

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

**SERVICE APPEAL NO. 1396/2018**

Date of institution ... 18.12.2017

Date of judgment ... 19.07.2019

Safdar Ali, Ex-Constable No. 2078,  
Police Station Toru, Mardan

... (Appellant)

**VERSUS**

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Mardan.
3. District Police Officer Mardan.

... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 21.11.2017, WHEREBY THE REVISION OF THE APPELLANT UNDER RULE 11-A OF POLICE RULES 1975 AMENDED IN 2014 AGAINST THE ORDER DATED 25.09.2017 OF THE RPO MARDAN HAS BEEN REJECTED FOR NO GROUNDS WHEREIN THE RPO MALAKAND UPHELD THE ORDER DATED 29.08.2017 OF THE DPO MARDAN, WHEREBY THE APPELLANT WAS DISMISSED FROM SERVICE.

Mr. Taimur Ali Khan, Advocate.

.. For appellant.

Mr. Muhammad Jan, Deputy District Attorney

.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (JUDICIAL)

MR. HUSSAIN SHAH

.. MEMBER (EXECUTIVE)

**JUDGMENT**

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Appellant

alongwith his counsel present. Mr. Muhammad Jan, Deputy District Attorney

alongwith Mr. Atta-ur-Rehman, Inspector (Legal) for the respondents present.

Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant

was serving in Police Department as Constable. He was imposed major penalty

*M. Amin*  
*19.7.2019*

of dismissal from service vide order dated 29.08.2017 on the allegation of absence from duty. The appellant filed departmental appeal (undated) which was rejected on 25.09.2017 thereafter, the appellant filed revision petition on 26.09.2017 which was rejected on 21.11.2017 hence, the present service appeal on 18.12.2017.

3. Respondents were summoned who contested the appeal by filing of written reply/comments.

4. Learned counsel for the appellant contended that the appellant was serving in Police Department as Constable. It was further contended that as per charge sheet dated 21.11.2016 the appellant was allegedly absence from duty with effect from 18.10.2016 for a period of one month and three days. It was further contended that the appellant also replied the same wherein he stated that due to domestic quarrel with his maternal uncle he could not attend the duty but the inquiry officer had conducted the inquiry and submitted his inquiry report dated 01.06.2017 but the ground mentioned in the reply of the charge sheet was not discussed in his inquiry report nor any witness was examined in this regard.

It was further contended that the appellant has also stated in the reply dated 13.04.2017 of the charge sheet that now he will immediately report to perform duty but the inquiry officer has stated in the inquiry report that the Moharrir Police Station Toru was contacted, who certified that the alleged official has not joined his duty yet therefore, it was contended that the inquiry officer was bound to record the statement of Moharrir Police Station Toru in this regard and also provided opportunity of cross examination to the appellant. It was further contended that the absence of the appellant from duty as per charge sheet was one month and three days therefore, the major penalty of dismissal from service

also harsh. It was also contended that the appellant was condemned unheard which has rendered the whole proceeding illegal and liable to be set-aside.

*M. Amin  
19.7.2019*


5. On the other hand, learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant remained absent from duty. It was further contended that the absence of the appellant was deliberated without permission of the lawful authority. It was further contended that a proper department proceeding was initiated against the appellant and the appellant was proved guilty by the inquiry officer therefore, the competent authority has rightly imposed major penalty of dismissal from service on the basis of inquiry report after fulfilling all the codal formalities and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was issued charge sheet on 21.11.2016 on the allegation of absence from duty with effect from 18.10.2016 i.e for the period of one month and three days. The record further reveals that the appellant submitted reply to the same wherein he stated that he was having some domestic quarrel with his maternal uncle due to which he could not perform the duty for the aforesaid period of one month and three days. The record further reveal that the appellant has also alleged in the reply of the charge sheet the now he will report to the concerned Police Station for duty immediately but neither the inquiry officer has discussed the plea of the appellant regarding his domestic quarrel with his maternal uncle in the inquiry report nor has recorded any statement in this regard. Same way the inquiry officer has stated in the inquiry report that he has contacted Moharrir of Police Station Toru but he replied that the appellant has not joined the duty while on the other hand, the appellant has replied <sup>to</sup> in the charge sheet that he will report to concerned P.S for duty immediately therefore, in such circumstances, the inquiry officer was also required to record the statement of Moharrir of Police Station Toru and also provide opportunity of cross examination to the appellant but the inquiry officer has not recorded the statement of Moharrir in the

*M. Amin*  
19.7.2019

presence of the appellant therefore, the appellant was condemned unheard which has rendered the whole proceeding illegal and liable to be set-aside. As such, we partially accept the appeal, set-aside the impugned order, reinstate the appellant into service with the direction to the respondent-department to conduct de-novo inquiry in the mode and manner prescribed under Police Rule, 1975 within a period of 90 days from the date of copy of receipt of this judgment. The issue of back benefits will be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
19.07.2019

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

  
(HUSSAIN SHAH)  
MEMBER

30.04.2019

Appellant in person and Mr. Zia Ullah learned Deputy District Attorney present. Appellant seeks adjournment as his counsel is not in attendance. Adjourn. To come up for arguments on 17.07.2019 before D.B.



Member



Member

17.07.2019

Appellant alongwith his counsel and Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Atta-ur-Rehman, Inspector (Legal) for the respondents present. Arguments heard. To come up for order on 19.07.2019 before D.B.



(HUSSAIN SHAH)  
MEMBER



(M. AMIN KHAN KUNDI)  
MEMBER


19.07.2019

Appellant alongwith his counsel present. Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Atta-ur-Rehman, Inspector (Legal) for the respondents present. Arguments heard and record perused.

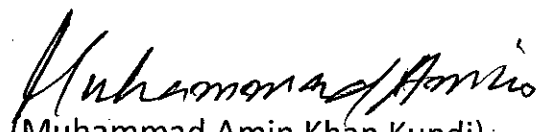
Vide our detailed judgment of today consisting of four pages placed on file, we partially accept the appeal, set-aside the impugned order, reinstate the appellant into service with the direction to the respondent-department to conduct de-novo inquiry in the mode and manner prescribed under Police Rule, 1975 within a period of 90 days from the date of copy of receipt of this judgment. The issue of back benefits will be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

19.07.2019




(Hussain Shah)  
Member




(Muhammad Amin Khan Kundi)  
Member

04.09.2018

Junior to counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney present. Junior to counsel for the appellant seeks adjournment as senior counsel is not available. Adjourned. To come up for arguments on 26.10.2018 before D.B.

  
(Muhammad Amin Kundi)  
Member

  
(Muhammad Hamid Mughal)  
Member

26.10.2018

Due to retirement of Hon'able Chairman, the Tribunal is defunct. Therefore, the case is adjourned for the same on 13.12.2018 before D.B.

  
Reader

13.12.2018

Clerk of counsel for the appellant and Mr. Muhammad Riaz Painsa Khel, Asstt. AG alongwith Attaur Rahman, S.I (Legal) for the respondents present.

A request made for adjournment on behalf of learned counsel for the appellant due to his indisposition.

Adjourned to 13.02.2019 for hearing before the D.B.

  
Member

  
Chairman

13.02.2019

Counsel for the appellant and Addl. AG alongwith Attaur Rahman, Inspector (Legal) for the respondents present.

Learned counsel for the appellant seeks adjournment due to over occupation before the Honourable High Court. Adjourned to 30.04.2019 before the D.B.

  
Member

  
Chairman

06.03.2018

Clerk of the counsel for appellant present. Mr. Riaz Painda Khel, Assistant AG alongwith Atta-ur-Rahman, Inspector for the respondent present. Written reply not submitted. Learned Assistant AG requested for further time adjournment. Request accepted. To come up for written reply/comments on 20.03.2018 before D.B.

~~\_\_\_\_\_~~ S.I (Legal)  
~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~ (Gul Zeb Khan)

20.03.2018

Appellant in person present. Mr. Kabir Ullah Khattak, Addl: AG alongwith Mr. Atta-ur-Rahman, S.I (Legal) for the respondent present. Written reply submitted. To come up for rejoinder and arguments on 28.05.2018 before D.B.



Member

28.05.2018

**Appellant Safdar Ali, alongwith Mr. Taimur Ali Khan, Advocate present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Khalid Mehmood, Head Constable for the respondents present. Rejoinder submitted on behalf of the appellant. Case to come up for arguments on 04.09.2018 before the D.B.**

  
Member


  
Chairman

03.01.2018

Learned counsel for the appellant present. Preliminary arguments heard and case file perused.

Learned counsel for the appellant argued that the appellant joined the Police Force in the year 2007 and completed all his due trainings. That during this time the appellant was unable to perform his duty due to illness of his minor son. That on this account, the respondents ~~was~~ dismissed him from service vide order dated 29.08.2015, but without issuing charge sheet, and statement of allegations. That neither any regular enquiry was held, nor he was given opportunity of self-defense. Further argued the appellant submitted departmental appeal which was rejected on 25.09.2017 for no good grounds. That the appellant filed revision under rule 11-A of the police rule 1975 on 26.09.2017, but the same was also rejected on 21.11.2017 for no good grounds.

Points raised need consideration. Admitted for regular hearing subject to all legal objections including limitation. The appellant is also directed to deposit security and process fee within (10) days, whereafter notice be issued to the respondents department for written reply/comments on 19.02.2018 before S.B.

  
(Gul Zeb Khan)  
Member (Executive)

19.02.2018



Clerk of the counsel for appellant and Assistant AG for the respondents present. Written reply not submitted. Learned Assistant AG requested for further time adjournment. Request accepted. To come up for written reply/comments on 06.03.2018 before S.B.

  
(Gul Zeb Khan)  
Member



Form-A  
FORM OF ORDERSHEET

Court of \_\_\_\_\_  
Case No. 1396/2017

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	18/12/2017	<p>The appeal of Mr. Safdar Ali presented today by Mr. Taimur Ali Khan Advocate may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 18/12/17</p>
2-	22/12/17.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>03/01/18.</u></p> <p style="text-align: right;"> CHAIRMAN</p>

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 1396 /2017.

Safdar Ali

V/S

Police Deptt:

**INDEX**

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of Appeal	-----	01-03
2.	Copy of inquiry report	A	04
3.	Copy of show cause notice	B	05
4.	Copy of reply to show cause	C	06
5.	Copy of dismissal order	D	07
6.	Copy of departmental appeal	E	08-10
7.	Copy of rejection order	F	11
8.	Copy of revision	G	12-15
9.	Copy of rejection of revision	H	16
10	Wakalat Nama	-----	17

**APPELLANT**

THROUGH:



**TAIMUR ALI KHAN  
ADVOCATE HIGH COURT**

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 1396/2017

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1435

Dated 18-12-2017

Safdar Ali, Ex- Constable, No.2078,  
Police Station Toru, Mardan.

(APPELLANT)

**VERSUS**

1. The Provincial Police Officer, KPK, Peshawar.
2. The Regional Police Officer, Mardan.
3. The District Police Officer Mardan.

(RESPONDENTS)

-----

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 21.11.2017, WHEREBY THE REVISION OF THE APPELLANT UNDER RULE 11-A OF POLICE RULES 1975 AMENDED IN 2014 AGAINST THE ORDER DATED 25.09.2017 OF THE RPO MARDAN HAS BEEN REJECTED FOR NO GROUNDS WHEREIN THE RPO MALAKAND UPHELD THE ORDER DATED 29.08.2017 OF THE DPO MARDAN, WHEREBY THE APEPLALNT WAS DISMISSED FROM SERVICE.

**PRAYER:**

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 21.11.2017, 25.09.2017 AND 29.08.2017 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED INTO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

Filed to-day

Registrar

18/12/17

## **RESPECTFULLY SHEWTH:**

### **FACTS:**

1. That the appellant joined the police force in the year 2007 and completed all his due training etc and also have good service record throughout.
2. That due to some domestic problem, and the illness of his minor son the appellant was unable to perform his duty and was remained absent from his duty. He also informed the Moharir and requested for leave.
3. That due to the above mentioned reason, one sided inquiry was conducted against the appellant in which no opportunity of defence was provided to the appellant as the appellant visited several time to attend the inquiry proceeding but he was not allowed to met with inquiry and ex-party action has been taken against the appellant. **(copy of inquiry report is attached as Annexure-A)**
4. That show cause notice was issued to the appellant which he properly replied by the appellant in which he clearly mentioned that he did not remain willfully remain absent but due to some domestic problem he was unable to perform his duty. **(Copies of show cause notice and reply are attached as Annexure-B&C)**
5. That on the basis of ex-party inquiry, the appellant was dismissed from service vide order dated 29.08.2015 without issuing charge sheet, and without conducting proper inquiry. **(Copy of order dated 29.08.2017 is attached as Annexure-D)**
6. That against the impugned order, the appellant filed departmental appeal which was rejected on 25.09.2017 for no good ground, then the appellant filed revision under rule 11-A of the police rules 1975 amended in 2014 on 26.09.2017, but the same was also rejected on 21.11.2017 for no good ground. **(Copy of departmental appeal rejection order, revision and rejection of revision are attached as Annexure-E,F,G&H)**
7. That now the appellant come to this august tribunal on the following grounds amongst others.

### **GROUND:**

- A) That the impugned order dated 21.11.2017, 25.09.2017 and 29.08.2017 are against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.

- B) That one sided inquiry was conducted against the appellant in which no opportunity of defence was provided to the appellant as the appellant visited several time to attend the inquiry proceeding but he was not allowed to met with inquiry and ex-party action has been taken against the appellant and the appellant was dismissed from service on the basis of ex-party inquiry, which is not permissible in law.
- C) That the absence period has already been condoned by declaring the absence period as leave without pay, therefore there remained no ground to penalize the appellant on absence and the impugned order may be set aside on this ground alone.
- D) That no charge sheet was served to the appellant before passing the impugned order of dismissed from service, which is the violation of law and rules.
- E) That the penalty of dismissal from service is very harsh which is passed in violation of law and, therefore, the same is not sustainable in the eyes of law.
- F) That the appellant did not intentionally absent from his duties but due to domestic problem, he was compel to remain absent from his duty and he also informed the Moharrir about the issue and requested for leave.
- G) That the appellant has been condemned unheard and has not been treated according to law and rules.
- H) 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

Safdar Ali

THROUGH:

  
TAIMUR ALI KHAN

ADVOCATE HIGH COURT

ENQUIRY REPORT AGAINST CONSTABLE SAFDAR NO.2078 PS TORU.

A 4

The Undersigned was deputed to conduct Enquiry of constable Safdar No.2078, Police Station Toru Mardan, by the Worthy District Police Officer Mardan through office Letter No.518/R Dated 21/11/2016.

BRIEF FACTS.

That **Constable Safdar No.2078**, while posted at Police Station Toru Mardan, deliberately absented himself from lawful duty vide DD No. <sup>30</sup>07 dated 18.10.2016 PS Toru till date without any leave/permission from competent authority.

PROCEEDINGS

The proceedings of the enquiry have been conducted strictly in accordance with the NWFP Police Rules 1975.

Ex-record of the defaulter constable was re-questioned from Establishment branch, whereas it was noticed that, he has no good & 20 bad entries throughout his service.

The above-mentioned constable was contacted several times to appear before the undersigned and record his statement; first he was avoiding himself. Later on, when he produced for recording his statement, he was directed to report his arrival in place of posting at PS Toru, and produce the same arrival DD report but in vain. In this connection, Moharrar of PS Toru was also contacted, who certified that the alleged official has not joined his duty yet. This act shows to be great negligence & lack of interest in official duty on part of the defaulter police official, which is mentioned in the enclosed DD report of PS City.

FINDINGS.

During the enquiry it was observed that, the above mentioned constable is found guilty of misconduct / inefficiency and having no interest in official duty, who could neither convince the undersigned through his statement, nor did he reported his arrival back to PS concerned.

CONCLUSION.

In view of the above, the undersigned has reached to the conclusion that, the above mentioned official may be dealt as Ex-Party action.

No: 734 /S  
Dt: 01-06-2017  
Encl: ( 10 )

Good-will Final SCN  
Bad 22  
312-days Absence

2/06/17

OR  
Dismissed  
Jawid  
26/06

Deputy Superintendent of Police,  
City Circle, Mardan.

ATTESTED

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B (5)

**FINAL SHOW CAUSE NOTICE**

I, Dr: Mian Saeed Ahmad, District Police Officer, Mardan as competent authority under Police Rules 1975, do hereby serve you **Constable Safdar No. 2078**, while posted at Police Station Toru, Mardan as follows:-

i) That consequent upon the completion of enquiry conducted against you through inquiry Officer, however, you have been found guilty.

ii) On going through the findings and recommendations of the enquiry Officer, the material on record and other connected papers including your defence before the said enquiry Officer.

I am satisfied that you have committed, a gross misconduct as defined in Rules 2 (iii) of KP Police disciplinary Rules 1975.

*Whereas, you, Constable Safdar No. 2078*, while posted at Police Station Toru Mardan, deliberately absented yourself from the lawful duty vide DD No. 07 dated 18.10.2016 to-date, without any leave / permission of the competent authority.

1. As a result thereof I, Dr: Mian Saeed Ahmad, District Police Officer, Mardan as competent authority issue you a final show cause is to why major punishment of dismissal may not be imposed upon you, your reply should reach to this office within 05 days.
2. If no reply to this notice is received within Seven days of its delivery in the normal course of circumstances, it shall be presumed that you have no defence to put in and in this case an ex-parte action shall be taken against you.
3. Copy of the findings of the enquiry officer is enclosed.

  
District Police Officer,  
Mardan

No. 9 /R/FSCN

Dated 7 / 6 / 2017

Constable Safdar No. 2078 s/o Muhammad Shareef r/o Garhi Ismail zai PS Garhi Kapoora.


**ATTESTED**



Deputy Superintendent of Police,  
City Circle, Mardan.

Bad. 22

312-days Absence

  
2/06/17

جنا عالی

جنا عالی شہزادہ گل خان <sup>9/R/BSN</sup> 9/17-6-7  
تاریخ 7 - 10/18/76

جنا عالی - شہزادہ گل خان کی طرف سے  
جنا عالی - شہزادہ گل خان کی طرف سے

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محمد علی بیگ 2078

file

ATTESTED  
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ORDER

This order will dispose-off the departmental inquiry, which has been conducted against Constable Safdar No. 2078, on the allegation that he while posted at Police Station Toru-Mardan, deliberately absented himself from lawful duty vide DD No. 30 dated 18.10.2016 to till date without any leave / permission of the competent authorities. This attitude adversely reflected on his performance which is an indiscipline act and gross misconduct on his part as defined in rule 2(iii) of Police Rules 1975. Therefore he was recommended for departmental action.

In this connection, Constable Safdar No. 2078, was charge sheeted vide this office No. 518/R, dated 21.11.2016 and also proceeded him against departmentally through Mr. Shah Mumtaz Khan, DSP/City Mardan, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsement No. 734/S, dated 01.06.2017. The allegations have been established against him and recommended for Ex-parte action by the Enquiry Officer as the alleged official neither reported his arrival to PS Concerned nor he bother to appear before him.

After going through the enquiry file, the undersigned issued a final show-cause notice to the alleged official vide this office No. 09/R/FSCN, dated 07.06.2017. To which he submitted his reply to the undersigned so that he was called to the orderly room on 26.08.2017.

After going through the final show-cause notice / enquiry file and heard him in orderly room, the undersigned reached to the conclusion that the alleged Constable Safdar No. 2078, is hereby awarded major punishment of "Dismissal from Service" while his 312-days absence period is counted as leave without pay, with immediate effect in exercise of the power vested in me under the above quoted rules.

*Order announced*

O.R.No. 1976  
Dated 29.8.2017.

No. 7468-72 dated Mardan the 29-8 /2017.

  
Dr. Mian Saeed Ahmed (PSP)  
District Police Officer,  
Mardan.

Copy for information and necessary action to:-

1. The S.P Operations, Mardan.
2. The DSP/City, Mardan.
3. The Pay Officer (DPO) Mardan.
4. The F.C (DPO) Mardan.
5. The OSI (DPO) Mardan.

\*\*\*\*\*

**ATTESTED**



To

E (8)

The Honourable,  
Deputy Inspector General of Police,  
Mardan Region-I, Mardan.

Subject: APPEAL FOR RE-INSTATEMENT IN SERVICE  
AGAINST THE ORDER OF WORTHY DISTRICT  
POLICE OFFICER, MARDAN DATED 29.08.2017  
VIDE WHICH THE APPLICANT WAS DISMISSED  
FROM SERVICE.

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Respected Sir,

It is humbly submitted as under:-

FACTS:-

The applicant was departmentally proceeded against on the allegation that while posted at Police Station Toru, Mardan deliberately absented himself from lawful duty w.e.from 18.10.2016 till todate. After departmental enquiry conducted by the Deputy Supdt: of Police City Mardan the applicant was dismissed from Service by learned District Police Officer Mardan vide OB NO. 1976 dated 29.08.2017. Hence, aggrieved this appeal against the said order.

GROUNDS FOR APPEAL.

1. That the order of learned District Police, Mardan

N/Page 2

ATTESTED

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is severe and harsh.

2. That the order contain legal lecnacs and is not maintainable in the eyes of law.
3. That the applicant has not absented himself intentionally from his lawful duties.
4. That in fact my minor son all of a sudden fell ill. In this regard I informed the Moharrir concern and requested for leave but I was not allowed.
5. That in the prevailing circumstances I rushed to my house and remained busy in the treatment of my son.
6. That when I returned back to the Police Station, I was informed that I have been marked absent and cannot resume my duty on the permission of Seperior.
7. That I requested to my superior to allow me for duty but with no avail. Consequently, I was dismissed from service without affording any opportunity to defend the allegations.
8. That the departmental enquiry has been conducted in my absence and no notice or summon has been served upon me
9. That during departmental enquiry no one has been examined to prove the charges.

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ATTESTED

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10. That I have ten years service in credit and has to support a large family. There is no source of income except the present job.

In view of the above it is requested that the applicant may kindly be re-instated on humanitarian ground and obliged. The applicant shall pray for your long life and prosperity.

Yours Obediently

*Shah*

(SAFDAR NO.2078)

( EX.Constable )

r/o Ghari Kapura.

ATTESTED

*A*

ORDER.



F (10)

This order will dispose-off the appeal preferred by Ex-Constable Saifdar Ali No. 2078 of Mardan District Police against the order of District Police Officer, Mardan, whereby he was awarded Major punishment of dismissal from service vide District Police Officer, Mardan OB No. 1976 dated 29.08.2017.

Brief facts of the case are that, the appellant while posted at Police Station Toru deliberately absented himself from lawful duty vide DD No. 30 dated 18.10.2016 till the date of his dismissal without any leave/permission of the competent authority. This attitude adversely reflected on his performance which is indiscipline act and gross misconduct on his part. Therefore he was recommended for departmental proceeding. Consequently he was charge-sheeted and also proceeded against departmentally through the then SDPO/City, Mardan. The Enquiry Officer after fulfilling necessary process submitted his findings to District Police Officer, Mardan and recommended him for ex-party action. The alleged Constable neither reported back to Police Station Toru nor he bother to appear before the District Police Officer, Mardan. After going through the enquiry file the District Police Officer, Mardan issued a Final Show Cause Notice to the alleged official to which he was submitted his reply which was found unsatisfactory and called for the Orderly Room on 26.08.2017 by the DPO/Mardan. After going through the Final Show Cause Notice/enquiry file heard him in person and the alleged Constable was dismissed from service.

He was called in orderly room held in this office on 20.09.2017 and heard him in person. The appellant did not produce any cogent reason for his long absence. Besides the appellant was also dismissed earlier from service on 30.01.2014 due to absence from duty but he did not give off his conduct of absence. Therefore, I find no grounds to intervene the order passed by District Police Officer, Mardan. **Appeal is rejected.**

ORDER ANNOUNCED.

  
9/c (Muhammad Ajam Shinwari)PSP  
Regional Police Officer,  
Mardan 

No. 7190 /ES, Dated Mardan the 25/09 /2017.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office  
Memo: No. 532/LB dated 11.09.2017. The Service Record is returned herewith.

(\*\*\*\*\*)

**ATTESTED**  


To

The Honourable,  
Provincial Police Officer,  
KPK, Peshawar.

Subject: MERCY PETITION FOR RE-INSTATEMENT  
ON SERVICE.

Respected Sir,

Mercy petition on behalf of petitioner  
is submitted as under:-

1. That the petitioner was dismissed by District Police Officer, Mardan vide OB NO.1976 dated 29.08.2017 on the ground of allegation that the petitioner absented himself from duty w/e from 18.10.2016 till to date, without leave/permission of the competent authority.
2. That against the impugned order of dismissal dated 29.08.2017, the petitioner preferred departmental appeal before the learned Deputy Inspector General Mardan Region I, Mardan. The petitioner/appellant appeared in person in orderly Room on 20.09.2017 and his appeal was rejected on the same date without hearing of the petitioner.

N/Page 2

ATTESTED

*[Signature]*

3. That aggrieved from the impugned order dated 20.09.2017 passed by Deputy Inspector General of Police Mardan Region-I, Mardan the instant mercy petition inter alia on the following grounds:-

- a. That the petitioner is a poor, honest, hard worker, obedient, able and energetic person and he has to support a family consisting upon his old, weak and sick parents and after both are died, three school going children. The petitioner is sole bread earner of his family.
- b. That now the petitioner is jobless and there is no other source of income to support his family.
- c. That the petitioner will never absent himself from his duty in future and his ~~fact~~ of ~~absented~~ my minor son all of sudden fell ill. In this regard I informed the moharrir concern and requested for leave but I was not allowed.
- d. That in the prevailing circumstances I rushed to my house and remained busy in the treatment of my son.
- e. That when I returned back to the Police Station, I was informed that I have been ~~marked~~ absent and cannot resume my duty on the permission of Superior.

ATTESTED  
*[Signature]*

14

- f. That I requested to my superior to allow me for duty but with no avail. Consequently, I was dismissed from service without affording any opportunity to defend the allegation.
- g. That in this regard no notice or summon has been served upon me nor no one has been examined to prove the charges.
- h. That the petitioner will perform his duty honestly devotedly, sincerely, regularly, punctually and to the best of his ability and no default, error or mistake will be committed in future.
- i. That his best future is depend upon his service.
- j. That this petitioner may please be entertained on humanitarian ground and on humanitarian ground the petitioner may please be re-instated.
- k. That the petitioner and his family will pray for your excellery ,success , healthy, proper and happy life for erer.

It is, humbly prayed that on acceptance of this Mercy petition, the petitioner may please be re-instated on humanitarian ground. Further more any other adquate relief as your honour deem fit just, proper and

**ATTESTED**



expedient may also be graciously granted.

Dated: 26.09.2017

Yours Obediently,

*Safdar*

( SAFDAR )

Ex.Constable NO. 2078

r/o Ghari Kapura.

ATTESTED

*Te*



OFFICE OF THE  
INSPECTOR GENERAL OF POLICE  
KHYBER PAKHTUNKHWA  
PESHAWAR.

No. S/ 7483 /17, dated Peshawar the 21/11/2017.

OR  
20/9/2017

H (16)

ORDER

This order is hereby passed to dispose of departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 submitted by Ex-FC Safdar Ali No. 2078. The petitioner was dismissed from service by DPO, Mardan vide OB No. 1976, dated 29.08.2017 on the charge of absence from duty for 10 months and 12 days.

His appeal was rejected by Regional Police Officer, Mardan vide order Endst: No. 7190/ES, dated 25.09.2017.

Meeting of Appellate Board was held on 16.11.2017 wherein petitioner was heard in person. During hearing petitioner contended that his absence was not deliberate but his son was ill.

Perusal of record reveals that petitioner was dismissed from service on the charge of absence from duty for long period of 10 months and 12 days. His service record contained 20 bad entries which shows that he is habitual absentee.

During hearing petitioner failed to advance plausible explanation in rebuttal of the charges. Therefore, the Board decided that his petition is hereby rejected.

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

(FALAK NAWAZ)  
AIG/Legal,

For Inspector General of Police,  
Khyber Pakhtunkhwa,  
Peshawar.

No. S/ 7484-89 /17,

Copy of the above is forwarded to the:

1. Regional Police Officer, Mardan.
2. District Police Officer, Mardan.
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. PA to AIG/Legal, Khyber Pakhtunkhwa, Peshawar.
7. Office Supdt: E-IV CPO Peshawar.

ATTESTED

مقدمہ میں 2 منجانب (ایپل) بہت (مقدمہ میں بنام حکم کوٹہ سروس)

سوری

ایپل

دعویٰ

جرم

### باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام لیسٹاور کیلئے ~~مقدمہ میں لیسٹاور~~ کیلئے ~~مقدمہ میں لیسٹاور~~ 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 ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائس پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری کی طرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے، اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے وہ 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 لکھد یا کہ سندر ہے۔

Accepted & Attested

20

ماہ

المرقوم

العبد العبد العبد

کے لئے منظور ہے۔

مقام

C

کوری

**BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,  
PESHAWAR.**

**Service Appeal No. 1396/2017.**

Safdar Ali (Ex-Constable No. 2078).....Appellant.

**VERSUS.**

District Police Officer, Mardan & others.....Respondents.

**Respectfully Sheweth:**

**PRELIMINARY OBJECTIONS:-**

1. That the appellant has not come to this Honourable Tribunal with clean hands.
2. That the appellant has got no cause of action.
3. That the appellant has concealed material facts from this Honourable Tribunal.
4. That the appellant is estopped by his own conduct, by law to bring the instant appeal.
5. That the present appeal is bad in its present form hence not maintainable and liable to be dismissed.
6. That the appeal is bad due to non-joinder of necessary parties and mis-joinder of unnecessary parties.
7. That the instant appeal is barred by law & limitation.

**REPLY ON FACTS.**

1. Correct to the extent of joining Police Department in 2007, however, the appellant's service record speaks otherwise to the later part of this Para.
2. Incorrect. Neither appellant's son was ill nor he has requested the Muharrar Police Station concerned & the plea of his son's illness is fake and self-fabricated story. **Besides**, Muharrar of a Police Station is not competent to grant leave to an official. There is a proper procedure to earn leave, casual or otherwise, which he did not adopt.
3. Incorrect. Proper inquiry was conducted, wherein, the appellant was summoned time & again but he did not bother even to attend the inquiry proceedings. At last when appeared he was directed to report arrival at Police Station Toru & then record his statement before inquiry officer but he did not return till this day. Ultimately, an ex-parte action was taken against him. **(Copy of inquiry is attached as Annexure-A)**
4. Incorrect, hence, denied.
5. Incorrect. The appellant was treated as per rules/law and was issued charge sheet with statement of allegations. All codal formalities has been complied with. **(Copy of statement of allegations & Charge Sheet is attached as Annexure-B).**
6. Incorrect. The appellant was heard & given proper opportunities of defence at all forums of appeal but he could not present any cogent reasons in his absence, hence, his appeals were rejected. **(Copies of appeals rejection by W/DIG Mardan & W/IGP KPK are attached as Annexure- C & D).**
7. Incorrect. The appellant does not hold any ground, legal or moral, to stand hereon in this Honourable Tribunal.

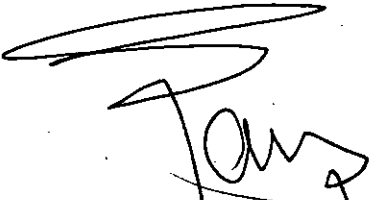
**REPLY ON GROUNDS:-**

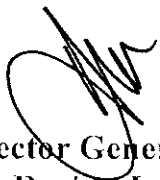
- A. Incorrect. The impugned orders are just, legal, in accordance with facts & material on record, hence, tenable in the eye of law.

- B. Incorrect. Proper departmental inquiry as per rules/law was conducted and the appellant was summoned time & again but he showed disinterest in service and disobeyed his senior's commands. Ultimately, he deserved the awarded punishment.
- C. Incorrect. The treatment of absence period as leave without pay is based on the principle of "No Work No Pay". The impugned order is, therefore, tenable in the eyes of law.
- D. Incorrect. All codal formalities has been complied with.
- E. Incorrect. The penalty awarded is as per rules/la. Hence, sustainable in the eyes of law.
- F. Incorrect. The appellant did not present any cogent reasons in defence of his fake plea of absence. **Besides**, Muharrar Police Station concerned is not authorized to grant, casual leave or otherwise.
- G. Incorrect, hence, denied.
- H. The respondents also seek permission to raise additional grounds, if any, at the time of arguments.

**PRAYER:-**

The prayer of the appellant, being baseless & devoid of merits, is liable to be dismissed with costs.

  
**Inspector General of Police,  
Khyber Pakhtunkhwa,  
Peshawar.**  
(Respondent No. 01)

  
**Deputy Inspector General of Police,  
Mardan Region-I, Mardan**  
(Respondent No. 02)

  
**District Police Officer,  
Mardan**  
(Respondent No. 03)

**BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,  
PESHAWAR.**

Service Appeal No. 1396/2017.

Safdar Ali (Ex-Constable No. 2078).....Appellant.

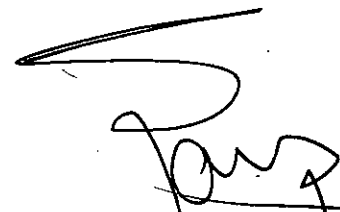
**VERSUS.**

District Police Officer, Mardan  
& others.....

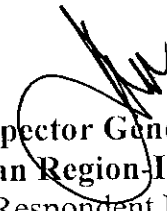
Respondents.

**COUNTER AFFIDAVIT.**

We, the respondents do hereby declare and solemnly affirm on oath that the contents of the Para-wise comments in the service appeal cited as subject are true and correct to the best of our knowledge and belief and nothing has been concealed from this Honourable Tribunal.



**Inspector General of Police,  
Khyber Pakhtunkhwa,  
Peshawar.  
(Respondent No. 01)**



**Deputy Inspector General of Police,  
Mardan Region-I, Mardan  
(Respondent No. 02)**



**District Police Officer,  
Mardan  
(Respondent No. 03)**

**OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN**

6307-416 3713

No. 518 /R/D.A-P.R-1975.

Dated 21-11-2016

**DISCIPLINARY ACTION UNDER KPK POLICE RULES - 1975**

1. Faisal Shahzad District Police Officer, Mardan as competent authority on of the opinion that Constable Safdar No. 2078, rendered himself liable to be proceeded against as he committed the following act/omission within the meaning of section-02 (iii) of NPK Police Rules 1975:

**STATEMENT OF ALLEGATIONS**

That Constable Safdar No. 2078, while posted at Police Station Toru Mardan, deliberately absented himself from lawful duty vide DID No. 30 dated 18.10.2016 to date, without any permission/leave from competent authority. He is recommended for departmental action by DSP Sheikh Maloon No. 2481/SMT Dated 31.10.2016.

2. For the purpose of scrutinizing the conduct of the said official with reference to the above allegations Shah Munnaz Khan DSP/City Mardan is appointed as Inquiry Officer.

3. The enquiry officer shall conduct proceedings in accordance with provisions of Police Rules 1975 and shall provide reasonable opportunity of defense and hearing to the accused official, record his findings and make within twenty five (25) days of the receipt of this order recommendation as to punishment or other appropriate action against the accused officer.

4. The accused officer shall join the proceedings on the date, time and place fixed by the Inquiry Officer.

(Faisal Shahzad) DSP  
District Police Officer,  
Mardan

**OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN**

R. dated Mardan the /2016.

Copy of above is forwarded to the:

- DSP/City Mardan for initiating proceedings against the accused official / Officer namely Constable Safdar No. 2078, under Police Rules, 1975.
- Constable Safdar No. 2078, with the directions to appear before the Inquiry Officer on the date, time and place fixed by the enquiry officer for the purpose of enquiry proceedings.

**CHARGE SHEET UNDER KPK POLICE RULES 1975**

1. Faisal Shahzad District Police Officer, Mardan as competent authority

Charge you Constable Satar No. 2078, as follows.

That you FC, while posted at Police Station Toru Mardan, deliberately absented yourself from lawful duty vide DD No. 30 dated 18.10.2016 to date, without any permission/leave from competent authority. You are recommended for departmental action by DSP Sheikh Mahoon No. 2481/SMT Dated 31.10.2016.

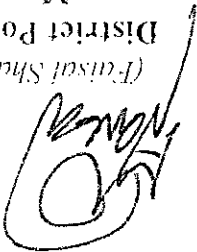
This amounts to grave misconduct on your part, warranting departmental action against you, as defined in section - 6 (1) (a) of the KPK Police Rules 1975.

1. By reason of the above, you appear to be guilty of misconduct under section - 02 (iii) of the KPK Police Rules 1975 and has rendered yourself liable to all or any of the penalties as specified in section - 04 (i) a & b of the said Rules.

2. You are therefore, directed to submit your written defense within seven days of the receipt of this charge sheet to the enquiry officer.

3. Your written defence if any, should reach to 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, an ex-parte action shall follow against you.

4. Intimate whether you desired to be heard in person.



(Faisal Shahzad) PSP  
District Police Officer,  
Mardan



JIRY REPORT AGAINST CONSTABLE SAFDAR NO.2078 PS TORU.

The undersigned was deputed to conduct Enquiry of constable Safdar No.2078, Police Station Toru Mardan, by the Worthy District Police Officer Mardan through office Letter No.518/R Dated 21/11/2016.

BRIEF FACTS.

That **Constable Safdar No.2078**, while posted at Police Station Toru Mardan, deliberately absented himself from lawful duty vide DD No. <sup>30</sup>07 dated 18.10.2016 PS Toru, till date without any leave/permission from competent authority.

PROCEEDINGS.

The proceedings of the enquiry have been conducted strictly in accordance with the NWFP Police Rules 1975.

Ex-record of the defaulter constable was re-questioned from Establishment branch, whereas it was noticed that, he has no good & 20 bad entries throughout his service.

The above-mentioned constable was contacted several times to appear before the undersigned and record his statement; first he was avoiding himself. Later on, when he produced for recording his statement, he was directed to report his arrival in place of posting at PS Toru, and produce the same arrival DD report but in vain. In this connection, Moharrar of PS Toru was also contacted, who certified that the alleged official has not joined his duty yet. This act shows to be great negligence & lack of interest in official duty on part of the defaulter police official, which is mentioned in the enclosed DD report of PS City.

FINDINGS.

During the enquiry it was observed that, the above mentioned constable is found guilty of misconduct / inefficiency and having no interest in official duty, who could neither convince the undersigned through his statement, nor did he reported his arrival back to PS concerned

CONCLUSION.

In view of the above, the undersigned has reached to the conclusion that, the above mentioned official may be dealt as Ex-Party action.

No: 734 /S  
Dt: 01-06-2017  
Encl: ( 10 )

Good-will Final SCN  
Bad 22

312-days Absence

2/06/17

OR  
Dismissed  
Jury found  
26/06/17  
Deputy Superintendent of Police,  
City Circle, Mardan.

156/156  
Safdar

FINAL SHOW CAUSE NOTICE

I, Dr. Mian Saeed Ahmad, District Police Officer, Mardan as competent authority under Police Rules 1975, do hereby serve you Constable Safdar No. 2078, while posted at Police Station Toru, Mardan as follows:-

i) That consequent upon the completion of enquiry conducted against you through inquiry Officer, however, you have been found guilty.

ii) On going through the findings and recommendations of the enquiry Officer, the material on record and other connected papers including your defence before the said enquiry Officer.

I am satisfied that you have committed, a gross misconduct as defined in Rules 2 (iii) of KP Police disciplinary Rules 1975.

*Whereas, you Constable Safdar No. 2078, while posted at Police Station Toru Mardan, deliberately absented yourself from the lawful duty vide DD No. 07 dated 18.10.2016 to-date, without any leave / permission of the competent authority.*

1. As a result thereof I, **Dr. Mian Saeed Ahmad**, District Police Officer, Mardan as competent authority issue you a final show cause is to why major punishment of dismissal may not be imposed upon you, your reply should reach to this office within 05 days.
2. If no reply to this notice is received within Seven days of its delivery in the normal course of circumstances, it shall be presumed that you have no defence to put in and in this case an ex-parte action shall be taken against you.
3. Copy of the findings of the enquiry officer is enclosed.

  
District Police Officer,  
Mardan

No. 9 /R/FSCN

Dated 7 / 6 /2017

Constable Safdar No. 2078 s/o Muhammad Shareef r/o Garhi Ismail zai PS Garhi Kapoora.

میں نے خود ایک عدد فوٹو کاپی شہ عمارت نوش  
وہ لوگ لیا۔ صبح 6/17 کو بوقت 11-05 بجے

میں نے

ال

کنٹریل نمبر 2078 اور ڈائریکٹ سیکشن گورنر اعلیٰ

166d-1277235-3

0307-4163713

ضابطہ عالی

کنٹریل نمبر 2078 در ایک عدد فوٹو کاپی شوکار

نوش ... جیل اہل مدد کو  
وہ لوگ کار سیکرٹری، تھیل حسب مناسبت

اہل مدد اور ارسال کے تحت

ASIP  
ASIP CR

13-6-17

ضابطہ عالی

دھورے کے ایک مہل ہے۔ اہل مدد دروش  
ارسال کے تحت ہے

ASIP

ASIP CR

13-6-17

ORDER.

This order will dispose-off the appeal preferred by Ex-Constable Safdar Ali No. 2078 of Mardan District Police against the order of District Police Officer, Mardan, whereby he was awarded Major punishment of dismissal from service vide District Police Officer, Mardan OB No. 1976 dated 29.08.2017.

Brief facts of the case are that, the appellant while posted at Police Station Toru deliberately absented himself from lawful duty vide DD No. 30 dated 18.10.2016 till the date of his dismissal without any leave/permission of the competent authority. This attitude adversely reflected on his performance which is indiscipline act and gross misconduct on his part. Therefore he was recommended for departmental proceeding. Consequently he was charge sheeted and also proceeded against departmentally through the then SDPO/City, Mardan. The Enquiry Officer after fulfilling necessary process submitted his findings to District Police Officer, Mardan and recommended him for ex-party action. The alleged Constable neither reported back to Police Station Toru nor he bother to appear before the District Police Officer, Mardan. After going through the enquiry file the District Police Officer, Mardan issued a Final Show Cause Notice to the alleged official to which he was submitted his reply which was found unsatisfactory and called for the Orderly Room on 26.08.2017 by the DPO/Mardan. After going through the Final Show Cause Notice/enquiry file heard him in person and the alleged Constable was dismissed from service.

He was called in orderly room held in this office on 20.09.2017 and heard him in person. The appellant did not produce any cogent reason for his long absence. Besides the appellant was also dismissed earlier from service on 30.01.2014 due to absence from duty but he did not give off his conduct of absence. Therefore, I find no grounds to intervene the order passed by District Police Officer, Mardan. **Appeal is rejected.**

ORDER ANNOUNCED.

(Muhammad Alam Shinwari)PSP  
Regional Police Officer,  
Mardan *AS.*

No. 7190 /ES, Dated Mardan the 25/09 /2017.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office  
Memo: No. 532/LB dated 11.09.2017. The Service Record is returned herewith.

(\*\*\*\*\*)

*N EC/InsP: Legal  
For n/a action.*

*DPO Mardan  
25/9/17*

8137  
27-9-17



OFFICE OF THE  
INSPECTOR GENERAL OF POLICE  
KHYBER PAKHTUNKHWA  
PESHAWAR.

No. S/ 7483 /17, dated Peshawar the 21/11/2017.

OR  
20/11/2017

H (16)

ORDER

This order is hereby passed to dispose of departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 submitted by Ex-FC Safdar Ali No. 2078. The petitioner was dismissed from service by DPO, Mardan vide OB No. 1976, dated 29.08.2017 on the charge of absence from duty for 10 months and 12 days.

His appeal was rejected by Regional Police Officer, Mardan vide order Endst: No. 7190/ES, dated 25.09.2017.

Meeting of Appellate Board was held on 16.11.2017 wherein petitioner was heard in person. During hearing petitioner contended that his absence was not deliberate but his son was ill.

Perusal of record reveals that petitioner was dismissed from service on the charge of absence from duty for long period of 10 months and 12 days. His service record contained 20 bad entries which shows that he is habitual absentee.

During hearing petitioner failed to advance plausible explanation in rebuttal of the charges. Therefore, the Board decided that his petition is hereby rejected.

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

(FALAK NAWAZ)  
AIG/Legal,

For Inspector General of Police,  
Khyber Pakhtunkhwa,  
Peshawar.

No. S/ 7484-89 /17,

Copy of the above is forwarded to the:

1. Regional Police Officer, Mardan.
2. District Police Officer, Mardan.
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. PA to AIG/Legal, Khyber Pakhtunkhwa, Peshawar.
7. Office Supdt: E-IV CPO Peshawar.

**BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,  
PESHAWAR.**

**Service Appeal No. 1396/2017.**

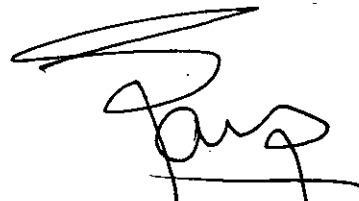
Safdar Ali (Ex-Constable No. 2078).....Appellant.

**VERSUS.**

District Police Officer, Mardan  
& others.....Respondents.

**AUTHORITY LETTER.**

Mr. Atta-ur-Rahman Sub-Inspector Legal, (Police) Mardan is hereby authorized to appear before the Honourable Service Tribunal, Khyber Pakhtunkhwa, Peshawar in the above captioned service appeal on behalf of the respondents. He is also authorized to submit all required documents and replies etc. as representative of the respondents through the Addl: Advocate General/Govt. Pleader, Khyber Pakhtunkhwa Service Tribunal, Peshawar.



**Inspector General of Police,  
Khyber Pakhtunkhwa,  
Peshawar.  
(Respondent No. 01)**



**Deputy Inspector General of Police,  
Mardan Region-I, Mardan  
(Respondent No. 02)**



**District Police Officer,  
Mardan  
(Respondent No. 03)**

Saidat Ali VS Police Deptt.

REJOINDER ON BEHALF OF APPELLANT

RESPECTFULLY SUBMITTED:

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. First portion of Para A is admitted correct, hence no comments. while the rest of Para is incorrect hence denied.
2. Incorrect. While para 2 of the appeal is correct. Moreover the respondent department admitted that the appellant has submitted application for leave.
3. Incorrect. No proper inquiry was conducted and one sided inquiry was conducted against the appellant in which no opportunity of defence was provided to the appellant as the appellant visited several time to attend the inquiry proceeding but he was not allowed to meet with inquiry officer and ex-parte action has been taken against the appellant and was dismissed from service without fulfilling the codal formalities.
4. Incorrect. Hence denied.
5. Incorrect. The appellant was not treated according to law and rules and charge sheet was not communicated to the appellant which is

mandatory under the rules and dismissed from service without fulfilling the codal formalities.


6. Incorrect. While Para 6 of the appeal is correct.
7. Incorrect. The appellant has good cause of action to file the instant appeal which is liable to be accepted on the following grounds.

GROUND:

- A) Incorrect. The impugned orders are not in accordance with law, facts, norms of justice and material therefore not tenable and liable to be set aside.
- B) Incorrect. One sided inquiry was conducted against the appellant in which no opportunity of defence was provided to the appellant as the appellant visited several times to attend the inquiry proceeding, but he was not allowed to meet with inquiry officer and ex-parte action has been taken against the appellant and he was dismissed from service without fulfilling codal formalities.
- C) Incorrect. The absence period has already been condoned by declaring the absence period as leave without pay and he was also dismissed from service on the same absence which amounts to double jeopardy which is not permissible under the Constitution of Pakistan.
- D) Incorrect. No charge sheet was communicated to the appellant which is mandatory by law.
- E) Incorrect. While para E of the appeal is correct.
- F) Incorrect. While para F of the appeal is correct.
- G) Incorrect. The appellant was not treated according to the law and rules and was dismissed from service on ex-parte proceeding which is a violation of law and rules.
- H) Legal.



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

Through: APPELLANT   
(FAIMUR 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

**BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.**

Service Appeal No.1396/2017

Police Deptt:

VS

Sardar Ali

**REJOINER ON BEHALF OF APPELLANT**

**RESPECTFULLY SHRWEETH:**

**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. First portion of Para A is admitted correct, hence no comments. while the rest of Para is incorrect hence denied.
2. Incorrect. While para 2 of the appeal is correct. Moreover the respondent department admitted that the appellant has submitted application for leave.
3. Incorrect. No proper inquiry was conducted and one sided inquiry was conducted against the appellant in which no opportunity of defence was provided to the appellant as the appellant visited several time to attend the inquiry proceeding but he was not allowed to meet with inquiry officer and ex-parte action has been taken against the appellant and was dismissed from service without fulfilling the codal formalities.
4. Incorrect. Hence denied.
5. Incorrect. The appellant was not treated according to law and rules and charge sheet was not communicated to the appellant which is

*Handwritten notes:*  
P.L.S. 28/5/2017  
Sardar Ali  
P.L.S.


mandatory under the rules and dismissed from service without fulfilling the codal formalities.

6. Incorrect. While Para 6 of the appeal is correct.
7. Incorrect. The appellant has good cause of action to file the instant appeal which is liable to accepted on the following grounds.

**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. One sided inquiry was conducted against the appellant in which no opportunity of defence was provided to the appellant as the appellant visited several time to attend the inquiry proceeding, but he was not allowed to met with inquiry officer and ex-parte action has been taken against the appellant and was dismissed from service without fulfilling codal formalities.
- C) Incorrect. the absence period has already been condoned by declaring the absence period as leave without pay and was also dismissed from service on the same absence which amount to double jeopardy which is not permissible under the Constitution of Pakistan.
- D) Incorrect. No charge sheet was communicated to the appellant which is mandatory the law.
- E) Incorrect. While para E of the appeal is correct.
- F) Incorrect. While para F of the appeal is correct.
- G) Incorrect. The appellant was not treated according to the law and rules and was dismissed from service on ex-parte proceeding which is violation of law and rules.
- H) Legal.

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

Through: APPELLANT   
(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

27/5/18

  
Javed Muhammad  
Advocate High Court  
Oath Commissioner  
Dist: Court Peshawar.

## بیان اذان

کنیل صدر علی بلک نمبر 2078 منصفہ کھانہ طور رو

کنیل مذکورہ نے جب دریاوت بیان کیا کہ میں معزز  $\frac{15}{76}$  18 ج سوالہ  
عد 30 سے کھانہ طور رو سے جبریلوڑ منسیر حاضر ہوں۔ میرا اپنے جانوں  
کیا کہ گھر لوٹنا رہ جیل رہا تھا اور اب بھی ہے جس وجہ سے میں  
ڈیوٹی پر نہیں جا سکتا تھا۔ اب میں کھانہ طور رو جا کر اپنی حاضری کی  
رپورٹ کرونگا۔

منیر کعبہ درخواست اسد عاصم کہ میری منسیر حاضری کو عبوری سمجھ کر  
معافی دی جا کر جا رہا تھا کہ حد تو بلا کار والی فائل کرنے کا حکم صادر فرمائی  
جائے۔ آئندہ کہلے کھانا پورنگا۔ یہی منسیر بیان ہے جو حقیقت پر مبنی ہے۔

محمد علی

الو  
کنیل صدر علی 2078 منصفہ کھانہ طور رو -  $\frac{4}{17}$  13  
No = 0307. 4163713

Reply of change sheet

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1409 /ST

Dated 16-8- / 2019


To

The District Police Officer,  
Government of Khyber Pakhtunkhwa,  
Mardan.

Subject: - JUDGMENT IN APPEAL NO. 1396/2017, MR. SAFDAR ALI.

I am directed to forward herewith a certified copy of Judgement dated 19.07.2019 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.