

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. 839/2016

Date of Institution ... 01.08.2016

Date of Decision ... 03.01.2019

Asif (Ex-Constable No. 1958) Police Department R/O Taru Jabba Mohallah
Malikan District Nowshera. ... (Appellant)

VERSUS

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

Present.

MIAN HIKMATULLAH JAN,
Advocate. ... For appellant.

MR. KABIRULLAH KHATTAK,
Addl. Advocate General ... For respondents.

MR. HAMID FAROOQ DURRANI, ... CHAIRMAN
MR. HUSSAIN SHAH, ... MEMBER(E)

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

The appellant was enrolled in the Police Department and during course of performance of his duty, was on sanctioned leave at the relevant time when he was called for duty during Muharram days, which he did not join. It was the case of appellant that due to his illness he was shifted to his native village Parachinar, therefore, did not get any information requiring reporting for duty. He was dismissed from service vide order dated 27.08.2014, after departmental proceedings against him. An appeal was preferred by the appellant on 02.09.2014 which was rejected while his Revision Petition was partially allowed on 21.06.2016

and the punishment of dismissal from service was converted into compulsory retirement.

2. We have heard learned counsel for the appellant and learned Addl. AG on behalf of the respondents.

It was the contention of learned counsel for the appellant that the punishment awarded to the appellant was harsh and his absence from duty could, at the most, be considered negligence rather than misconduct in view of judgment reported as 2006-SCMR-60.

As against that, it was contended on behalf of the respondents that all the codal formalities were fulfilled before passing of impugned order against the appellant. It was also stated that on previous two occasions i.e. 12.09.2008 and 01.09.2010, the appellant was dismissed from service on account of mental ailment.

3. It is a matter of record that the impugned order of dismissal from service and the subsequent modifying order of compulsory retirement were passed against the appellant on account of his absence from duty for 13 months and 16 days. While allowing the Revision Petition the AIG (Establishment), on behalf of Inspector General of Police, Khyber Pakhtunkhwa Peshawar had clearly recorded that the appellant was heard in person when he admitted that he was ill. However, keeping in view the service of appellant for about 11 years, the board mitigated the punishment awarded to the appellant.

4. As the appellant could not lay hand on any material irregularity in conducting departmental proceedings against him and the fact that the final authority had already taken lenient view in his case, the appeal in hand appears to be without any merits. Meeting the contention of learned counsel for the appellant

regarding harshness of the penalty awarded to the appellant, suffice it to say that the judgment cited at the bar was very much distinguishable. The incident involved in the referred case was regarding negligence in a transaction of over payment.

5. For what has been discussed above, the appeal in hand is hereby dismissed. Parties are left to bear their respective costs. File be consigned to the record room.





(HUSSAIN SHAH)
MEMBER(E)




(HAMID FAROOQ DURRANI)
CHAIRMAN


ANNOUNCED
03.01.2019

S.No.	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	03.1.2019	<p><u>Present.</u></p> <p>Miam Hikmatullah Jan, Advocate .. For appellant</p> <p>Mr. Kabirullah Khattak, Addl.AG .. For respondents</p> <p>Vide our detailed judgment of today the appeal in hand is dismissed. Parties are left to bear their respective costs. File be consigned to the record room.</p> <p> Member</p> <p> Chairman</p> <p><u>ANNOUNCED</u> 03.1.2019</p>

06.08.2018

Appellant in person and Mr. Zia Ullah, Deputy District Attorney present. Appellant seeks adjournment on the ground that his counsel is not in attendance. Adjourned. To come up for arguments on 01.10.2018 before D.B.


(Muhammad Amin Kundi)
Member


(Muhammad Hamid Mughal)
Member

01.10.2018

Appellant in person present. Mr. Kabirullah Khattak learned Additional Advocate General for the respondent present. Appellant requested for adjournment that his counsel is not available today. Adjourned. To come up for arguments on 15.11.2018 before D.B.


(Hussain Shah)
Member


(Muhammad Hamid Mughal)
Member

15.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 03.01.2019.


READER

839/16

18.12.2017

Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Aziz Shah, H.C for the respondents present. Rejoinder submitted. Counsel for the appellant seeks adjournment. Granted. To come up for arguments on 22.02.2018 before the D.B.


Member


Chairman

22.02.2018

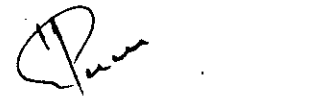
Due to non availability of D.B. Adjourned. To come up on 04.04.2018 before D.B.


Member

04.04.2018


Counsel for the appellant and Addl; AG for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 08.06.2018 before D.B.


(Ahmad Hassan)
Member


(M. Hamid Mughal)
Member

08.06.2018

Clerk to counsel for the appellant present. Addl; AG for respondents present. Clerk to counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 06.08.2018 before D.B.


(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member


06.03.2017

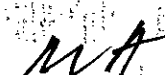
Clerk to counsel for the appellant and Mr. Muhammad Raziq, H.C. alongwith Addl. AG for respondents present. Written reply submitted. To come up for rejoinder and arguments on 06.06.2017.


(MUHAMMAD AMIR NAZIR)
MEMBER

06.06.2017


Counsel for the appellant and Mr. Muhammad Adeel Butt, Additional AG for the respondent present. Counsel for the appellant requested for time to file rejoinder. Request accepted. To come up for rejoinder and arguments on 04/10/2017 before D.B.



(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member

04.10.2017

Appellant in person present. Mr. Zia Ullah; Deputy District Attorney for the respondents present. Appellant requested for time to file rejoinder. Request accepted. To come up for rejoinder/arguments on 18.12.2017 before D.B.

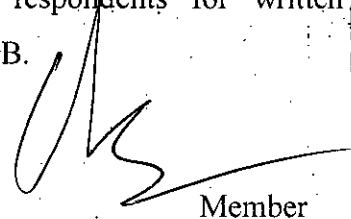

Member
(Executive)


Member
(Judicial)

03.11.2016

Appellant Deposited
Security & Process Fee

Appellant in person and Addl. AG for respondents present. Security and process fee not deposited. Appellant is directed to deposit security and process fee within seven (7) days, thereafter notices be issued to the respondents for written reply/comments on 22.12.2016 before S.B.



Member

22.12.2016

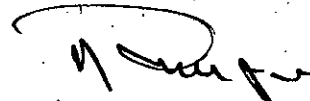
Appellant in person and Mr. Muhammad Raziq, HC alongwith Addl. AG for respondents present. Written reply not submitted. Requested for adjournment. Request accepted. To come up for written reply/comments on 30.01.2017 before S.B.



(MUHAMMAD AMIR NAZIR)
MEMBER

30.01.2017

Appellant in person and Mr. Muhammad Raziq, H.C. alongwith Mr. Muhammad Adeel Butt, Additional AG for respondents present. Written reply by respondents not submitted. Learned Additional AG requested for further time for submission of written reply. To come up for written reply/comments positively on 06.03.2017 before S.B.



(ASHFAQUE TAJ)
MEMBER

24.08.2016

Counsel for the appellant present. Learned counsel for appellant argued that the appellant was service as constable when dismissed from service vide original order dated 27.08.2014 on the allegations of absence from duty where-against he preferred departmental appeal which was partially allowed and punishment modified in the shape of compulsorily retirement vide impugned order dated 21.06.2016 communicated to the appellant on 5.7.2016 and hence the instant service appeal on 01.08.2016.

24.08.16
24.08.16
That the appellant was not absent as he was on earned leave due to mental ailment. That he was neither informed of order of cancellation of leave nor was in a position to perform the duty. That neither enquiry was conducted in the mode and manners prescribed by rules nor opportunity of hearing afforded to the appellant.



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 3.11.2016 before S.B.

S.B.
Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 839/2016

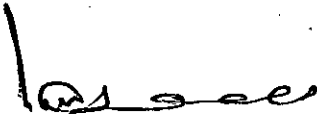
S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	17/08/2016	<p>The appeal of Mr. Asif resubmitted today by Mr. Mian Hikmatullah Jan Advocate may be entered in the Institution Register and put up to Learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	18-08-2016	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on. <u>24-08-2016</u></p> <p style="text-align: right;"> MEMBER</p> <p>Appellant present in person for adjournment. Since the case pertains to territorial jurisdiction of Hazara Division, as such the case adjourned to 20.10.2016 before S.B at camp court, Abbottabad.</p> <p style="text-align: right;">Chairman</p>

The appeal of Mr. Asif Ex-Constable No.1958 in KPK Police Department Distt. Nowshera received today i.e. on 01.08.2016 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of the appeal may be got signed by the appellant.
- 2- The law under which appeal is filed is not mentioned.
- 3- Annexures of the appeal may be flagged.
- 4- Copies of first departmental appeal and its rejection are not attached with the appeal which may be placed on it.
- 5- Annexures of the appeal may be annexed serial wise as mentioned in the memo of appeal.
- 6- Approved file covers is not used.
- 7- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1230 /S.T,

DL. 2/8 /2016


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mian Hikmatullah Jan Adv. Pesh.

Sir,
Resubmitted after the needful is
done.
Mian Hikmatullah Jan

BEFORE THE HONOURABLE
SERVICES TRIBUNAL, KPK PESHAWAR

Service Appeal No. 839 /2016

Asif

(Appellant)

V E R S U S

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar etc.


(Respondents)

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Appellant

Through


Mian Hikmatullah Jan
Advocate, High Court,
Peshawar

Dated: 27.07.2016

①

BEFORE THE HONOURABLE
SERVICES TRIBUNAL, KPK PESHAWAR

Service Appeal No. 839 /2016

Asif (Ex-Constable No. 1958)
in Khyber Pakhtunkhwa Police Department
R/o Taru Jabba, Mohallah Malikan, District Nowshera

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 780

Dated 01-8-2016

(Appellant)

V E R S U S

- 1) Inspector General of Police, Khyber Pakhtunkhwa, Peshawar
- 2) Superintendent of Police, Office at Police Headquarters,
Peshawar

(Respondents)

Service appeal against the compulsory retirement from Service vide Order dated 21.06.2016 whereby the departmental appeal for reinstatement was turn down against the order dated 27.08.2014 while the copies of the order dated 21.06.2016 were received to the appellant on 05.07.2016.

Prayer:

Filed to-day

Registrar

On acceptance of this appeal the impugned order dated 21.06.2016 whereby the appellant has been compulsory retired from the service may graciously be set aside and the appellant may kindly be reinstated in service with all back benefits.

Re-submitted to-day
and filed.

Registrar

17/8/16

Respectfully Sheweth,

Brief facts of the instant appeal are as under:

- 1) That the appellant was enrolled in the Police Department and after under-going the requisite training joined the regular service.
- 2) That the appellant has always served the department entire to the satisfaction of his superiors and there are never ever any bad remarks in his entire service career.
- 3) That appellant was called to attend his duties during Muharram Days when the appellant was already on sanctioned leave due to his illness. During his illness the appellant was shifted to his native village at Parachinar, Kuram Agency, hence he was not informed about any call for the duty.
- 4) That when the appellant approached to the respondent No. 2 it came into notice that he has been removed from the service vide order No. 3334-41/PA/SP dated 27.08.2014 while appellant was served with show cause notice which was replied by appellant. (Copy of order dated 27.08.2014 Show Cause Notice and reply are attached as Annexure A, B & C respectively)
- 5) That appellant even then submitted the departmental appeal against his dismissal order which was modified to the extent that the dismissal order was converted into compulsory retirement vide order No. S/4537/16 dated 21.06.2016. (Copy of departmental appeal and order dated 21.06.2016 is attached as Annexure D & E)

- 6) That appellant time and again approached to the department concerned and requested them to furnish him the attested copies so that he may move an appeal to this honourable service tribunal but to no avail.
- 7) That on 05.07.2016 the department concerned supplied the appellant the attested copies, hence the present appeal on the following amongst other grounds.

GROUNDS

- a) That orders of dismissal and compulsory retirement passed by the respondents are wrong, illegal, perverse, malafide, against the facts and circumstances, hence not tenable in the eyes of law.
- b) That the appellant's absence from duty was not willful or deliberate but due to his serious mental disease.
- c) That at the relevant time posting at Police Station Pahari Pura, Peshawar the appellant was on leave prior to the relevant days as the appellant was suffering from Chronic Mental disease and was unable to live a normal life, hence the appellant could not attend his service during the relevant days. But as submitted above that the appellant was already on leave and he was not properly intimated about his duty in Muharram days.
- d) That due to the above disease the appellant was shifted to his native village at Parachinar Kuram Agency where he had to stay for a long time as the appellant was stuck into curfio due to Muharram days, hence was unable to come back as all the entry and exist routes were blocked. It is to mention here that the appellant submitted

application for sick leave but the same was also not entertained.

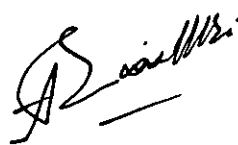
- e) That the absence of appellant was not intentional but due to the above reason, hence the same may graciously be taken into consideration while deciding the matter.
- f) That appellant has never ever done anything wrong throughout his service career which could bring bad name to the department, hence a most lenient view may kindly be taken while deciding the matter.
- g) That appellant shall be careful in future and shall serve the department with his heart and soul who shall respect his superiors and shall abide by all the legal orders of his superiors.
- h) That appellant shall try his level best to avoid such like complaints in future who remained a dutiful person and being a poor person has got no other source to feed his family who is the sole bread earner of his family who is still young and in case of compulsory retirement would be unable to get another job.
- i) That this August Tribunal is the only ray of light for appellant to get a merciful and sympathetic decision in his favour who puts himself at the mercy of your this honourable tribunal.
- j) That the appellant filed departmental presentation but the same has not been taken into consideration rather been totally ignored, hence illegality has been committed as the appellant was condemned unheard.
- k) That punishment of compulsory retirement from service is a harsh punishment whereby entire career of the

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appellant became spoiled because the appellant has given his cream young age of 11 years to the Govt. department and thus even become entitle for pension benefits, but the respondent has even not considered his length of service.

- l) That compulsory retirement form the service upon short absence is a harsh punishment and is required to be set aside while period of absence from service is meager and tangible.
- m) That appellant had never-ever been involved in any type of corruption, negligence or misconduct hence the punishment of compulsory retirement is against the law.
- n) That entire service record of the appellant is too good and no bad remarks have been earned by appellant throughout his service career.
- o) That any other ground will be taken at the time of arguments.

It is, therefore, most humbly prayed that on acceptance of this appeal the punishment of compulsory retirement may graciously be set aside and the appellant be reinstated in service with all back benefits.



Appellant

Through



Mian Hikmatullah Jan
Advocate, High Court,
Peshawar

Dated: 27.07.2016

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BEFORE THE HONOURABLE
SERVICES TRIBUNAL, KPK PESHAWAR

Service Appeal No. _____/2016

Asif

(Appellant)

V E R S U S

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar etc.

(Respondents)

AFFIDAVIT

I, Asif (Ex-Constable No. 1958) in Khyber Pakhtunkhwa Police Department R/o Taru Jabba, Mohallah Malikan, District Nowshera, do hereby solemnly affirm and declare on Oath that the contents of service appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this honourable tribunal.

ATTESTED



DEPONENT

[Handwritten signature]
[Handwritten signature]

7

BEFORE THE HONOURABLE
SERVICES TRIBUNAL, KPK PESHAWAR

Service Appeal No. _____/2016

Asif

_____ (Appellant)

V E R S U S

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar etc.

_____ (Respondents)

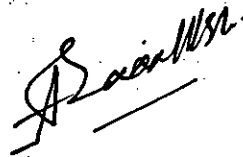
ADDRESSES OF PARTIES

Appellant

Asif (Ex-Constable No. 1958)
in Khyber Pakhtunkhwa Police Department
R/o Taru Jabba, Mohallah Malikan, District Nowshera


Respondents

- 1) Inspector General of Police, Khyber Pakhtunkhwa, Peshawar
- 2) Superintendent of Police, Office at Police Headquarters,
Peshawar



Appellant

Through


Mian Hikmatullah Jan
Advocate, High Court,
Peshawar

Dated: 27.07.2016

ORDER

A

This office order relates to the disposal of formal departmental enquiry against Constable Asif No.1958 of Capital City Police Peshawar on the allegations that he absented himself from duty on the following period without taking permission or leave.

Amexur A

S. No	From	To	Total absentee
01	17.06.2013	08.07.2013	21-days
02	27.07.2013	31.07.2013	04-days
03	05.08.2013	Till date	12-months & 21-days
Total			13-months & 16-days

In this regard, he was issued charge sheet and summary of allegations. Two separate enquiries were initiated, conducted by SDPO, Faqirabad & DSP Civil Secretariat.

1. SDPO, Faqirabad conducted the enquiry proceedings in the 1st absence period & submitted his report that the defaulter official is habitual absentee. The E.O further recommended major punishment for defaulter official vide Enquiry Report No.69/ST dated 18.03.2014.

2. DSP Civil Secretariat conducted the enquiry proceedings in 2nd absence period & submitted his report that the defaulter official does not take interest in his official duty and again absented himself from 05.08.2013 till date. The E.O further recommended major punishment for defaulter official vide Enquiry Report dated 16.06.2014.

Upon the finding of E.Os, he was issued final show cause notices which he received by himself but he failed to submit his reply with in stipulated period of 07-days or appear before this office as yet.

In light of the findings of E.Os and other material available on record, the undersigned came to conclusion that the alleged official found guilty of prolonged absence as he is malingering type official. Therefore, in exercise of the power vested in me under Police Disciplinary Rules, 1975, he is hereby dismissed from service with immediate effect. For the period he remained absent for 13-months & 16-days is treated without pay.

Amir Hujer

**SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR**

OB. NO. 2606 Dated 27/8 /2014
No. 3334-41/PA/SP dated Peshawar the 27/8 /2014

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

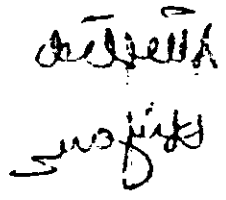
- ✓ Capital City Police Officer, Peshawar.
- ✓ SP Cantt & DSP H.Qs, Peshawar.
- ✓ Pay Office, GAB, CRC, FMC along with complete departmental file.
- ✓ official concerned

Amir Hujer

5. That applicant has never ever done any thing wrong throughout his service career which could bring bad name to the department hence a most lenient view may kindly be taken while deciding the matter.
6. THAT applicant shall be careful in future and shall serve the department with his heart and soul and shall respect his superiors and shall abide by all the legal orders of his superiors.
7. That applicant will try his level best to avoid such like complaints in future who remained a dutiful person and being a poor person has got no other source to feed his family who is the sole bread earner of his family.
8. THAT your esteemed position is the only ray of light for applicant to get a merited and sympathetic decision in his favour who puts himself at the mercy of your kind self.
9. That the applicant requests for beg your pardon and would refrain from any acts leading to such like situations.
10. That the show cause notice has been received by the applicant a few days back hence the reply is within time.

If in future most humbly prayed that on acceptance of this reply the show cause notice against the applicant may graciously be withdrawn and the applicant may be allowed to serve as regular employee.

Dated :

Faithfully Yours


FC A/c # 1928 R/O presently
 Taru Jappa, District Nowshera.

To,

THE WORTHY SUPERINTENDENT OF POLICE HEADQUARTERS,
PESHAWAR.

Anextur
CC

40

Subject: REPLY TO SHOW CAUSE NOTICE # 62 / PA SP/ HQ DATED PESHAWAR.

Respected sir,

That the applicatn humbly submits as under:-

1. That the app;icant was enrolled in the police Department and after under going the requisite training joined the regular service.
2. That at the relevant time posting at police station pahari pura, peshawar the applicant was on leave prior to the relevant days as the applicant was suffering from chronic mental disease and was unable to live a normal life hence the applicant could not attend his service during the relevant days. But as submitted above that the applicant was already on leave and he was not properly intimated about his duty in muharram days.
3. That due to the above disease the applicant was shifted to his native village at para chinar, kurram Agency where he had to stay for a long time as the applicant was stuck into curfio due to Muharram days hence was unable to come back as all the entry and exit routes were blocked. It is to mention here that the applicant submitted application fro sick leave but the same was also not entertained.
4. THAT the absence of applicant was not intentional but due the above reason hece the same may graciously be taken into consideration while deciding the matter.

Attested
Signature

5. That applicant has never ever done any thing wrong throughout his service career which could bring bad name to the department hence a most lenient view may kindly be taken while deciding the matter.
6. THAT applicant shall be careful in future and shall serve the department with his heart and sole who shall respect his superiors and shall abide by all the legal orders of his superiors.
7. That applicant shall try his level best to avoid such like complaints in future who remained a dutiful person and being a poor person has got no other source to feed his family who is the sole bread earner of his family.
8. THAT your esteemed position is the only ray of light for applicant to get a merciful and sympathetic decision in his favour who puts himself at the mercy of your kind self.
9. That the applicant requests for beg your pardon and would refrain from any acts leading to such like situations.
10. That the show cause notice has been received by the applicant a few days back hence the reply is within time.

It is, therefore, most humbly prayed that on acceptance of this reply the show cause notice against the applicant may graciously be withdrawn and the applicant may be allowed to serve as regular employee.

Dated :

Faithfully Your's

Asif
Asif

FC Asif # 1958 R/O presently
Taru Jabba, District Nowshera.

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To,

The Inspector General of Police,
(KPK) Peshawar

Subject: Departmental Appeal against the order No. 3334-41/PA/SP dated 27.08.2014 (Copy annexed hereto marked A) issued from the office of Superintendent of Police, Headquarters, Peshawar, whereby the appellant has been dismissed from service.

Respected Sir,

The appellant states as under:

That the appellant was enrolled in the Police department and after under going the requisite training joined the regular service.

: -
That at the relevant time posting at police Station Pahari Pura, Peshawar the appellant was on leave prior to the relevant days as the appellant was suffering from Chronic Mental Disease and was unable to live a normal life, hence the applicant could not attend his service during the relevant days. But as submitted above that the appellant was already on leave and he was not properly intimated about his duty in Muharram days.

That due to the above disease the appellant was shifted to his native village at Parachinar, Kurram Agency where he had to stay for a long time as the appellant was stuck into curfio due to Muharram days hence was unable to come back as all the entry and exit routes were blocked.

Attested

[Signature]

It is to mention here that the appellant submitted application for sick leave but the same was also not entertained.

That the absence of appellant was not intentional but due to the above reason hence the same may graciously be taken into consideration while deciding the matter.

That appellant has never ever done anything wrong throughout his service career which could bring bad name to the department, hence a most lenient view may kindly be taken while deciding the matter.

That appellant shall be careful in future and shall serve the department with his heart and soul who shall respect his superiors and shall abide by all the legal orders of his superiors.

Attested
Hijra

That appellant shall try his level best to avoid such like complaints in future who remained a dutiful person and being a poor person has got no other source to feed his family who is the sole beard earner of his family.

That your esteemed position is the only ray of light for appellant to get a merciful and sympathetic decision in his favour who puts himself at the mercy of your kind self.

That the appellant requests ^{and} ~~for~~ beg your pardon and would refrain from any acts leading to such like situations.

That the show cause notice has been received by the appellant a few days back hence the reply is within time.

That the appellant filed departmental presentation but the same has not been taken into consideration rather been totally ignored, hence illegality has been committed as the appellant was condemned unheard.

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It is, therefore, humbly requested that on acceptance of this appeal dismissal order from service of appellant may kindly be set aside and he may be restored on his post.

Dated: 02.09.2014

Appellant

Asif

Asif

Constable No. 1958

Presently at Taru Jabba,

District Nowshera

*Attested
Hijran*



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

No. SI/ 4537 /16, dated Peshawar the 21-c 6 /2016.

ORDER

This order is hereby passed to dispose of departmental appeal under Rule 11-A of Khyber-Pakhtunkhwa Police Rule-1975 submitted by Ex-Constable Asif Ali No. 1958. The appellant was dismissed from service by SP/HQrs: Peshawar vide OB No. 2606, dated 27.08.2014, on the charge of absence from duty for 13 months and 16 days.

His appeal was rejected / filed by CCPO/Peshawar vide order Endst: No. 513-18/PA, dated 03.03.2015.

Meeting of Appeal Board was held on 26.05.2016 wherein appellant was heard in person. During appearance petitioner contended that he was ill.

Owing to his long service of 11 years in Police, the Board converted his punishment of dismissal from service into compulsory retirement.

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

Attested
Hujain
Najeeb
(NAJEEB-UR-REHMAN BUGVI)
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

SI/ 4538-44 /16,

Copy of the above is forwarded to the:

1. Capital City Police Officer, Peshawar.
2. SP/HQrs, Peshawar.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. Office Supdt: E-IV CPO Peshawar.
7. Central Registry, CPO.



OFFICE OF THE
CAPITAL CITY POLICE OFFICER
PESHAWAR

18

No.

/CRC, dated Peshawar

/

/2016

To: The Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.


Subject: Applications of Ex-Head Constable/Constable

Memo: 2/

Kindly refer CPO memo: No. S/6442-47/15,
dated 29.12.2015 on the subject noted above.

1. In this connection, it is submitted that Ex-Constable Asif No. 1958 has not instituted any service appeal in Service Tribunal, Khyber Pakhtunkhwa, Peshawar.
2. It is therefore, requested that his case may please be re-considered in Departmental Appeal Board of Police, please.

S. R. 2016
FMC
E/P


SP/Hqs:
For CAPITAL CITY POLICE OFFICER,
PESHAWAR

Mustaf
Hijam

10 روپے



60912

ایڈووکیٹ/دستخط: _____
بار کونسل اہار ایسوسی ایشن پشاور
رابطہ نمبر: 63018902621

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: روس ٹریٹل جم صاحب کے

<p>منجانب: جم صاحب</p> <p>افضل کمان بنام</p>	<p>دعویٰ: _____ علت نمبر: _____ مورف: _____ جرم: _____ تھانہ: _____</p>
بابت تحریر آنکہ	

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دی کارروائی متعلقہ ایڈووکیٹ محمد یار ایڈووکیٹ
 ان مقام کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو
 راضی نامہ کرنے و تقریر جانک و فیصلہ برطاعت دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
 زریں مدد خطا کرنے کا اختیار ہوگا، نیز ضرورت ہوتی ہے پیروی یا اپیل کی یا آمدگی اور منسوخی، نیز
 دائر کرنے اپیل عمرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور ضرورت ہوتی ہے مقدمہ مذکورہ کے کل یا جودی
 کارروائی کے واسطے اور وکیل یا اختیار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہو گا اور صاحب
 مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساتھ پر داختم منظور و قبول ہو گا دوران مقدمہ
 میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہو گا وہ وکیل موصوف و قبول کرنے کا اختیار ہوگا کوئی تاریخ پیشی مقام
 دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ اپنے پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ مندر ہے۔

المرقوم: 30

الع بد — واہ شد — الع بد

مقام کے لئے

نوٹ: اس جملہات بار کی ذمہ داری کا حامل قبول ہوگی

Accepted by my name

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No.839/2016.

Asif Ex- Constable No.1958 Police Line Peshawar.....Appellant.

VERSUS.

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Superintendent of Police, Hqrs, PeshawarRespondents.

Reply on behalf of Respondents No. 1 & 2.

Respectfully Sheweth:-

PRELIMINARY OBJECTIONS.

1. That the appeal is badly time barred.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has not come to this Hon'able Tribunal with clean hands.
4. That the appellant has no cause of action.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from Honorable Tribunal.
7. That this Hon'ble tribunal has no jurisdiction to entertain the appeal.

FACTS:-

- 1- Para No. 1 pertains to record, hence needs no comments.
- 2- Para No. 2 is totally incorrect and denied. In fact the appellant has a bad service record. During his service he earned several bad entries including several minor and major punishments.
- 3- Para No. 3 is totally incorrect and denied. In fact the appellant while posted at Police Lines, and PS Phari Pura Peshawar absented himself from duty w.e.f 17.06.2013 to 08.07.2013, 27.07.2013 to 31.07.2013, 05.08.2013 to 27.08.2014 (total 13 months and 16 days) without taking permission/leave.
- 4- Para No. 4 is totally incorrect. Infact the appellant was proceeded departmentally on allegations of wilfull absence from duty. He was called time and again to appear before the enquiry officer and defend himself but he failed to appear before the enquiry officer. The enquiry officer after fulfilling all codal formalities recommended him for major punishment. As the charges of deliberate absence were stand proved against him, hence he was awarded major punishment of dismissal from service under PR 1975 by SP/HQrs: Peshawar vide OB No. 2606 dated 27.08.2014.
- 5- Para No. 5 is correct to the extent that the appellant filed a departmental appeal to the CCPO with was also rejected/filed, he them filed an appeal before the W/PPO which was partially accepted and his punishment was

modified and major punishment of dismissal from service was converted into compulsory retirement from service.

6- Para No. 6 is incorrect and denied. In fact the appellant did not approach to the department for attested copies.

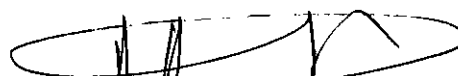
7- Para No. 7 not related. Hence needs no comments.

GROUND:-

- a. Incorrect. The punishment orders are in accordance with law/rules.
- b. Incorrect. The appellant wilfully absented himself from duty without taking permission/leave.
- c. Incorrect. Para already explained above in detail.
- d. Incorrect. The appellant deliberately absented himself from his lawful duty without taking permission/leave.
- e. Incorrect. As above.
- f. Incorrect. In fact the appellant has a blemished service record. It is his second major punishment on the same allegations.
- g. Incorrect. The appellant is a habitual absentee and despite repeated warnings and punishments, he did not mend his ways.
- h. Incorrect. As above.
- i. Incorrect. The appellant being a habitual absentee does not deserve any leniency.
- j. Incorrect. The appellant made a representation but after due consideration was reject/filed. He was also called and heard in person in Orderly Room on 27.02.2015.
- k. Incorrect. The appellant was treated as per law/rules.
- l. Incorrect. As above.
- m. Incorrect. Para already explained above in detail.
- n. Incorrect. The appellant has a blemished service record.
- o. That respondents also seek permission of this Honorable Service Tribunal to raise additional grounds at the time of arguments.

PRAYER.

It is therefore most humbly prayed that in light of above facts and submissions, the appeal of the appellant being devoid of merits and legal footing, may kindly be dismissed.


**Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.**


**Superintendent of Police,
HQs, Peshawar.**

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No.839/2016.

Asif Ex- Constable No.1958 Police Line Peshawar.....Appellant.

VERSUS.

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Superintendent of Police, HQrs, PeshawarRespondents.

AFFIDAVIT

We respondents No. 1 & 2 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal.


**Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.**


**Superintendent of Police,
HQrs, Peshawar.**

ORDER

This is an office order for the disposal of the departmental proceedings against Constable Asif No. 2488 while posted to Police Station Mathra who remained absent from his lawful duties without any information/permission from his seniors w.e.f. 21-01-2009 to 02.03.2009 (39 Days).

On the basis of the above mentioned allegations, disciplinary proceedings were initiated against him and he was issued Charge Sheet along-with Statement of allegations. SDPO/Saddar Circle was appointed as enquiry officer.

Findings of the E.O, SDPO/Saddar Circle was received and perused by the undersigned, the defaulter Constable Asif No. 2488 was found guilty and the enquiry officer recommended him for major punishment (Dismissal from Service). As per findings of the Enquiry officer, he was issued Charge Sheet vide No. 30/PA, SP/Rural, dated: 13-03-2009 but he did not bother to submit his reply which clearly shows his attitude towards discipline.

I have gone through the case file and perused the record. Keeping in view the recommendation of the enquiry officer and the record also shows him habitual absentee and malinger official and his period of absentia ie 1 Month & 9 Days. Therefore, I, being the competent authority agree with the recommendation of the Enquiry Officer. Therefore, Constable Asif No. 2488 is hereby awarded major punishment of dismissal from service and period of his absence is counted as leave without pay.

Order announced.

3006
RATED - 9 - 20/0

(SYED ABDUL KALAM)
Superintendent of Police Rural,
Peshawar.

No. 30 /S.P: Rural: dated Peshawar, the 1-9 /2010.

Copy for information and necessary action to the:-

- 1 . SSP Operations Peshawar
- 2 . SP HQrs:
- 3 . Pay Officer.
- 4 . CRC.
- 5 . OASI Branch.
- 6 ✓ Fauji Missal Branch with enquiry report for record

(10)

(Handwritten signature)

(Handwritten signature and initials)

This order will dispose off departmental enquiry against the
table Asif No. 2488 on the grounds that he while posted
at Police Station Banaman, Peshawar absented himself from his duty with
effect from 15.8.08 to date without leave & permission by his seniors.

Accordingly, he was issued charge sheet with statement of
allegations and SP/HQrs & DSP/Legal were appointed as Enquiry Officers.
Findings of the Enquiry Officers received in which he was found
guilty and recommended for major punishment.

He was issued Final Show Cause Notice to fulfill the procedure &
legal formalities but he is still at large and there is no possibility of his return back to
join his duty back in the near future.

I have gone through the case file and perused the whole record
thoroughly, also recommendation for major punishment, which shows that he has
tarnished the image of Police Force in the eyes of general public.

Therefore, being found guilty of gross mis-conduct, an exparte
action is being taken against him, he is hereby awarded the major punishment of
dismissal from services from the date of his absence under the Rules Removal from
Service (Special Powers Ordinance) 2000 with immediate effect.

**SR: SUPERINTENDENT OF POLICE,
OPERATIONS, PESHAWAR.**

O.B.No. 2754

Dated 13-9- /2008.

NO. 878-81 /PA, DT: 12/09 /08.

Copy to for information & n/action to:-


1. The Capital City Police Officer, Peshawar.
2. The SP/HQrs SP/City DSP/Legal & DSP/HQrs
3. Pay Officer, CRC, OASI, FMC with enquiry papers.
4. I/C Clothing Godown to collect Govt: articles from him.

73

ORDER

Constable Asif No.1958 of Capital City Police Peshawar while posted at Police Lines, Peshawar absented himself from duty from 21.10.2012 to 01.11.2012 (11-days) without taking permission or leave.

In the light of recommendations of E.O, his period of absence from 21.10.2012 to 01.11.2012 is treated as leave without pay and warned to be careful in future.


SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR

ErCP
(46)

OB NO. 1785
Dated 20/5/2013

No. 1811-15 /PA/SP/HQrs: dated Peshawar the 20/5 /2013.

Copies to:

- ✓ DSP/HQrs: Peshawar
- ✓ Pay Officer/ I/C DAR, Peshawar
- ✓ OASI, CRC & FMC along-with complete departmental file.
- ✓ Officials concerned.

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal # 839 Of 2016

Asif ex-constable

Versus

Provincial police officer and another

REJOINDER FOR AND ON BEHALF OF APPELLANT TO THE REPLY OF RESPONDENTS

PRELIMINARY OBJECTIONS :-

In reply to all the preliminary objections it is stated that the preliminary objections taken in reply of respondents are not relevant with the facts and circumstances of the case, hence are denied as laid.

ON FACTS :-

1. Para # 1 of the reply needs no reply.
2. Para # 2 of the reply is incorrect, misconceived, unwarranted and unauthorised hence vehemently denied as laid. The allegations levelled in this para are bald in nature which are not supported through any documentary proof.
3. Para # 3 of the reply is incorrect while para # 3 of the appeal is correct and is based on true and actual facts.
4. Para # 4 of the reply is incorrect and against the facts. When appellant filed his reply to show cause notice he was waiting for the call of respondents for personal hearing but he was personally heard and the order of dismissal was passed without hearing the appellant.
5. Para # 5 of the reply is incorrect and against the record. The departmental appeal was filed on 02-09-2014 which was also once decided ex parte as is mentioned in the order dated 21-06-2016 but later on the appellant was heard in person and his plea of illness was believed hence his punishment of dismissal from service was converted to compulsory retirement.
6. Para # 6 of the reply is also incorrect and against the facts hence denied as laid.
7. Para # 7 of reply needs no comments.

9 **GROUNDS**

- a. Para # (a) of the grounds is correct while reply of the respondents is denied as laid.
- b. Para # (b) of the grounds is correct while reply of the respondents is denied as laid.
The appellant was already on leave due to his illness and during his leave he was called for duty in muharram days while the appellant was taken to his native village PARACHINAR where he was kept under treatment and the appellant was not served about joining of his duties. The plea of illness was also taken into consideration by the Appeal Board who also heard the appellant in person and had believed his stance of illness. Now the appellant is healthy and fit for his service who earlier had also rendered his services with full zeal and enthusiasm. The appellant is young, energetic and honest police official who had joined the police service out of his passion and fervour for the job.
- c. Para # (c) of the grounds is correct while reply of the respondents is denied as laid.
- d. Para # (d) of the grounds is correct while reply of the respondents is denied as laid.
- e. Para # (e) of the grounds is correct while reply of the respondents is denied as laid.
- f. Para # (f) of the grounds is correct while reply of the respondents is denied as laid.
- g. Para # (g) of the grounds is correct while reply of the respondents is denied as laid.
- h. Para # (h) of the grounds is correct while reply of the respondents is denied as laid.
- i. Para # (i) of the grounds is correct while reply of the respondents is denied as laid.
- j. Para # (j) of the grounds is correct while reply of the respondents is denied as laid.
- k. Para # (k) of the grounds is correct while reply of the respondents is denied as laid.
- l. Para # (l) of the grounds is correct while reply of the respondents is denied as laid.
- m. Para # (m) of the grounds is correct while reply of the respondents is denied as laid.
- n. Para # (n) of the grounds is correct while reply of the respondents is denied as laid.
- o. Para # (o) needs no reply.

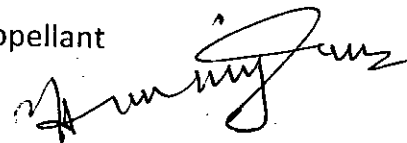
It is therefore, most humbly prayed that on acceptance of this appeal the punishment of compulsory retirement may graciously be set aside and the appellant be re-instated in service with all back benefits.

Any other relief which has not been specifically asked for may also be granted in the fitness of the things as deemed proper by this August Tribunal.

Dated: 08/10/2017

Through

Appellant



Mian Hikmatullah Jan

Advocate

High Court, Peshawar.

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal # 839 Of 2016

Asif ex-constable

Versus

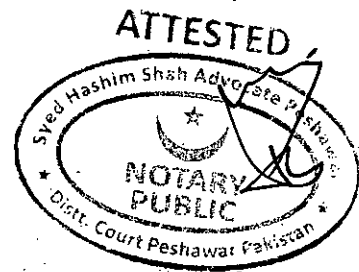
Provincial police officer and another

AFFIDAVIT

I, Asif (Ex – Constable No. 1958) in Khyber Pakhtunkhwa Police Department R/O Taru Jabba, Mohallah Malikan, District Nowshera, do hereby solemnly affirm and declare that the contents of this rejoinder are true and correct to the best of my knowledge and belief.



Deponent



18 DEC 2017