

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 173/2016

Date of Institution 29.02.2016

Date of Decision 07.08.2018

Sudhair Khan Ex-Constabl No. 02 Accounts Branch CPO Peshawar.

... (Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Additional Inspector General of Police/ Head Quarters Khyber Pakhtunkhwa Peshawar.
3. Deputy Inspector General of Police/ Head Quarters Khyber Pakhtunkhwa, Peshawar

i. ... (Respondents)

M. Amin
7.8.2018

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 , AGAINST THE ORDER DATED 10.02.2016, WHERE BY THE APPELLANT HAS BEEN AWARDED MAJOR PUNISHMENT OF REMOVAL FROM SERVICE, AGAINST WHICH HIS DEPARTMENTAL APPEAL HAS ALSO BEEN REJECTED VIDE ORDER DATED 29.01.2016 COMMUNICATED TO THE APPELLANT ON 05.02.2016

Mr. Yasir Saleem Advocate ... For Appellant

Mr. Muhammad Jan, Deputy District Attorney ... For Respondents

MR. MUHAMMAD AMIN KHAN KUNDI MEMBER (JUDICIAL)

MR. MUHAMMAD HAMID MUGHAL MEMBER (JUDICIAL)

JUDGMENT

MUHAMMAD AMIN KUNDI, MEMBER: -, Learned counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney for the official respondents also present. Arguments heard and record perused.

2. Brief fact of the case as per present appeal are that the appellant was serving in police department as Constable. During service he was imposed major penalty of removal from service Vide Order dated 10.02.2012 on the allegation of absence the appellant filed departmental appeal, which was rejected on 29.01.2016 hence the present service appeal on 29.02.2016

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

4. Counsel for the appellant contended that the appellant was serving in Police department it was further contended that during service the appellant applied for Ex-Pakistan Leave for a period of two years and the appellant was verbally assured that his leave may be sanctioned. It was further contended that the appellant was never informed regarding departmental proceeding. It was further contended that the appellant has more than fifteen (15) years service in his credit but the appellant was imposed major penalty of removal from service and his ^{MC} on aforesaid service was not considered by the respondent. It was further contended that the impugned penalty of removal from service is very harsh. Therefore prayed for lenient view of compulsory retirement.

5. On the other hand learned Deputy District Attorney opposed on the contention of the learned counsel for the appellant and contended that the appellant was serving in police department. It was further contended that the appellant remained absent from duty. It was further contended that proper inquiry was conducted against the appellant and the inquiry

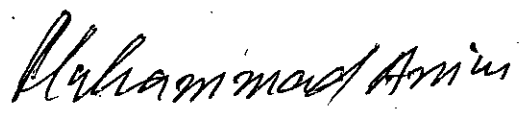
M. Anwar
7.8.2018

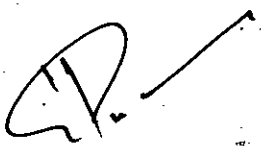
officer has recommended major penalty of removal from service, therefore the competent authority has rightly imposed major penalty of removal from service and prayed for dismissal of appeal.

6. Perused of the record reveals that the appellant was serving in Police department, the record further reveals that the appellant remained absent from duty during service and proceeded abroad. Therefore departmental proceeding was initiated against him and he was imposed major penalty of removal from service. Admittedly the appellant has more than 15 years service in his credit but the respondent department has not considered the aforesaid service of the appellant at the time of impugned order. Therefore the purpose of safe administration of justice ^{for m} the major penalty of removal from service appears to be harsh. As such we partially accept the appeal and convert major penalty of removal from service into compulsory retirement from the date of issuance of impugned order i.e. w.e.f. 10.02.2012. The absence period be treated as unauthorized absence without pay. Parties are left to bear their own costs. File be consigned to the record room after completion.

ANNOUNCED

07.08.2018


(MUHAMMAD AMIN KUNDI)
MEMBER


(MUHAMMAD HAMID MUGHAL)
MEMBER

07.08.2018

Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney for the respondents presents. Vide our detail judgment of today placed on file, we partially accept the appeal and convert major penalty of removal from service into compulsory retirement from the date of issuance of impugned order i.e. 10.02.2012. The absence period be treated as unauthorized absence without pay. Parties are left to bear their own costs. File be consigned to the record room.

(Muhammad Hamid Mughal)
Member


(Muhammad Amin Kundi)
Member

ANNOUNCED

07.08.2018

09.04.2018

Counsel for the appellant and Addl: AG for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 21.06.2018 before D.B.


(Ahmad Hassan)
Member

(M. Hamid Mughal)
Member

09.04.2018


Counsel for the appellant and Addl: AG for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 21.06.2018 before D.B.



(Ahmad Hassan)
Member


(M. Hamid Mughal)
Member

22.06.2018

Clerk of the counsel for appellant present. Mr. Riaz Ahmad Paindakheil, Assistant AG for the respondents also present. Clerk of the counsel for appellant seeks adjournment on the ground that learned counsel for the appellant is not available today. Adjourned. To come up for arguments on 07.08.2018 before D.B.


(Ahmad Hassan)
Member

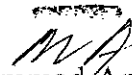

(Muhammad Amin Khan Kundi)
Member

Service Appeal No. 173/2016

28.09.2017

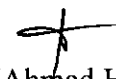
Clerk of the counsel for appellant present. Mr. Ziaullah, Deputy District Attorney alongwith Mr. Suleman, Reader for the respondents also present. Clerk of the counsel for appellant requested for adjournment. Adjourned. To come up for arguments on 08.12.2017 before D.B.



(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member

08.12.2017

Clerk to counsel for the appellant present. Asst: AG for the respondents also present. Clerk to counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 14.02.2018 before D.B.


(Ahmad Hassan)
Member (E)


(Muhammad Amin Khan Kundi)
Member (J)

14-2-18

Clerk of the counsel for appellant present. Mr. Kabir Ullah Khattak, Additional AG for the respondents present. Due to general strike of the, counsel for the appellant is not in attendance today. To come up for arguments on 09.04.2018 before D.B.


Member


Chairman

07.12.2016


Counsel for appellant and Assistant AG for the respondents present. Learned counsel for the appellant submitted rejoinder which is placed on file. To come up for arguments on 12.4.17 before D.B.


(ASHFAQUE TAJ)
MEMBER

12.04.2017

Counsel for the appellant present. Mr. Muhammad Suleman, Head Constable alongwith Mr. Muhammad Jan, Government Pleader for the respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 13.07.2017 before D.B.

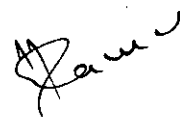

(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member

13.07.2017

Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 28.09.2017 before D.B.


(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

29.6.2016

Counsel for the appellant present. Learned counsel for appellant argued that the appellant that the appellant was serving as Constable when removed from service on the allegations of willful absence vide impugned order dated 10.2.2012 where-against he preferred departmental appeal which was rejected on 29.1.2016 and hence the instant service appeal on 29.2.2016.

That the prescribed procedure for conducting enquiry was not followed and harsh punishment in the shape of removal from service was imposed against the appellant despite the fact that he had rendered more than 17 years service.

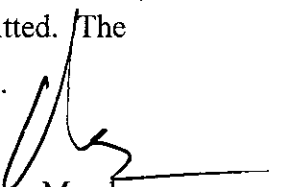
Points urged need consideration. Admit subject to limitation. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 16.08.2016 before S.B.

Appellant Deposited
Security & Process Fee


Chairman


16.08.2016

Counsel for the appellant and Mr. Salman, HC alongwith Addl. AG for respondents present. Written reply submitted. The assigned to D.B for rejoinder and final hearing on 7.12.2016.


Member

14.4.2016.

Counsel for the appellant present. Seeks adjournment.
To come up for preliminary hearing on 28.04.2016.


Chairman

28.4.2016

Agent of counsel for the appellant present. Seeks
adjournment due to strike of the bar. Adjourned for
preliminary hearing to 20.5.2016 before S.B.

20.05.2016

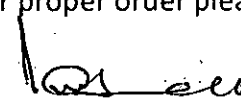
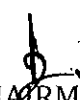


None present for appellant. Notice be issued to
appellant/counsel for the appellant for 29.6.2016 for preliminary
hearing before S.B.


Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 173/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	29.02.2016	<p>The appeal of Mr. Sudhair Khan presented today by Mr. Sajid Amin Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2	1-3-2016	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>22-03-2016</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	22.03.2016	<p>Agent of counsel for the appellant present. Seeks adjournment. Adjourned for preliminary hearing to 30.3.2016 before S.B.</p> <p style="text-align: right;"> Chairman</p>
	30.03.2016	<p>Counsel for the appellant present. Seeks adjournment. Adjourned for preliminary hearing to 14.4.2016 before S.B.</p> <p style="text-align: right;"> Chairman</p>

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Appeal No. 173 /2016

Sudhair Khan Ex-Constable No. 02, Accounts Branch CPO
Peshawar.

(Appellant)

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and
others.

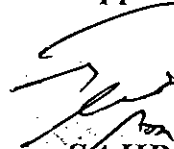
(Respondents)

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Appellant

Through


SAJID AMIN
Advocate, Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

K.W.F. Provincial
Service Tribunal
Diary No. 152
Dated 29-2-2016

Appeal No. 173 /2016

Sudhair Khan Ex-Constable No. 02, Accounts Branch CPO
Peshawar.

(Appellant)

VERSUS

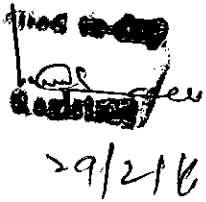
1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Additional Inspector General of Police/ Head Quarters Khyber Pakhtunkhwa Peshawar.
3. Deputy Inspector General Police/ Head Quarters Khyber Pakhtunkhwa Peshawar.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 10.02.2012, whereby the appellant has been awarded major punishment of Removal from Service, against which his Departmental Appeal has also been rejected vide order dated 29.01.2016 communicated to the appellant on 05.02.2016.

Prayer in Appeal: -

On acceptance of this appeal both impugned orders dated 10.02.2012, and 29.01.2016, may please be set-aside and the appellant may please be re-instated in service with full back wages and benefits of service or in alternate the penalty of removal from service awarded to the appellant may be modified/converted into compulsory retirement from service keeping in view his previous more than 15 years qualifying service.


29/2/16

Respectfully Submitted:

1. That the appellant was enlisted as Constable in the FRP on 25.04.1995, later on the appellant was also transferred to CPO and was posted in Accounts branch on deputation. Ever since his enlistment the appellant performed his duties as assigned with great zeal and devotion and there was no complaint whatsoever regarding his performance.
2. That the appellant while performing his duties in the said capacity, applied for Ex-Pakistan leave for a period of two years in December 2010. It is pertinent to mention here that the appellant was verbally assured that his leave may be sanctioned, therefore, he proceeded abroad with impression that his leave may be sanctioned.
3. That it is pertinent to mention here that the appellant was never informed about the acceptance or otherwise of his leave application.
4. That later on the appellant was proceeded for absence from duty and ex-parte departmental proceedings were conducted against him, a charge sheet was though issued, however never communicated to the appellant containing the allegations of wilful and deliberate absence from duty w.e.f 18.01.2011. *(Copy Charge Sheet is attached as Annexure A)*
5. That thereafter an ex-parte inquiry was conducted and the inquiry officer recommended the appellant for major punishment. Thereafter a show cause notice was also issued but not served upon the appellant. *(Copies of the inquiry report and show cause notice are attached as Annexure B & C)*
6. That thereafter the appellant was awarded the major penalty of removal from service w.e.f 18.01.2011 vide order dated 10.02.2012. Copy of the order was however never communicated to the appellant. *(Copy of the order dated 10.02.2012, is attached as Annexure D)*
7. That thereafter when the appellant reported for duty in November, 2015, he was informed that he has been removed from service vide order dated 10.02.2012. thereafter the appellant after receiving the copy of the order submitted his departmental appeal dated 24.11.2015, however it has also been rejected vide order dated 29.01.2016, copy of the order was communicated to the appellant on 05.02.2016. *(Copies of the departmental appeal and rejection order are attached as Annexure E & F)*

8. That the impugned orders are illegal unlawful, without lawful authority and against the law and facts hence liable to be set aside inter alia on the following grounds:

GROUND OF SERVICE APPEAL:

- A. That the appellant has not been treated in accordance with law, hence his rights secured and guaranteed under the law are badly violated.
- B. That no proper procedure has been followed before awarding the penalty of Removal from Service to the appellant, neither has he been served with any charge sheet, statement of allegations or any absence notice nor any endeavor has been made to associate him with the inquiry proceedings, the whole proceedings were conducted ex-parte, the appellant has not been allowed opportunity to defend himself thus proceedings so conducted are defective in the eye of law.
- C. That the appellant has not been allowed opportunity of personal hearing before the imposition of penalty upon him, thus he has been condemned unheard.
- D. That no charge sheet, statement of allegation or show cause notice has ever been served upon the appellant before awarding him the penalty of removal from service hence he has not been provided opportunity to defend himself against the charges leveled.
- E. That the appellant has been awarded the penalty of removal from service with retrospective effect, since no penalty order can be made with retrospective effect, therefore, on this score alone the impugned dismissal order is not tenable in the eye of law and is thus liable to be set aside. *Reliance is placed on 1993 PLC C.S 308.*
- F. That the superior courts have always held that punishment must commensurate with the magnitude of guilt, in the instant case the appellant has been treated quite harshly, he had at his credit more than 15 years service, thus awarding punishment of removal from service is too harsh and liable to be set aside or modified. *Reliance is placed on 2006 SCMR 1120, 2013 SCMR 817 and 2013 SCMR 372.*

- G. That the appellant has never committed an act or omission which could be termed as misconduct, albeit he has been awarded the penalty. His absence was never willful but was due to his domestic problems which forced him to proceed abroad, however the appellant duly submitted application for leave since he was having leave in his account, therefore he was hopeful that his leave may be sanctioned moreover over he was also verbally assured that his leave application may be accepted.
- H. That the appellant has been proceeded against by incompetent authority thus the whole proceedings and the impugned order being without lawful authority is void ab-initio.
- I. That the appellant belongs to a poor family, his whole family is dependent upon him, therefore his whole family is suffering due the illegal removal from service.
- J. That the appellant has more than 15 years spotless service career at his credit, the penalty imposed upon him is too harsh and liable to be set aside.
- K. That the appellant is jobless since his illegal removal from service.
- L. That the appellant seeks permission of this Honourable Tribunal to rely on additional grounds at the hearing of the appeal.

It is, therefore, humbly prayed that on acceptance of this appeal both impugned orders dated 10.02.2012, and 29.01.2016, may please be set-aside and the appellant may please be re-instated in service with full back wages and benefits of service or in alternate the penalty of removal from service awarded to the appellant may be modified/converted into compulsory retirement from service keeping in view his previous more than 15 years qualifying service.

Sud,

Appellant

Through



SAJID AMIN

Advocate, Peshawar

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Appeal No. _____/2016

Sudhair Khan Ex-Constable No. 02, Accounts Branch CPO
Peshawar.

(Appellant)

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa,
Peshawar and others.

(Respondents)

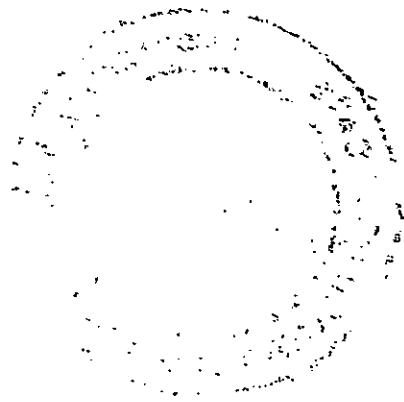
**APPLICATION FOR CONDONATION OF DELAY,
IF ANY IN FILING THE TITLED APPEAL**

Respectfully submitted:

1. That the appellant has today filed the accompanied appeal before this honorable tribunal in which no date of hearing is fixed so far.
2. That the applicant prays for condonation of delay if any in filing the instant appeal inter alia on the following grounds:-

GROUND OF APPLICATION

- A. That the appellant was never informed about the departmental proceedings nor the order was communicated to him in time, when the order was communicated to the appellant, he submitted his departmental appeal within 30 days from the communication date, which remained under consideration, however it was lastly rejected vide order dated 29.01.2016, Thereafter the instant appeal is filed well within 30 days of the final appellate order.
- B. That the delay if any in filing the instant appeal was not willful nor can the same be attributed to the appellant as it was due to the late communication of the order to the appellant by the respondents, therefore the appellant cannot be made suffered for the faults of others, hence delay if any deserves to be condoned.
- C. That it has been consistently held by the superior courts that appeal filed within 30 days from the date of communication of the order on departmental representation / appeal would be in time. Reliance is placed on *2013 SCMR 1053 & 1997 SCMR 287 (b)*



- D. That no proper procedure has been followed before the imposition of penalty upon the appellant. Thus the whole proceedings as well as the order of penalty is illegal and void ab-initio and no limitation run against such an illegal and void order.
- E. That valuable rights of the appellant are involved in the instant case in the instant case, hence the delay if any in filing the instant case deserves to be condoned.
- F. That it has been the consistent view of the Superior Courts that causes should be decided on merit rather than technicalities including limitation. The same is reported in 2014 PLC (CS) 1014 2003 PLC (CS) 769.

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

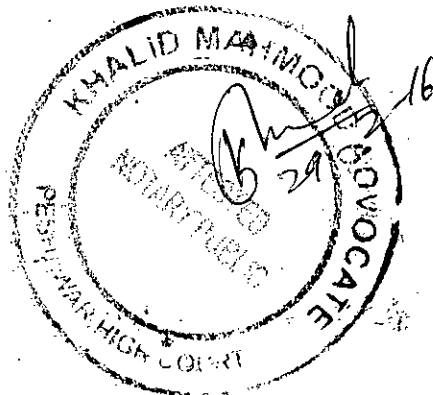
[Signature]
Applicant

Through

[Signature]
SAJID AMIN
Advocate, Peshawar

AFFIDAVIT

I, **Sudhair Khan Ex-Constable No. 02, Accounts Branch CPO Peshawar**, do hereby solemnly affirm and declare on oath that the contents of the above noted appeal as well as application for condonation are true and correct and that nothing has been kept back or concealed from this Honourable Tribunal.



[Signature]
Deponent

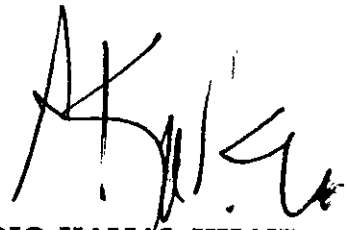
CHARGE SHEET

7

ANNEX A

I, Sadiq Kamal Khan DIG/HQr: Khyber Pakhtunkhwa, Peshawar, as competent authority, hereby charge you Constable Sudhair Khan of Account Branch CPO Peshawar as follows:-

1. That you while posted in the Account Branch CPO Peshawar have absented yourself from lawful duty with effect from 18.01.2011 to date without prior permission or leave.
2. By reasons of the above, you appear to be guilty of misconduct under section 3 of the Khyber Pakhtunkhwa Peshawar, Removal from service (Special Power) Ordinance, 2000, and have rendered yourself liable to all or any of the penalties specified in section 3 of the Ordinance ibid.
3. You are, therefore, required to submit your written defence within seven days of the receipt of this charge sheet to the Enquiry Committee/Enquiry Officer as the case may be.
4. Your written defence, if any, should reach the Enquiry Officer/Enquiry committee within the specified period, failing which it shall be presumed that you have no defence to put in and in that case exparte action shall follow against you.
5. Intimate whether you desire to be heard in person.
6. A statement of allegations is enclosed.


(SADIQ KAMAL KHAN)
DIG/Headquarters
For Provincial Police Officer
Khyber Pakhtunkhwa
Peshawar




9/10

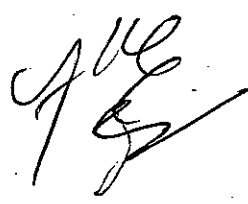

DISCIPLINARY ACTION

I, Sadiq Kamal Khan DIG/HQr: Khyber Pakhtunkhwa, Peshawar as competent authority, is of the opinion that you, Constable Sudhair Khan of Account Branch CPO Peshawar have rendered yourself liable to be proceeded against as you have committed the following acts/omission within the meaning of section -3 Removal from Service (Special Power) Ordinance 2000.

STATEMENT OF ALLEGATION

1. That he while posted in the Account Branch CPO Peshawar has absented himself from lawful official duty with effect from 18.01.2011 without prior permission or leave.
2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations, an enquiry committee consisting of the following is constituted under section - 3 of the ordinance.
 - i. Fazal Ahmad Jan DSP Admn /CPO
 - ii. Pervez Khan Line Officer /CPO
3. The enquiry committee shall, in accordance with the provisions of the Ordinance, provide reasonable opportunity of hearing to the accused, record its findings and make within 25 days of the receipt of this order, recommendations as to punishment or the appropriate action against the accused.
4. The accused and a well conversant representative of department shall join the proceedings on the date, time and place fixed by the enquiry committee.


(SADIQ KAMAL KHAN)
DIG/Headquarters
For Provincial Police Officer
Khyber Pakhtunkhwa
Peshawar



10/10

Handwritten notes and signatures at the top of the page, including "Younis B" and circled numbers "9" and "10".

ENQUIRY REPORT

The contents of Charge Sheet and Statement of Allegations issued by W/DIG/Hqrs; CPO Peshawar to Mr. Sudhair Khan Constable of Account Branch Peshawar envisages that he while posted in the Account Branch CPO Peshawar absented himself from lawful duty with effect from 18.01.2011 to date without prior permission or leave. The worthy DIG/HQrs. KPK. Peshawar ordered for conducting proper departmental enquiry against him and the instant joint enquiry, comprising the following committee members, was entrusted by the W/DIG/HQrs. KPK. Peshawar.

- 1- Fazal Ahmad Jan DSP/Administrations CPO Peshawar
- 2- Pervez Khan Line Officer CPO Peshawar

In order to probe into the matter and dig out real facts the following officials were summoned and their statements were taken.

- 1- Naseer Ahmad Accountant CPO.
- 2- Arifullah Constable Account Section CPO.

1- Naseer Ahmad Accountant CPO stated in his written statement that Constable Sudhair Khan was performing his duties in Accounts Branch CPO. On 17-01-2011, the said Constable requested that his services might be transferred to DSP/Admin CPO. On 18-01-2011, he was relieved and directed to report to DSP/Admin. CPO. The matter was brought into the notice of DSP/Admin. CPO vide that office vernacular report (Copy enclosed). The LO/CPO reported that Constable Sudhair Khan has not reported his arrival and absented himself from lawful duty w.e.f 18-01-2011 without any permission of the high ups. The W/Addl.IGP/Hqrs. directed for the stoppage of his salary and subsequently his salary was stopped by submitting change to the office of Accountant General KPK Peshawar. Furthermore, Constable Sudair Khan has neither contacted nor reported for his duty in Accounts Branch CPO since 18-01-2011.

2- Arifullah Constable Account Section CPO stated in his written statement that as directed he went to the house of Constable Sudhair Khan located in Hamid Kalay in connection with to serve upon him the Charge Sheet/Statement of Allegations. He met with his brother namely Moazzam Khan who told him that Constable Sudhair Khan had

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gone to Saudi Arabia and was not available in the house. He returned the Charge Sheet/Statement of Allegations un served.

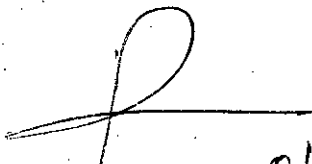
FINDINGS


The perusal of facts and statements of Naseer Ahmad Accountant CPO., and Arifullah Constable Account Section CPO transpires that Constable Sudhair khan absented himself from lawful duty with effect from 18-01-2011 to date without any kind of prior permission or leave. His salary has already been stopped by Account Branch CPO. The Charge Sheet/Statement of Allegations was sent to his home through Arifullah Constable for service upon him but were received back un served duly signed by his brother namely Moazzam. His brother has confirmed that Sudair Khan has gone to Saudi Arabia.

Conclusion

Constable Sudhair khan assigned in Accounts Branch CPO has absented himself from lawful duty since 18/01/2011 to date without any prior permission or leave. The Joint Inquiry Committee unanimously has reached to the conclusion that the defaulter official Constable Sudhair khan is found guilty and recommended for major punishment in his absentia.


Submitted for perusal and necessary action.


(PERVEZ KHAN) 04/10/11
Line Officer
Central Police Hqrs.KPK Peshawar

 04/10/11
(FAZAL AHMAD JAN)
DSP/Administrations
Central Police Hqrs.KPK Peshawar

W/DIG/Hqrs

Issue final ser.


5/6/2011

~~RESISTANCE~~ 5/10

P. 11

10590/E-II
6/10/2011

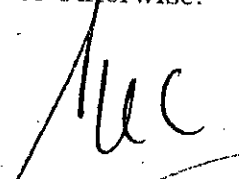
2/10



FINAL SHOW CAUSE NOTICE.

1. WHEREAS, you Constable Sudhair Khan while posted in Account Section CPO, Peshawar committed gross misconduct of absence from lawful duty as defined in Section 3 of Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance 2000, resultantly you were Charge Sheeted and served with a statement of allegations and Mr. DSP/Admn/LO CPO were appointed to conduct enquiry..
2. WHEREAS, the Enquiry officer has finalized the Enquiry proceedings, giving you full opportunities of defence i.e personal hearing as well as cross examination of the witnesses and the statement of all PWS were recorded absence, besides audience to relevant record. Consequent upon the completion of Enquiry proceeding, the Enquiry Officer held you guilty of the charges leveled against you as per Charge Sheet. A copy of the findings of the Enquiry Officer of the E.O is enclosed.
3. AND WHEREAS, on going through the finding and recommendation of Enquiry Officer, the material placed on record and other connected papers including your defence before the said Inquiry Officers. (I am satisfied that you have committed the misconduct and are guilty of the charges leveled against you as per statement of allegations conveyed to you which stand proved and render you liable to be awarded punishment under the said rules).
4. NOW THEREFORE, I, DIG/HQrs Khyber Pakhtunkhwa Peshawar as Competent Authority have tentatively decided to impose upon you, any one or more penalties including the penalty of "dismissal from Service" under Section 3 of the said Ordinance.

You are therefore, required to Show Cause within seven days of the receipt of this Notice, as to why the aforesaid penalty should not be imposed upon you, failing which it shall be presumed that you have no defence to offer and an exparte action shall be taken against you. Meanwhile also intimate whether you desire to be heard in person or otherwise.


(SADIQ KAMAL KHAN)
DIG/Headquarters,
For Provincial Police Officer,
Khyber Pakhtunkhwa
Peshawar

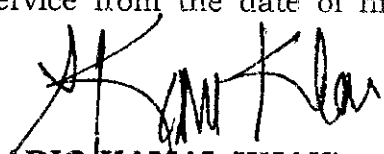
ORDER

This is an order passed on the departmental enquiry conducted against Constable Sudhair Khan No.02 of Account Branch CPO, Peshawar who has absented himself from duty w.e from 18.01.2011 without leave or permission. The above named constable was issued charge sheet and statement of allegation vide letter No. 18116/E-II dated: 12.08.2011, and sent to DSP/Admn CPO for service upon him, which was sent to his home through special messenger but the same was returned back un-served. His brother namely Moazzam confirmed that his brother constable Sudhair Khan No.02 has gone to Sudi Arabia. The enquiry committee consisting of the following officers of CPO was constituted and directed for initiating proceeding against him for misconduct on his part.

1. Fazal Ahmad Jan, DSP/ Admn/ CPO
2. Pervez Khan, Line Officer, CPO Peshawar

The enquiry committee after conducting proper enquiry observing all codal formalities, recommended the above named Constable for major punishment. The delinquent constable was issued final show cause notice with the direction to assume his duty within 07 days failing which he would be dismissed from service under Section-III of Khyber Pakhtunkhwa removal from service special powers ordinance 2000. Subsequently the Constable was informed through advertisement for assuming his duty within 15 days otherwise the proposed action concerning his dismissal from service would be taken. But till date the defaulter constable has not bothered to assume duty which clearly shows dis-interest in service.

Keeping in view the recommendation of enquiry committee, I therefore, in exercise of the power vested in me vide Khyber Pakhtunkhwa removal from service (special powers) ordinance 2000, remove constable Sudhair Khan No. 02 of Account Branch CPO, Peshawar from service from the date of his continuous absence i.e from 18.01.2011.


(SADIQ KAMAL KHAN)
DIG/Headquarters
Khyber Pakhtunkhwa
Peshawar

No. 2454-59/E-II dated Peshawar the 10 / 2 / 2012

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

1. Addl: IGP/ HQrs Khyber Pakhtunkhwa Peshawar.
2. Capital City Police Officer, Peshawar.
3. DSP/ Admin CPO Peshawar.
4. Accountant CPO Peshawar.
5. Line Officer CPO Peshawar.
6. Sudhair Khan s/o Murad Khan tehsil & District Peshawar village Hameed Kalay Post Office Garhi Sherdad Police Station Mathra.

بخدمت جناب اسپیکر جنرل آف پولیس صوبہ خیبر پختونخوا پشاور۔
درخواست برائے بحالی ملازمت۔

جناب عالی!

سائل حسب ذیل عرض رساں ہے۔

- (1) یہ کہ سائل سدھیر خان ولد مدد خان ساکن حمید کلمے مٹھرا پشاور کو بحیثیت کانسٹیبل (سنٹرل پولیس آفس) میں 25.04.1995 سے 18.01.2011 تک محکمہ ہذا میں ڈیوٹی سرانجام دے رہا تھا۔
- (2) یہ کہ بدوران ملازمت سائل کو مختلف قسم کے گھریلو خاندانی چپقلشوں اور دیگر وجوہات کی بناء پر سائل بیرون ملک اپنی زندگی بچانے کیلئے بہ امر مجبوری جانا پڑا۔
- (3) یہ کہ ان وجوہات کی بناء پر محکمہ ہذا نے کارروائی بوجہ غیر حاضری شروع کی جو کہ بذریعہ آرڈر مورخہ 18.01.2011 کو محکمہ ہذا سے درخواست کیا گیا۔
- (4) یہ کہ سائل چونکہ مختلف اقسام کے مسائل میں گھرا ہوا تھا جس کی بناء پر سائل ملازمت سے برخاستگی کے خلاف کسی بھی قسم کی اپیل نہیں کیا۔
- (5) یہ کہ سائل محکمہ ہذا میں تقریباً 16 سال تک ملازمت کی اور ان تمام عرصہ میں سائل کے خلاف کبھی بھی کسی بھی قسم کی کوئی حکمانہ شکایت موصول نہیں ہوئی ہے۔
- (6) یہ کہ سائل نے محکمہ ہذا میں اتنا طویل عرصہ اپنی خدمات سرانجام دی ہیں اور سائل کی غیر حاضری ہرگز قصداً ہو ان تھی یا۔
وجوہات بالا تھی۔
- (7) یہ کہ سائل ایک غریب بندہ ہے اور اہل و عیال کی دیکھ بھال وغیرہ بھی سائل کی ذمہ داری تھی اور سائل کا کوئی دوسرا آسرا بھی نہیں ہے۔
- (8) لہذا آپ صاحبان سے عاجزانہ استدعا ہے کہ سائل کا مندرجہ بالا مجبوری کو مد نظر رکھتے ہوئے سائل کو دوبارہ نوکری پر بحال کیا جائے۔

المترقوم: 24.11.2015

3650/11
24-11-15

سائل تاحیات زندگی دعا گو رہیگا۔

(Signature)

العارض

سدھیر خان (سابقہ کانسٹیبل) ICPO کاؤنٹ برانچ پشاور

شناختی کارڈ نمبر: 03159805573، رابطہ نمبر: 173011-633310-5

Registrar

pls process

(Signature)

supdt: Searat

(Signature)

24/11/15

(Signature)

Supdt: Secret, Branch CPO, Peshawar

No. 14976 /E-IV

Dated 9/12/2015

Subject: APPEAL

Please refer to your letter No. 5768/15 dated 07.12.2015.

Constable Sudhair Khan No. 02 of Account Branch CPO Peshawar was absented him-self from duty w.e from 18.01.2011 without any leave /permission from Seniors.

On the above charges, charge sheet and statement of allegations was issued to the above named official and sent to DSP/Admn CPO Peshawar for service upon him, which was sent to his home through messenger but the same was returned back un-served.

According to the brother of the above official, the said official was gone to Saudi Arabia. The enquiry Committee consisting of DSP/Admn and LO CPO Peshawar was constituted for initiating proceeding against the above official for misconduct on his part.

The above named official was also informed through advertisement for assuming his duty within 15 days, otherwise, the proposed action concerning his dismissal from service would be taken but till 10.02.2012 i.e date of removal from service, he not bothered to assume duty which clearly shows his dis-interest in service.

The enquiry committee after observing all codal formalities, recommended the above official for major punishment and on the recommendation of enquiry committee, the above named official was removed from service under (Special Power) ordinance 2000 from the date of absence i.e 18.01.2011 on 10.02.2012.

The above named Ex-Constable was enlisted in FRP/HQrs KPK Peshawar on 25.04.1995 and later on transferred to CPO Peshawar on loan basis on 16.10.1996.

According to the attached service record, there is no good or bad entry. The total service of the above named Ex-official was 15 years, 08 months and 23 days.


The service roll, Fauji Missal and enquiry file of the above named Ex-Constable are attached please.

Encl: Service Roll = (01)
Fauji Missal = (01)
Enquiry File = (59) papers

Office of the PPO KPK, Peshawar
(Secret Branch)
By: No. SI 382/15
Dated 09-12-15


(PERVEZ ILLAHI)
Registrar

For Inspector General of Police,
Khyber Pakhtunkhwa Peshawar





OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar

No. S/ 810

/16, Dated Peshawar the 29/01/2016.

ANNEX 'F'

(15)

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 Sudhair Khan No. 02. The appellant was awarded punishment of Removal from service from the date of absence i.e 18.01.2011 by DIG/HQrs: Khyber Pakhtunkhwa vide order No. 2454-59/E-II, dated 10.02.2012 on charges that the appellant while posted in Account Branch CPO absented himself from duty till date of removal from service i.e 10.02.2012 for 01 year and 21 days.

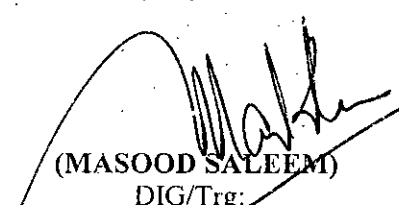
Meeting of the Appeal Board was held on 13.01.2016, wherein the appellant appeared and heard in person. His appeal is time barred. He the appeal of Ex-Constable Sudhair Khan No. 02 is hereby filed.

Sd/-
NASIR KHAN DURRANI
Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

No. S/ 811-19 /16,

Copy of the above is forwarded to the:

1. Deputy Inspector General of Police, HQrs: Khyber Pakhtunkhwa, Peshawar.
2. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
3. PRO 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/Establishment CPO.
7. Office Supdt: E-IV, CPO, Peshawar.
8. Accountant CPO.
9. Central Registry Cell (CRC) CPO.


(MASOOD SALEEM)
DIG/Trg:
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.



POWER OF ATTORNEY

In the Court of Khyber Pakhtunkhwa Service Tribunal
Peshawar.

Sudhair Khan Ex Constable

- } For
- } Plaintiff
- } Appellant ✓
- } Petitioner
- } Complainant

VERSUS

Provincial Police Officer Khyber Pakhtunkhwa
Peshawar & others.

- } Defendant
- } Respondent
- } Accused

Appeal/Revision/Suit/Application/Petition/Case No. _____ of _____
Fixed for _____

I/We, the undersigned, do hereby nominate and appoint

SAJID AMIN ADVOCATE, HIGH COURT

_____ my true and lawful attorney, for me in my same and on my behalf to appear at Peshawar. to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits. Compromises or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or subpoena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at _____
the _____ day to _____ the year _____
Executant/Executants _____ Sud
Accepted subject to the terms regarding fee _____

Accepted

Sajid Amin
SAJID AMIN
Advocate High Court

BEFORE THE KHBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 173/2016

Sudair Khan(Appellant)

Versus

Provincial Police Officer, Khyber Pakhtunkhwa others.....(Respondents)

Subject:- REPLY ON BEHALF OF RESPONDENTS.

Preliminary Objections:-

- a) The appeal has not been based on facts
- b) The appellant has got no cause of action to file the appeal.
- c) The appeal is not maintainable in the present form.
- d) The appeal is bad for non-joinder and mis-joinder of necessary parties.
- e) The appellant is estopped to file the appeal.
- f) The appeal is barred by law and limitation.
- 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 and he was marked absent from duty with effect from 18.01.2011. Charge sheet and statement of allegations based on charges of willful and deliberate absence from duty were issued to appellant. Appellant had reportedly left for abroad as disclosed by Moazzam his brother. The charge sheet and statement of allegations were served on his said brother but no reply was received. Final Show Cause notice was issued to appellant but he did not turn up. Therefore, appellant was removed from service vide impugned order. The inquiry report and impugned order annexed with the original appeal as Annexure-B & D respectively are self-explanatory.
2. Incorrect, appellant has not applied for grant of ex-Pakistan leave and he had left for abroad without sanction of leave and NOC. He has admitted that he left abroad without proper sanction.
3. Incorrect, appellant was well in picture that no ex-Pakistan leave was granted to him but he willfully and deliberately left for abroad.
4. Correct to the extent that charge sheet and statement of allegations were issued to appellant which were served on the brother of appellant. Proper regular inquiry was conducted. The inquiry committee examined witnesses in support of the charges and service of the charge sheet. Final Show Cause notice was issued to

7
appellant and he avoided defense of the charges therefore, the impugned order of his removal from service was passed.

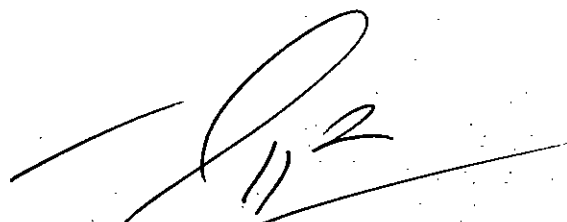
5. Incorrect, proper departmental inquiry was conducted and appellant did not defend himself despite the fact the charge sheet was served on his brother.
6. Correct to the extent that appellant was removed from service from the date of absence from duty. Appellant did not advance any explanation behind his willful and deliberate absence from duty. He had not performed any duty right from the date of his absence therefore he was removed from the service from the date of absence from duty.
7. Incorrect, appellant remained absent from duty for several years and copy of the impugned order was delivered to appellant on demand. The departmental appeal of appellant was badly time barred therefore, the same was correctly rejected.
8. Incorrect, the impugned order is just, proper and has been passed in accordance with law and rules. The Service Appeal of appellant is not sustainable as the departmental appeal of appellant was time barred and the departmental authority did not condone the delay in lodging departmental appeal.

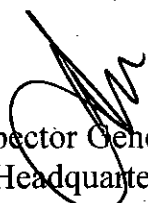
GROUNDS:-

- A. Incorrect, appellant has been treated in accordance with law and rules. Regular inquiry was conducted and appellant willfully and deliberately avoided defense of the charges. He filed the departmental appeal at very belated stage therefore, the same was rejected being time barred.
- B. Incorrect, all the procedural, legal, and codal formalities were adopted before passing the impugned order. The charge sheet was served on the brother of appellant. The inquiry committee recorded the statement of Arif Ullah Constable who served the charge sheet on the brother of appellant. Final show cause notice was issued to appellant. The inquiry committee collected sufficient evidence in support of the willful absence from duty of appellant.
- C. Incorrect, appellant did not appear before the competent authority and he was heard in detail during decision in his department appeal.

- D. Incorrect, charge sheet and statement of allegations were served on the brother of appellant. The inquiry report is self-speaking in this regard.
- E. Incorrect, appellant was marked absent from duty with effect from 18.01.2011 and he did not turn up till passing the impugned order dated 10.02.2012, therefore, he was removed from service from the date of absence from duty as he had not performed any duty from date of his absence.
- F. Incorrect, appellant remained absent for long period and his absence was willful and deliberate therefore, penalty commensurate with the charges was imposed on appellant.
- G. Appellant remained absent from duty for long period and willful and deliberate absence from duty amounts to gross misconduct.
- H. Incorrect, competent authority i.e. Deputy Inspector General of Police Headquarters has issued the impugned order.
- I. Incorrect, the impugned order was passed due to ill-conduct of appellant.
- J. Incorrect, long service is no defense of commission of gross misconduct.
- K. Incorrect, appellant intentionally absented himself from duty and went abroad, resultantly lost service.
- L. The respondents may also be allowed to raise other grounds during hearing of the case.

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


Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No.1 & 2)


Deputy Inspector General of Police,
Headquarters,
Khyber Pakhtunkhwa, Peshawar
(Respondent No.3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 173/2016

Sudair Khan(Appellant)

Versus

Provincial Police Officer, Khyber Pakhtunkhwa others.....(Respondents)

AFFIDAVIT


I, Falak Nawaz AIG Legal CPO, Peshawar do here by solemnly affirm on oath that the contents of accompanying reply on behalf of Respondents are correct to the best my knowledge and belief. Nothing has been concealed from this Honorable Tribunal.

DEPONENT



Falak Nawaz,
AIG/Legal
14203-2060203-5

ATTESTED



16-08-2016

Mian Sibghat Ullah Shah
Advocate

OATH COMMISSIONER
High Court Peshawar



**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

In the matter of
Appeal No. 173/2016

Sudher Khan Ex- Constable No. 02 Accounts Branch CPO
Peshawar. **(Appellant)**

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa and others.
(Respondents)

REJOINDER ON BEHALF OF THE APPELLANT

Respectfully submitted:

The appellant submit his rejoinder as under:

Preliminary Objections:

1. Contents incorrect and misleading. The instant appeal is based on facts.
2. Contents incorrect and misleading. The appellant has illegally been awarded the major penalty of removal from service hence he has got the necessary cause of action to file instant appeal.
3. Content incorrect and misleading. The appeal is filed well in accordance with the prescribed rule and procedure, hence maintainable in his present form.
4. Contract misconceived and incorrect. All the parties necessary for the safe adjudication of this appeal has been arrayed in the appeal.
5. Contents incorrect and misleading, no rule of estoppel is applicable in the instant case.
6. Content incorrect and misleading. The appeal is filed well within the prescribed period of limitation and not barred by law.
7. Contents incorrect and misleading, the appellant has approached this Honourable Tribunal with clean hands.

Facts of the Case:

1. Contents need no reply to the extent of admission, rest of the Para is baseless hence denied. Contents of para 1 of the appeal are correct.
2. Contents of Para 2 of the appeal are correct. The reply submitted to the Para is incorrect and false.
3. Contents of Para 3 of the appeal are correct. The reply submitted to the Para is incorrect and false.

4. Contents of Para 4 of the appeal are correct. The reply submitted to the Para is incorrect and false.
5. Contents of Para 5 of the appeal are correct. Reply submitted to the Para is incorrect and misleading.
6. Contents need no reply to the extent of admission, rest of the Para is baseless hence denied. Contents of para 6 of the appeal are correct..
7. Contents of Para 7 of the appeal are correct. The reply submitted to the Para is incorrect and false.
8. Contents of Para 8 of the appeal are correct. The reply submitted to the Para is incorrect and false.

Grounds of Appeal:

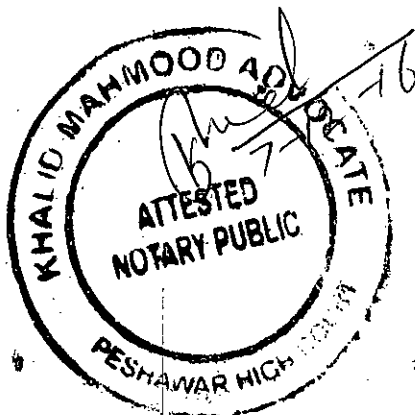
The Grounds of appeal taken in the memo of appeal are legal will be substantiated at the hearing of this appeal. Besides the appellant has not been treated in accordance with law, no proper procedure has been followed before awarding the major penalty to the appellant. The penalty imposed is thus in violation of the law & rules. The impugned order is not sustainable in the eye of law and is thus liable to be set aside.

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


Appellant

Through


YASIR SALEEM
Advocate High Court



AFFIDAVIT

I do hereby solemnly affirm and declare on oath that the contents of the above rejoinder as well as titled appeal are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.


Deponent

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1789 /ST

Dated 4 / 9 / 2018

To The Deputy Inspector General of Police Headquarters,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: - JUDGMENT IN APPEAL NO. 173/2016, MR. SUDHAIR KHAN.

I am directed to forward herewith a certified copy of Judgement dated 7.8.2018 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.