

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. 889/2014

Date of Institution ... 27.06.2014

Date of Decision ... 12.04.2018

Ahmad Noor Ex-Constable No. 713, District Police Hangu S/O Zar Noor R/O
Muhammad Zai, Thall District Hangu. ... (Appellant)

VERSUS

1. District Police Officer, Hangu and two others. ... (Respondents)

MR. FAZAL SHAH MOHMAND, ... For appellant
Advocate

MR. USMAN GHANI,
District Attorney, ... For respondents.

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. MUHAMMAD AMIN KHAN KUNDI, ... MEMBER

JUDGMENT

NIAZ MUIHAMMAD KHAN, CHAIRMAN.- Arguments of the learned
counsel for the parties heard and record perused.

FACTS

2. The appellant was dismissed from service on 21.3.2014 on the ground of his absence, against which he filed departmental appeal on 17.4.2014 which was rejected on 29.05.2014 and thereafter he filed the present service appeal on 27.6.2014.

ARGUMENTS.

3. The learned counsel for the appellant argued that the order of dismissal was given retrospective effect from the date of absence and hence was a void order. That the appellant was not associated with the enquiry. That no charge sheet was served upon the appellant. That the appellant did not submit reply to the charge sheet. That no final show cause notice was served upon the appellant. That the appellant was only given opportunity of personal hearing. That the whole proceedings were illegal.

4. On the other hand, the learned District Attorney argued that the appellant was served with charge sheet. That the appellant had submitted reply to the charge sheet. That the appellant even today admitted his absence. That the department had rightly awarded the penalty of dismissal from service to the appellant. With regard to retrospectivity of the order, the learned District Attorney referred to the judgment dated 02.03.2018 delivered by the larger bench of this Tribunal in service appeal No. 562/2016 entitled "*Rahim-ud-Din Vs. Inspector General of Police, Khyber Pakhtunkhwa Peshawar and two others*" in which it was held that the retrospective part of the order could be segregated from the rest and can be given immediate effect.

CONCLUSION.

5. The issue of retrospectivity is to be decided first. This Tribunal in a judgment referred to above by the larger bench has already held that the retrospective order is though a void order but it can be modified and can be given effect immediately. However, the record reveals that due to absence of the appellant he could not be associated with the whole proceedings. The dismissal order itself speaks that no reply was submitted by the appellant. The reply shown by the learned District Attorney pertains to some other period. The order of dismissal itself shows that the final show cause notice was not served on the appellant but on one ASI Anar Gul replied the final show cause notice by adding that the appellant was not

willing to serve in the Police Department and that there was no hope of his joining service in Police Department. It clearly gives the impression that neither the charge sheet nor statement of allegations was served on the appellant. The show cause notice was also not served on the appellant and it was presumed that the appellant was not interested in service and then he was awarded a harsh punishment of dismissal from service on the basis of absence only. This Tribunal is, therefore, of the view that not only the punishment was harsh but the proper procedure was also not followed. The dismissal order is therefore, set aside and the appellant is reinstated in service. The department is directed to hold denovo proceedings within a period of ninety days from the date of receipt of this judgment. The issue of back benefits etc. shall be subject to the final outcome of denovo proceedings and rules on the subject. Parties are left to bear their own costs. File be consigned to the record room.

Muhammad Amin

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER


Niaz Muihammad Khan
(NIAZ MUIHAMMAD KHAN)
CHAIRMAN

ANNOUNCED

12.04.2018

01.01.2018

Appellant in person present. Mr. Muhammad Jan, DDA for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 02.03.2018 before D.B.


(Ahmad Hassan)
Member(E)

(M.Amin Khan Kundi)
Member (J)

02.03.2018

Counsel for the appellant and Addl. AG alongwith Zahid Rahman, Inspector (Legal) for the respondents present. Learned counsel for the appellant seeks adjournment. To come up for arguments on 12.04.2018 before the D.B.


(Ahmad Hassan)
Member



Chairman

12.04.2018

Counsel for the appellant and Mr. Usman Ghani District Attorney alongwith Zahid Rehman, Inspector (Legal) for the respondents present. Arguments heard and record perused.

This appeal is accepted as per our detailed judgment of today. Parties are left to bear their own costs. File be consigned to the record room.


MEMBER


CHAIRMAN

ANNOUNCED
12.04.2018

26.05.2017


Clerk of the counsel for appellant present. Mr. Muhammad Adeel Butt, Additional AG for respondents also present. Clerk of the counsel for appellant requested for adjournment. Adjourned. To come up for arguments on 19.09.2017 before D.B.



(GUL ZEB KHAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

19.09.2017

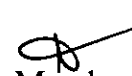
Appellant present. Learned Assistant Advocate General for the respondents present. Appellant seeks adjournment on the ground that learned counsel for appellant has gone to performed Hajj. Adjourned. To come up for arguments on 20.10.2017 before D.B.

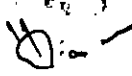

Member
(Executive)


Member
(Judicial)

20.10.2017

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

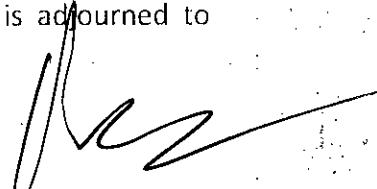

Member
(Executive)


Member
(Judicial)

09.06.2016


Appellant in person and Addl: AG for respondents present. Due to strike of the Bar learned counsel for the appellant is not available today before the court, therefore, case is adjourned to 20.09.2016 before D.B.


MEMBER


MEMBER

20.09.2016

Counsel for the appellant and Mr. Abdur Rehman, Inspector alongwith Addl: AG for respondents present. Counsel for the appellant requested for adjournment. To come up for arguments on 12.01.2017.

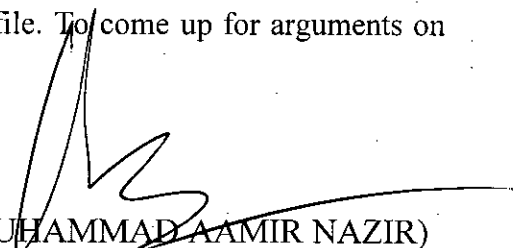

Member


Member

12.01.2017

Counsel for the appellant and Mr. Abdur Rehman, Inspector alongwith Mr. Muhammad Jan, GP for respondents present. Representative of the respondents submitted charge sheet alongwith inquiry report which is placed on file. To come up for arguments on 26.05.2017.


(AHMAD HASSAN)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER

5

09.03.2015


Appellant with counsel and Mr. Asgher Mehmood, ASI for respondents along with Addl: A.G present. Comments submitted. The appeal is assigned to D.B for rejoinder and final hearing for 01.10.2015.


Chairman

01.10.2015

Counsel for the appellant and Asst: AG for respondents present. Counsel for the appellant requested for adjournment. To come up for arguments on 2-3-16


Member


Member

02.03.2016

Counsel for the appellant and Mr. Abdur-ur-Rehman, Inspector (Legal) along with Mr. Muhammad Jan, GP for respondent present. Rejoinder received on behalf of the appellant copy which is handed over to the respondent-department. To come up for arguments on 09.06.2016.


Member


Member

Appeal No. 489/2014
Mr. Ahmad Noor

3. 09.09.2014

Counsel for the appellant present. Preliminary arguments heard and case file perused. Through the instant appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, the appellant has impugned order dated 21.03.2014 passed by respondent No.1 vide which the appellant was awarded major punishment of dismissal from service. Against the above referred impugned order appellant filed departmental appeal which was also rejected by respondent No.2 vide order dated 29.05.2014, hence the instant appeal on 27.06.2014.

Since the matter pertains to terms and conditions of service of the appellant. The appeal is within time, hence admit for regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply. To come up for written reply/comments on 25.11.2014.

Appellant's deposited
Process fee & Security
Rs. 300/- Bank Receipt
attached with file

4. 09.09.2014

This case be put before the Final Bench II for further proceedings.

Member

Chairman

25.11.2014

Appellant with counsel and Mr. Muhammad Jan, GP with Muhammad Aslam, Inspector (Legal) for the respondents present. The Tribunal is incomplete. To come up for the same on 08.1.2015.

READER

08.1.2015


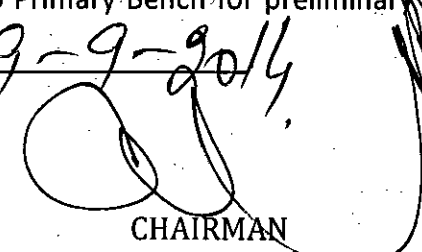
Counsel for the appellant and Mr. Muhammad Jan, GP with Mujahid Hussain, ASI for the respondents present. The Tribunal is incomplete. To come up for the same on 9.3.2015.

READER

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 8899/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	27/06/2014	<p>The appeal of Mr. Ahmad Noor presented today by Mr. Fazal Shah Mohmond Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	1-7-20/4.	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>9-9-20/4</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 889 /2014

Ahmad Noor Ex Constable.....Appellant

VERSUS


District Police Officer Hangu and others.....Respondents.

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4.	Copy of departmental appeal & order dated 29-05-2014	C & D	10-12
5.	Wakalat Nama		13


Appellant

Through


Fazal Shah Mohmand
Advocate, Peshawar

Dated:27-06-2014

OFFICE:-

Cantonment Plaza Flat 3/B
Khyber Bazar Peshawar
Cell # 0301 8804841

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 389 /2014

Ahmad Noor! Ex Constable No 713, District Police Hangu S/O Zar
Noor R/O Muhammad Zai Thall District Hangu **Appellant**

VERSUS

1. District Police Officer Hangu.
2. Deputy Inspector General of Police Kohat Region Kohat.
3. Provincial Police Officer Khyber Pukhtoon Khwa Peshawar
.....**Respondents**

927
27/6/14

**APPEAL U/S SECTION 4 OF THE KPK SERVICE TRIBUNAL
ACT 1974 AGAINST THE ORDER DATED 21-03-2014
PASSED BY RESPONDENT NO 1 WHERE BY THE
APPELLANT HAS BEEN DISMISSED FROM SERVICE FROM
THE DATE OF ABSENCE AND ORDER DATED 29-05-2014
OF RESPONDENT NO 2 WHEREBY DEPARTMENTAL
APPEAL OF THE APPELLANT HAS BEEN FILED.**

PRAYER:-

On acceptance of this appeal the impugned order dated 21-03-2014 of respondent No 1 and order dated 29-05-2014 of Respondent No 2 may kindly be set aside and the appellant may kindly be ordered to be reinstated in Service with all back benefits

Respectfully Submitted:-

1. That the appellant joined Police Department as Constable on 01-06-2008 and since then performed his duties with honesty and full devotion and to the entire satisfaction of his superior officers.
2. That on 14-12-2013, the appellant while posted to Police lines Hangu proceeded on 7 days leave, wherein he fell seriously ill and informed the line Officer through telephone, and time and

27/6/14

again visited the Medical Officer for treatment who advised the appellant medicines and bed rest. (Copies of Medical chits are enclosed as Annexure A).

3. That after recovery the appellant reported for duty on 03-03-2014, but shockingly he was dismissed from service from the date of absence by respondent No 1 vide order dated 21-03-2014. (Copy of the order is enclosed as Annexure B)
4. That the appellant submitted Departmental appeal before respondent No 2 on 17-04-2014 which too was filed vide order dated 29-05-2014. (Copy of departmental appeal and order are enclosed as Annexure C & D).
5. That the impugned orders dated 21-03-2014 of respondent No 1 and order dated 29-05-2014 of respondent No 2 are against the law, facts and principles of justice on grounds inter alia as follows:-

GROUND

- A. That the impugned orders are illegal and void ab-initio.
- B. That no charge sheet and show cause notice was communicated to the appellant and thus no charge was framed against the appellant, thus the orders are void abinitio..
- C. That no inquiry was conducted to find out the true facts and circumstances.
- D. That even otherwise the absence from duty was not willful and deliberate rather the same was because of circumstances compelling in nature and were beyond the control of the appellant as well.
- E. That the Impugned orders are not maintainable and defective being with retrospective effect.

F. That the appellant has not been treated in accordance with law and mandatory provisions of law have been violated by the respondents while taking action against the appellant.

G. That the appellant was also not afforded the opportunity of personal hearing.

H. That the impugned order is not maintainable due to misapplication of law as well.

I. That after recovery the appellant made arrival for duty and furnished the medical chits pertaining to his sickness and bed rest.

J. That even other wise the appellant did nothing which could be termed as misconduct.

K. That the respondents have also failed to show as to what loss was caused to them due to the act of the appellant.

L. That the service career of the appellant is spotless and is jobless since his illegal dismissal from service.

M. That the appellant has about 6 years of service with unblemished service record.

N. That the appellant seeks the permission of this honorable tribunal for further/additional grounds at the time of arguments.

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

Any other remedy not specifically asked for may also be granted in favor of the appellant.


Appellant

Through


Fazal shah Mohmand
Advocate Peshawar.

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No. _____/2014

Ahmad Noor Ex Constable.....Appellant

VERSUS

District Police Officer Hangu and others.....Respondents.

AFFIDAVIT

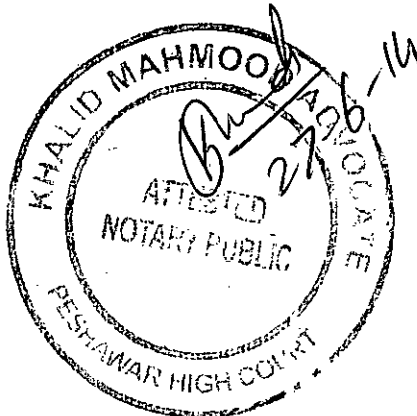
I, Ahmad Noor Ex Constable No 713, District Police Hangu S/O Zar Noor R/O Muhammad Zai Thall District Hangu, do hereby solemnly affirm and declare on oath that the contents of this **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Adag
DEPONENT

Identified by

Fazal Shah Mohmand

Fazal Shah Mohmand
Advocate Peshawar



Dr. Inayatullah Jan

FROM THE DESK OF

M.B.B.S. (K.M.C)

D.M.C.H (PAK)

R.M.P. (P.M.D.C.)

ALS

DMS Night
Khyber Teaching Hospital Peshawar

Clinic:
Sarah Health Centre
Pawaka.

Name: Amjad Noor Age: _____ Date: 22-12-13

L.B.D

D

Tab. Feldene 200
1 TI

Attested

copy

Tab Nubersol jidi
1 TI

Ad.

Tab Mettycolol
1 TI

Ad Complete Bed rest
W-07 22-12-2013 to 25/12/13

Not Valid For Court

DR. INAYATULLAH JAN


Peshawar



SERVICES HOSPITAL PESHAWAR
GOVERNMENT OF KPK
OPD REGISTRATION



6

Name AHMAD NOOR Age 28 Sex MALE

Department GENERAL OPD Address PESHAWAR

Hospital Yearly No. 60845 Dated 26-12-2013

History

R/-

Clinical Examination

Lumbago
Schistocera

① Tab Bexan
② Tab Monax 2mg
③ Tab Calsand
④ Cyt Gabeca 50mg

Provisional Diagnosis

Investigations

Attested


Adm



SERVICES HOSPITAL
GOVERNMENT OF KPK
OPD REGISTRATION

Name AIMAD NOOR Age 28 Sex MALE

Department GENERAL OPD Address PESHAWAR

Hospital Yearly No. 5607 Dated 25-01-2014

History	R/-
Clinical Examination	① Tab Cervical 4-5 — 1 2/3
Lumbago	② Tab Voltrax — 1 7/8
Sichitrac	③ Tab Calcarea D. — 1 1/2
Provisional Diagnosis	C. 94.
Investigations	OI with subline Advised Subject to proceed by MS Police Hospital

Doctor On Duty _____ Doctor's Signature [Signature]
Physician Services Hospital, Peshawar.

Attested
[Signature]



SERVICES HOSPITAL PESHAWAR
GOVERNMENT OF KPK
OPD REGISTRATION

REG-1

Name AHMAD NOOR Age 28 Sex MALE
Department GENERAL OPD Address PESHAWAR
Hospital Yearly No. 14762 Dated 24-02-2014

History

R/-
Tab. of labid 2007
121

Clinical Examination

Tab. P... 4007
111

Provisional Diagnosis

W/ (10)
Tab. Subex-T
- 12/11
Adv Sick leave for
10 (ten) days wmf 24/02/14
Subject to approval by M.S. police

Investigations

pro
LMT

Doctor On Duty

Doctor's Signature **MEDICAL OFFICER**
Police & Service Hospital
Peshawar

Attested
[Signature]
Adv

603 = 657

B/9

ORDER

This order of mine will dispose of the departmental enquiry initiated against Constable Ahmed Noor No. 713 on the basis of allegation that he while posted at Police Lines, Hangu absented himself from official duty with effect from 22.12.2013 to 03.03.2014 without any leave or prior permission.

Charge Sheet together with statement of allegations under Police Disciplinary Rules 1975 was initiated against him vide No. 09/PA dated 02.01.2014, to which he failed to submit his reply. Inspector Jahangir Khan RI Police Lines Hangu was appointed as Enquiry Officer to conduct departmental enquiry against him. After completion of enquiry, the enquiry officer submitted his findings and held him guilty for the charges leveled against him.

Thereafter, Final Show Cause Notice was issued to him vide this office No. 278/PA dated 22.01.2014, was served through ASI Anar Gul Muharrar Police Lines Hangu. Moharrar Police Lines has given a written statement that the defaulter Constable is not willing to serve further in Police department, there is no hope of him to join Police department in future.

He was called in for Orderly Room on 19.03.2014. He appeared in Orderly Room heard in person and did not present any solid proof for his long period of absence.

Keeping in view of above and having gone through available record, the undersigned has come to the conclusion that the defaulter Constable has absented himself from duty for long periods, which indicates that he is not interested to serve further. Moreover, in these circumstances, his retention in Police Department is burden on public exchequer, therefore, I, Iftikhar Ahmad, District Police Officer, Hangu in exercise of the powers conferred upon me, award him major punishment of "**Dismissal from Service**" from the date of his absence.

Order Announced.

OB No. 177

Dated 21/3/2014.


IFTIKHAR AHMAD
DISTRICT POLICE OFFICER,
HANGU


OFFICE OF THE DISTRICT POLICE OFFICER, HANGU.

No. 1031-35/PA, dated Hangu, the 21/3/2014.

Copy of above is submitted to the Regional Police Officer, Kohat for favour of information please.

2. Pay Officer, Reader, SRC & OHC for necessary action.

Attested


Ad


IFTIKHAR AHMAD
DISTRICT POLICE OFFICER,
HANGU

2/10

BEFORE THE DY: INSPECTOR GENERAL OF POLICE, KOHAT
RANGE KOHAT

SUBJECT: Appeal against the order of DPO Hangu bearing OB No.177 dated 21-3-2014 vide which ex-constable Ahmad Noor No.713 of Hangu Distt: Police was dismissed from service from the date of absence.

Respectfully Sheweth,

With veneration, the appellant submits the instant appeal on the following facts and grounds:-

Facts:

Allegation against the appellant is that while posted at Police Line Hangu, he absented from duty w.e.f 22-12-2013 to 03-3-2014 without leave or permission. The DPO Hangu initiated departmental proceedings against the appellant and after completion of inquiry by inspector Jehangir Khan, the impugned order was passed by DPO Hangu. Copy of the impugned order is enclosed.

Grounds:

- a. That the appellant had joined the police department as constable in the year 2008 and since then neither absented from duty nor awarded any minor / major punishment by the senior police officers for any wrong.
- b. That the departmental proceedings were not conducted in accordance with rules.
- c. That no charge sheet / summary of allegation was ever served on the appellant. The rules required that charge sheet / summary of allegations was to be served prior to imposition of major penalty by the competent authority.

Attested

[Handwritten signature]

[Handwritten initials]

- d. That neither cop of the findings of enquiry officer was furnished to the appellant nor the appellant was served with final show cause notice.
- e. That ex-party proceedings were carried out by the enquiry officer against the appellant without associating the appellant with the proceedings and affording him any opportunity of cross examination.
- f. That the absence of the appellant was not intentional, in fact the appellant had proceeded on seven days causal leave on 14-12-2013 but developed "Sliatica" and therefore could not attend to my official duties on due date.
- g. That I remained under medical treatment during the period of absence. Photo copies of the medical documents are enclosed herewith.

Prayer:

In light of the above submissions, it is prayed that by accepting the instant appeal, the impugned order may be set-aside and the appellant re-instated in service w.e.f the date of absence i.e. 22-12-2013. I may also be heart in person please.

Attested
Caf
Dated: 17-4-2014.
Ad

Yours Obediently,
Red
Ex-Constable Ahmad Noor
No.713
Distt: Police Hangu,
Cell # 0341-8483879.

Attested
Caf
Ad

D/12

ORDER.

This order is passed on the appeal preferred by Ex-Constable Ahmed Noor No. 713 of Hangu district Police; wherein he was awarded major punishment of dismissal from service by DPO Hangu vide O.B No. 177, dated 21.03.2014. He requested for setting aside the punishment order and reinstatement in service.

Facts are that the official while posted at Police Lines, Hangu absented himself from official duty w.e.f. 22.12.2013 to 03.03.2014 (02 months & 11 days) without any leave or permission from his superior officer, which clearly shows his inefficiency, negligence and gross misconduct on his part.

Charge Sheet & Statement of allegations was issued to him under Police Disciplinary Rule 1975 by DPO Hangu and Inspector Jehangir Khan R.I Police Lines, Hangu was appointed as enquiry officer to conduct proper departmental enquiry against him. The enquiry officer has submitted his finding that the defaulter official is still absented himself from duty and no hope to rejoin the duty. As a result, he was awarded a major punishment by DPO Hangu vide his OB mentioned above.

Aggrieved from the said order, the appellant preferred the instant departmental appeal for setting aside the punishment order passed by DPO Hangu.

He was heard in person in orderly room held in this office on 28.05.2014 but he could not give any satisfactory accounts in his defence.

Going through the available record and enquiry papers, the undersigned reached to the conclusion that charges leveled against him has been established. However, the punishment order of DPO Hangu is accordance with law / rules, therefore, the appeal is hereby filed.

ANNOUNCED
28.05.2014

Attested

[Signature]

Adn

No. S244-45 /EC, dated Kohat the 29/5 /2014.

Copy of above for information and necessary action to the District Police Officer, Hangu w/r to his office Memo: No. 1735/L.B, dated 05.05.2014. His service record is enclosed herewith.

2. ✓ Ex-Constable Ahmed Noor No. 713 of Hangu district.

[Signature]
(DR. ISHTIAQ AHMAD MARWAT)
Dy: Inspector General of Police,
Kohat Region, Kohat.

[Signature]
(DR. ISHTIAQ AHMAD MARWAT)
Dy: Inspector General of Police,
Kohat Region, Kohat.

POWER OF ATTORNEY

In the Court of Service Tribunal KPK Peshawar

Ahmad Noor Ex Constable NO 713

For
Plaintiff
Appellant
Petitioner
Complainant

VERSUS

D.P.O. Hangu and others

Defendant
Respondent
Accused

Appeal/Revision/Suit/Application/Petition/Case No-----of 2014

Fixed for-----

I/We the undersigned, do hereby nominate and appoint

FAZAL SHAH MOHMAND, ADVOCATE, HIGH COURT, PESHAWAR

*Ahmed Khan
Advocates*

My/our true and lawful attorney, for me/our in my/our name and on my/our behalf to appear at.....Peshawar..... to appear, plead, act and answer in the above Court or any appellate 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, compromise 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 sub-poena and to apply for and get issued and arrest, attachment or other execution, warrants or order and to conduct any proceedings 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 powers and authorities here by conferred on the Advocate whenever 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 do al 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 here by 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 under take at time of calling of the case by the Court my/our 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 favor shall be the right-of the Counsel or his nominee, and if awarded against shall be payable by me/us.

IN WITNESS, where of I/We have signed at.....Peshawar.....

This.....27th.....day of.....June.....in the year.....2014.....

Executant/Executants.....[Signature].....

Accepted subject to the terms regarding fee.....

Attested and Accepted by:

[Signature]

**Fazal Shah Mohmand
Advocate High Court.**

OFFICE:- Cantonment Plaza, Flat, 3/B Khyber Bazar Peshawar. Cell # 0301 8804841

*Accepted
Counsel Advocate
27.6.2014*

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 889/2014

Ahmed Noor Ex-Constable No. 713(Appellant)

Versus

Provincial Police Officer Khyber Pakhtunkhwa, Peshawar and others

.....(Respondents)

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S.No.	Description of Documents	Annex	Pages
1.	Memo of Appeal.	-	1-2
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Respondent

Through

M. A. Sy

Department Representative.

09-03-15

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

Service appeal No. 889/2014

Ahmed Noor Ex constable No. 713 Appellant.

VERSUS

Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar & others Respondents.

Respectively Sheweth:-

Parawise comments by respondents No. 1, 2 & 3 are submitted as under:-

Preliminary objections:-

1. That the appeal is not maintainable in the present form.
2. That the appellant has got no cause of action.
3. That the appellant has not come to this Hon: Tribunal with clean hands.
4. That the instant is barred by law.
5. That the instant appeal is not maintainable.

FACTS:-


1. Pertains to record.
2. Incorrect. Infact the appellant absented himself from lawful duty w.e.f 22.12.2013 without any leave or permission vide DD No. 19 dated 22.12.2013 of Police lines Hangu. Neither he submitted any medical documents regarding his illness to the concerned authorities nor to the enquiry officer.
3. Correct to the extent that he was dismissed from service on account of his absence from lawful duties without any leave or permission. Similarly he did not received charge sheet and summary of allegation nor joined the enquiry proceedings despite repeated summons/massages.
4. Correct.
5. Incorrect. Infact the orders were passed by the competent authority quite in accordance with law and rules.


Grounds:-

- A. Incorrect. The orders were passed by the authorities quite in accordance with law and rules.
- B. Incorrect. Infact appellant absented himself from lawful duty without any leave or permission and did not received charge sheet and statement of allegation intentionally and deliberately despite repeated summons and massages. The respondents have completed all the codal formalities before the impugned order.
- C. Incorrect. A proper departmental inquiry was initiated against the appellant but he did not bother to join enquiry proceedings despite repeated massages.

- D. Incorrect. The appellant absented himself willfully and deliberately from lawful duties without leave or prior permission. Similarly no such medical documents regarding his illness were produced to the concerned authorities nor to the enquiry officer.
- E. Incorrect. The orders were passed under the existing law & rules by the authorities. Thus are maintainable.
- F. Incorrect. The appellant was treated quite in accordance with law & rules and no mandatory provisions of law have been violated.
- G. Incorrect. Infact the appellant absented himself without leave or permission, neither receive charge sheet nor joined inquiry proceedings.
- H. Incorrect. The order was passed by the competent authority under the law & rules thus is maintainable.
- I. Incorrect. Neither the appellant reported his arrival for duty nor submitted medical documents pertaining to his sickness.
- J. Incorrect. The appellant absented himself from lawful duty without any leave or permission.
- K. Incorrect. Willful absence from duty without leave or permission in a discipline force is a grave professional misconduct which was committed by the appellant and was held guilty.
- L. Incorrect. The appellant was habitual absentee, in this connection 04 minor punishment have already been recorded in his service record on similar charges of willful absence from duty in short span of service.
- M. Incorrect. Reply has already been given in the previous para.
- N. The respondents may also be allowed to advance additional grounds at the time of arguments.


Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar,
(Respondent No. 3)
AKH


Dy. Inspector General of Police,
Kohat Region, Kohat
(Respondent No. 2)


District Police Officer,
Hangu
(Respondent No. 1)

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


Service appeal No. 889/2014
Ahmed Noor Ex constable No. 713 Appellant.


VERSUS

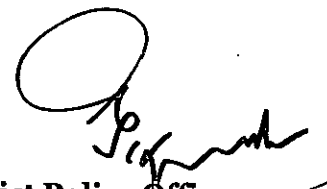
The Provincial of Police Officer, Khyber Pakhtunkhwa Peshawar.
The Regional Police Officer, Kohat Region Kohat.
The District Police Officer, Hangu. Respondents

AFFIDAVIT

We the following respondents do hereby solemnly affirm and declare that contents of **Reply/Parawise Comments** to the appeal filed by Ex-Constable Ahmad Noor are true to the best of our knowledge and nothing has been concealed from this honourable tribunal.


**Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar.**
(Respondent No.1)


**Regional Police Officer,
Kohat Region, Kohat**
(Respondent No.2)


**District Police Officer,
Hangu.**
(Respondent No.3)

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR.

Service Appeal No 889/2014

Ahmad Noor.....Appellant

V E R S U S

DPO & Others.....Respondents

REPLICATION ON BEHALF OF THE APPELLANT

REPLY TO PRELIMINARY OBJECTIONS.

All the preliminary objections raised by the respondents are incorrect and as such denied. Appellant has got a valid and legal cause of action, Instant appeal is not bad in its present form and the appellant has come to this honorable Tribunal with clean hands. Instant appeal is not barred by law and the same is maintainable.

RELY TO FACTS/GROUNDS.

Comments of the respondents are full of contradictions and are based on malafide. Respondents have failed to show that the appellant did anything that would amount to misconduct. The comments amount to admissions on part of the respondents, as they have failed to deny the plea of the appellant. Respondents have taken contradictory version regarding communication of charge sheet and show cause notice because according to the impugned order the charge sheet and show cause notice were served upon the appellant through ASI Anar Gul whereas in comments they say that the appellant did not receive the same, which proves the fact of the issue and the malafide on part of the respondents. It is also worthwhile to mention that after recovery the appellant reported for duty on 03-03-2014 vide Naqalmaid No 21 of the even date. **(Copy of Naqalmaid No 21 dated 03-03-2014 is enclosed as Annexure E).**

It is also strange that after arrival for duty, why exparte action was taken and why charge sheet and show cause notice was not communicate to him and even why proper inquiry was not conducted to find out the true facts and circumstances. Thus the appellant has been condemned unheard.

That in the circumstances the allegations against the appellant are totally false, baseless and unfounded and as such not maintainable in the eyes of law. The appellant has been punished without any omission or commission on his part. The respondents have failed to substantiate their version and bring anything on record in support of their version. Respondents have failed to prove that the impugned order is not defective and that there is no misapplication of law in the instant case, as such the impugned order is not only illegal but void as well.

It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for in the heading of the appeal.

Dated:- 2-3-16



Appellant

Through



Fazal Shah Mohmand

Advocate Peshawar

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Service Appeal No. 889/2014

Ahmad Noor(Appellant)

VERSUS

DPO and others.....(Respondents)

AFFIDAVIT

I, Ahmad Noor Ex-Constable No. 713 S/o Zar Noor R/o Muhammadzai Thall, District Hangu, do hereby solemnly affirm and declare, that the contents of the accompanying **Replication** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



Red

DEPONENT

Identified by: *Fazal Shah Mohmand*

Fazal Shah Mohmand
Advocate, Peshawar.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No 797 /ST

Dated 17 /04/2018


To

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

Subject: ORDER/JUDGEMENT IN APPEAL NO. 889/2014, MR. AHMAD NOOR.

I am directed to forward herewith a certified copy of Judgment/Order dated 12/04/2018 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

