

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1208/2015

Date of Institution ... 13.10.2015

Date of Decision ... 27.01.2022

Mr. Iqrar Said, Ex-Constable No. 2950, Police Lines Mardan.

... (Appellant)

VERSUS

The Inspector General of Police Khyber Pakhtunkhwa Peshawar and others.

... (Respondents)

Noor Muhammad Khattak,
Advocate

... For Appellant

Asif Masood Ali Shah,
Deputy District Attorney

... For respondents

AHMAD SULTAN TAREEN
ATIQU-UR-REHMAN WAZIR

...
...

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):-

Brief facts of the

case are that the appellant while serving as constable in Police Department, was proceeded against on the charges of absence from duty and was ultimately dismissed from service vide order dated 19-11-2014. Feeling aggrieved, the appellant filed departmental appeal, which was rejected vide order dated 16-01-2015. The appellant filed revision petition, which was also rejected vide order dated 18-09-2015, against which the appellant filed Service Appeal No. 1208/2015, which was decided vide judgment Dated 01-08-2017 and was dismissed on the issue of limitation. The appellant filed Civil Petition No. 3328/2017 in the Supreme Court of Pakistan, which was decided vide judgment dated 02-10-2019 and judgment dated 01-08-2017 of this tribunal was set aside

and the matter was remanded to this tribunal for deciding the appeal on merit and in accordance with law. In the instant appeal, the appellant has prayed for setting aside the impugned orders dated 19-11-2014, 16-01-2015 and 18-09-2015 and his re-instatement in service with all back benefits.

02. Learned counsel for the appellant has contended that the impugned orders are against law, facts and norms of natural justice, therefore, not tenable and liable to be set aside; that the appellant has not been treated in accordance with law, hence his rights secured under the law has badly been violated; that no show cause notice has been served upon the appellant before issuing the impugned order of dismissal; that no chance of personal hearing has been afforded to the appellant, which is mandatory under the law; that absence of the appellant was not willful but was due to compelling reason of his illness and to this effect, the appellant had already submitted advice of doctor concerned regarding complete bed rest, which however was not taken into consideration; that no regular inquiry has been conducted in the matter of the appellant; that the respondents acted in arbitrary manner, while issuing the impugned order of dismissal.

03. Learned Deputy District Attorney for the respondents has contended that the appellant was a habitual absentee, which is evident from his service record; that submitting medical prescription is an easy practice being used by the appellant, but in fact, the appellant was not sick but it was just a pretext, rather his absence was found deliberated and willful; that there is a proper procedure for availing leave on medical grounds but neither the appellant submitted his medical bed rest nor applied for leave on medical grounds; that proper departmental inquiry was conducted into the matter and upon recommendations of the inquiry officer, the appellant was awarded with major punishment of dismissal from service; that departmental appeal as well as revision petition of the appellant were rejected being devoid of merit.

04. We have heard learned counsel for the parties and have perused the record.

05. Since the case in hand was earlier decided by this Tribunal in Service Appeal No. 1208/2015 vide judgment dated 01-08-2017 and was dismissed on the issue of limitation. The august Supreme Court of Pakistan, set-aside judgment dated 01-08-2017 of this tribunal and remanded the case to this tribunal for decision on merit as the issue of limitation has already been settled by the apex court that the appellant had filed service appeal well within time, but in order to refresh the memory, it would be appropriate to have a look of the process of submission of his case before this Tribunal. Record reveals that the appellant was dismissed from service on the charges of absence from duty vide order dated 19-11-2014, against which the appellant filed departmental appeal, which is not available on record but as is evident from record that his departmental appeal was rejected vide order dated 16-01-2015, which shows that the appellant had submitted his departmental appeal well within time. The appellant filed revision petition under Rule-11A of Police Rules, 1975, which was rejected vide order dated 18-09-2015, thereafter, the appellant filed service appeal on 13-10-2015, which was also well within time, but this tribunal erred in calculating the time period and not referring to the proper rules and which was rightly pointed out by the supreme court of Pakistan in its judgment in civil petition No 3328/2017 announced on 02-10-2019, hence the issue of limitation stands resolved.

06. While referring to merit of the case, we have observed that vide the impugned order of dismissal, absence period of the appellant is treated as leave without pay, hence the authority had itself condoned the period of absence by allowing him leave without pay, hence there is no justification with the authority to penalize the appellant for such absence, which had been regularized and on this score alone, the impugned orders are liable to be set aside. Wisdom to this effect is derived from judgment of

Supreme Court of Pakistan reported as 2006 SCMR 434, 2012 TD (Services) 129 and 2012 TD (Service) 348.


07. Careless portrayed by the appellant was not intentional, hence cannot be considered as an act of negligence which might not strictly fall within the ambit of misconduct but it was only a ground based on which the appellant was awarded major punishment. Element of bad faith and willfulness might bring an act of negligence within the purview of misconduct but lack of proper care and vigilance might not always be willful to make the same as a case of grave negligence inviting severe punishment. Philosophy of punishment was based on the concept of retribution, which might be either through the method of deterrence or reformation. Reliance is placed on 2006 SCMR 60.

08. Record would suggest that the appellant submitted his request for grant of leave on medical grounds, which was not considered. The appellant had taken the same stance in his departmental appeal as well as in revision petition, which was not taken into consideration. It however is a well-settled legal proposition that availing of medical leave without permission of the competent authority could not be considered as an act of gross misconduct entailing major punishment of dismissal from service. Reliance is placed on 2008 SCMR 214. We have observed that charge against the appellant was not so grave as to propose penalty of removal from service, such penalty appears to be harsh, which does not commensurate with nature of the charge, as the appellant was sick and he tendered medical certificates in that regard, which was not considered and evaluated before imposing the major penalty of dismissal. Holding a regular inquiry to remove factual controversies was yet another binding factor upon the department. We have noted that the appellant was dismissed from service on simple charge sheet and no inquiry was conducted. The august Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has held that in case of imposing major penalty, the principles of natural justice required that a regular

inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice.

09. In view of the foregoing discussion, the instant appeal is partially accepted. The impugned orders are set aside and the penalty of dismissal is converted into minor penalty of censure. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
27.01.2022



(AHMAD SULTAN TAREEN)
CHAIRMAN




(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)


ORDER
27.01.2022

Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the instant appeal is partially accepted. The impugned orders are set aside and the penalty of dismissal is converted into minor penalty of censure. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
27.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

13.08.2021

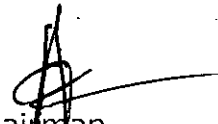
Appellant present through counsel.

Asif Masood Ali Shah learned Deputy District Attorney for respondents present.

Former made a request for adjournment in order to prepare the brief. Request is accorded. To come up for arguments on 01.10.2021 before D.B.



(Rozina Rehman)
Member (J)



Chairman

1-10-21

DB is on Tour case to come up
For the same on Dated. 27-1-22

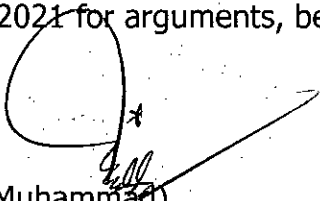
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Reader


11.11.2020

Appellant in person present.

Mr. Usman Ghani learned District Attorney alongwith Zaheer Muhammad PASI for respondents present.

Lawyers are on general strike, therefore, case is adjourned to 19.01.2021 for arguments, before D.B.

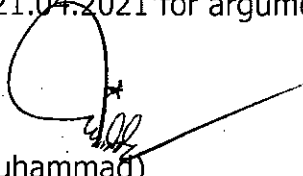

(Mian Muhammad)
Member (E)


(Rozina Rehman)
Member (J)

19.01.2021

Counsel for the applicant and Addl: AG alongwith Mr. Khayal Roz, Inspector for the respondents present.

Learned Additional Advocate General requests for adjournment as he is not in possession of the complete brief as well as the judgments/orders of apex court dated 02.10.2019. Learned counsel for the appellant does not object to the request, therefore, the proceedings are adjourned to 21.04.2021 for arguments before D.B.


(Mian Muhammad)
Member(E)


Chairman

21.04.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 13.08.2021 for the same as before.

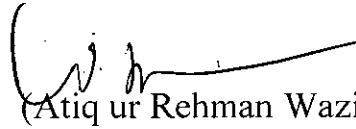

Reader

18.09.2020

Appellant present through counsel.

Mr. Muhammad Jan learned Deputy District Attorney alongwith Atta-ur-Rehman Inspector for respondents present.

In the instant matter partial arguments were heard by the Hon'ble Chairman and Muhammad Jamal Member (J) and further assistance was sought on two points, therefore, this case is respectively sent to the Hon'ble Chairman for appropriate orders. Counsel is directed to attend the said court on 30.09.2020 before D.B.



(Atiq ur Rehman Wazir)
Member (E)



(Rozina Rehman)
Member (J)

30.09.2020

Mr. Shafiullah, Advocate, for appellant is present. Mr. Kabirullah Khattak learned Additional Advocate General alongwith representative of department are also present.

Junior to the senior counsel submitted that they have not prepared the brief on the point as highlighted in order sheet dated 29.07.2020 and sought for allowing him time. Time is allowed for preparation of the brief. Adjourned to 11.11.2020 on which to come up for arguments before D.B



(Atiq-ur-Rehman Wazir)
Member(E)



(Muhammad Jamal Khan)
Member (J)

29.07.2020

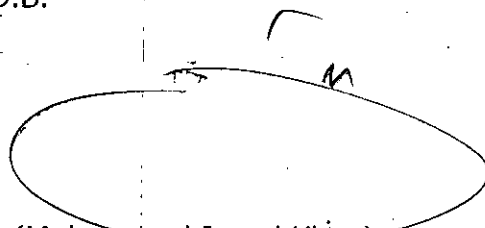
Appellant in person and Mr. Ziaullah, DDA alongwith Attaur Rehman, Inspector (Legal) for the respondents present.

In the instant matter, the main argument of learned counsel for the appellant was regarding non-issuance of show cause notice to the appellant before imposition of impugned penalty. Reply to the argument by learned DDA was with reference to Rule 5 of the Khyber Pakhtunkhwa Police Rules, 1975, in terms that show cause notice was not necessary in cases where regular enquiry was held against the police officials.

We feel that further assistance in the case is required from both sides in order to resolve the following propositions:-

- (i) Whether the issuance of show cause notice to a police official, proceeded against under rule ibid, is mandatory?
- (ii) Whether by virtue of being a civil servant any beneficial legislation, not in conflict/contradiction to the Rules ibid, can be invoked in the case of police officials?

To come up for further arguments on 18.09.2020 before this D.B.


(Muhammad Jamal Khan)
Member


Chairman

30.04.2020

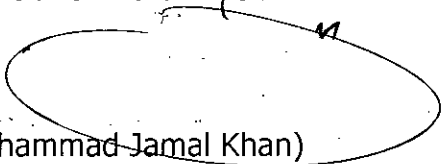
Due to COVID-19, the case is adjourned to 14.07.2020 for the same as before.


Reader

14.07.2020

Counsel for the appellant and Mr. Ziaullah, DDA alongwith Attaur Rahman, S.I for the respondents present.

Learned counsel for the appellant as well as learned Asstt. A.G have concluded their respective arguments. To come up for order on 23.07.2020 before this D.B.

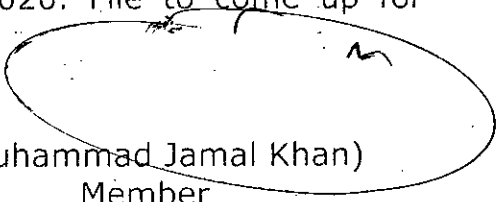

(Muhammad Jamal Khan)
Member(Judicial)


Chairman

23.07.2020

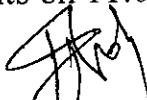
Appellant himself is present. Mr. Ziaullah, Deputy District Attorney for the respondents is also present.

Arguments in the instant case ~~was~~^{are} heard by the D.B, however, the judgment was reserved and the case was fixed for order but today Hon'ble Chairman Khyber Pakhtunkhwa Services Tribunal, is on leave therefore, order could not be announced. Adjourned to 29.07.2020. File to come up for order before D.B.


(Muhammad Jamal Khan)
Member

12.02.2020

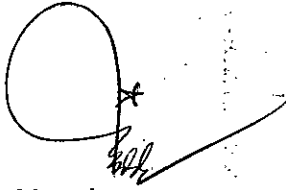
Learned counsel for the appellant present. Mr. Kabirullah Khattak learned Additional AG alongwith Mr. Atta Ur Rehman Inspector for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 11.03.2020 before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

11.03.2020

Junior to counsel for the appellant present. Addl: AG alongwith Mr. Atta Ur Rehman, SI for respondents present. Junior to counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 30.04.2020 before D.B.


Member


Member

1208/2015

18/10/2019

Appeal received from August Supreme Court of Pakistan vide order dated 02/10/2019 in (Civil Appeal No 1612/2009. Assigned to DB for final hearing/disposal on 08/11/2019.

Notices to the parties be issued accordingly.


Chairman

08.11.2019

Appellant in person present. Mr. Kabir Ullah Khattak learned Additional Advocate General present. Learned AAG stated that he has no notice of the present service appeal and seeks adjournment. Adjourn. To come up for arguments on 27.12.2019 before D.B.



Member


Member

27.12.2019

Appellant in person present. Mr. Ziaullah, DDA alongwith Mr. Atta ur Rehman, Inspector for respondents present. Appellant seeks adjournment. Adjourn. To come up for arguments on 12.02.2020 before D.B.


Member


Member

Ph: 9220581
Fax: 9220406



REGISTERED

No. C.A.1612/2019-SCJ (Imp.)

SUPREME COURT OF PAKISTAN

Islamabad, dated 08/10, 2019.

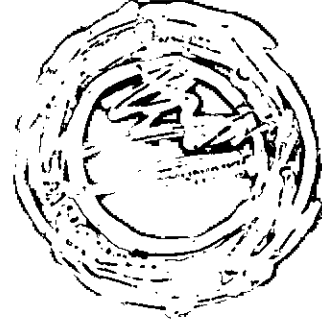
From

The Registrar,
Supreme Court of Pakistan,
Islamabad.

To

The Registrar,
KPK. Service Tribunal,
Peshawar.

By AR.P.



Subject: CIVIL APPEAL NO. 1612 OF 2019.
Out of
CIVIL PETITION NO. 3328 OF 2017.
Iqrar Said.

VERSUS

The Inspector General of Police, KPK., Peshawar & others.

On appeal from the Judgment/Order of the K.P.K. Service Tribunal, Peshawar dated 01.8.2017, in Appeal No.1208/2015.

Dear Sir,


I am directed to forward herewith a certified copy of the Order of this Court dated 02.10.2019, converting into appeal the above cited civil petition and allowing the same, in the terms stated therein, ~~is endorsed~~ for further necessary action.

I am also to invite your attention to the directions of the Court contained in the enclosed Order for immediate compliance.

Please acknowledge receipt of this letter along with its enclosure immediately.

Encl: Order:

Yours faithfully


(MUHAMMAD MUJAHID MEHMOOD)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

2019

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed
Mr. Justice Munib Akhtar

CIVIL PETITION NO.3328 OF 2017

[On appeal from judgment dated 1.8.2017, passed by the Khyber Pakhtunkhwa Service Tribunal, in Appeal no.1208 of 2015]

Iqrar Said

...Petitioner(s)

Versus

***The Inspector General of Police, KPK,
Peshawar and others***

...Respondent(s)

For the Petitioner(s) : Maulvi Ejaz ul Haq, ASC with
Syed Rifaqat Hussain Shah, AOR

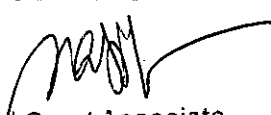
For the Respondent(s) : Barrister Qasim Wadood,
Addl. A.G., KPK

Date of Hearing : 02.10.2019

ORDER

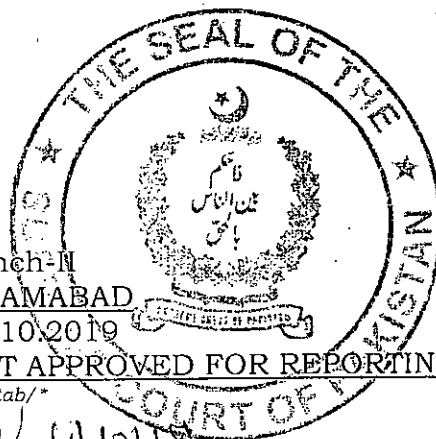
Gulzar Ahmed, J.— We have heard the learned counsel for the parties and examined the relevant law regarding filing of the departmental appeal as well as the revision by the aggrieved person. We have noted that Rule 11-A (4) of the Khyber Pakhtunkhwa Police Rules, 1975 specifically provides for filing of revision petition within a period of 30 days. In the case in hand, after the departmental representation of the petitioner was rejected on 16.01.2015, the petitioner filed a revision under Rule 11-A (4) *ibid*, which was rejected on 18.09.2015 and on 13.10.2015 he filed a service appeal before the Service Tribunal. Looking at the law apparently the service appeal filed by the petitioner before the

ATTESTED


Court Associate
Supreme Court of Pakistan
Islamabad

Service Tribunal was not time barred and in this respect, the Service Tribunal has made an apparent mistake in not reading the proper rules while dealing with the case in hand in that it referred to the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986 which in the case of the petitioner were not applicable rather the Police Rules noted above were applicable to the case of the petitioner in which a specific provision has been made for filing of the revision. Consequently, the impugned judgment dated 01.08.2017 of the Service Tribunal is found to be suffering from serious legal defect and therefore the same is set aside and the matter is remanded to the Khyber Pakhtunkhwa Service Tribunal for deciding the appeal of the petitioner on merits and in accordance with the law.

2. The petition is converted into appeal and is allowed.



Bench-II
ISLAMABAD
02.10.2019
NOT APPROVED FOR REPORTING
Mahtab/**

—sd— Gulzar Ahmed, J
—sd— Munib Akhtar, J

Certified to be True Copy

[Signature]
Court Associate
Supreme Court of Pakistan
Islamabad

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No. 1208/2015

Date of Institution ... 13.10.2015

Date of Decision ... 01.08.2017

Mr. Iqrar Said, Ex-Constable No. 2950, Police Lines
Mardan. ... (Appellant)

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar
and others. ... (Respondents)

MR. NOOR MUHAMMAD KHATTAK,
Advocate --- For appellant.

MR. MUHAMMAD JAN,
Deputy District Attorney ... For respondents.

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. AHMAD HASSAN ... MEMBER

JUDGMENT

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

FACTS

2. Brief facts giving rise to the present appeal are that the appellant was
dismissed from service vide impugned order dated 19.11.2014 for his being absent
from duty. The proceedings were initiated against the appellant under the Khyber
Pakhtunkhwa Police Rules, 1975.

ARGUMENTS

3. The learned counsel for the appellant argued that in the impugned order the
authority awarding punishment had treated the period of absence as leave without

pay and that in view of the judgment of the Superior Courts including the apex court, when the absence is converted into any of the leave due then the period of absence is regularized and no proceedings, whatsoever, could be initiated against the person whose leave has been sanctioned. In this respect the learned counsel for the appellant relied upon a judgment reported as 2012-NLR-TD-129 which is based on the judgments of the august Supreme Court of Pakistan. The learned counsel for the appellant further argued that the appellant then applied for medical leave on 13.03.2014 and in view of Rule 13 of the Khyber Pakhtunkhwa Civil Servants Revised Leave Rules, 1981 the authority could not refuse that leave save for sending the case for second opinion of Medical Board. That no proper enquiry was conducted against the appellant as no charge sheet was served upon the appellant nor any statement of allegations was served. That no show cause notice was served upon the appellant and no chance of personal hearing was afforded to him. The appellant filed a department appeal (having no date) which was rejected on 18.09.2015 and there-after the present appeal before this tribunal was filed on 13.10.2015 which is within time. The learned counsel for the appellant also relied upon a judgment entitled "*Mir Ajab Khan and another Vs. Deputy Post Master General and others*" reported as 2013-SCMR-1053 in support of his contention that the appellant could wait for the decision of departmental appellate authority and he could not be forced to file appeal before this Tribunal within 30 days.

4. On the other hand the learned Deputy District Attorney argued that the present appeal is hopelessly time barred for the reason that after the impugned order dated 19.11.2014 the appellant filed an appeal which was rejected on 16.1.2015 and if the period is reckoned from 16.1.2015 then 30 days expire on 16.2.2015 and the present appeal is filed on 13.10.2015 which is time barred.

5. In response to this the learned counsel for the appellant replied that in fact the appellant had filed a revision petition before the Provincial Police Officer and the

PPO in exercise of the powers under Rule 11-A of the Khyber Pakhtunkhwa Police Rules, 1975 rejected the petition of the appellant on 18.09.2015.

CONCLUSION.


6. Without adverting to the merits of the case, this Tribunal is first to see as to whether the appeal is within time or not. Under proviso to Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 any party who has been given a right of appeal, review or a representation to a departmental authority under any law or rules shall have to first avail that remedy and then he is to come to this Tribunal accordingly within a period of 90 days of filing of such appeal, review or representation (if not responded) or within a period of 30 days, if rejected.

7. There is no mention of right of revision in this proviso to Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. Another aspect of this case is that right of review is given to a civil servant under the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986 (Rule-3). Right of review can only be availed when the original order is passed by the Government and not by any other person. Here the original order has been passed by the DPO and not by the Government; hence this revision cannot be converted into review. And after availing right of appeal no right of review can be availed.

8. The judgment relied upon by the learned counsel for the appellant reported as 2013-SCMR-1053 is on the point that if a departmental appeal is filed then it is the sweet will of the appellant either to approach this Tribunal after 90 days or to wait till the decision of the departmental appeal and if the departmental appeal is decided then another 30 days time is allowed to appellant to approach this Tribunal. But in the present case the appellant had been waiting not for the result of departmental appeal as his departmental appeal had already been decided on 16.1.2015 but he

had been waiting for the decision of a revision as stated above which is not the spirit of the judgment referred to above.

9. As a sequel to the above discussion, this appeal being time barred is dismissed. Parties are left to bear their own costs. File be consigned to the record room.



(AHMAD HASSAN)
MEMBER



(NIAZ MUHAMMAD KHAN)
CHAIRMAN

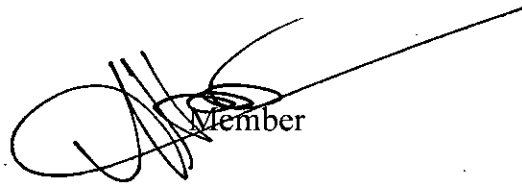
ANNOUNCED

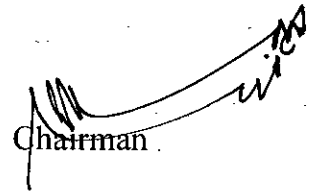
01.08.2017

01.08.2017

Appellant alongwith counsel and Mr. Muhammad Jan, Deputy District Attorney alongwith Attaur Rahman, SI (Legal) for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of to-day, this appeal is dismissed being time barred. Parties are left to bear their own costs. File be consigned to the record room.


Member


Chairman

ANNOUNCED
01.08.2017



06.09.2016

Clerk to counsel for the appellant and Mr. Khalid Mehmood, Naib Court alongwith Mr. Ziaullah, GP for respondents present. Clerk to counsel for the appellant requested for adjournment. Adjournment granted. To come up for arguments on 26.12.2016.


Member


Member

26.12.2016

Clerk to counsel for the appellant and Mr. Muhammad Ghani, SI alongwith Mr. Ziaullah, GP for respondents present. Arguments could not be heard due to incomplete bench. Case adjourned to 24.03.2017 for arguments before D.B.


Chairman

24.03.2017

Counsel for the appellant and Mr. Atta Ur Rahman, SI alongwith Mr. Kabir Ullah Khattak, Assistant AG for the respondents present. Argument could not be heard due to incomplete bench. To come up for final hearing on 01.08.2017 before D.B.


Chairman

10.11.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Constable when dismissed from service vide impugned order dated 19.1.2014 on the allegations of wilful absence where against he preferred departmental appeal which was rejected on 18.9.2015 and hence the instant service appeal on 27.10.2015.

That the inquiry was not conducted in the prescribed manners as no charge sheet, statement of allegations were ever issued.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 25.1.2016 before S.B.

Appellant Deposited
Security & Process Fee


Chairman

25.1.2016

Counsel for the appellant and Mr. Muhammad Ghani, S.I alongwith Addl: A.G for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 3.5.2016.


Chairman

03.05.2016

Agent to counsel for the appellant and Mr. Muhammad Ghani, SI alongwith Addl: AG for respondents present. Rejoinder submitted on behalf of the appellant, copy of which is placed on file. To come up for arguments on 06.09.2016.



Member

Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1208/2015


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	27.10.2015	<p>The appeal of Mr. Iqrar Said resubmitted today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2		<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>10-11-15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Iqar Said Ex-Constable No. 2950, Police Lines, Mardan received to-day i.e. on 13.10.2015 is incomplete on the following score which is returned to his counsel for completion and resubmission within 15 days.

1. Copies of charge sheet and enquiry report may be placed on file.

No. 1590 /ST,

Dated 16/10/2015.


REGISTRAR
KPK SERVICE TRIBUNAL,
PESHAWAR.

MR. Noor Muhammad Khattak, Advocate.

Note:

Sir,

That it is mentioned in the appeal that appellant has not been charge sheeted nor enquiry has conducted in the matter. Hence the appeal may be fixed for hearing.

129
27/10/2015

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO 1208 /2015

IQRAR SAID

VS

POLICE DEPTT:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of appeal	1- 3.
2.	Medical prescriptions	A	4- 16.
3.	Application	B	17.
4.	Impugned order	C	18.
5.	Departmental appeal	D	19- 22.
6.	Rejection order	E	23.
	Vakalat nama	24.

APPELLANT

THROUGH:



NOOR MOAHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1208 /2015

K.W.F. Province
Service Tribunal
Diary No. 1249
Dated 13-10-2015

Mr. Iqrar Said, Ex. Constable No. 2950,
Police lines Mardan **Appellant**

VERSUS

- 1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 2- The Deputy Inspector General of Police, Mardan Region-I Mardan.
- 3- The District Police Officer, District Mardan.

..... **Respondents**

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 19-11-2014 WHEREBY THE APPELLANT WAS DISMISSED FROM SERVICE WITHOUT CONDUCTING REGULAR INQUIRY IN THE MATTER AND AGAINST THE APPELLATE ORDER DATED 18-09-2015 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS

PRAYER:

That on acceptance of this appeal the impugned orders dated 19-11-2014 and 18-09-2015 may very kindly be set aside and the respondents may please be directed to re-instate the appellant with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

Filed to-day
13/10/15
Registrar

R/SHEWETH:

ON FACTS:

re-submitted to-Registrar
and filed;
27/10/15

That appellant was appointed as constable in the respondent Department vide order dated 07/07/1999. That after appointment the appellant started performing his duty quite efficiently and up to the entire satisfaction of his superiors.

- 2- That appellant while serving as constable in the police Department became seriously ill and due to that reason the appellant visited the concern Doctor for Medical Treatment/check up. That in response the concerned Doctor advise the appellant for complete bed rest. Copies of the Medical prescriptions are attached as annexure

..... **A.**

- 3- That appellant filed application for Medical leave on the advice of concerned Doctor and on the basis of medical prescriptions but no reply was received from respondents side on the application of the appellant. Copy of the leave application is attached as annexure **B.**
- 4- That astonishingly vide order dated 19-11-2014 the appellant was dismissed from service by the respondent No.3 with out conducting regular inquiry in the matter. Copy of the impugned order is attached as annexure **C.**
- 5- That feeling aggrieved from the impugned dismissal order dated 19-11-2014 the appellant filed departmental appeal before the appellate authority who rejected the Departmental appeal of the appellant vide order dated 18.9.2015. Copies of the Departmental appeal and rejection order are attached as annexure **D and E.**
- 6- That appellant having no other remedy prefer the instant appeal on the following grounds amongst the others.

GROUND:

- A- That the impugned orders dated 19-11-2014 and 18.9.2015 are against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B- That the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That no charge sheet and statement of allegation has been served on the appellant before issuing the impugned order dated 19-11-2014.
- D- That no chance of personal hearing/ defense has been given to the appellant which is mandatory under amended E & D rules 2011.
- E- That the absence of the appellant is not willful but caused due to illness. Moreover the appellant also preferred so many applications for the grant of medical leave but the respondents have not replied the same.

- F- That no regular inquiry has been conducted in the matter of appellant which is as per Supreme Court judgment is necessary in cases of punitive actions against the civil servant.
- G- That the respondent acted in arbitrary and malafide manner while issuing the impugned orders dated 19-11-2014 and 18.9.2015.
- H- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated: 9.10.2015

APPELLANT



IQRAR SAID

THROUGH:

NOOR MOHAMMAD KHATTAK

DATE

A- (4)

No.

Rs. 5/-

OUT PATIENTS DEPARTMENT

NAME 2920, ...

YEARLY NO. 19.12

DATE 8-3-15

DISEASE

PAGE VALUE RUPLES 5.

Handwritten notes and signatures, including 'CX' and 'U.S.D.'.

Large handwritten notes, possibly describing the patient's condition or treatment.

ADMITTED

Handwritten signature and date at the bottom of the page.

6

No.

Rs. 5/-

OUT PATIENTS DEPARTMENT

NAME 2951 - Mr. [unclear]

YEARLY NO 5532

DATE 22-3-11

DISEASE

FACE VALUE RUPEES 5/-

[Handwritten signature]

[Handwritten mark]

[Handwritten signature] 2-7

[Handwritten signature] 4-7

[Handwritten signature]

ATTESTED

MEDICAL OFFICER
H.O. [unclear]

7

کلینک: بہادر میڈیکل سنٹر
القائل ڈی ایچ کیو ہسپتال مردان
موبائل: 0321-9323868

Not Valid For Court

آرتھوڈینک مرجن
ڈاکٹر خلیل الرحمان کا کاخیل
ایم بی بی ایس (پشاور) ڈی او بی (دیوبند)
ایم ایس ایم ایس (دیوبند) ایف آئی ای ایس (امریکہ)
ماہر امراض ہڈی، جوڑوہ شمشہ
آرتھوڈینک وارڈ D.H.Q ہسپتال مردان

تاریخ 23-3-19 _____

[Handwritten signature]

[Handwritten signature]

[Handwritten signature]

[Handwritten signature]

AA

[Handwritten signature]

J Two weeks

ATTESTED

Dr. Khalil Raza Khan
M.B.B.S (Pakistan) M.D. (USA)
D.H.Q. Hospital
Dungra, District Faisalabad
فیسال آباد

9

کلینک: بہادر میڈیکل سنٹر
پانچال ڈی ایچ جی ہسپتال مردان
موبائل: 0321-9323868

Not Valid For Court

آرٹھروپڈک سرجن
ڈاکٹر ظہیر الرحمن کا کاخیل
ایم بی بی ایس (پشاور) ڈی او بی (دوبہ)
ایم اے عام ایس (دوبہ) ایف آئی ایس (امریکہ)
ماہر امراض ہڈی، جوڑو و ٹھٹھ
آرٹھروپڈک وارلڈ D.H.Q ہسپتال مردان

8.4.14 تاریخ

[Handwritten signature]

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ATTESTED

Dr. Ghani Raza
M.B.S (Peshawar) (Vizium)
M.S. (Vizium) FICS (USA)
دن اردو وارلڈ ہسپتال کے سربراہ ہیں۔

10

No.

Rs. 5/-

OUT PATIENTS DEPARTMENT

NAME *295 Mr. [unclear]*

YEARLY NO *7343*

DATE *23-4-14*

DISEASE

PAGE VALUE RUPEES 5.

[Handwritten signature]
[Handwritten signature]
[Handwritten signature]

MEDICAL OFFICER
[Signature]
M. S. Hospital Mardao

(11)

کلینک: بہادر میڈیکل سنٹر
بالتاٹل ڈی ایچ جی ہسپتال مردان
موبائل: 0321-9323868

Not Valid For Court

آرٹھو پیڈیک سرجن

ڈاکٹر خلیل الرحمان کا کاخیل

ایم بی بی ایس (پہلے) ڈی او ای (دیانا)
ایم ای ایم ایس (دیانا) ایف آئی ای ایس (امریکہ)

ماہر امراض ہڈی، جوڑوہ ٹھہ

آرٹھو پیڈیک وارڈ D.H.Q. ہسپتال مردان

تاریخ 14.11.2023

۳۲

Handwritten signature/initials

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Two weeks

Dr. Khalil Rehman Kakakhali
M.B.B.S. (F.C.I.P.S. & F.V.P.S.)
M.A.M.S. (F.C.I.P.S. & F.V.P.S.)

دن بعد دوبارہ معائنہ کیلئے تشریف لائیں۔

12

No.

Rs. 5/-

FACE VALUE IN RUPIES 5

OUT PATIENTS DEPARTMENT

NAME 2950 - [Signature]

YEARLY NO 1975

DATE 7-5-15

DISEASE

[Signature]
 [Signature] - newyefel
 [Signature]
 - 25 [Signature] [Signature]
 25 [Signature] [Signature]
 25 [Signature] [Signature]

MEDICAL OFFICER
[Signature]

13

کلینک: بہادر میڈیکل سنٹر
بالتقابل ڈی ایچ کیو ہسپتال مروان
موبائل: 0321-9323868

Not Valid For Court

آرٹھو پیڈک سرجن
ڈاکٹر خلیل الرحمان کا کاخیل
ایم ای ایم ایس (پشاور) ایم ای اوئی (ویانا)
ایم ای ایم ایس (ویانا) ایم ای ایس (امریکہ)
ماہر امراض ہڈی، جوڑو ہاتھ
آرٹھو پیڈک وارنٹ D.H.Q. ہسپتال مروان

تاریخ 7-5-14

Handwritten signature and text, possibly including 'Dr. Khalil' and 'M.D. Orthopedic Surgeon'.

Handwritten text: 'Cafe sup'.

Handwritten text: 'More of'.

Handwritten text: 'People'.

AS
Office No. 11
J. Two weeks
Orthopedic Surgeon
Dr. Khalil Rahmani K. K. Khaw
11111 & (Post-graduate)
11111 & (USA)
H. P. Hospital
دن بعد دوبارہ معائنہ کیلئے تشریف لائیں۔

14

No.

Rs. 3/2

OUT PATIENTS DEPARTMENT

NAME 2950 [Handwritten signature]

YEARLY NO. 6800

DATE 22-5-71

DISEASE

PAGE VALUE RUPLES 5.

[Large handwritten signature]

28. 11/22/207

2. new

By Thindap

re

MEDICAL OFFICER
[Signature]

15

کلینک: بہادر میڈیکل سنٹر
پانچ تال ڈی ایچ کیو ہسپتال مردان
موبائل: 0321-9323868

Not Valid For Court

ڈاکٹر خلیل الرحمان کا کاخیل

ایم بی بی ایس (پشاور) ڈی او آئی (ویانا)
ایم اے ایم ایس (ویانا) ایف آئی ایس (امریکا)

ماہر امراض ہڈی، جوڑوہ ٹھہ

آرٹھوپیڈک وارڈ D.H.Q. ہسپتال مردان

تاریخ 29.5.14

[Handwritten signature]

[Handwritten signature]

[Handwritten signature]

[Handwritten signature]

[Handwritten signature]
Dr. Khalil Rahmaan Khan
MBBS (Pun) D.O. (Vienna)
M.A.M.S. (Korea) F.R.C.S. (UK)
دن بعد وہ بارہ بجائے شریف لائین 11

16

No.

Rs. 5-

FACE VALUE RUPEES 5

OUT-PATIENTS DEPARTMENT.

NAME... 29/10 ... 1/10

YEARLY NO... 204

DATE... 6/6/14

DISEASE...

8

28 Valium drug

(28 medical

As

of Bed rest
of three days

MEDICAL OFFICER
D.H.Q Hospital Madras

درخواست میرا دعا ہے

جناب عالی! میری سہیلی صاحبہ کی طبیعت خراب ہے۔

۔۔۔ کہ سہیلی کو دل کی شدید بیماری میں مبتلا ہے۔ جسکی وجہ سے سہیلی اپنے بچوں کے قابل نہیں ہے۔

۔۔۔ کہ سہیلی نے ڈاکٹر سے رجوع کیا تو ڈاکٹر نے کہا کہ اسکی حالت کا مشورہ دیا ہے۔

۔۔۔ کہ سہیلی کو جو مذکورہ عیالات اپنی دلہنی صاحبہ سے قابل ہے۔ اور تھیں اسکی اور اسکی عیالات ہے۔ اسکی سہیلی کو حالت خرابی ہے۔ دعا ہے۔

گناہگار ہے کہ سہیلی کو حالت خرابی ہے۔ دعا ہے۔ اور جیسے سہیلی کو حالت خراب ہے۔ دعا ہے۔

التوفیق 13/3/14

[Signature]

ATTESTED

اقرار ہے کہ سہیلی فر 2950
پولیس آفیسر مردان

[Signature]

POLICE DEPARTMENT

MARDAN DISTRICT

ORDER

Constable Iqrar Said No. 2950, while posted at Police Station Jabbar Mardan committed the following act, which is gross misconduct on his part as detained in Rules 92 the Police Rules 1975:

Brief facts are that constable Iqrar Said No. 2950, has on duty at Police Station Jabbar Mardan, deliberately absented himself from the lawful duty vide DD No. 31 dated 05.09.2014 to till dated without any leave/permission from the competent authority.

In this connection, Constable Iqrar said no.2950 was charged sheeted vide this office No. 736/R, dated 13.9.2014 and he was also proceeded against departmentally though Mr. Khalid Jadoon DSP Katlang Mardan, who after fulfilling necessary process submitted his findings to the under signed vide his office endorsement No. 600, dated 14.10.2014 n which the allegations have been established against him.

After going through inquiry file the undersigned agree with the findings of enquiry officer the alleged Constable iqrar Said no. 2950, and being a habitual absentee he is hereby dismissed from service, while his absence period counted as leave without pay, in exercise of the power vested in me under Police Rules 1975.

Order announced
O.B No. 327
Dated 19.11.2014

(Gul Afzal Afridi)
District Police Officer
Mardan

No. _____ / dated Mardan the 19.11.2014

Copy forwarded to all concerned.

ATTESTED



C-18

ORDER

Constable Iqbal Said No. 2950, while posted at Police Station Jabbar Mardan committed the following act, which is gross misconduct on his part as defined in Rules 1975.

Brief facts are that Constable Iqbal Said No. 2950, while posted at Police Station Jabbar Mardan, deliberately absented himself from the job duty vide DO No. 31 dated 03.09.2014 to till date without any leave / permission from the competent authority.

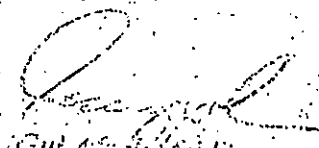
In this connection, Constable Iqbal Said No. 2950, was charged sheeted vide this office No. 736/R, dated 03.09.2014 and he was also proceeded against departmentally through Mr. Khaliq Jadoon DSI Mardan, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsement No. 600, dated 14.11.2014 in which the allegations have been established against him.

After going through inquiry file, the undersigned agree with the findings of enquiry officer and the alleged Constable Iqbal Said No. 2950, and being a habitual absentee he is hereby dismissed from service while his absence period counted as leave without pay, in exercise of the power vested in me under Police Rules-1975

Order pronounced

O.D. No. 437

Dated 11/11/2014

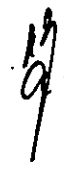

(G. A. Khan)
Deputy Police Officer,
Mardan

No. 111/1 dated Mardan the 11/11/2014

Copy for information and necessary action to:-

1. The Deputy Inspector General of Police Mardan Region-1, Mardan.
2. The S.P Operations, Mardan.
3. The D.S. HQs Mardan.
4. The Pay Officer (DPO) Mardan.
5. The S.C. (DPO) Mardan.
6. The G.A. (DPO) Mardan.

ATTESTED



BEFORE THE WORTHY INSPECTOR GENERAL OF POLICE,
KHYBER PAKHTUNKHWA, PESHAWAR.

D - (19)

Subject: APPEAL FOR RE-INSTATEMENT IN RESPECT
OF EX. CONSTABLE IQRAR SAID NO. 2950
MARDAN POLICE DISMISSED BY THE DISTT:
POLICE OFFICER, MARDAN VIDE OB NO.
2327 DATED 23.01.2014

RESPECTFULLY SHOWN:

FACTS.

I, inducted in Police Force as
Constable on date 29.11.2010 in Mardan Police,
after qualifying my basic training was returned
to my District and was posted in various Police
Station.

During those days I was posted
in Police Station Jabbar and was performing my
duty with zeal and zest. As earlier, I was feeling
aches in my back bone. On 04.09.2014 I was allowed
23 Hours leave, and went to home. On 05.09.2014 due
to the instance of aches I, was brought to District
Hospital, Mardan. After examining the Doctor advised
two weeks complete bed rest and on 20.09.2014 again
attended District Head Quarter Hospital, Mardan and
examined by the Doctor again. I was advised further
bed rest for two weeks and also suggested some medicine,

ATTESTED



which were used by me. After ~~Granting~~ health I made my arrival on 02.10.2014, for medical receipts and my arrival report copies are attached. On 15.10.2014 I was called for statement to the enquiry officer, but my wife was seriously ill who was brought to hospital, I convey my message to the Moharrir of the Police Station that I am unable to attend the enquiry officer, but my message was not conveyed and straight away I was shown as not appearing before the enquiry officer, in this respect a report of the District Hospital, Mardan also attached. On 19.11.2014 I received dismissal order. As I was present on duty. Then I lodged an appeal before the worthy Dy: Inspector General of Police Mardan which was not considered and was also dismissed. Hence aggrieved this appeal.

GROUNDS.

1. That I have completed four years un-blamished service in Police force to the satisfaction of my superior.
2. That my absence was not willfully, But due to the above mentioned reason in which support the mentioned reason, in which support the medical

ATTESTED



Certificates are attached.

3. That the enquiry officer did not bother to call me for recording my statement, and straight away I was shown absent from duty. But in fact I was present and on 15.10.2014 when I was called by the enquiry officer, my wife had been brought to Distt: Hospital, Mardan. I convey my message to the Moharrar of the Police Station regarding the illness of my wife. in which support medical certificate is attached for perusal.
4. That I was performing my duty neither I was called by the enquiry officer, nor recorded my statement totally. One-sided proceeding was adopted which is unjustice and un lawful.
5. That I am married one and having two school going children and old age parents who are also effecting from my dismissal.
6. That I have no other source of income to support my family and this dismissal has caused great shock to me.

ATTESTED



So in view of the above grounds it is humbly prayed that I may kindly be re-instated on service.

...4#..

22

I shall pray for your long life and prosperity.

Yours (bediently

(EX. CONTABLE)

IQRAR SAID NO. 2950)

Distt: Police, Mardan r/o

SurakhDheri, Rustam.

ATTESTED

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Handwritten signature



7

E-23 ✓

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
CENTRAL POLICE OFFICE, PESHAWAR

ORDER

This order is hereby passed to dispose off departmental appeal under Rule 11-a of Khyber Pakhtunkhwa Police Rule-1975 submitted by Ex-FC Iqbal Said No. 2950 of District Police Mardan against the Punishment Order i.e dismissed from service passed against the appellant by DPO/Mardan vide OB No. 2327 dated 19.11.2014.

In the light of recommendations of Appeal Board meeting held on 10.09.2015, the board examined the enquiry in detail & other relevant documents. It revealed that the appellant was served with Charge Sheet/Statement of Allegations and punishment order was announced on the basis of reply to the Charge Sheet and Statement of Allegations.

The appellant was heard in detail. Record perused. He has absented himself from lawful duty for 02 months and 14 days. He also got 17 bad entries having no good entry during short period of service. The board rejected his appeal.

Order announced in the presence of appellant.

Sd/-

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

No. 11567-71 E-IV dated Peshawar the 18/9 2015

Copy of above is forwarded to the:-

1. Deputy Inspector General of Police, Mardan Region, Mardan
2. PSO to IGP/Khyber Pakhtunkhwa Peshawar.
3. PA to Addl: IGP/HQrs Khyber Pakhtunkhwa, Peshawar.
4. PA to DIG/HQrs Khyber Pakhtunkhwa, Peshawar.
5. DPO/Mardan. The service Roll, Fauji Missal and Enquiry File of the above named official are also returned herewith.


(ASIF IQBAL MOHMAND)

AIG/Establishment
For Inspector General of Police
Khyber Pakhtunkhwa Peshawar.

17/9/15

ATTACHED



VAKALATNAMA

IN THE COURT OF KPK Service Tribunal Peshawar
_____ OF 2015

Gharas Said (APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Police Department (RESPONDENT)
(DEFENDANT)

I/We Gharas Said
Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2015

Gharas Said
CLIENT

NK
ACCEPTED
NOOR MOHAMMAD KHATTAK
(ADVOCATE)

OFFICE:
Room No.1, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.
Phone: 091-2211391
Mobile No.0345-9383141

C

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.

Service Appeal No. 1208/2015

Iqrar Said Ex-Constable No. 2950 Police Lines MardanAppellant.

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.

REPLY TO FACTS:-

1. Incorrect. The appellant was appointed as Constable on 01.12.2010 and his service bear numerous red/bad entries in his short service, proving him inefficient & habitual absentee. **(Copy of red/bad entries are attached as Annexure-A)**
2. Incorrect. The appellant is a habitual absentee as evident from his service record. Besides, availing medical chits/documents has, now a days, become an easy practice and is being run successfully by Govt. officials during inquires or their departmental proceedings. In fact, the appellant just pretext and his absence was found, rather, deliberate during his inquiry.
3. Incorrect. The Police is a discipline force and is being run under proper rules/law. There is properly laid procedure for availing medical leave from the competent authority, but, the appellant did not bother even to submit an application for proper leave.
4. Incorrect. Proper departmental inquiry was conducted through DSP Mr. Khalid Khan Jadoon, who recommended the appellant for punishment, hence the appellant was punished as such. **(Copy of charge sheet, summary of allegations & inquiry are attached as Annexure-B, C & D)**
5. Incorrect. His departmental appeal was rejected by W/DIG Mardan as well as his appeal before the W/IGP Khyber Pakhtunkhwa, whereat, his case was examined by the appellate Board on 10.09.2015 and found him ineligible for further retention in Police force. **(Copies of rejection order by W/IGP & W/DIG Mardan are attached as Annexure-E & F)**
6. Incorrect. The instant appeal holds no legal grounds to stand on.

REPLY TO GROUNDS:-

- A. Incorrect. The two impugned orders are in accordance with law, facts and norms of natural justice & material on record, hence, tenable in the eyes of law.

- B. Incorrect. The appellant has been treated under relevant rules/law & there is no violation of any article of the Constitution of Pakistan.
- C. Incorrect. Proper procedure has been followed under relevant rules/law.
- D. Incorrect. All codal formalities has been complied with.
- E. Incorrect & baseless. This Para has already been replied in Para-2 & 3 above.
- F. Incorrect. Proper departmental enquiry has been conducted & all codal formalities has been complied with.
- G. Incorrect. The respondents have acted in accordance with rules/law.
- H. The respondents also seek permission of the Honorable tribunal to submit further grounds, if any, at the time of arguments.

PRAYER:-

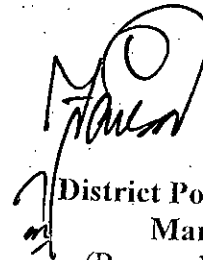
It is, humbly prayed that the appeal of the appellant is baseless and devoid of merits, may please be dismissed with costs.



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



Dy. Inspector General of Police,
Mardan Region-I, Mardan.
(Respondent No. 2)



District Police Officer,
Mardan.
(Respondent No. 3)

Recd

A

Serial No.

15. CENSURES AND PUNISHMENTS.

He is hereby warned to be careful in future.

OB No: 1195

17-4-12

DPO/MR

①

Fined Rs: 200/- for his

Absence.

OB No: 802

18-3-03

DPO/MR

②

5 days extra d/d for unauthorised Absence

OB No- 733

21-3-14

DPO/MR

Order

He is hereby dismissed from service while his absence period counted as leave without pay, in exercise of the power vested in me under PR-1975.

OB No 2327
19/11/14.

DPO/MR

Red

A

10

(Continued)

CHARACTER ROLL OF

15. CENSURES AND PUNISHMENTS. -- Contd.

Serial No.

Order

Appeal rejected by DIG Mandla
vide Enclst. No. 335/ES dt. 16/1/15.

DDP/Mandla

ORDER

His appeal rejected by IGP
KPK Peshwar Enclst. No. 11567-71/E-IV
dt. 18/9/2015.

DDP/Mandla

is
ex
On
O.B
Date
No.

Bad

A

16. LEAVE, ABSENCE AND BREAKS IN SERVICE.

All Periods not counting as "approved service" to be entered in red ink.

1.		2.			3.	4.
Date		Extent			No. Of District Order	Description of leave i.e privilege hospital, sick leave or of absence, or forfeiture of approved service.
To		Years	Months	Days		
				(30)	3220 29-8-11	E/Leave - DPO/MR
				(8)	3853 25-10-11	Leave w/o pay - DPO/MR
				(14)	4059 28-11-11	M/Leave - DPO/MR
				(55)	356 7-2-12	Leave w/a pay - DPO/MR
				(31)	698 6-3-12	E/Leave - DPO/MR
				(1)	712 6-3-12	Leave w/a pay - DPO/MR
				(1)	798 19-3-12	do - DPO/MR
				(3)	1195 17-4-12	do - DPO/MR
				(6)	1945 6-7-12	do - DPO/MR
				(1)	2442 4-9-12	do - DPO/MR
				(1)	2481 6-9-12	do - DPO/MR
				(3)	3352 18-12-12	do - DPO/MR

Since period counted
E/Leave

Bad

① $\frac{3353}{18-12-12}$

Leave w/o pay - DP/MP

② $\frac{650}{1-3-13}$

do - DP/MP

③ $\frac{846}{26-3-12}$

do - DP/MP

④ $\frac{2257}{14-10-13}$

do - DP/MP

⑤ $\frac{2813}{24-11-13}$

do - DP/MP

⑥ $\frac{733}{21-3-14}$

do - DP/MP

e

0.

O.

Dai

No.

B

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

No. 736 /R/D.A-P.R-1975.

Dated 3-10- /2014

DISCIPLINARY ACTION UNDER NWFP POLICE RULES - 1975

I, **Gul Afzal Khan** District Police Officer, Mardan as competent authority am of the opinion that Constable **Iqrar Said No. 2950**, rendered himself liable to be proceeded against as he committed the following acts/omission within the meaning of section-02 (iii) of NWFP Police Rules 1975.

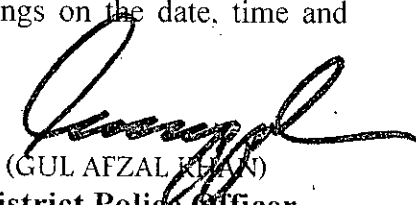
STATEMENT OF ALLEGATIONS

That **Constable Iqrar Said No. 2950**, while posted at Police Station Jabbar, deliberately absented himself from the lawful duty vide DD No. 31 dated 05.09.2014 to-date without any leave / permission of the competent authority.

2. For the purpose of scrutinizing the conduct of the said official with reference to the above allegations **Mr Khalid Jadoon DSP/Katlang Mardan** is appointed as Enquiry 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 its 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 Enquiry Officer.


(GUL AFZAL KHAN)
District Police Officer,
Mardan

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

No. 736 /R, dated Mardan the 3-10- /2014.

Copy of above is forwarded to the:

1. DSP/Katlang Mardan for initiating proceedings against the accused official / Officer namely Constable **Iqrar Said No. 2950**, under Police Rules, 1975.
2. Constable **Iqrar Said No. 2950**, with the directions to appear before the Enquiry Officer on the date, time and place fixed by the enquiry officer for the purpose of enquiry proceedings.

***** !!! *****

C


CHARGE SHEET UNDER NWFP POLICE RULES 1975

I, **Gul Afzal Khan** District Police Officer, Mardan as competent authority hereby charge you **Constable Iqrar Said No. 2950**, as follows.

That you constable, while posted at Police Station Jabbar, deliberately absented yourself from the lawful duty vide DD No. 31 dated 05.09.2014 to-date without any leave / permission of the competent authority.

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

1. By reason of the above, you appear to be guilty of misconduct under section - 02 (iii) of the NWFP 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 persons.


(GUL AFZAL KHAN)
District Police Officer,
Mardan.

D

ENQUIRY REPORT AGAINST CONSTABLE IQRAR SAID 2950.

ALLEGATION:-

Constable Iqrar Said No 2950, while posted at Police Station Jabbar deliberately absented himself from the lawful duty vide DD No. 31 dated 05/09/2014 till-date without any leave/permission of the competent authority. He was recommended for departmental enquiry to scrutinize the conduct of said official with reference of above allegation. Charge sheet with statement of allegation were issued and served upon the alleged official and the enquiry was entrusted to the undersigned.

PROCEEDINGS:-

Inquiry proceeding were initiated, the defaulter constable was summoned. Beside copies of relevant daily diaries were requisitioned from PS Jabbar and placed on enquiry file.

The defaulter constable was summoned through a written parwana but he failed to appear before the undersigned which shows that he is no more interested in his official duties.

FINDINGS:-

The defaulter Constable has remained absent from the lawful duty with effect from 05-09-2014 till-date. He did not inform any Officer about his absence; neither did he seek any Official leave from senior Officers. Service Record of the defaulter Constable revealed that he has earned (17) bad entries with no good entry while remain 150 days absent.

Keeping in view of the above facts and circumstance, it is recommended that an ex-parte action may please be taken against the defaulter constable.

Submitted please.

Dy: Superintendent of Police
Kafalang Circle

No 600 /SVKGTG, dated 14/11/2014

He is habitual absentee
does not take interest in
his duties. So dismissed
from service.

[Signature]
18-11-014

①


ORDER.

This order will dispose-off the appeal preferred by Ex-Constable Iqrar Said No. 2960 of Mardan District Police against the order of District Police Officer, Mardan, wherein he was dismissed from service vide District Police Officer, Mardan OB No. 2327 dated 19.11.2014.

Brief facts of the case are that while posted at Police Station Jabbar, absented himself from duty vide daily diary 91 dated 05.09.2014 and remained absent till order of his dismissal from service on 19.11.2014. Proper departmental enquiry was conducted against him through Deputy Superintendent of Police Katlang Mardan. During course of enquiry appellant was summoned by enquiry officer through written parwana which was served upon his brother and he was also informed about departmental enquiry initiated against him by concerned DFC of Police Station, Jabbar which is evident from report recorded vide daily diary No. 35 dated 25.10.2014, but even then appellant did not appear before the enquiry officer which clearly showed that he was not interested in his job. Hence he was dismissed from service.

I have perused the record and also heard the appellant in Orderly Room held in this office on 14.01.2015, but he failed to justify his absence period and could not produce any cogent reason about his absence. Therefore, I **MUHAMMAD SAEED** Deputy Inspector General of Police, Mardan Region-I, Mardan in exercise of the powers conferred upon me reject the appeal and do not interfere in the order passed by the competent authority, thus the appeal is filed.

ORDER ANNOUNCED.



(MUHAMMAD SAEED) PSP
Deputy Inspector General of Police,
Mardan Region-I, Mardan.

No. 335 /ES, Dated Mardan the 16/01 /2015.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 2006/LB dated 31.12.2014. His service roll is returned herewith.

(*****)

OB
EC
OAS

For me

DPO, Mardan



17

B

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
CENTRAL POLICE OFFICE, PESHAWAR

ORDER

This order is hereby passed to dispose off departmental appeal under Rule 11-a of Khyber Pakhtunkhwa Police Rule-1975 submitted by Ex-FC Iqrar Said No. 2950 of District Police Mardan against the Punishment Order i.e dismissed from service passed against the appellant by DPO/Mardan vide OB No. 2327 dated 19.11.2014.

In the light of recommendations of Appeal Board meeting held on 10.09.2015, the board examined the enquiry in detail & other relevant documents. It revealed that the appellant was served with Charge Sheet/Statement of Allegations and punishment order was announced on the basis of reply to the Charge Sheet and Statement of Allegations.

The appellant was heard in detail. Record perused. He has absented himself from lawful duty for 02 months and 14 days. He also got 17 bad entries having no good entry during short period of service. The board rejected his appeal. Order announced in the presence of appellant.

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

No. 11567-71 /E-IV dated Peshawar the 18/9 /2015

Copy of above is forwarded to the:-

1. Deputy Inspector General of Police, Mardan Region, Mardan
2. PSO to IGP/Khyber Pakhtunkhwa Peshawar.
3. PA to Addl: IGP/HQrs Khyber Pakhtunkhwa, Peshawar.
4. PA to DIG/HQrs Khyber Pakhtunkhwa, Peshawar.
- ✓ 5. DPO/Mardan. The service Roll, Fauji Missal and Enquiry File of the above named official are also returned herewith.

EC

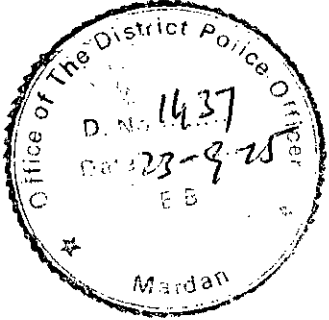
For u/c action

M

DPO/Mardan
22/9/15

(ASIF IQBAL MOHMAND)
AIG/Establishment
For Inspector General of Police
Khyber Pakhtunkhwa Peshawar.

17/9/15



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

Service Appeal No. 1208/2015

Iqrar Said Ex-Constable No. 2950 Police Lines MardanAppellant.

VERSUS.

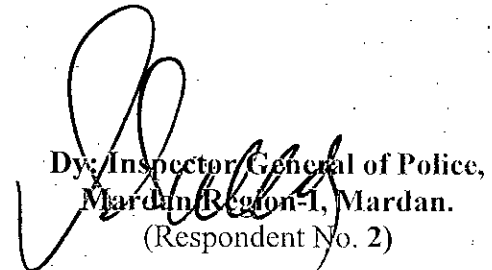
District Police Officer, Mardan & others.....Respondents.

COUNTER AFFIDAVIT.

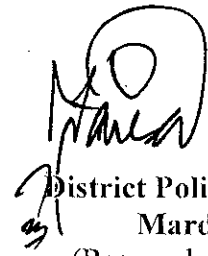
We, the respondents do hereby declare and solemnly affirm on oath that the contents of the Para-wise comments in the service appeal cited as subject are true and correct to the best of our knowledge and belief and nothing has been concealed from this Honourable Tribunal.



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



**Dy. Inspector General of Police,
Mardan Region-1, Mardan.
(Respondent No. 2)**



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

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

Service Appeal No. 1208/2015


Iqrar Said Ex-Constable No. 2950 Police Lines MardanAppellant.


VERSUS.

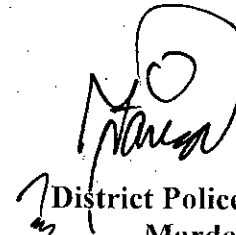
District Police Officer, Mardan & others.....Respondents.

AUTHORITY LETTER.

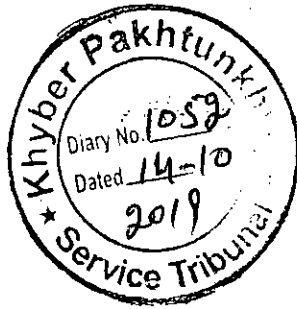
Mr. Muhammad Shafiq Inspector Legal, (Police) Mardan is hereby authorized to appear before the Honourable Service Tribunal, Khyber Pakhtunkhwa, Peshawar in the above captioned service appeal on behalf of the respondents. He is also authorized to submit all required documents and replies etc. as representative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


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


**By: Inspector General of Police,
Mardan Region-I, Mardan.
(Respondent No. 2)**


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

Ph: 9220581
Fax: 9220406



REGISTERED

No. C.A.1612/2019-SCJ (Imp.)

SUPREME COURT OF PAKISTAN

Islamabad, dated 09/10, 2019.

From

The Registrar,
Supreme Court of Pakistan,
Islamabad.

To

The Registrar,
KPK. Service Tribunal,
Peshawar.

Subject: CIVIL APPEAL NO. 1612 OF 2019.

Out of

CIVIL PETITION NO. 3328 OF 2017.

Iqrar Said.

VERSUS

The Inspector General of Police, KPK., Peshawar & others.

On appeal from the Judgment/Order of the K.P.K. Service Tribunal, Peshawar dated 01.8.2017, in Appeal No.1208/2015.

Dear Sir,

I am directed to forward herewith a certified copy of the Order of this Court dated 02.10.2019, converting into appeal the above cited civil petition and allowing the same, in the terms stated therein, ~~for further necessary action~~ for further necessary action.

I am also to invite your attention to the directions of the Court contained in the enclosed Order for immediate compliance.

Please acknowledge receipt of this letter along with its enclosure immediately.

Encl: Order:

Yours faithfully

Sd/-

(MUHAMMAD MUJAHID MEHMOOD)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR


Copy with a certified copy of the Order of this Court's dated 02.10.2019, is forwarded to the Inspector General of Police, Khyber Pakhtunkhwa, Peshawar for information, necessary action and compliance. C/O A.R. (Peshawar).

Encl: Order:


ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

Do the needful.

Add: Reg.


16/10/19.

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed
Mr. Justice Munib Akhtar

CIVIL PETITION NO.3328 OF 2017

[On appeal from judgment dated 1.8.2017, passed by the Khyber Pakhtunkhwa Service Tribunal, in Appeal no.1208 of 2015]

Iqrar Said

...Petitioner(s)

Versus

***The Inspector General of Police, KPK,
Peshawar and others***

...Respondent(s)

For the Petitioner(s) : Maulvi Ejaz ul Haq, ASC with
Syed Rifaqat Hussain Shah, AOR

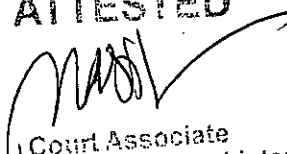
For the Respondent(s) : Barrister Qasim Wadood,
Addl. A.G., KPK

Date of Hearing : 02.10.2019

ORDER

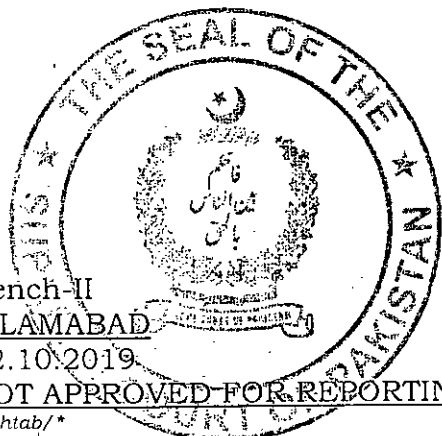
Gulzar Ahmed, J.— We have heard the learned counsel for the parties and examined the relevant law regarding filing of the departmental appeal as well as the revision by the aggrieved person. We have noted that Rule 11-A (4) of the Khyber Pakhtunkhwa Police Rules, 1975 specifically provides for filing of revision petition within a period of 30 days. In the case in hand, after the departmental representation of the petitioner was rejected on 16.01.2015, the petitioner filed a revision under Rule 11-A (4) *ibid*, which was rejected on 18.09.2015 and on 13.10.2015 he filed a service appeal before the Service Tribunal. Looking at the law apparently the service appeal filed by the petitioner before the

ATTESTED


Court Associate
Supreme Court of Pakistan
Islamabad

Service Tribunal was not time barred and in this respect, the Service Tribunal has made an apparent mistake in not reading the proper rules while dealing with the case in hand in that it referred to the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986 which in the case of the petitioner were not applicable rather the Police Rules noted above were applicable to the case of the petitioner in which a specific provision has been made for filing of the revision. Consequently, the impugned judgment dated 01.08.2017 of the Service Tribunal is found to be suffering from serious legal defect and therefore the same is set aside and the matter is remanded to the Khyber Pakhtunkhwa Service Tribunal for deciding the appeal of the petitioner on merits and in accordance with the law.

2. The petition is converted into appeal and is allowed.



Mahtab/*
4/10/19

—sd— Gulzar Ahmed, J
—sd— Munib Akhtar, J

Certified to be True Copy

[Signature] 8/10/2019
Court Associate
Supreme Court of Pakistan
Islamabad

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 1770 /ST

Dated 16/10 /2019

To,

The Registrar,
Supreme Court of Pakistan,
Islamabad.

Subject:- CIVIL APPEAL NO. 1612 OF 2019

OUT OF

CIVIL PETITION NO. 3328 OF 2017

Dear Sir,

I am directed to acknowledge the receipt of your letter No. C.A.1612/2019-SCJ dated 9/10/2019 alongwith its enclosure.


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No.1208/2015

IQRAR SAID VERSUS POLICE DEPARTMENT

REJOINDER ON BEHALF OF PETITIONER IN RESPONSE TO
THE REPLY SUBMITTED BY THE RESPONDENTS

R/SHEWETH:

PRELIMINARY OBJECTIONS:

(1 TO 7):

All the objections raised by the respondent are in correct and baseless and not in accordance with law and rules rather the respondent is estopped due to their own conduct to raise any objection at this stage of the appeal.

ON FACTS:

- 1- Incorrect and not replied accordingly hence denied.
- 2- Incorrect and not replied accordingly. That due to serious illness the appellant had absented himself from duty. Moreover the concern Doctor also advised the appellant for complete bed rest.
- 3- Incorrect and not replied accordingly. That applied for medical leave on the basis of that advice but no reply was received from respondents.
- 4- Incorrect and not replied accordingly. That appellant was astonishingly dismissed from service vide order dated 19-11-2014 with out conducting regular inquiry, and with out codal formalities which is necessary in punitive matters.
- 5- Incorrect and not replied accordingly. That the appellant feeling aggrieved from the impugned order dated 19-11-2014 filed Departmental appeal before appellate authority who rejected the Departmental appeal of the appellant vide order dated 18-09-2015 on no good grounds.
- 6- Incorrect and not replied accordingly hence denied.

GROUND:

All the grounds of main appeal are correct and in accordance with law and prevailing rules and that of the respondent are incorrect and baseless hence denied. That the impugned orders dated 19-11-2014 and 18-09-2015 are against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside. That no show cause notice has been served on the appellant by the respondent Department before issuing the impugned order dated 19-11-2014 against the appellant. That no regular inquiry has been conducted before issuing the impugned order dated 19-11-2014. No chance of personnel hearing/personnel defense has been given to the appellant before issuing the impugned order dated 19-11-2014. That the respondent Department acted in arbitrary and malafide manner while issuing the impugned order dated 19-11-2014 against the appellant.

It is therefore most humbly prayed that on acceptance of this rejoinder the appeal of the appellant may be accepted as prayed for.

APPELLANT

12/11/15

IQRAR SAID

THROUGH:

[Signature]

**NOOR MOHAMMAD KHATTAK
DVOCAE**

از دفتر DSP/کتا

دوانہ

صیغہ دال

نکار سہ ماہی سرحد میں حصہ کی ایک تقریباً 2950 کی
پیشی حساب DSP/کتا کو بوقت 10:00 بجے 27/10/14 دفتر کابل
میں تقریباً بذریعہ تحریریں روانہ اللہ در حاجت رہے۔
DSP/کتا کو پیشابو جانے۔

دوانہ اعلیٰ عدالت کے دفتر
قراباویں

JR/DSP/کتا

23/10/14

بسم الله الرحمن الرحيم
الحمد لله رب العالمين
والصلاة والسلام على سيدنا محمد
المرسلين
أقرت

NIC-16101-9505266

Mob-0307-5537622

۲۹۵۰



**KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

No. 1016 /ST

Dated: 13-5- /2022

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

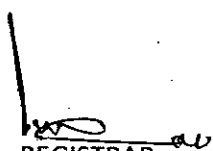
To

The District Police Officer,
Government of Khyber Pakhtunkhwa
Mardan.

Subject: JUDGMENT IN APPEAL NO. 1208/2015 MR. IQRAR SAID.

I am directed to forward herewith a certified copy of Judgement dated 27.01.2022 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR