ (8) سال سے محکمہ پولیس میں اپنے ڈیوٹی ایمانداری سے ادا کر رہا ہے کہ گھریلو حالات اور مسائل کی وجہ سے من سائل ذہنی و جسمانی بیماری میں مبتلا ہو گیا تھا۔ اور من سائل کو علاج کروانا ضروری ہو چکا تھا۔

یہ کہ مزکورہ علاج و معالجہ کے کاغذات و رپورٹ، کاغذات درخواست ہذا کے ساتھ لف ہے۔

لہٰذا من سائل نے کمانڈنٹ صاحب ایلیٹ فورس کو درخواست بغرض Re-Instatement in Service دائر کی جس کی فوٹو کاپی بھی لف ہے۔

اس درخواست میں کام مختصراً ذیل سے درج ہیں۔

من سائل کو نوٹس نمبر 1722 مورخہ 19.12.13 کے ذریعہ برخاست کر کے درخواست کو Accept نہیں کیا گیا۔

لہٰذا من سائل آپ صاحبان کی خدمت میں دردمندانہ گزارش کی جاتی ہے کہ من سائل کی درخواست پر اور من سائل کی غریبی و مجبوری کو مدنظر رکھتے ہوئے دردمندانہ غور فرمائیں۔

اور من سائل کو اپنے ڈیوٹی پر دوبارہ بحالی کے احکامات صادر فرمائیں۔

سائل تاحیات بعہد تابعدار رہے گا۔

المرقوم: 28.9.2014

سائل
رئیس خان کانسٹیبل ایلیٹ فورس

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بخدمت جناب سی۔سی۔پی۔او۔پولیس ضلع پشاور

(درخواست بمراد Re-Instatement in service)

جناب عالی:۔

سائل حسب ذیل عرض رسان ہے۔

یہ کہ سائل رئیس خان محکمہ پولیس ایلیٹ فورس بلٹ 4620 ایلیٹ 3466 عرصہ (8) سال سے محکمہ پولیس میں اپنی ڈیوٹی ایمانداری سے ادا کرتا رہا ہوں۔

گھر کی حالات اور سائل کی وجہ سے من سائل ذہنی جسمانی بیماری میں مبتلا ہو گیا تھا۔ اور من سائل کو "کالا یرقان" ہو چکا تھا۔

یہ کہ مذکورہ علاج معالجہ کے تمام رپورٹ، کاغذات درخواست ھذا کے ساتھ لف ہے۔

لہذا سائل نے کمانڈنٹ صاحب ایلیٹ فورس کو درخواست برائے Re-instatement in service دائر کی۔ جس کی فوٹو کاپی بھی لف ہے۔

اس درخواست میں تمام مشکلات تفصیل سے درج ہیں۔

اس کی طرف سے من سائل کو لیٹر 17226 EF مورخہ 19-12-13 کو جاری ہوا جس میں میرے درخواست کو Accept نہیں کیا گیا۔

لہذا اب من سائل آپ صاحبان کی خدمت میں دردمندانہ گزارش کرتا ہوں۔ کہ من سائل کے درخواست پر اور من سائل کے غریبی و عاجزی کو مدنظر رکھتے ہوئے دردمندانہ غور فرمائیں۔ اور من سائل کو اپنی ڈیوٹی پر دوبارہ تعیناتی کے احکامات صادر فرمائیں۔ سائل تاحیات نیم خاندان دعا گو رہے گا۔

المرقوم 10-9-2014

عرض

سائل رئیس خان کانسٹیبل ایلیٹ فورس 3466/4620

25

Annex: "I"

To

The Inspector General of Police,
K.P.K. Peshawar.

SUBJECT:- MERCY PETITION/REVIEW PETITION IN RESPECT OF RAEES KHAN NO.4620, CONSTABLE WORKING UNDER DEPUTY COMMANDANT, ELITE FORCE, K.P.K. WHO HAS BEEN DISMISSED FROM SERVICE ON ACCOUNT OF LONG ABSENCE DUE TO ILLNESS.

Respected Sir,

Your humble petitioner submits this mercy appeal/ Review. before your honour for favourable and sympethetic consideration on the following grounds :-

1) That the petitioner is an Ex-Constable No. 4620, and was working under the command of, Deputy Commandant Elite Force, K.P.K. in Police Lines, Peshawar.

2) That during the start of the year 2012 the petitioner suddenly fell ill and after examination by the doctors of the Police Services Hospital, Peshawar, the disease was diagnozedto be "Hippatatics "C" and therefore, was unable to attend to his duties due to serious illness.

3) That because of this serious illness he remained absent without any leave OR prior permission w.e.f. 7-01-2012.

4) That the competent authority , Muhammad Iqbal, Deputy Commandant, Elite Force, K.P.K. initiated departmental proceedings against him and the petitioner was served with statement of allegations and Mr. Javed Iqbal, Inspector Elite Force, Headquarters, Peshawar was appointed as Inquiry Officer and after observing all the codal formalities the petitioner was dismissed from service on account of long absence as stated above.

ATTESTED
ADVOCATE

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5) That during the absence (when he was ill due to Hippatatics "C") the petitioner was treated /examined by the doctors concerned and as a result of long treatment, the petitioner luckily regained health and now the petitioner is hale and hearty and is capable to resume his duties, provided his dismissal order is reviewed and be provided an opportunity to be re-instated in service as Constable in Elite Force, purely on humanitarian grounds.

6) That the petitioner has rendered more than 8 years service in Police Department and has undertaken all the relevant courses/training assigned to him during the service and being a trained Constable he is fully competent and able to do his duties if chance be given to him by the competent authority by reviewing his orders and re-instating in service back. (Copy of the summary allegations are enclosed for ready reference).

It is, therefore, most humbly prayed that on acceptance of this mercy petition, the dismissal orders passed against the Constable No. 4620, Elite Force, K.P.K. may kindly be reviewed and he be re-instated in service, purely on humanitarian grounds, being poor and helpless Ex-Constable of Police Department.

Thanking you in anticipation.

Your most obediently,

رئیس خان

(Raees Khan No.4620
Constable, Elite Force, KPK
R/O Sharkera P.O. Matani,
Tehsil & District Peshawar
Cell No. 0304-8459044

PESHAWAR
14-03-2016

Annex "J"

(27)

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
PESHAWAR.

No. S/ 6181 /16, dated Peshawar the 15/9/2016.

ORDER

This order is hereby passed to dispose of departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 submitted by **Ex-Constable Raees Khan No. 3466/4620.** The appellant was dismissed from service w.e.f 07.01.2012 by Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar vide order Endst: No. 10777-87/EF, dated 30.11.2012, on the charge of absence from duty for 10 months and 23 days.

His appeal was filed by Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar vide letter No. 17226/EF, dated 19.12.2013.

Meeting of Appellate Board was held on 11.08.2016 wherein appellant was heard in person. During hearing petitioner contended that he was suffering from Hepatitis C. He also produced medical documents.

Perusal of record reveals that petitioner absented himself for long period of 10 months and 23 days. Moreover, the impugned order of his dismissal from service was passed vide order dated 30.11.2012 and his appeal was filed vide order dated 19.12.2013. The instant review petition filed on 17.03.2016 is badly time barred. Thus his appeal is rejected on grounds of limitation and merit as well.

This order is issued with the approval by the Competent Authority.

Najeeb

(NAJEEB-UR-REHMAN BUGVI)
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

No. S/ 6182-88 /16,

Copy of the above is forwarded to the:

1. Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. Office Supdt: E-IV CPO Peshawar.
7. Central Registary Cell, CPO.

ATTESTED
ADVOCATE

قیمت 10 روپے

67555

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

ایڈوکیٹ/دستخط: Abdul Hameed Advocate (ASC)

بار کونسل/بار ایسوسی ایشن نمبر: BC-10-7605

رابطہ نمبر: 0343-9025029

بعدالت جناب: خیبر پختونخواہ سروس ٹریبونل۔ پشاور

منجانب: اپیلانٹ

بنام: رئیس خان ولد ظاہر شاہ Ex Constable No 3466/4620 Elite Police, KP, Peshawar

دعویٰ: S: Appeal

علت نمبر:

مورخہ:

جرم:

تھانہ:

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ آن مقام پشاور کیلئے عبدالحمید ایڈووکیٹ سپریم کورٹ آف پاکستان کو وکیل 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 وتقرر ثالث وفیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی ونظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہو گا اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ کے سبب سے ہوگا وہ وکیل موصوف وصول کرنے کا حقدار ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہٰذا وکالت نامہ لکھ دیا تاکہ سند رہے۔

المرقوم: 4/10/2016

گواہ شد

العبد — العبد

مقام پشاور کے لئے منظور ہے۔

Ex: Constable No 3466/4620 Elite Police KP Peshawar

Attested & accepted

Abdul Hameed
Advocate Supreme Court of Pakistan (ASC)
Mob: 0343-9025029

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PEASHAWAR.

Service Appeal No. 1034/2016.

Raees Khan.....(Appellant)

VERSUS

Deputy Commandant Elite Force, Khyber Pakhtunkhwa, Peshawar and others.....(Respondents)

Subject:- COMMENTS ON BEHALF OF RESPONDENTS.

Preliminary Objections:-

a) The appeal has not been based on facts.
b) The appeal is not maintainable in its present form.
c) The appeal is bad for mis-joinder and non-joinder of necessary parties.
d) The appellant is estopped to file the appeal.
e) The appeal is barred by law and limitation.
f) Appellant has wrongly impleaded Commandant Elite Force and Addl: Inspector General of Police, Elite Force. Actually Commandant Elite Force & Addl: Inspector General of Police, Elite Force is one and the same post.
g) The appellant has not come to the Honorable Tribunal with clean hands.

FACTS:-

1. Correct to the extent that appellant was enlisted in Police department as constable. He was marked absent from duty with effect from 07.01.2012 till his dismissal from service vide order dated 30.11.2012. He remained absent for a period of 10 months and 23 days. He avoided to join enquiry proceedings despite the fact he was repeatedly summoned and eventually a proclamation was published in Urdu daily Express for his attendance and joining the enquiry proceedings but he did not turn up therefore, the impugned orders were issued. Copy of the proclamation is enclosed as Annexure-A.

2. Incorrect, appellant was habitually absent and was least interested in his official duty. He was dismissed from service on charges of wilfull and deliberate absence from duty for long period.

3. Incorrect, appellant has advanced lame excuses and has manipulated the story of his illness. He remained absent from duty for long period and did not convey any message about his illness. Furthermore, he did not turn up despite proclamation was published in Urdu daily for his attendance.

4. Incorrect, appellant remained absent from duty. He avoided defending the charges of absence from duty and has advanced lame excuses of illness.

5. Incorrect, proper enquiry was conducted but appellant himself avoided joining the enquiry proceedings and defending the charges levelled against him in the charge sheet.

6. Incorrect, appellant was avoiding enquiry proceedings. Proclamation was published in Urdu daily Express but he did not bother to resume his duty and joining enquiry proceeding.

7. Incorrect, the appeal of appellant is badly time barred. The departmental appeal of appellant was time barred therefore, this Honorable Tribunal lacks jurisdiction to condone the period of limitation of departmental appeal.

8. Incorrect, appellant was not suffering from any illness as he did not convey any message about his illness before the authorities. Therefore, he was dismissed from service.

9. Incorrect, there is no concept of second appeal against the order of departmental authority.

10. Incorrect, the appeal of appellant is not tenable on the given grounds. Furthermore, his revision petition was correctly rejected by Respondent No. 4 vide speaking order. Furthermore, the revision petition was time barred.

GROUNDS:-

A. Incorrect, appellant was treated in accordance with law and rules governing the disciplinary proceeding.

B. Incorrect, appellant dismissed from service on charges of long willful and deliberate absence from service and his own inactions and ill conduct were behind passing the impugned order.

C. Incorrect, appellant was avoiding service of charge sheet and statement of allegations. He also did not turn up in response to the proclamation in Urdu daily.

D. Incorrect, appellant himself was avoiding joining enquiry proceedings and the respondents issued the impugned order after adopting all the codal formalities and legal procedure.

E. Incorrect, this Para is mere repetition of Para-C of the ground of appeal and appellant has wrongly pleaded his illness behind his long absence from duty.

F. Incorrect, appellant was habitual absentee and was least interested in official duty.

G. Incorrect, appellant was not suffering from illness but willfully and deliberately absented himself from duty.

H. Incorrect, penalty, commensurate with charges, has been imposed on appellant.

It is therefore, prayed that the appeal of appellant may be dismissed with costs.

Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 4)

Commandant Elite Force,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 1 & 2)

DAILY EXPRESS
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آخری انتباہ

آپ کنسٹیبلان ضلع اضلاع سے حال تعینات ایلیٹ فورس خیبر پختونخوا سرکاری ڈیوٹی سے اجازت ڈیل تاریخوں سے غیر حاضر چلے آرہے ہیں آپ کے خلاف محکمانہ کارروائی جاری ہے اس لئے آپ کو بذریعہ اشتہار ہذا مطلع کیا جاتا ہے کہ آپ اس اشتہار کے مشتہر ہونے کے 07 دن کے اندر اندر مجاز آفسر کے سامنے پیش ہوں بصورت دیگر آپ کے خلاف یکطرفہ محکمانہ کاروائی کی جائے گی۔

1) کنسٹیبل رئیس خان نمبر 4620/34 حال ضلع پشاور مورخہ 6/6/2012 سے بدستور غیر حاضر
2) کنسٹیبل محمد سجاد نمبر 302/34 حال ضلع کوہاٹ مورخہ 29/1/2012 سے بدستور غیر حاضر
3) کنسٹیبل طفیل احمد نمبر 1282/11 حال ضلع پشاور مورخہ 23/09/2012 سے بدستور غیر حاضر

(محمد اقبال) ڈپٹی کمانڈنٹ ایلیٹ فورس خیبر پختونخوا پشاور

INF(P)3442

Also available on www.khyberpakhtun.gov.pk

روزنامہ ایکسپریس، پشاور، جمعرات، 15 نومبر، 2012ء

DAILY EXPRESS
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اشتہار برائے اخراج

آپ کنسٹیبلان ضلع پشاور کے حال تعینات ایلیٹ فورس خیبر پختونخوا سرکاری ڈیوٹی سے اپنی اجازت ذیل تاریخوں سے غیر حاضر چلے آرہے ہیں آپ کے خلاف محکمانہ کارروائی جاری ہے اس لئے آپ کو بذریعہ اشتہار ہذا مطلع کیا جاتا ہے کہ آپ اس اشتہار کے مشتہر ہونے کے 07 دن کے اندر اندر مجاز آفسر کے سامنے پیش ہوں بصورت دیگر آپ کے خلاف یکطرفہ محکمانہ کارروائی کی جائے گی۔

1) کنسٹیبل رئیس خان نمبر 4620/349 حال ضلع پشاور مورخہ 6/6/2012 سے بدستور غیر حاضر
2) کنسٹیبل محمد سجاد نمبر 3902 حال ضلع کوہاٹ مورخہ 29/1/2012 سے بدستور غیر حاضر
3) کنسٹیبل طفیل احمد نمبر 1282 حال ضلع پشاور مورخہ 23/09/2012 سے بدستور غیر حاضر

(محمد اقبال) ڈپٹی کمانڈنٹ ایلیٹ فورس خیبر پختونخوا پشاور

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