

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No. 1430/2023.

Umair Ex-Constable No. 1083.....Appellant

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa.

& 02 others.....Respondents.

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14-12-2023  
Peshawar.

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Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 9892

Date 14-12-2023

1. Provincial Police Officer, Khyber Pakhtunkhwa.  
& 02 Others..... Respondents.WRITTEN REPLY ON BEHALF OF RESPONDENTS.1. Preliminary Objections.

1. That the appellant has got no Cause of action and locus standi to file the present appeal.
2. That the appeal is bad due to misjoinder and nonjoinder of necessary parties.
3. That the appeal is time barred.
4. That the appellant has not come to the Tribunal with clean hands.
5. That this Hon'ble Tribunal has got no jurisdiction to entertain the present appeal.
6. That the instant appeal is not maintainable in its present form.
7. That the appellant concealed the material facts from this Hon'ble Tribunal.
8. That the appellant has been estopped by his own conduct to file the appeal.

2. REPLY ON FACTS.

1. Para No. 01 of appeal is correct to the extent of appointment of appellant in service, however appellant during service proved himself an inefficient official. On account of absence, he was proceeded against departmentally and dismissed from service. His service record is full of unfavourable entries including dismissal (**Copies attached as Annexure A**).
2. Para No. 02 of appeal is correct to the extent of appellant's addiction of ice on account of which he absented himself from lawful duties, on account of which he was proceeded against departmentally. Appellant's addiction to ice clearly violates the departmental code of conduct which requires employees to maintain a high standard of behavior both on and off duty (**Copies of Charge Sheet and Summary of Allegations attached as Annexure B&C**).
3. Para No. 03 of appeal is correct to the extent of recommendation of Enquiry Officer, however the recommendation of Enquiry Officer is not binding upon the competent authority when the charges against the appellant has already been proved.
4. The recommendation to the extent of taking lenient view is correct, however the final decision ultimately rests with the competent authority. Appellant was found guilty during enquiry, therefore keeping in view his past service record he was dismissed

(2)

from service. His departmental appeal as well as revision petition were rightly dismissed being time barred by the respondents.


5. That the appellant has got no cause of action to file the instant appeal which is time barred and devoid of merit.

**GROUND.**

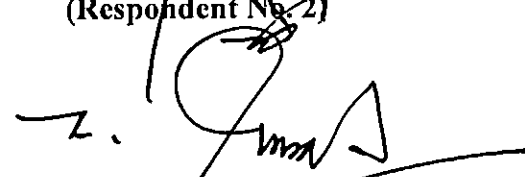
- A. Incorrect. The order of respondents are quite legal and in accordance with law/rules.  
B. Appellant admit his addition and absence from duties, however being member of discipline force he was supposed to apply for proper leave, but he has availed self sanctioned leave.  
C. Incorrect. The recommendation of Enquiry Officer is not binding upon the competent authority. Appellant is habitual absentee and deserves no leniency as he was previously dismissed on account of absence, but he did not mend his way.  
D. Incorrect. After proper departmental enquiry, appellant was dismissed from service.  
E. Incorrect. Reply already given vide paras above.  
F. Incorrect. The appellant was found guilty during departmental enquiry, hence dismissed from service in accordance with law/rules.  
G. Incorrect. Appellant was treated in accordance with law/rules.  
H. That respondents also seek permission of this Hon'ble Tribunal to advance other grounds and proof at the time of hearing of appeal.

**PRAYERS**

It is therefore prayed that the appeal of appellant may kindly be dismissed with cost being time barred/devoid of merits and without any legal substance.

  
(HAROON RASHID KHAN) PSP  
District Police Officer, Swabi.  
(Respondent No. 3)

(MUHAMMAD SULEMAN) PSP  
Regional Police Officer, Mardan.  
(Respondent No. 2)

  
(DR. MUHAMMAD AKHTAR ABBAS) PSP  
DIG/Legal, CPO  
For Provincial Police Officer,  
Khyber Pakhtunkhwa, Peshawar  
(Respondent No. 1)

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& 02 Others..... Respondents.

POWER OF ATTORNEY.

We, the respondent No. 1 to 3 do hereby appoint Muhammad Shafiq, SDPO Topi/DSP Legal Swabi as special representative on our behalf in the above noted appeal. He is authorized to represent us before the Tribunal on each and every date fixed and to assist the Govt: Pleader attach to Tribunal.

  
 (HAROON RASHID KHAN) PSP  
 District Police Officer, Swabi.  
 (Respondent No. 3)

(MUHAMMAD SULEMAN) PSP  
 Regional Police Officer, Mardan.  
 (Respondent No. 2)

  
 (DR. MUHAMMAD AKHTAR ABBAS) PSP  
 DIG/Legal, CPO  
 For Provincial Police Officer,  
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 (Respondent No. 1)

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1. Provincial Police Officer, Khyber Pakhtunkhwa.  
& 02 Others..... Respondents.

AFFIDAVIT:-

I the respondent No. 3 do hereby solemnly affirm and declare on oath that the contents of the written reply are correct/true to the best of my knowledge / belief and nothing has been concealed from the honorable Tribunal.

*It is further stated on oath that in this appeal, the answering respondents have neither been placed ex parte nor their defence have been struck off cost.*



(HAROON RASHID KHAN) PSP  
District Police Officer, Swabi.  
(Respondent No. 3)

**ATTESTED**



*14-12-2023*

5 / "A"

OFFICE OF THE DISTRICT POLICE OFFICER, SWABI.


ORDER.

Constable Umair No.1083, while posted to Police Post Etam, absented himself from duty with effect from 04.06.2020 to 28.08.2020 and 29.08.2020 till date without any leave/prior permission of the competent authority, which is against the discipline and amounts to gross mis-conduct. He was issued Show Cause Notice, he was directed time and again to receive his show cause notice, but he failed to receive the same. Therefore, he was issued charge sheet and summary of allegations and DSP H. Qrs. Swabi was appointed as enquiry officer. The Enquiry officer conducted proper departmental enquiry, recorded statements of all concerned, collected evidence and submitted his findings, wherein he recommended the defaulter Constable Umair No.1083 for suitable punishment. The undersigned perused the enquiry papers and findings of the Enquiry officer and by agreeing with him issued Final Show Cause Notice. The Final Show Cause Notice was served upon him through local Police Station. He was clearly directed to submit his reply within seven days of the receipt of the Final Show Cause Notice but he did not. However, it was decided to give him an opportunity of personal hearing, but he failed to appear, which means that he has nothing to offer in his defence and deserved ex parte action.

Therefore, I, **Imran Shahid, PSP,QPM**, District Police Officer, Swabi, in exercise of the powers vested in me under Khyber Pakhtunkhwa Police Rules 1975, hereby award **Constable Umair No.1083**, Major Punishment of dismissal from service with immediate effect. He will not be entitled for payment of salary for the absence (intervening) period.

O.B No. 1325

Dated 13/10 /2020.

  
(IMRAN SHAHID) PSP,QPM  
District Police Officer, Swabi.

ATTESTED



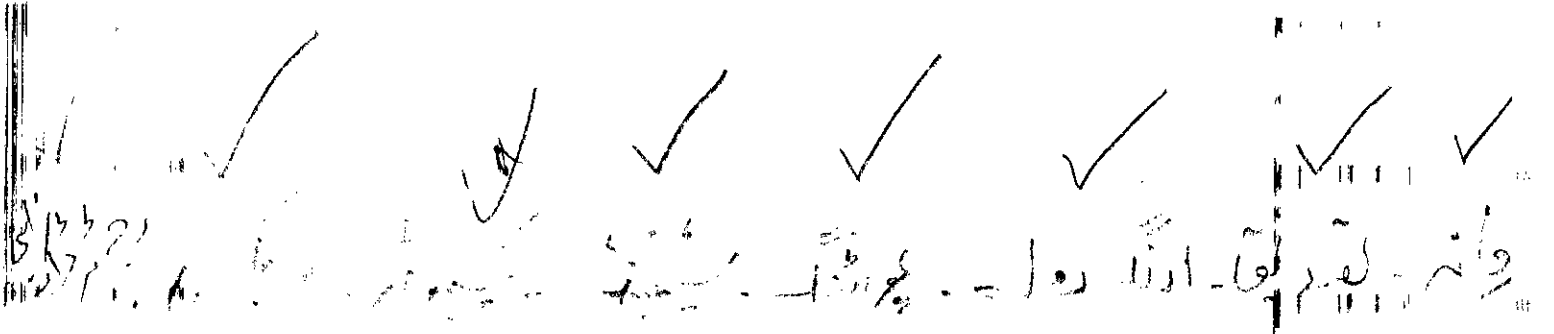
District Police Officer,

OFFICE OF THE DISTRICT POLICE OFFICER, SWABI.

No. 2991-95 /PA, dated Swabi, the 13/10 /2020.

Copies to the: -

1. DSP. Razzar.
2. Pay Officer.
3. Establishment Clerk.
4. Fauji Missal Clerk.
5. Official concerned



O.R.D.E.R

(6) A/1

This order shall dispose off on the Departmental Enquiry against Constable Umair No. 162 of FRP/HQrs: Peshawar.

Brief facts are that Constable Umair No. 162 absented himself from duty with effect from 16.06.2015 to 14.10.2015 for total period of (120) days without any leave/permission of the Competent Authority.

In this regard formal departmental proceedings were initiated against him and DSP, Admn: FRP: HQrs: was nominated as Enquiry Officer. After proper enquiry, the EO submitted his findings, wherein he recommended the defaulter constable for ex-parte action. Upon the findings of Enquiry Officer he was issued Final Show Cause Notice to which he received personally, but he failed to submit any reply in response to the Final Show Cause Notice. He was called for personal hearing, but failed to do so.

Keeping in view the recommendations of the Enquiry Officer and other material available on record it has come crystal clear that the said Constable has deliberately absented himself from duty and did not bother to reply in response to the Show Cause Notice. From perusal of his record it has found that he was enlisted on 04.01.2012 and during his past service he absented himself from duty for a period of 186 days which shows that he has no interest to serve in Police Department and there is no likely hood of his becoming good Police Officer in future. He is not fit for Police service, Therefore, Constable Umair No. 162 of FRP/HQrs is hereby dismissed from Service under Police Rules 1975 from the date of his absence i.e. 16.06.2015 and the period of absence is treated as leave without Pay.

**Order announced.**

*[Signature]*  
Deputy Commandant,  
Frontier Reserve Police  
Khyber Pakhtunkhwa Peshawar

No. 1566-70 /PA dated Peshawar, the

17/12 2015.

Copy of the above is forwarded for information & n/action to the:-

1. Commandant, FRP Khyber Pakhtunkhwa.
2. Accountant /FRP/HQrs: Peshawar.
3. SRC/OASI/FRP HQrs: Peshawar.
5. FMC/ FRP/HQrs: Peshawar with original Enquiry file.

*inc (04) files - original*

(7) A/II



**ORDER.**

This order will dispose of the departmental enquiry against Constable Umair No. 2125 of FRP HQrs: Peshawar.

Brief facts of the case are that Constable Umair No. 2125 of FRP HQrs: Peshawar absented himself from duty 31.01.2019 to 22.03.2019 without any leave/permission of the competent authority. He was issued charge Sheet/statement of allegation and RI/FRP HQrs: Peshawar was appointed as Enquiry Office. After enquiry the enquiry Officer recommended the said constable for ex-parte action. He was issued Final Show Cause Notice to which he replied but his reply was found not satisfactory. He was called in OR for personal hearing and during his Peshi he badly failed to produce any plausible reason in his defence.

Keeping in view the recommendation of Enquiry Officer and other available material, he is awarded the following punishment:-

1. Stoppage of one Increment with cumulative effect.
2. Absence period is treated as without pay.

ATTESTED

Officer, Swabi.

Deputy Commandant  
Frontier Reserve Police  
Khyber Pakhtunkhwa Peshawar

No. 890-92/PA dated Peshawar the

09-07-2019.

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

1. Accountant FRP HQrs: Peshawar.
2. SRC FRP HQrs: Peshawar.
- ✓ 3. OASI FRP HQrs: Peshawar.

OB-883  
9/7/19



⑧ "B"

CHARGE SHEET

Whereas I am satisfied that formal enquiry as contemplated by Civil Servants (E&D) Rules 2011 is necessary and expedient.

And whereas I am of the view that the allegations if established would call for Major/Minor penalty as defined in the aforesaid Rules.

Now therefore as required by the aforesaid Rules I, **Imran Shahid, PSP, QPM**, District Police Officer, Swabi charge you **Constable Umair No.1083**, on the basis of statement of allegations attached to this charge sheet.

In case your reply is not received within seven days without sufficient cause it will be presumed that you have no defence to offer and ex-parte action will be taken against you.

ATTESTED

*[Signature]*  
District Police Officer, Swabi

*[Signature]*  
District Police Officer,  
Swabi.

9 "C"

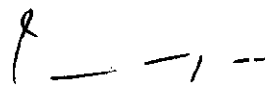
SUMMARY OF ALLEGATIONS.

It is alleged that Constable Umair No. 1083, has been found Ice/crystal addict and habitual absentee. He absented himself from duty with effect from 04.06.2020 till date without any leave/prior permission of the competent authority. Therefore, he was issued with show cause notice. He was directed time and again to receive his show cause notice but he did not. His this act is against the discipline and amounts to gross mis-conduct, hence summary of allegation.

Mr. Shakeel Khan, DSP HQrs Swabi is appointed to conduct proper departmental enquiry against him.

ATTESTED

9  
DIO

  
District Police Officer,  
Swabi.

No. 183 /CC/PA

Dated: 16/07 /2020

(10) pages -