

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 329/2019

Date of Institution ... 20.02.2019

Date of Decision ... 05.01.2022

Jan Azam Khan S/o Pir Badshah R/o Chambai, Kohat, Ex-Constable No. 610, Police line, Kohat. ... (Appellant)

VERSUS

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

Naila Jan,
Advocate ... For Appellant .

Muhammad Adeel Butt,
Additional Advocate General ... For respondents

AHMAD SULTAN TAREEN ... **CHAIRMAN**
ATIQU-UR-REHMAN WAZIR ... **MEMBER (EXECUTIVE)**

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the

case are that the appellant joined Police Department in 2006. During the course of his service, the appellant was proceeded against on the charges of absence and was ultimately removed from service vide order dated 27-01-2010. Feeling aggrieved, the appellant filed departmental appeal, which was not responded, hence the appellant filed Service Appeal No. 1381/2017, which was decided by this Tribunal vide judgment dated 19-09-2018 with direction to the respondents to consider departmental appeal of the appellant as pending and to decide it through a speaking order within a period of three months. The departmental appeal of the appellant was rejected vide order dated 16-01-2019, hence the instant service appeal with prayers that the impugned order may be set aside and the appellant may be re-instated in service with all back benefits.

02. Leaned counsel for the appellant has contended that absence of the appellant was not willful but due to illness of his brother at Dubai, for which the appellant requested for ex-Pakistan leave, which was delayed but the appellant was required to move to Dubai in order to look after his ailing brother; that the appellant was not re-instated into service after remand of the case to respondents and his appeal was dismissed in an illegal manner; that absence of the appellant was treated as leave without pay, hence there was no ground available for respondents to remove him from service; that in the impugned order previous issues have also been reflected, for which the appellant was already penalized.


03. Learned Additional Advocate General for the respondents has contended that the appellant during his two years service, willfully absented himself from lawful duty with effect from 17-08-2008 to 21-03-2009; that the appellant was proceeded departmentally and while taking a lenient view awarded him minor penalty of censure vide order dated 09-07-2009; that the appellant had not move any application for ex-Pakistan leave and proceeded abroad without leave or NOC; that the appellant already admitted his guilt of proceeding abroad without permission of the competent authority; that departmental appeal of the appellant was examined and the appellant was afforded opportunity to defend his cause but the appellant badly failed to prove his innocence; that the appellant was issued proper charge sheet/statement of allegation, which were served at his home address; that father of the appellant admitted that his son has gone abroad and is no more interested in police job; that the appellant was called in person and he himself admitted that he had gone abroad without permission; that during short span of his service, the appellant once absented himself from service for the period of seven months and again for seven months till conclusion of the inquiry conducted against him; that his absence period was treated as leave without pay on the well established principle of no work no pay.


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

05. Record reveals that earlier the appellant was proceeded against properly in accordance with law and was dismissed from service 27-01-2010. The service tribunal in his service appeal No 1381/2017 decided on 19-09-2018 condoned the limitation on the ground that his dismissal order was passed with retrospective effect. The appellant was afforded another opportunity to defend his cause by treating his service appeal as departmental appeal, where the appellant admitted the fact, that he had gone to Dubai without permission and without obtaining Noc. In a situation, his departmental appeal was rejected and no relief was granted to him.

06. In his instant service appeal, the appellant again admitted that he had gone to Dubai for quite longer time and that too without obtaining permission from the competent authority. In a situation, we did not notice any irregularity in the proceeding conducted against the appellant, hence does not warrant any interference. As sequel to above, we are constrained to dismiss the instant appeal with no orders as to costs. File be consigned to record room.

ANNOUNCED
05.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


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

ORDER

05.01.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, we are constrained to dismiss the instant appeal with no orders as to costs. File be consigned to record room.

ANNOUNCED

05.01.2022



(AHMAD SULTAN TAREEN)
CHAIRMAN

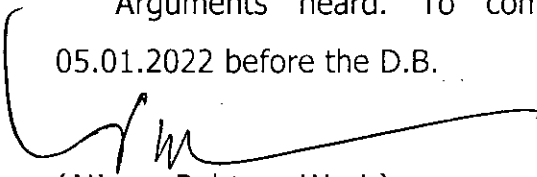


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

23.12.2021

Counsel for the appellant and Mr. Muhammad Adeel Butt, Addl. AG alongwith Arif Saleem, Steno for the respondents present.

Arguments heard. To come up for order on 05.01.2022 before the D.B.


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


Chairman

12.02.2021

None for the appellant present. Adl: AG alongwith Mr. Arif Saleem, Steno for respondents present.

Arguments could not be heard due to general strike of the Bar.

Adjourned to 07.05.2021 for arguments before D.B.

(Mian Muhammad)
Member (E)

(Muhammad Jamal Khan)
Member(J)

7-5-21

due to COVID-19, the case is adjourned to 6-9-2021 for the same.

09.06.2021

Nemo for appellant.

Kabir Ullah Khattak learned Additional Advocate General alongwith Ishaq Gul D.S.P (Legal) for respondents present.

The last date was adjourned due to Note Reader. Notice be given to appellant his counsel for the next date. To come up for arguments on 23.12.2021 before D.B.

(Rozina Rehman)
Member (J)

Chairman

Noted by Nadeem Khan 15/09/2021

18.09.2020

Counsel for appellant present.

Mr. Kabirullah Khattak learned Additional Advocate General for respondents present.

Former requests for adjournment. Adjourned. To come up for arguments on 20.11.2020 before D.B.



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



(Rozina Rehman)
Member (J)

20.11.2020

Appellant present through counsel.

Kabir Ullah Khattak learned Additional Advocate General alongwith Arif Salim Stenographer for respondents present.

A request for adjournment was made as issue involved in the present case is pending before Larger Bench. Adjourned. To come up for arguments on 12.02.2021 before D.B.



(Atiq ur Rehman Wazir)
Member (E)



(Rozina Rehman)
Member (J)

01.04.2020 Due to public holiday on account of COVID-19, the case is adjourned to 11.06.2020 for same as before.


Reader

11.06.2020 Appellant alongwith counsel and Mr. Kabirullah Khattak, Additional AG for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned to 21.08.2020 for arguments before D.B.


(Mian Muhammad)
Member


(M. Amin Khan Kundi)
Member

21.08.2020 Due to summer vacation case to come up for the same on 18.09.2020 before D.B.


Reader

27.09.2019

Learned counsel for the appellant present. Mr. Kabirullah Khattak learned Additional Advocate General alongwith Mr. Bilal Ahmed Head Constable for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 15.11.2019 before D.B.



(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

15.11.2019

Appellant alongwith counsel and Mr. Riaz Ahmad Paindakheil, Assistant AG for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 14.01.2020 for arguments before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

14.01.2020

Due to general strike on the call of Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Ziaullah, Deputy District Attorney alongwith Mr. Arif Saleem, ASI for the respondents present. Adjourned to 27.02.2020 for arguments before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

27-2-20

The learned Member s. is
on tour therefore case is
adjourned to 1-4-2020


Reader

15.05.2019

Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Mufariq Shah H.C present. Written reply submitted. To come up for rejoinder/arguments on 28.06.2019 before D.B.



Member

28.06.2019

Appellant alongwith her counsel and Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Bilal Ahmad, Head Constable for the respondents present. Record reveals that the departmental appeal of the appellant is not available on record. Representative of the department is directed to furnish the copy of departmental appeal as well as inquiry record in the next date. Adjourned to 22.08.2019 for record and arguments before D.B.



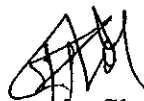
(HUSSAIN SHAH)
MEMBER



(M. AMIN KHAN KUNDI)
MEMBER

22.08.2019

Learned counsel for the appellant present. Mr. Kabirullah Khattak learned Additional Advocate General alongwith Mr. Ishaq Gul DSP for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 27.09.2019 before D.B.



(Hussain Shah)
Member




(M. Amin Khan Kundi)
Member

19.03.2019 Learned counsel for the appellant present. Preliminary arguments heard.

The appellant in the last round of litigation obtain order of this tribunal vide judgment dated 19.09.2018 in service appeal No.1381/2017 wherein the Hon'ble tribunal set aside the order of the appellate authority and asked the concerned authority to decide the departmental appeal of the appellant through a speaking order. Accordingly the appellate authority reconsidered the said appeal and was dismissed vide order dated 16.01.2019 on the ground of having no merit and badly time barred. Feeling aggrieved the appellant filed revision petition which was rejected on 06.02.2019, hence preferred the instant service appeal on 20.02.2019.

Points raised need consideration. The appeal is admitted for regular hearing. Subject to all legal objections. The appellant is directed to deposit security and process fee within ten (10) days. Thereafter notices be issued to the respondents for written reply/comments. To come up for written reply/comments on ^{18.04.2019} 06.05.2019 before S.B


Appellant Deposited
Security & Process Fee


Member.



18.04.2019 Clerk to counsel for the appellant present. Written reply not submitted. Ishan Gul DSP (Legal) representative of the respondent department absent. He be summoned with direction to furnish written reply/comments. Adjourn. To come up for written reply/comments on 15.05.2019 before S.B.


Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 329/2019

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|---|
| 1 | 2 | 3 |
| 1- | 05/03/2019 | <p>The appeal of Mr. Jan Azam resubmitted today by Naila Jan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR 5/3/19</p> |
| 2- | 11/03/19. | <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>19/03/19</u>.</p> <p> CHAIRMAN</p> |

The appeal of Mr. Jan Azam Khan Ex-Constable N. 610 Police Line Kohat received today by i.e. on 20.02.2019 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Annexures-A, F & G of the appeal are missing.
- 2- Copy of removal order dated 16.10.2009 mentioned in the memo of appeal is not attached with the appeal which may be placed on it.
- 3- Copies of order dated 27.01.2010, 02.12.2016 and 13.11.2017 mentioned in prayer of the memo of appeal are not attached with the appeal which may be placed on it.

No. 296 /S.T,

Dt. 20/2/2019

Naila Jan Adv. Peshawar.

[Signature]
REGISTRAR 20/2/19
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

*Returned as per objection
and resubmitted
by Naila Jan
20/2/2019
[Signature]*

**BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR**

S.A. 329 /2019

Jan Azam

VERSUS

Provincial Police, Officer Khyber Pakhtunkhwa and
others

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| 9. | Copy of order | "G" | |
| 10. | Wakalat Nama | | |

Dated: 20/02/2019


Appellant

Through


NAILA JAN

Advocate, High Court
Peshawar.

D

**BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR**

S.A. 329 /2019

Khyber Pakhtukhwa
Service Tribunal

Diary No. 247

Dated 20/2/19

Jan Azam Khan S/O Pir Badshah R/O Chambai,
Kohat, Ex-Constable No.610, Police line, Kohat.

(Appellant)

VERSUS

1. Provincial Police, Officer, Khyber
Pakhtunkhwa, Peshawar
2. Regional Police officer Kohat Region Kohat.
3. District Police officer Kohat.

(Respondents).

**APPEAL U/S 4 OF THE KHYBER
PAKHTUNKHWA SERVICES TRIBUNAL ACT,
1974 AGAINST OB NO. 93 DATED 27/01/2010 OF
R.NO. 1 WHEREBY APPELLANT WAS REMOVED
FROM SERVICE WITH EFFECT FROM 16/10/2009
OR OFFICE ORDER NO.14143/EC DATED
02/12/2016 OF THE RESPONDENT.NO.2
WHEREBY REPRESENTATION OF APPELLANT
WAS REJECTED OR OFFICE ORDER
NO.S/7266/17 DATED 13/11/2017 WHEREBY
REVISION PETITION OF APPELLANT WAS
FILED FOR NO LEGAL REASON**

PRAYERS:-

**ON ACCEPTANCE OF THE INSTANT APPEAL
THE IMPUGNED ORDERS DATED 27-01-2010,**

Filed to-day
Registrar
20/2/19

Re-submitted to-day
and filed.

Registrar
5/3/19

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02-12-2016, 13-11-2017 and order dated
16/01/2019 and 06/02/2019 MAY KINDLY BE SET
ASIDE AND THE APPELLANT MAY KINDLY
BE REINSTATED INTO SERVICE WITH ALL
BACK BENEFITS.

Respectfully Sheweth,

The appellant submits as under:-

1. That appellant was appointed as constable in Police department on 02/06/2006.
2. That since his appointment till his removal from services, the appellant performed his duty to best of his ability and has not given any chance of displeasure his superiors.
3. That the appellant was removed from services on the score of absence from duty but such absence was not deliberate and illegal but the appellant moved application for Ex-Pakistan leave as his brother was ill and was under treatment in Dubai, so was under dire need of appellant services. (Copy of order of

removal dated 16/10/2009 is annexed as annexure "A")

4. That the appellant moved departmental appeal to the RPO who rejected the same on the ground of limitation.

5. That the appellant moved/preferred services appeal to the humble Service Tribunal Khyber Pakhtunkhwa which remanded the case to the Hon'ble RPO for decision on merits as void order cannot be dismissed on the ground of limitation as there is no limitation against void order. **(Copy of Judgment dated 19/09/2018 is annexed as annexure "B")**

6. That after remanded of the case, the learned RPO without reinstating the appellant into service again dismissed the Departmental appeal of the appellant on the merits as well as limitation. **(Copy of appellate order 16/01/2019 is annexed as annexure "C")**

7. That feeling aggrieved the appellant filed revision petition which was rejected vide order dated 06/02/2019. **(Copy of the**

MF

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petition and order is annexed as annexure
"D & E")

8. That feeling aggrieved from the above orders. The appellant having no other remedy filing the appeal inter alia on the following grounds:-

GROUND:-

- A. That the absence was not deliberate but was due to the illness of his brother at Dubai for which the appellant moved Ex-Pakistan leave but the appellant had to leave for Dubai due to illness of his brother.
- B. That the appellant has not been treated in accordance with law and Rules and was subjected to discrimination hence violation of Article 4 and 25 of the constitution of Islamic Republic of Pakistan 1973.
- C. That the appellant was not reinstated into service after remand of the case to RPO Kohat and his appeal was dismissed in an illegal manner.
- D. That no chance of personal hearing/defense has been provided to the appellant further the appellant has not been provided opportunity of

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fair trial as guaranteed by Article 10-A of the Constitution of Islamic Republic of Pakistan 1973.

E. That the absence was treated as leave without pay so there was no ground available to the RPO for dismissing his appeal because the absence was regularized.

F. That in the impugned order previous issue was also mentioned for which minor punishment of censure was imposed upon the appellant, but such findings are not according to facts of the case as in this period, the five days i.e. from 17/08/2008, the appellant remained with injured constable Amal Gul No.500 and from dated 22/08/2008 to 21/03/2009, the appellant was ill and was treated in Hospital. ~~Copy of description of the Hospital is annexed as annexure (F2)~~

G. That similar placed employees namely Qasim No.52/702, Asif C No.1084/1250, Adeel Ahmad C No.39.63, Abdur Rehman 1114/1116 Farooq, 989 Javed were reinstated by the Tribunal as well as by Department and are serving the Department so no discriminating treated be given to appellant. ~~Copy of order is annexed as annexure (G)~~

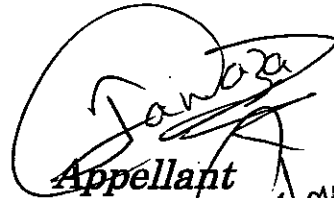
GR
WR

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It is, therefore, most humbly prayed that on acceptance of the instant appeal the impugned orders dated 27-01-2010, 02-12-2016, 13-11-2017 and order dated 16/01/2019 and 06/02/2019 may kindly be set aside and the appellant may kindly be reinstated into service with all back benefits.

Any other relief not specifically asked for may also graciously be extended in favour of the appellant in the circumstances of the case.

Dated: 20/02/2019


Appellant

Through


NAILA JAN

Advocate, High Court
Peshawar.

NOTE:-

No such like appeal for the same appellant, upon the same subject matter has earlier been filed by me, prior to the instant one, before this Hon'ble Tribunal.


Advocate

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**BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR**

S.A _____/2019

Jan Azam

VERSUS

Provincial Police, Officer Khyber Pakhtunkhwa and
others

AFFIDAVIT

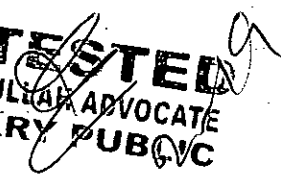
I, Jan Azam Khan S/O Pir Badshah R/O Chambai, Kohat,
Ex-Constable No.610, Police line, Kohat, do hereby
solemnly affirm and declare that all the contents of the
accompanied appeal are true and correct to the best of my
knowledge and belief and nothing has been concealed or
withheld from this Hon'ble Tribunal.


DEPONENT

Identified By;


NAILA JAN

Advocate High Court
Peshawar.


ATTESTED
IRFAN ULLAH ADVOCATE
NOTARY PUBLIC

26-1

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**BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR**

S.A. _____/2019

Jan Azam

VERSUS

Provincial Police, Officer Khyber Pakhtunkhwa and
others

ADDRESSES OF PARTIES

APPELLANT.

Jan Azam Khan S/O Pir Badshah R/O Chambai,
Kohat, Ex-Constable No.610, Police line, Kohat.

RESPONDENTS

1. Provincial Police, Officer Khyber Pakhtunkhwa,
Peshawar
2. Regional Police officer Kohat Region Kohat.
3. District Police officer Kohat.

Dated: 20/02/2019


Appellant

Through


NAILA JAN

Advocate, High Court
Peshawar.

ORDER

This order is passed on departmental enquiry against Constable Jan Azam No. 610. He was charged to the effect that while posted at Police Lines Kohat he absented himself w.e.f. 16.10.2009, till to date with out any leave or permission.

Charge Sheet and summary of allegations were sent to his home through RI Police Lines Kohat but he intentionally did not received the Charge Sheet, make any arrival report at Police Lines Kohat nor attended the enquiry proceedings.

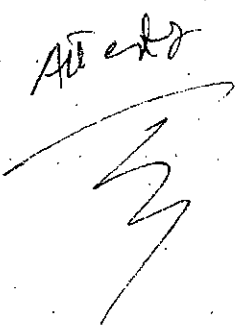
In view of the above, no other option is left except to proceed against Constable Jan Azam No. 610 Ex-parte under the NWFP Removal From Service (Special Powers) Ordinance 2000 and DSP HQrs was appointed enquiry officer who submitted his findings and recommended one of a major punishment of Removal From Service to the defaulter constable.

Since by remaining absent from duty without leave or permission he has proved himself as inefficient, in disciplined, guilty of misconduct and a mere burden on the Police department, therefore, in exercise of the powers conferred by Section 3 of the NWFP Removal From Service (Special Powers) Ordinance 2000, Constable Jan Azam No. 610 is removed from service w.e.f. 16.10.2009.

OB No 93
Dated 27/1/10


DISTRICT POLICE OFFICER,
KOHAT

30-1-10
C/S
S/S
S/S



Amir B



BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A No. 1381 /2017

Jan Azam Khan S/O. Pir Badshah,
R/o Chambai, Kohat, Ex-Constable
No. 610 Police Line, Kohat Appellant

VERSUS

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1407

Dated 11-12-2017

- 1. District Police Officer, Kohat.
- 2. Regional Police Officer,
Kohat Region, Kohat.
- 3. Provincial Police Officer,
KP, Peshawar. Respondents

⇔<=>⇔<=>⇔<=>⇔<=>⇔

APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT,
1974 AGAINST OB NO. 93 DATED 27-01-2010 OF
R. NO. 1 WHEREBY APPELLANT WAS REMOVED
FROM SERVICE WITH EFFECT FROM 16-10-2009
OR OFFICE ORDER NO. 14143 / EC DATED 02-12-
2016 OF R. NO. 2 WHEREBY REPRESENTATION OF
APPELLANT WAS REJECTED OR OFFICE ORDER NO.
S / 7266 / 17 DATED 13-11-2017 WHEREBY
REVISION PETITION OF APPELLANT WAS FILED
FOR NO LEGAL REASON:

ATTESTED

[Signature]
 REGISTRAR
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

Filed to-day
[Signature]
 Registrar
 11/12/17

⇔<=>⇔<=>⇔<=>⇔<=>⇔

Respectfully Sheweth:

Short facts giving rise to the present appeal are as under:-
 That appellant was appointed as Constable on 02-06-2006 and served the department to the best of his ability and with devotion.
 That on 13-11-2009, appellant was served with Charge Sheet and Statement of Allegations that he absented from official duty without

[Handwritten mark]

Re-submitted to -da and filed.

REGISTRAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 1381/2017

Date of Institution... 11.12.2017

Date of decision... 19.09.2018



Jan Azam Khan S/O Pir Badshah,
R/o Chambai, Kohat, Ex-Constable,
No. 610 Police Line, Kohat.

... (Appellant)

Versus

1. District Police Officer, Kohat and two others.

.... (Respondents)

Mr. Arbab Saif Ul Kamal,
Advocate

... For appellant.

Mr. Kbairullah Khattak,
Additional Advocate General

... For respondents.

MR. AHMAD HASSAN,
MR. MUHAMMAD AMIN KHAN KUNDI,

... MEMBER
... MEMBER

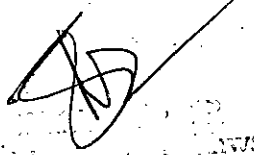
JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. Brief facts of the case are that the appellant was serving as Constable in Police Department. On account of willful absence from duty, disciplinary proceedings were initiated and upon conclusion major penalty of removal from service was imposed on him w.e.f 16.10.2009. He filed departmental appeal on 10.02.2010 which was not responded. That, on 23.11.2016 the appellant submitted second departmental appeal before

ATTENDED


AHMAD HASSAN
MEMBER
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

respondent no.2 for reinstatement in service which was rejected on 02.12.2016, hence, the instant service appeal.

ARGUMENTS

3. The learned counsel for the appellant argued that on the allegations of absence from duty, he was removed from service. Absence was not deliberate and willful. As his brother was ill so he was forced by the circumstances to go abroad to look after him. Disciplinary proceedings were conducted at the back of the appellant so he was condemned unheard. Reliance was placed on judgment of this Tribunal dated 05.07.2018 passed in service appeal no. 562/16, judgment dated 31.10.2016 in service appeal no. 1570/11, judgment dated 22.01.2018 service appeal no. 660/17 and 2011 PLC(C.S)990..

4. On the other hand, the learned Additional Advocate General argued that all codal formalities were observed before passing the impugned order. He was treated according to law and rules, hence, there was no illegality in the said order. The appeal is not maintainable and be dismissed.

CONCLUSION.

5. The appellant in his departmental appeal dated 10.02.2010 and 13.11.2016 admitted that he went abroad to look after his ailing brother without getting Ex-Pakistan leave, as such, the charge of willful absence from duty against the appellant had proved beyond any shadow of doubt. His departmental appeal was rejected on the sole ground of being time barred. The respondents failed to carefully analyze the contents of impugned order. As the impugned order dated 27.01.2010 was passed with retrospective effect so the same was void and no limitation runs against a void order. It can be safely concluded that his departmental appeal was not decided in accordance with law and rules.

6. As a sequel to above order of the appellate authority dated 24.11.2016 is set aside. Resultantly, the departmental appeal of the appellant shall be deemed pending. Appellate

ATTESTED

[Signature]
 Khyber Pakhtunkhwa
 Service Tribunal.
 Peshawar

authority is directed to decide the same through a speaking order within a period of three months from the date of receipt of this judgment. The present appeal is disposed off accordingly. Parties are left to bear their own cost. File be consigned to the record room.

Announced
19.09.2018

Sd/- Ahmad Hassan
Mander

Sd/- M. Amin Khan Kundli
Mander

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

| | |
|----------------------------------|---------|
| Date of Presentation of Petition | 27.9.18 |
| Number of Words | 1600 |
| Copying Fee | 10.00 |
| Urgent | 2.00 |
| Total | 12.00 |
| Name of Copy | 27.9.18 |
| Date of Copy | 27.9.18 |
| Date of Delivery | 27.9.18 |

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Office of the
Regional Police Officer,
Kohat

Ph: #. 0922-9260112 Fax #. 0922-9260114

No. / EC dated Kohat the 10/1/2019

ORDER

In compliance with the Khyber Pakhtunkhwa, Service Tribunal, Peshawar, judgment dated 19.09.2018, in service appeal No. 1381/2017, this order is passed on departmental appeal of Ex-Constable Jan Azam No. 610 (hereinafter called appellant).

2. Short facts arising of the appeal are that the appellant while serving and posted at Police Lines Kohat, willfully absented himself from lawful duty w.e. from 16.10.2009. Therefore, disciplinary proceedings were initiated against the appellant, which culminated into his removal from service vide competent authority order dated 27.01.2010.

3. Relevant record requisitioned and the appellant was called for personal hearing in orderly room held on 16.01.2019.

4. The appellant was heard patiently, who stated / admitted that he had gone abroad, but failed to advance any plausible explanation to the prolong absence from service, proceedings abroad without any lawful permission and failure to join departmental proceedings, despite service of charge sheet at his home address and received by his father.


5. Record gone through, which indicates that the appellant was enrolled as constable on 02.06.2006 and during his short span of service about two years, willfully / deliberately absented himself from duty for a period of about 07 months (w.e.f 17.08.2008 to 21.03.2009) and a minor punishment of censure was imposed on him, vide order dated 09.07.2009. During his short service about 03 years, the appellant again willfully absented himself from duty, w.e. from 16.10.2009, proceeded abroad without any kind of leave, permission from the competent authority and also failed to adopt legal procedure. Furthermore, for proceeding abroad a government servant is bound under the law / rules to obtain Ex-Pakistan Leave and NOC for issuance of passport, but record reflects that the appellant did not adopt the above stated procedure and thus reflects indiscipline attitude on the part of the appellant. The appellant also filed the departmental appeal with enormous delay of about 07 years.

[Handwritten Signature]

6. Record further indicates that all codal formalities in the departmental proceedings were fulfilled in accordance with law & rules. The charge framed against the appellant was proved beyond any shadow of doubt. However, the impugned order dated 27.01.2010 is modified to the extent of "Removal from service with immediate effect and the willful absence period from service is treated as unauthorized leave without pay".

7. As a sequel of above, the departmental appeal of the appellant is devoid of merits, without any substantiate and badly time barred. Hence, dismissed on merits and limitation as well.

Announced
16.01.2019


(MUHAMMAD IJAZ KHAN) PSP
Regional Police Officer,
Kohat

No 538-39 /EC

Copy of above for necessary action to the:-

- 1. District Police Officer, Kohat.
- 2. Appellant.

.....



(16)

Amir D

To,

The Inspector General Police (PPO)

KPK Peshawar

SUBJECT : PETITION AGAINST ORDER DATED 16-10-2019
OF RPO KOHAT WHEREBY DEPARTMENT APPEAL
OF APPLICANT AGAINST ORDER DATED 16-10-
2009 OF DPO KOHAT WHEREBY APPLICANT WAS
REMOVED FROM SERVICES WITH
RETROSPECTIVE DATE.

Respectfully Sheweth:

1. That Applicant was appointed as constable in the Department on
02-06-2006.

2. That since his appointment till his removal from services ,the
Applicant performed his duty to best of his ability and has not
given any chance of displeasure his superiors .

3. That the Applicant was removed from services on the score of
absence from duty but such absence was not deliberate and illegal
but the Applicant moved Application for Ex-Pakistan leave as his
brother was ill and was under treatment in Dubai ,so was un dire
need of Applicant services . (order of removal dated 16-10-2009.

4. That the Applicant moved Department Appeal to the RPO who
rejected the same on the ground of limitation.

5. That the Applicant moved /preferred services appeal to the humble service tribunal KPK which remanded the case to the Hon'ble RPO for decision on merits as void order cannot be dismissed on the ground of limitation as there is no limitation against void order. (Service Tribunal order dated 09.09.2018 attached)
6. That after remand of the case, the learned RPO without Reinstating the Applicant into service again dismissed the Departmental appeal of the Applicant on the merits as well as limitation.
- Hence this petition on the grounds:

GROUND:

- A. That the absence was not deliberate but was due to the illness of his brother at Dubai for which the Applicant moved ex-Pakistan leave but the Applicant had to leave for Dubai due to illness of his brother.
- B. That the Applicant was not Reinstated into service after remand of the case to RPO Kohat and his appeal was dismissed in an illegal manner.
- C. That the absence was treated as leave without pay so there was no ground available to the RPO for dismissing his appeal.
- D. That in the impugned order previous issue was also mentioned for which minor punishment of censure was imposed upon the Applicant, but such findings are not

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(ed)

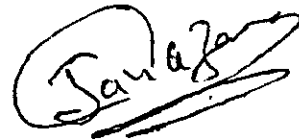
according to facts of the case as in this period, the five days i.e from 17.08.2008 to 21.08.2008, the Applicant remained with injured constable Amal Gul No 500 and from dated 22.08.2008 to 21.03.2009,. the Applicant was ill and was treated in hospital (Description of the Hospital is attached)

E. That similarly placed employees namely Qasim No 52/702, Asif C No. 1084/1250, Adeel Ahmad C No. 39/63, Abdur Rehman 1114/ ¹¹⁶ Farooq, ⁹⁸⁹ Javed were reinstated by the tribunal as well as by Department and are serving the Department so no discriminating treated be given to Applicant. (Orders attached)

It is, therefore most humbly prayed that on acceptance of this petition, the Applicant be reinstated in his service, with all back benefits.

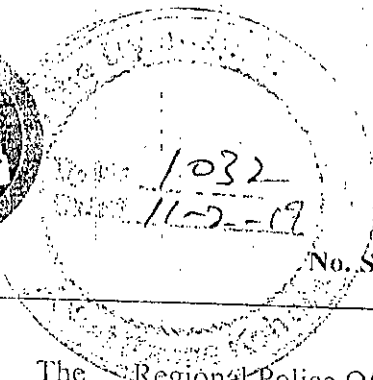
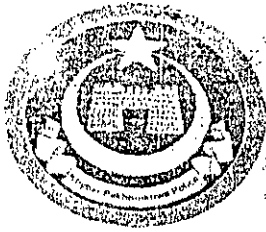
Applicant

Dated: 21.01.2019



JAN AZAM
Ex-Constable, Kohat
Constable No 610
Cell # 0333-9649481





19

Mutaw E

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

No. S/ 417

/19, dated Peshawar the 06/02/2019

To: The Regional Police Officer,
Kohat.

Subject: - APPLICATION.

Memo:

The Competent Authority has examined and filed the application submitted by Ex-Constable Jan Azam No. 610 of Kohat District Police against the punishment of removal from service awarded by DPO/Kohat vide OB No. 93, dated 27.01.2010 as his revision petition has already been processed in CPO and filed being time barred for about 07-years.

The applicant may please be informed accordingly.

Ma 1310 / Ec
de 13/02-19

DPO Kohat

(SYED ANIS-UL-HASSAN)
Registrar,

For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

To inform the applicant

6/2/19

DIG POLICE
KOHAT

11/2/19

de

EC
11/2

E 9

2-12-16

①

ORDER

This order will dispose of a departmental appeal, moved by Ex-FC Jan Azam of Kohat district against the punishment order passed by DPO Kohat vide OB No. 93, dated 27.01.2010, whereby he was awarded major punishment of removal from service for the allegations prolonged absence from official duty without any prior permission or leave.

He preferred an appeal to the undersigned, upon which comments were obtained from DPO Kohat and his service record was perused.

I have gone through the available record and came to the conclusion that the allegations leveled against the appellant are proved and the punishment order passed by DPO Kohat is correct. Hence, appeal being badly time-barred about 07-years is hereby rejected.

Order Announced
24.11.2016

Awal Khan

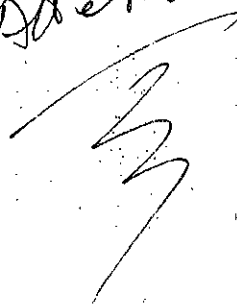
(AWAL KHAN)
Regional Police Officer,
Kohat Region.

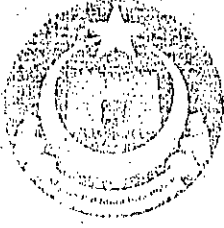
No. 74/163 / EC, dated Kohat the 2-12- /2016.

Copy to the District Police Officer, Kohat for information and inform the concerned Ex-FC.

Awal Khan

(AWAL KHAN)
Regional Police Officer,
Kohat Region.

Attorneys




G 11

13-11-17

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

No. S/ 7266 /17, dated Peshawar the 13/11/2017.

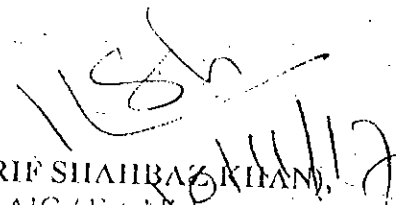
To : The Regional Police Officer,
Kohat Region, Kohat.

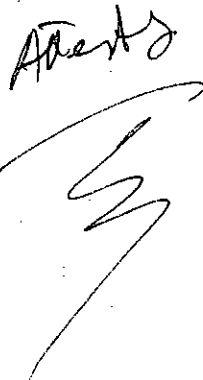
Subject: APPEAL (EX-FC JAN AZAM NO. 610)

Memo :

Ex-Constable Jan Azam No. 610 of District Police Kohat had submitted appeal to the Worthy Inspector General of Police, Khyber Pakhtunkhwa, Peshawar for reinstatement into service. His appeal was processed / examined at Central Police Office, Peshawar and filed by the competent authority being badly time barred for about 07 years.

The applicant may please be informed accordingly.


(ARIF SHAHBAZ KHAN),
AIG / Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.



وکالت نامہ

بعدالت *kp service Tribunal Peshawar*

نام *Jan Azam Khan* *Police*

تاریخ *21/2019* منجانب *appellant*

باعث تحریر آنکے

مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے واسطے پیروی و جوابدہی بمقام *Peshawar* کے لئے

نانکھ جان ایڈوکیٹ ہائی کورٹ *انسٹرکٹڈ* خان *انسٹرکٹڈ*

کو بدین شرط وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختیار خاص رو برو عدالت حاضر ہوتا رہوں گا۔ اور یوقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دیکر حاضر عدالت کروں گا اگر پیشی پر من مظهر حاضر نہ ہو اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور میرے برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام پشہری کے کسی اور جگہ سماعت ہونے یا بروز تعطیل یا پشہری کے کسی اور جگہ سماعت ہونے یا بروز تعطیل یا پشہری کے اوقات کے آگے پیچھے پیش ہونے پر من مظهر کو کوئی نقصان پہنچنے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختیار نامہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پر داخستہ صاحب موصوف مثل کردہ ذات خود منظور قبول ہوگا۔ اور صاحب موصوف کو عرضی دعویٰ و جواب دعویٰ اور درخواست اجراء نے ڈگری و نظر ثانی اپیل و گرانہ ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کے اجراء کرانے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور سپرد کاٹھی و راضی نامہ کو فیصلہ برخلاف کرنے، اقبال دعویٰ دینے کا بھی اختیار ہوگا۔ اور بصورت اپیل و برآمدگی مقدمہ یا منسوخ ڈگری یکطرفہ درخواست حکم امتناعی یا ترقی یا گرفتاری قبل از اجراء ڈگری بھی موصوف کو بشرط ادا کی گئی علیحدہ مختیار نامہ پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہوگا یا مقدمہ مذکورہ یا اس کے کسی جزو کی کارروئی کے واسطے یا بصورت اپیل، اقبال کے واسطے کسی دوسرے وکیل یا بیرسٹر کو بجائے اپنے یا اپنے ہمراہ مقرر کریں۔ اور ایسے مشیر قانون کو ہر امر میں وہی اور ویسے ہی اختیارات حاصل ہوں گے۔ جیسے کہ صاحب موصوف کو حاصل ہیں اور پہلے ادا نہ کروں گا۔ تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا یہ مختیار نامہ لکھ دیا تاکہ سند رہے مورخہ *21/2019* مضمون مختیار نامہ بن لیا ہے اور اچھی طرح سمجھ لیا اور منظور ہے۔

ATTESTED & ACCEPTED

Saira Jan
فائلہ جان ایڈوکیٹ پشاور ہائی کورٹ پشاور

Jan Azam Khan
جان ازام خان

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service appeal No. 329/2019
Jan Azam Khan

.....Appellant

VERSUS

Provincial Police Officer,
Khyber Pakhtunkhwa, & other

..... Respondents

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| 2. | Counter affidavit | - | 04 |
| 3. | Copy of da ily diary & order | A & B | 05-06 |
| 4. | Copy of statement of father of the appellant | C | 07 |
| 5. | Copy of daily diary No. 6 | D | 08 |


DISTRICT POLICE OFFICER,
KOHAT
(Respondent No. 3)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service appeal No. 329/2019
Jan Azam Khan

.....Appellant

VERSUS

Provincial Police Officer,
Khyber Pakhtunkhwa, & other

..... Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS.

Respectively Sheweth:-

Parawise comments are submitted as under:-

Preliminary Objections:-

- a. That the appellant has got no cause of action.
- b. That the appellant has got no locus standi.
- c. That the appeal is not maintainable in the present form.
- d. That the appellant has not come with clean hands to this Honorable Tribunal.
- e. That the appellant is estopped to file the instant appeal for his own conduct.
- f. That the appellant while in service had obtained passport without NOC from the department / authority and thus made contravention of relevant provision of Passport Act 1974.
- g. That the appellant proceeded abroad without any permission, Ex-Pakistan Leave and thus violated the Civil Servants Revised Leave Rules 1981 and Police Rules and willful absented from lawful duty, hence the appellant is stopped to file the present appeal for his own conduct.
- h. That the appellant filed a departmental appeal and service appeal after a laps of about **07 years**. Hence, both the appeals are **badly time barred**.

FACTS:-

1. Pertains to record, hence no comments.
2. Incorrect, the appellant during two years service, willfully absented himself from lawful duty w.e.from 17.08.2008 (vide daily diary No. 7 dated 07.08.2008, Police Lines Kohat) to 21.03.2009 (**07 months & 05 days**). The appellant was proceeded with departmentally and the competent authority while taking lenient view awarded him a punishment of censure vide order dated 09.07.2009. Copies of daily diary and order are **annexure A & B**.

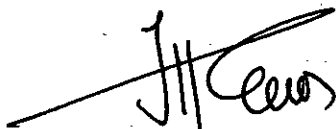
3. Incorrect, the appellant had not moved any application for leave or Ex-Pakistan Leave and violated the leave rules. The appellant proceeded abroad without any kind of leave, permission and got passport for the purpose and also committed an offence under the provisions of Passport Act 1974. The appellant also admitted proceeded abroad in this para of memorandum of appeal. Therefore, the appellant was proceeded with departmentally under the rules.
4. The appellant after return from abroad (about 07 years) moved an appeal before the respondent No. 2. The appeal was correctly rejected by the departmental appellate authority respondent No. 2.
5. Pertains to record, however, it is submitted that the order of Honorable Tribunal is implemented in letter & spirit.
6. The Honorable Tribunal vide para No. 6 of the judgment set aside order of the appellate authority dated 24.11.2016 (respondent No. 2). The departmental appeal of the appellant was deem pending, which was decided through a speaking order as directed by the Honorable Tribunal. Therefore, during pendency of appeal no one can be reinstated.
7. The revision petition of the appellant was processed and disposed of in accordance with law & rules.
8. The appellant is estopped to file the present appeal for his own conduct.


Grounds:-

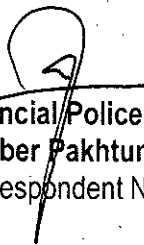
- A. Incorrect, the appellant had previously absented himself from lawful duty for **07 month & 05 days** and awarded minor punishment. The appellant again absented himself w.e.from 17.08.2008 to 21.03.2009 (**215 days**) till the finalization of inquiry and proceeded abroad as admitted by the appellant. The appellant had not moved any kind of application for leave and thus violated the provisions of Passport Act 1974 and Leave Rules as well.
- B. Incorrect, proper charge sheet and statement of allegations were issued against the appellant, which were served at his home address and received by his father Pir Badshah. His father endorsed that his son (Jan Azam) had gone abroad for livelihood. The statement is **annexure C**.
- C. Incorrect, there is no provision in law and rules that a person dismissed or removed from service will be re-instated in service during pendency of his departmental appeal.
- D. Incorrect, the appellant was called and heard in person in orderly room by respondent No. 2 held on 16.01.2019. The appellant admitted that he had gone abroad but failed to advance any explanation to the willful prolong absence from service and proceedings abroad without any lawful permission.

- E. During short span of service, the appellant once absented from service for the period of **07 months & 05 days** and again **absented for 215 days** (till the conclusion of inquiry). The order passed by the respondent No. 2 dated 16.01.2019 is speaking one. Furthermore, there is a well-established principle that "no work no pay". Therefore, the absence period was treated as unauthorized leave.
- F. Incorrect, the appellant had not filed any appeal / revision against the first punishment order dated 09.07.2009. The appellant during service had willful absented himself vide daily diary No. 7 dated 17.08.2008 and reported arrival on 21.03.2009 vide daily dairy No. 6 Police Lines Kohat. Copy is **Annex: D**.
- G. Irrelevant, each and every case has its own facts, circumstance and merits. The appellant during his short span of service i.e **two years** absented from duty for 07 months and 05 days and subsequently proceeded abroad. The period of absence w.e.from 17.08.2008 till the disposal of departmental appeal was 215 days.

In view of the above, it is submitted that the appeal is contrary to facts and law / rules, without any substance / merit and badly time barred. Therefore, it is prayed that the appeal may graciously be dismissed with cost.


 Regional Police Officer,
 Kohat
 (Respondent No. 2)


 District Police Officer,
 Kohat
 (Respondent No. 3)


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

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service appeal No. 329/2019
Jan Azam Khan

.....Appellant

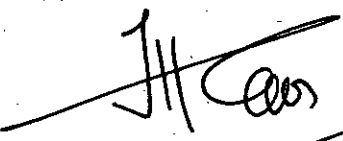
VERSUS


Provincial Police Officer,
Khyber Pakhtunkhwa, & other

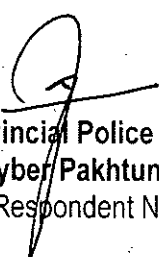
..... Respondents

COUNTER AFFIDAVIT

We, the below mentioned respondents, do hereby solemnly affirm and declare on oath that contents of parawise comments are correct and true to the best of our knowledge and belief. Nothing has been concealed from this Hon: Tribunal.


Regional Police Officer,
Kohat
(Respondent No. 2)


District Police Officer,
Kohat
(Respondent No. 3)


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

Amex "B"
⑥

WJ

ORDER

This order is passed on the departmental enquiry against Constat. Jan Azam No. 610 of this District Police under the Removal From Service (Special Powers) Ordinance 2000.

Facts of the departmental enquiry are that the above named official was selected for Elite Course but he had absented himself vide DD No. 7 dated 17/08/2008 and reported his arrival at Police Lines Kohat vide DD No. 6 dated 21/03/2009 without any leave or permission from the competent authority.

He was served with Charge Sheet and Statement of allegations and DSP/ Legal Kohat was appointed as Enquiry Officer. The Enquiry Officer conducted proper departmental enquiry against him and found him guilty of misconduct and recommended that his absence period may be treated as leave without pay.

Due to apology of the defaulter official during the course of enquiry, therefore, the undersigned take a lenient view and his absence period from 17/08/2008 to 21/03/2009 is treated as leave without pay and awarded a minor punishment of Censure. His pay is released.

OB No. 701
Dated 9-7-2009

[Signature]
DISTRICT POLICE OFFICER,
KOHAT

No. 3834-37/11 dated Kohat the 09/7 /2009
Copy to OASI, SRC, Reader and Pay Officer for information and necessary action.

////////

[Signature]
Dy Superintendent
of Police Legal
Kohat

پولیس ایف ڈی آر
کوہاٹ

ایف ڈی آر نمبر 192 اور ایف ڈی آر نمبر 3348281294
20/11/2010

میرا بیٹا جان اعظم فرزند اکیلی باپ گری
آب ڈوہ نزدیکی سے قاتل ہو گیا۔
پولیس ایف ڈی آر نمبر 192 اور
3348281294

Attested
APC

Dy Superintendent
of Police Legal
Kohat

میرا بیٹا 20/11/2010 کو قاتل ہو گیا

میرا بیٹا 20/11/2010 کو قاتل ہو گیا
3348281294

جان
جان

جان
جان

ایف ڈی آر نمبر 192 اور ایف ڈی آر نمبر 3348281294
میرا بیٹا 20/11/2010 کو قاتل ہو گیا
3348281294

ایف ڈی آر نمبر 192 اور ایف ڈی آر نمبر 3348281294
میرا بیٹا 20/11/2010 کو قاتل ہو گیا
3348281294

