

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT, D.I.KHAN.

Service Appeal No. 366/2019

Date of Institution	...	15.03.2019
Date of Decision	...	29.10.2021

Muhammad Arif Ex-Constable No. 555 Tank Police R/O Village
Kaka Khel P/O Mullazai Tehsil & District Tank.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Home
Department Civil Secretariat Peshawar and three others.

... (Respondents)

Gul Tiaz Khan Marwat,
Advocate

... For appellant.

Muhammad Rasheed,
Deputy District Attorney

... For respondents.

Rozina Rehman

... Member (J)

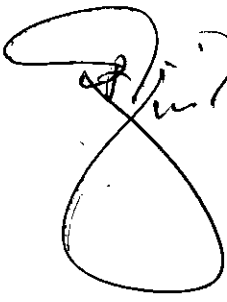
Atiq Ur Rehman Wazir

... Member (E)

JUDGMENT

Rozina Rehman, Member(J): Facts gleaned out from the memorandum of appeal are that appellant was enlisted as Constable. He was proceeded against departmentally on the allegations of absence from duty and vide order dated 06.04.2010, he was dismissed from service.

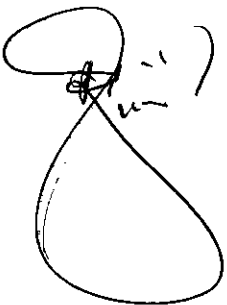
2. We have heard Gul Tiaz Khan Marwat Advocate learned counsel for appellant and Muhammad Rasheed, learned Deputy District Attorney for the respondents and have gone through the record and the proceedings of the case in minute particulars.



3. Gul Tiaz Khan Marwat Advocate learned counsel appearing on behalf of appellant, in support of appeal contended with vehemence that impugned orders are illegal and void-ab-initio as the appellant was not treated according to law and rules. That the appellant has been discriminated and was condemned unheard. He argued that no regular inquiry was initiated against the appellant and that the appellant was not given fair trial. Lastly, he submitted that the appellant has been discriminated and given step motherly treatment. The impugned order was therefore, untenable and liable to be struck down.

4. Conversely, learned D.D.A submitted that the appellant deliberately absented himself from duty without any legal or reasonable cause for which he was properly charge sheeted. Further submitted that Inquiry Officer was nominated and proper inquiry was conducted and after observing all codal formalities, he was proceeded against departmentally and after being proved guilty of willful absence, he was dismissed from service. He further argued that the appellant was dismissed from service on 06.04.2010, whereas, departmental appeal was filed in the year 2018 which was rejected being time barred on 18.07.2018.

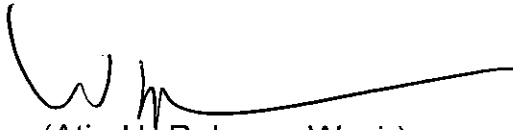
5. From the record, it is evident that appellant was enlisted as Constable on 26.07.2007. He absented himself from duty vide DD. No.23 dated 01.11.2009 and failed to report, therefore, he was issued charge sheet alongwith statement of allegations and proper inquiry was initiated against him. After submission of the inquiry report, he was issued final show cause notice and was dismissed from service from the date of his absence. The Government servant becomes liable

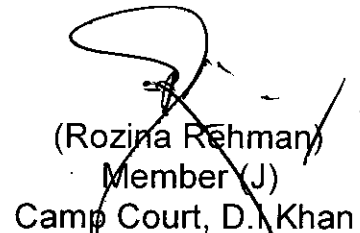


6. It is well-entrenched legal proposition that when an appeal before departmental authority is time barred, the appeal before Service Tribunal would be incompetent. In this regard reference can be made to cases titled Anwarul Haq v. Federation of Pakistan reported in 1995 SCMR 1505, Chairman, PIAC v. Nasim Malik reported in PLD 1990 SC 951 and State Bank of Pakistan v. Khyber Zaman & others reported in 2004 SCMR 1426.

7. For what has been discussed above, instant service appeal is dismissed, leaving the parties to bear their own costs. File be consigned to the record room.

ANNOUNCED.
29.10.2021


(Atiq Ur Rehman Wazir)
Member (E)
Camp Court, D.I.Khan


(Rozina Rehman)
Member (J)
Camp Court, D.I.Khan

Order
29.10.2021

Appellant present through counsel.

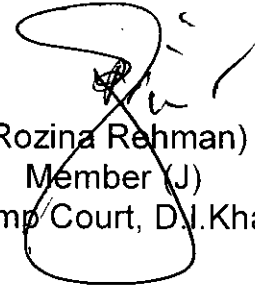
Muhammad Rasheed learned Deputy District Attorney
for respondents present.

Vide our judgment of today of this Tribunal placed on
file, instant service appeal is dismissed, leaving the parties to
bear their own costs. File be consigned to the record room.

Announced.
29.10.2021



(Atiq ur Rehman Wazir)
Member (E)
Camp Court, D.I.Khan



(Rozina Rehman)
Member (J)
Camp Court, D.I.Khan


Due to COVID-19 therefore to
come up for the same on 28/9/21

Om
Reedn

28.09.2021

Learned counsel for the appellant present. Mr. Usman Ghani, District Attorney for the respondents present.

Learned counsel for the appellant sought adjournment being not prepared for arguments today. Adjourned. To come up for arguments before the D.B on 29.10.2021 at Camp Court D.I.Khan.


(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)
CAMP COURT D.I.KHAN

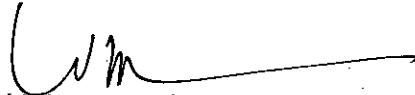

(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT D.I.KHAN

24.11.2020

Appellant present through counsel.

Muhammad Jan learned Deputy District Attorney for respondents present.

Former made a request for adjournment. Adjourned. To come up for arguments on 26.01.2021 before D.B at Camp Court DI.Khan.




(Atiq-ur-Rehman Wazir)
Member (E)
Camp Court, D.I Khan



(Rozina Rehman)
Member (J)
Camp Court, D.I Khan

*Due to covid, 19 case is
adjourned to 24.02.2021*



24.02.2021

Nemo for parties.

Riaz Khan Painsdakheil learned A.A.G for respondents present.

Preceding date was adjourned on a Reader's note therefore, both the parties be put on notice for 25.05.2021 for arguments before D.B at Camp Court D.I. Khan



(Atiq ur Rehman Wazir)
Member (E)
Camp Court, D.I.Khan

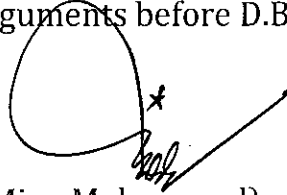


(Rozina Rehman)
Member (J)
Camp Court, D.I.Khan

Service Appeal No. 366/2019

26.02.2020

Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney alongwith Mr. Nadeem, -LHC for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 20.04.2020 for arguments before D.B at Camp Court D.I.Khan.



(Mian Mohammad)
Member
Camp Court D.I.Khan

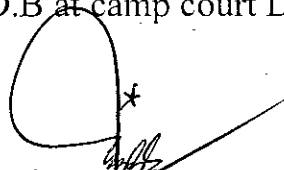


(M. Amin Khan Kundi)
Member
Camp Court D.I.Khan

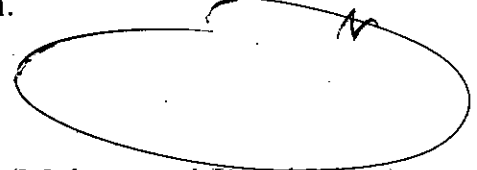
26.10.2020

Appellant is present in person. Mr. Muhammad Jan, Deputy District Attorney for respondents is present present.

Since the Members of the High Court as well as of the District Bar Association D.I.Khan are observing strike today, therefore, the case is adjourned to 24.11.2020 for arguments before D.B at camp court D.I.Khan.



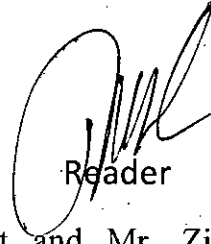
(Mian Muhammad)
Member(E)



(Muhammad Jamal Khan)
Member(J)
Camp Court D.I Khan

22/10/2019


Since tour to D.I.Khan has been cancelled .To come for the same on 26/11/2019.



Reader

26.11.2019


Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney alongwith Mr. Sher Afzal, S.I for the respondents present. Representative of the department submitted para-wise comments on behalf of respondents No. 2 to 4 which is placed on record. Case to come up for rejoinder and arguments on 29.01.2020 before D.B at Camp Court D.I.Khan.




(Muhammad Amin Khan Kundi)
Member
Camp Court D.I.Khan

29.01.2020

Clerk to counsel for the appellant and Mr. Usman Ghani, District Attorney alongwith Mr. Nadeem, LHC for the respondents present. Clerk to counsel for appellant requested for adjournment on the ground that learned counsel for the appellant is not available today due to general strike of the Khyber Pakhtunkhwa Bar Council. Adjourned to 26.02.2020 for rejoinder and arguments before D.B at Camp Court D.I.Khan.



(Hassain Shah)
Member
Camp Court D.I.Khan



(M. Amin Khan Kundi)
Member
Camp Court D.I.Khan

Service Appeal No. 366/2019


28.08.2019

Counsel for the appellant Muhammad Arif present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was imposed major penalty of dismissal from service vide impugned order dated 06.04.2010 on the allegation of absence from duty. The appellant filed departmental appeal (undated) which was rejected on 18.07.2018. It was further contended that the appellant filed revision petition before the Inspector General of Police on 17.08.2018 which was not responded hence, the present service appeal. Learned counsel for the appellant further contended that neither proper inquiry was conducted nor the appellant was informed about the departmental proceeding nor any absence notice was issued to the appellant therefore, the impugned dismissal order is illegal and liable to be set-aside. Learned counsel for the appellant further contended that there is some delay in filing of departmental appeal but the appellant has filed the application for condonation of delay therefore, the appellant was condemned unheard and the impugned order is illegal and liable to be set-aside.

The contentions raised by the learned counsel for the appellant 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 10 days, thereafter, notices be issued to the respondents for written reply/comments for 22.10.2019 before S.B at Camp Court D.I.Khan.

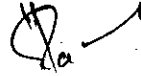
Appellant Deposited
Security & Process Fee

06/9/19


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I.Khan

24.04.2019

Learned counsel for the appellant present and requested for adjournment. Adjourn. To come up for preliminary hearing and assistance of learned counsel for the appellant on the issue of limitation on 26.06.2019 before S.B at Camp Court, D.I.Khan.



Member
Camp Court, D.I.Khan.

26.06.2019

Counsel for the appellant present and requested for adjournment. Adjourned to 28.08.2019 for preliminary arguments as well as arguments on the issue of limitation before S.B at Camp Court D.I.Khan.


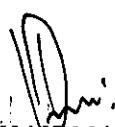
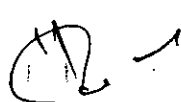



(Muhammad Amin Khan Kundi)
Member
Camp Court D.I.Khan

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 366/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	15/03/2019	<p>The appeal of Mr. Muhammad Arif received today by post through Mr. Gul Tiaz Khan Marwat Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 15/3/19</p>
2-	1-4-19	<p>This case is entrusted to touring S. Bench at D.I.Khan for preliminary hearing to be put up there on <u>22-4-19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	22.04.2019	<p>Appellant absent. Learned counsel for the appellant absent. Adjourn. To come up preliminary hearing on 23.04.2019 before S.B at Camp Court, D.I.Khan.</p> <p style="text-align: right;"> Member Camp Court, D.I.Khan.</p>
	23.04.2019	<p>Appellant absent. Learned counsel for the appellant absent. Adjourn. To come up for preliminary hearing on 24.04.2019 before S.B at Camp Court, D.I.Khan.</p> <p style="text-align: right;"> Member Camp Court, D.I.Khan.</p>

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 366 /2019

Muhammad Arif

..... **APPELLANT**

VERSUS

Govt: of KPK through Secretary Home Department etc.

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4	Copy of order of dismissal from service	C	12
5	Copy of order of D.I.G dated 18.07.2018	D	13-14
6	Copy of Revision Petition to I.G.P	E	15-17
8	Vakalatnama		18

Dated: 28 /02/2019

Your Humble Appellant

**MUHAMMAD ARIF
Through Counsel**

**GUL TIAZ KHAN MARWAT
Advocate High Court DIKhan**

03009092488

I

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 366 /2019

Muhammad Arif No. 555 Ex-Constable Tank Police R/O
Village Kaka Khel P/O Mullazai Tehsil & District Tank.

..... **APPELLANT** Khtukhwa
Service Tribunal

VERSUS

Diary No. 342

Dated 15-3-2019

1. Govt: of KPK through Secretary Home Department
Govt: of KPK Civil Secretariat Peshawar.
2. Inspector General of Police KPK Peshawar.
3. Deputy Inspector General of Police D.I.Khan.
4. District Police Officer Tank.

.....**RESPONDENTS**

APPEAL U/S 4 OF KPK SERVICE TRIBUNAL ACT
1974 AGAINST THE ORDER OF WITHHOLDING
AND NON-DISPOSAL OF REVISION/ REVIEW
PETITION OF THE APPELLANT BY RESPONDENT
NO. 2 WITHIN THE STATUTORY PERIOD OF 90
DAYS.

Respected Sir,

1. That the appellant was appointed as constable in the Tank Police on 26.07.2007 and was allotted No. 555 and thereafter remained posted at various position in Police Department Tank.
2. That the appellant performed his duties to the entire satisfaction of his superiors.

Filed to-day
Registrar
15/3/19

Arif

3. That the appellant was shown as absent from duty vide DD No. 23 dated 01.11.2009 and charge sheet and statement of allegations dated 31.12.2009 were issued but the same were not served personally on the Appellant and Inquiry Officer was also appointed vide order dated 09.12.2009. Copies of charge sheet and statement of allegations are enclosed as **Annexure A&B** respectively.
4. That as per record of the department, the Inquiry Officer conducted the inquiry but in the absence and at the back of Appellant and Respondent No. 4 passed an order bearing No. OB-590 dated 06.04.2010 vide which major penalty of dismissal from service of Appellant was passed from the date of absence i.e. 01.11.2009. Copy of order is enclosed as **Annexure C**.
5. That the Appellant preferred departmental appeal to the D.I.G of Police D.I.Khan which was dismissed vide order dated 18.07.2018. Copy of Order is enclosed as **Annexure D**.
6. That the Appellant approached the provincial police Chief/IGP KPK Peshawar by submitting revision petition but the same has not been decided with the statutory period of 90 days. Copy of Petition is enclosed as **Annexure E**.

Just

7. That the Appellant feeling aggrieved from all the impugned orders/actions and inactions of respondents 2 to 4 individually and collectively, the appellant seeks the indulgence of this learned tribunal under its appellate jurisdiction inter alia on the following grounds.

GROUND:-

- A. That neither any charge sheet, statement of allegations and nor any show cause notice has been served upon the appellant and the impugned order of dismissal of the Appellant has been passed without holding regular inquiry while by now it is a settled principal of law that regular inquiry is must and there should be no punishment without holding regular inquiry.
- B. That the order of dismissal of Appellant passed by the Respondent No.4, DPO Tank is against law and facts as neither the Appellant was associated in the so-called inquiry proceedings nor witnesses were examined in the presence of Appellant.
- C. That besides all these legal defects, neither final show cause notice was served upon the Appellant before imposition of major penalty of dismissal from service nor personal hearing was provided which is must under the law.
- D. That the Appellant has been penalized twice for no fault of his own as on one hand the Appellant has been ousted/ knock out from service while on the other hand the appellant has been penalized by awarding punishment of dismissal as a consequence of which the Appellant cannot do any other employment due to dismissal from service as dismissal from service is a stigma for future service/employment.

Jan 2

- E. That the impugned action/order of respondent No.4 of dismissal of Appellant from service is not sustainable without holding regular inquiry and without proving an opportunity of personal hearing but the Appellant was punished without observing all these legal and mandatory formalities and requirements of law.
- F. That the order of imposition of major penalty of dismissal from service is also not sustainable and the same is tantamount to double Jeopardy as on hand the Appellant has been deprived of his last piece of morsel of food by ousting him from service while on the other hand, the appellant has been further punished by virtue of dismissal from service as a person dismissed from service cannot join any further employment/job and on this score alone the order of dismissal from service of the Appellant is liable to be set aside and withdrawn/recalled.
- G. That the impugned actions/ orders of dismissal ~~from~~^{of} departmental appeal of Appellant by respondent No. 3 as well as non-disposal of revision/review/mercy petition/Appeal of Appellant by Respondent No.2 are against law and facts as the Appellant was condemned unheard from the beginning to the end.
- H. That the entire proceedings from beginning to end is against law as the departmental proceedings has been initiated/ completed against the Appellant under the provision of removal from service (Special Powers Ordinance, 2002) while the Appellant is an employee/ official who is to be proceeded under the Provisional Police Rule called as (NWFP) KPK Police Rules, 1975.
- I. That besides all these legal defects, neither final show cause notice was served upon the Appellant before imposition of major penalty of dismissal from service nor personal hearing was provided which is ^{must} under the law.

Qum2

- J. That the Appellant has been met out discriminatory treatment and he has not been treated under the law as required under the provisions of fundamental rights guaranteed the Constitution of Islamic Republic of Pakistan.
- K. That this Honorable Tribunal is creation of Constitution under which fundamental rights of the citizens of the Country are protected and having vast Constitutional Power, this Honorable Tribunal is competent and authorized to correct the failure, faults, dereliction of duty, laches, defects in jurisdiction denial of justice, bias or disability and to set aside/struck down illegal and order without lawful authority of the Departmental Authorities of Government Offices/ Departments including the Respondents.
- L. That the Appellant is jobless from the date of dismissal from service and he has never been gainfully employed elsewhere.
- M. That all the actions/inactions and orders passed by the respondents are void and illegal and no limitation runs against the void orders and it is also a settled principle of law that when the initial order is void then the superstructure built thereon shall have to fall on the grounds automatically.
- N. That counsel for the Appellant may please be allowed to raise additional ground during the course of arguments.

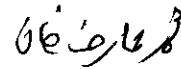
Jun 2

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It is, therefore, humbly prayed on acceptance this Appeal this Honorable Tribunal may very graciously be pleased to accept the appeal of the Appellant and as a consequence thereof the Appellant may please be reinstated into service with all back benefits as the Appellant is jobless since date of his order of dismissal from service.

Any other relief deemed appropriate in the prevailing circumstances may also be granted.

Your humble appellant,



Muhammad Arif

Through Counsel

Dated: 28 /02/2019



**Gul Tiaz Khan Marwat
Advocate High Court
DIKhan**

CERTIFICATE

Certified that it is a first appeal by the appellant before this learned tribunal against the impugned orders of respondents.



APPELLANT

7

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No _____/2019

Muhammad Arif

..... **APPELLANT**

VERSUS

Govt: of KPK through Secretary Home Department etc.

AFFIDAVIT

I, Muhammad Arif No. 555 Ex-Constable Tank Police R/O Village Kaka Khel P/O Mullazai Tehsil & District Tank, the appellant do hereby solemnly affirm and declare on Oath that the contents of appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.

Attested by
M. S. J.
SALIM ULLAH
R.O. & A.C.
Oath Commissioner D.L. Khan

Waheed
DEPONENT

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Civil Misc. Application No. _____/2019

In

Service Appeal No _____/2019

Muhammad Arif

..... **APPELLANT****VERSUS**

Govt: of KPK through Secretary Home Department etc.

**PETITION U/S 5 OF LIMITATION ACT CONTAINING THE
REQUEST FOR CONDONATION OF DELAY IN FILING OF
APPEAL.**

Respected Sir,

1. That the accompanied Appeal is being filed before this learned Tribunal against the order of dismissal of service of Petitioner as well as non-disposal of revision/ review petition by respondent No. 2.
2. That the so called inquiry proceeding was initiated and conducted against the petitioner in the absence and at the back of petitioner and the order of dismissal was not communicated to the petitioner.
3. That when the petitioner came to know about the order of dismissal from service, the petitioner there and then filed department appeal to the respondent No. 3 which was also dismissed but the order was not communicated to the petitioner.
4. That the petitioner on gaining the knowledge of dismissal of departmental appeal by respondent No. 3 then filed revision/ review petition before the respondent No. 2 who is the highest departmental authority in the police



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hierarchy and the right and remedy of review and revision is also provided under the civil servant act and KPK Police Rules-1975, which has not been so far decided by the respondent No. 2 within the statutory period of 90 days, hence the instant Appeal.

5. That keeping in view the circumstances explained above the delay in filing of Appeal if any may please be condoned in the interest of justice as bar of limitation does not apply against the void order.

It is, therefore, humbly prayed on acceptance this Petition, this Honorable Tribunal may very graciously be pleased to condon the delay if any filing of appeal.

Your humble appellant,

Muhammad Arif

Muhammad Arif

Through Counsel

Gul Tiaz Khan Marwat

**Gul Tiaz Khan Marwat
Advocate High Court
DIKhan**

Dated: 28 /02/2019

AFFIDAVIT

I, Muhammad Arif No. 555 Ex-Constable Tank Police R/O Village Kaka Khel P/O Mullazai Tehsil & District Tank, the appellant do hereby solemnly affirm and declare on Oath that the contents of Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.

Attested by
M. Arif
SALIM BAZI
AO & AT
Oath Commissioner, D.K. Khan

محمد تیز خان
DEPONENT

CHARGE SHEET.

(Handwritten mark)

A

10

I MUHAMMAD IJAZ ABID, DPO/TANK as competent authority under the N.W.F.P, Removal From Service (Special Powers) Ord: 2000 (Amendment Act-2005), do hereby inform you Constable Arif No. 555 of Police Lines, Tank, as follow:-

That you have committed the following serious misconduct:-

You Constable Arif No. 555 while deployed at Judicial Lock-Up, Tank have absented yourself from official duties without any leaver or permission since 01.11.2009 vide DD No. 23 Police Lines, Tank. Your this act of negligence amounts serious misconduct on your part and punishable under the N.W.F.P Removal from Service (Special Powers) Ord: 2000 (Amended Act-2005).

2. You appear to be guilty of misconduct of under section-3 of the N.W.F.P Removal from Service (Special Powers) Ord: 2000 (amendment Act-2005) and have rendered yourself liable to any one of the penalties including dismissal from service in section-3 of the Ordinance ibid.

3. You are therefore required to submit your written defence within seven days of the receipt of this Charge Sheet to the Enquiry Officer, as the case may be.

4. Your written defence, if any should reach the enquiry officer within specified period, failing which it shall be presumed that you have no defence to put in and in that case exparte action shall follow against you.

5. Intimate whether you desire to be heard in person.

6. A statement of allegations is enclosed.

(Handwritten signature)
(MUHAMMAD IJAZ ABID)
District Police Officer,
Tank.

(Handwritten signature)
Attested
Gund
Dow

(10)

B 71

DISCIPLINARY ACTION.

I, MUHAMMAD IJAZ ABID, District Police Officer, Tank being competent authority am of the opinion that You Constable Arif No. 555 of Police Lines, Tank have rendered himself liable to be proceeded against for committing the following acts/omissions within the meaning of the N.W.F.P Removal from Service (Spl: Powers) Ord: 2000, (Amendment Act-2005).

STATEMENT OF ALLEGATION

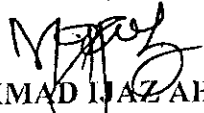
You Constable Arif No. 555 while deployed at Judicial Lock-Up, Tank have absented yourself from official duties without any leaver or permission since 01.11.2009 vide DD No. 23 Police Lines, Tank. Your this act of negligence amounts serious misconduct on your part and punishable under the N.W.F.P Removal from Service (Special Powers) Ord: 2000 (Amended Act-2005).

Hence this statement of allegation is issued.

2. For this purpose of scrutinizing the conduct of said official with reference to above allegation, ABDUL QAYYUM JAN SP/INVESTIGATION, TANK is appointed as Enquiry Officer to conduct proper departmental enquiry under the N.W.F.P Removal from Service (Special Powers) Ord:2000 (amendment Act-2005).


3. The enquiry officer shall in accordance with the provision of the ord; provide reasonable opportunity of the hearing to the accused, record its findings and make recommendations as to punishment or other appropriate action against the official within seven days of the receipt of this order.

4. The official and a well conversant representative of the department shall join the proceedings on the date time and place fixed by the enquiry officer.


(MUHAMMAD IJAZ ABID)
District Police Officer,
Tank.

No. 6066-671 dated Tank the 9/12 /2009.
Copy to the:-

1. Mr. Abdul Qayyum Jan SP/Investigation, Tank the enquiry officer for initiating Proceeding against the defaulter under the provision of N.W.F.P Removal from Service (Special Powers) Ord: 2000 (amendment Act-2005) and submit finding report within stipulated period as per prescribed rules.
2. Constable Arif No. 555 with the direction to appear before the Enquiry Officer on the date, time and venue fixed by the I.O for the purpose of inquiry proceedings.


(MUHAMMAD IJAZ ABID)
District Police Officer,
Tank.

*Attended
Qayyum
Adm*

ORDER

C 12

This order is aimed to dispose off departmental enquiry against Constable Muhammad Arif No. 555 of District Tank.

Facts are that Constable Muhammad Arif No. 555 while posted at Judicial Lockup Tank absented himself from law-full duty w.e from 1-11-2009 to-date, which is grave misconduct on his part and punishable under the rules.

He was issued charge sheet and statement of allegation under the NWFP, Removal from Service (Special Power) Ordinance-2000. Mr. Abdul Qayyum Jan Marwat SP/Investigation, Tank was appointed to conduct proper departmental enquiry into the matter. The enquiry officer completed the enquiry and submitted finding. On the receipt of finding/enquiry report, final show cause notice was issued to the delinquent constable.

I have gone through the finding, recommendation of I.O and his previous service record and came to the conclusion that constable Muhammad Arif No. 555 had gone abroad since 1-11-2009.

Therefore I, Muhammad Ijaz Abid District Police Officer, Tank (competent authority) award him punishment of dismissal from service from the date of absence i.e 1-11-2009.

Order announced.

OB NO 590
6.4.10

M. Ijaz Abid
(Muhammad Ijaz Abid)
District Police Officer,
Tank.
6.4.10

*Attested
Genl
Adm*



28-7-2018

D
OFFICE OF THE
REGIONAL POLICE OFFICER
DERA ISMAIL KHAN
REGION

13

No. 2572 /ES, Dated DI Khan the 18/07/2018

ORDER

My this order will dispose-of the departmental appeal, preferred by Ex Constable Muhammad Arif No. 555 of District Tank wherein he has prayed for setting aside the order of major punishment of dismissal from service imposed to him by DPO Tank vide OB No. 590 dated 06.04.2010 after found him guilty of the following allegations:-

That the appellant while posted at Judicial Lockup Tank absented himself from lawful duties without any permission/intimation to the higher authorities w.e. from 01.11.2009 till the date of dismissal order.

His service record, inquiry papers and comments were received from DPO Tank which were perused and it was found that enquiry into the matter was conducted by SP Investigation unit Tank who submitted his findings report stating therein that as per report of reliable sources, the delinquent constable has been proceeded Abu Dhabi and ex parte action may be taken against him. The competent authority after providing him the opportunity of showing cause has passed the order dated 06.04.2010.

Aggrieved from the impugned order, the appellant submitted the instant appeal before the undersigned which was sent to DPO Tank for comments and to provide his service record vide this office memo: No. 820/ES dated 01.02.2018. The DPO Tank has submitted the comments and service record of the appellant vide memo: No. 1243/Legal dated 10.04.2018, wherein the appeal of the appellant was properly defended on cogent grounds.

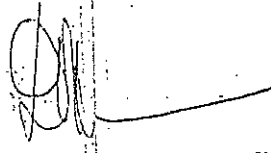
During the perusal of his service record, it was found that the appellant has served Police Force for about 02 years and 08 months. He has already been remained absent on an occasion and his total 02 days absence to this effect has been converted into leave without pay. Inquiry file also depicts that he has been given every opportunity of defence but badly failed to rebut the charges. It has also been transpired that the punishment order was passed by DPO Tank on 06.04.2010 but the defaulter constable preferred the instant appeal on 01.03.2018 which is grossly time barred.

Attested
Guns
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The undersigned also provided him opportunity of personal hearing but he failed to appear in Orderly Room. Keeping in view the above, I can safely infer from the above that the appellant is incorrigible and his appeal is devoid of merit. There is no need of interference in the impugned order. Therefore I, DAR ALI KHAN KHATTAK, PSP, Regional Police Officer, DI Khan, in exercise of powers vested in me under Rule 11 clause 4(a) of Khyber Pakhtunkhwa Police Rules 1975 (amended 2014) hereby reject his appeal being grossly time barred and endorse the punishment awarded to him by DPO Tank.

ORDER ANNOUNCED



(DAR ALI KHAN KHATTAK)PSP
REGIONAL POLICE OFFICER
DERA ISMAIL KHAN ✓

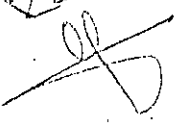
No. 2573 /ES

Copy of above is sent to the DPO Tank for information with reference to his office memo: No. 1243/Legal dated 10.04.2018 alongwith his service record.

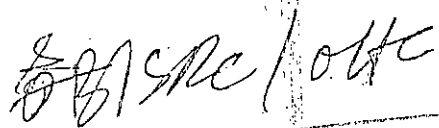
Encl:-
Service Roll ✓
Fauji Missal ✓

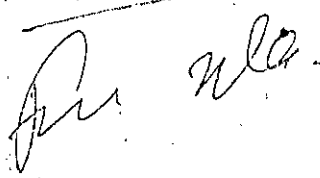


(DAR ALI KHAN KHATTAK)PSP
REGIONAL POLICE OFFICER
DERA ISMAIL KHAN ✓

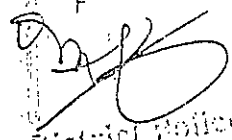
① S. Pall
Received

19-7

Fauji Missal
Rami
Jinnah
17/7/18

 SAC / offc

 nla

Attested
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District Police Officer
Tank
19/7

ORNO 754
off 20-7-2018

THROUGH PROPER CHANNEL.

Subject:- APPEAL / REPRESENTATION OF EX-CONSTABLE MUHAMMAD ARIF NO. 555 AGAINST THE IMPUGNED ORDER OF DPO/TANK WHEREBY HE WAS AWARDED MAJOR PUNISHMENT OF DISMISSAL FROM SERVICE VIDE OB NO. 590, DATED 06.04.2010 AND FILING OF DEPARTMENTAL APPEAL BY RPO/DIKHAN VIDE ORDER NO. 2572-73/ES, DATED 18.07.2018

Prayer

R/Sir,

On acceptance this departmental appeal, the impugned orders of DPO/Tank regarding dismissal from service and RPO/Dera Ismail Khan regarding filing of departmental appeal may kindly be set-aside with full back wages and benefits of service or any other relief may deemed proper also be allowed.

Brief facts:- That the appellant was enlisted as Constable in Police Department Tank on 27.06.2007 vide OB No. 285 dated 26.07.2007. After qualifying basis departmental training, the appellant remained posted at various positions in Police Department Tank and served to the best satisfaction of my Senior Command. While posting AT Judicial Lock Up Tank, I was shown absent from performance of duty vide DD No. 23, dated 01.11.2009 without any justification for which the appellant was Charge Sheeted. The Charge Sheet along with Summary of allegations was not served upon the appellant. Sp/Investigation, Tank was nominated as Inquiry Officer. No chance of self defense was provided subsequently exparte departmental enquiry was conducted and completed. The Inquiry Officer has submitted his defective and faulty enquiry report upon which the appellant was awarded Major Punishment of Dismissal from Service vide OB No. 590, dated 06.04.2010 against which the appellant has lodged departmental appeal before the Regional Police Officer, Dera Ismail Khan Region which was filed vide Order No. 2572-73/ES, dated 18.07.2018 (Copy enclosed) which are illegal and requires to be set aside forthwith..

Respectfully submitted:-

- a. That the appellant was posted at Judicial Lock Up Tank and serving to the best satisfaction of his Senior Command. No chance of complaint was provided.
- b. That the appellant while posted at Judicial Lock Up Tank was shown as absent from performance of duty vide DD No. 23, dated 01.11.2009 upon which he was charge sheeted. The Inquiry Officer was nominated.
- c. That the appellant was charge sheeted containing false and baseless allegations. The charge sheet was not served upon the appellant which was legal right of the appellant and violative of relevant law / rules.

*Attested
Gul
Aidi*

- 16
- d. That the Inquiry Officer was nominated. During departmental enquiry proceeding no chance of self defense or personal hearing was provided to the appellant nor any witness was examined in his presence.
- e. That the Inquiry Officer has submitted a faulty and defective ex-parte departmental enquiry report which is against the norms of justice.
- f. That the Authority without fulfillment of Codal formalities as required under the rules, announced a impugned order of my Dismissal from Service which is illegal and unjustified.
- g. That the Impugned Order of DPO/Tank and RPO/Dera Ismail Khan Region are against the norms of justice and express Provisions of law thus liable to be set aside inter alia on the following grounds:-

GROUND OF APPEAL:-

- That the ex-parte departmental proceedings initiated against the appellant was the result of personal ill will and was based on false statement, the charge was never proved in the enquiry thus the ex-parte departmental proceedings so conducted were a mere eye wash and nullity in the eyes of law.
- That during departmental proceedings neither charge sheet was served upon the appellant nor any chance of self defense or personal hearing was provided to the appellant thus the ex-parte departmental proceedings conducted and completed against the appellant are illegal, malafide and not tenable.
- That all the proceedings conducted against the appellant were violative of law and against the mandatory Provision of Khyber PakhtunKhwa Police Rules 1975 amendment 2014, the orders impugned are thus liable to be set at naught.
- That the ex-parte departmental proceeding conducted against the appellant did not adhered to the mandatory Provisions of Khyber PakhtunKhwa, Police Rules 1975, but in a novel way.
- That all the proceedings conducted against the appellant were illegal and unlawful as it run counter to the express Provisions of the Khyber PakhtunKhwa Police Rules 1975 amended 2014.
- That during ex-parte departmental proceeding the allegation of my absence from duty intentionally were not proved and thus the proceeding conducted against the appellant are illegal, malafide and not tenable.
- That the impugned order of DPO/Tank and RPO/Dera Ismail Khan Region are not based on justice, the orders impugned are thus liable to be set at naught.
- That the appellant seeks the permission of Hon 'able Appellant Authority to rely on additional grounds at the disposal of this appeal.

Attested
Gus
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It is, therefore requested that on acceptance of this departmental appeal the impugned orders of DPO/Tank and RPO/Dera Ismail Khan Region may kindly be set aside and the appellant may be reinstated into service with all back benefits as admissible under the rules so as to meet the requirements of justice, please.

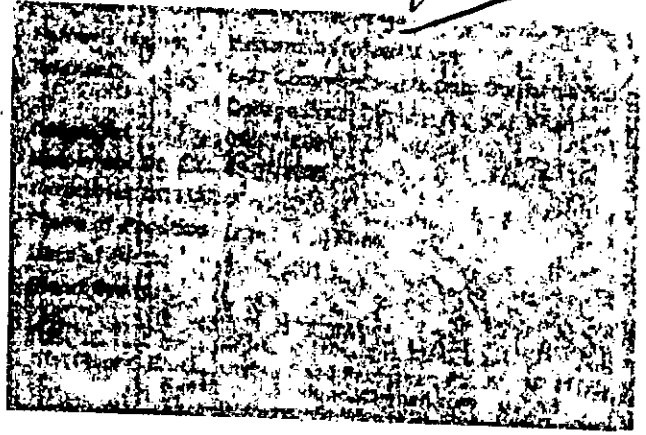
17-8-2018

CA

(MUHAMMAD ARIF)
Ex- Constable No. 555.
Police Department Tank,
R/o village Kaka Khel, Mullazai Tank.

Attest
Amir
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18



VAKALATNAMA

IN THE COURT OF KPK Service Tribunal Peshawar

Mohammad Arif VERSUS Govt of KPK & others

Title Service Appeal

I/we Mohammad Arif

The above named Appellant hereby appoint Gul Tiaz Khan Marwat Advocate High Court D.I.Khan, in the above mentioned case to all or any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this court/tribunal in which the same may be tried or heard or any other proceedings out of our connected therewith.
 2. To sign and verify and file or withdraw all proceedings, petitions, appeals, affidavits, and applications for compromise or withdrawal, or for the submission to arbitration of the said case or any other documents, may be deemed necessary or advisable by them by the conduct, prosecution or defense of the said case at all its stages.
 3. To receive payments of and issue receipts for all moneys that may be or become due and payable to us during the course on conclusion of the proceeding.
To do all other acts and things, which may deemed necessary or advisable during the course of proceedings.
- AND hereby agree:
- a. To ratify whatever advocates may do the proceedings.
 - b. Not to hold the advocates responsible if the said case be proceed ex-parte or dismissed in default in consequence of their absence from the court when it is called for hearing.
 - c. That the advocates shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains un-paid.
 - d. That advocates may be permitted to argue any other point at the time of arguments.

In witness whereof I/we have signed this vakalatnama here under the contents of which have been read/explained to me/us which is fully understood by me/us.

Date: 28/2/2019

Gul Tiaz Khan Marwat
Signature of Executants (s)

Accepted by:

Gul Tiaz Khan Marwat
Advocate High Court D.I.Khan (KPK)
Cell No. 0300-9092488 / 0345-9853488

I

BEFORE THE KPK SERVICE TRIBUNAL

CAMP COURT D.I.KHAN

CMA # _____/2019

In

Appeal No. 366/2019

Muhammad Arif

V/S

Govt. Of KPK and others

APPLICATION FOR BRINGING ON RECORD OF THIS HONORABLE
TRIBUNAL COPY OF DEPARTMENTAL APPEAL

Respected Sir,

1. That the above noted appeal is pending disposal before this honourable Tribunal and is fixed for today i.e. 28.08.2019.
2. That at the time of filing of appeal, copy of departmental appeal was not available with the Appellant, therefore the same could not be annexed with the appeal.
3. That in compliance with the order dated 26.06.2019, the appellant / petitioner has to file a copy of departmental appeal with the record of this honourable Court. Copy of appeal is enclosed as **Annexure F.**

Amir

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It is therefore, prayed that on acceptance this application, this Honourable Tribunal may very graciously be pleased to allow the petitioner to place on record the copy of departmental appeal mentioned in the subject of the petition.

Date: 28.08.2019

Your Humble Petitioner,

Muhammad Arif

Muhammad Arif
Through Counsel

Gul Tiaz Khan Marwat

GUL TIAZ KHAN MARWAT,
Advocate High Court, D.I.Khan

AFFIDAVIT

I, Muhammad Arif the Appellant / Petitioner do hereby solemnly affirm and declare on Oath that the contents of the instant application are true and correct to the best of my knowledge and belief as per facts gathered from record of the case and that nothing has been concealed from this Honourable Tribunal.

Muhammad Arif

DEPONENT



19 F

BEFORE THE WORTHY REGIONAL POLICE OFFICER DERA ISMAIL KHAN REGION.

Subject: APPEAL /REPRESENTAION OF EX-CONST:MUHAMMAD ARIF KHAN NO.555 OF POLICE DEPT:TANK AGAINST THE IMPUGNED ORDER OF DPO/TANK WHEREBY THE APPELLANT WAS AWARDED MAJOR PENALTY OF DISMISSAL FROM SERVICE VIDE ORDER NO 2572DT 01-11-2009.

Prayer.

R/sir.

On acceptance the departmental appeal, the impugned order of DPO / Tank regarding dismissal of appellatant may kindly be set aside with full back wages and benefits of service or any other relief may deemed proper also be allowed.

BRIEF FACTS

That the appellatant was enlisted as constable into this department Tank 18-07-2007 vid OB NO 590 dated 26-07-2007 after qualifying basic departmental training remained posted at various positions in police department Tank and served to best satisfactiion of senior command while posting in judicial lockup Tank. I was absented from performance of official duty Vide DD No 15 dated 06-09-2010 without Justification .

The appellatant was charge sheeted which was not served upon him properly inspector Sana Ullah Khan, Incharge District Security branch Tank was nominated as inquiry officer. The ex-parte departmental inquiry was conducted. No Chance of self defense and cross examination was provided even the chart sheet was also not served upon the appellatant. After completion of ex-parte proceeding, the inquiry officer has submitted a defective finding report to DPO/ Tank upon which the appellatant was awarded major punishment of dismissal form service vide order book 2572 dated 01-11-2009 which is unjustified and violative of law because the inquiry was initiated and completed in his absentia and no chance self defense and cross examination was provide, thus requires to set aside.

Respectfully Submitted

1. That the appellatant was posted in police station Mullazai District Tank and was serving to the best satisfaction of my senior command. NO chance of complaint was provided either to my colleague or senior command.
2. That while posting in PS Mullazia District Tank. The appellatant was charged sheeted on the allegations of his will full absence and inspector Sana Ullah Khan of police department Tank was nominated as inquiry officer for conducted departmental proceeding against the appellatant.
3. That I was issued charged sheet along with statement of allegations containing false and baseless allegations which was not served upon the appellatant witch is illegal and violative to law/Rules ANNEXURE "A".
4. That the inquiry office was nominated during in inquiry no chance of self defense or cross examination was provided by the inquiry officer nor any witness was examined in my presence.
5. That the inquiry officer has submitted a defective inquiry report containing false and fabricated report which is against the norms of justice.

Attested
Jurid

- 6. That the authority without full filament of codal formality as required under the laid down rules, announced harsh and aggressive order of my dismissal from service which is illegal and unjustified. Copy enclosed.
- 7. That the impugned order of DPO/Tank is against the justice and express provision of law thus liable to be set aside inter alia on the following grounds.

Grounds of Appeal.

- That the appellant was charged sheeted on the allegations of his will full absence from performance of duties vide DD No.15 dated 01-11-2009 PS Mullazai where as the appellant was not absent but laying ill thus the charge sheet issued to appellant illegal and violated of law.
- That I was issued charge sheet along with statement of allegations containing false and baseless allegations but no served upon the appellant which is illegal and unjustified.
- That the departmental proceedings initiated against the appellant was result of personal ill will and was based on false statement because the charges were never proved in the inquiry nor any chance of self defense or cross examination was provide to appellant during inquiry thus the proceedings so conducted and completed were a mere eye wash nullity in the eyes of law.
- That all proceedings conducted against the appellant were violative of law and against the mandatory provision of KPK police rules 1975, the order impugned is thus liable to be set at naught.
- That the inquiry officer while conducting proceeding did not adhered to the mandatory provisions of KPK Police rules 1975, he conducted the inquiry in novel way.
- That all the proceeding conducted against the appellant were illegal and un law full as it runs counter to the express provisions of KPK police rules 1975.
- That during proceeding neither charge sheet was served upon the appellant nor any chance of self defense was provided thus the proceeding conducted and complete against the appellant are illegal, malafide and not tenable.
- That the impugned order of DPO/Tank is not base on justice, the order impugned is thus liable to set at naught.
- That the appellant seeks the permission of honorable appellant authority to rely on additional ground at the disposal of this appeal.

It is, there for requested that on acceptance of this appeal the impugned of order of DPO/Tank may kindly set aside and the appellant may be reinstated into service from the date of my dismissal from service so as to meet the requirement of justice please.

(Handwritten signature in Urdu)

Muhammad Arif Khan No 555
Ex-Constable
Police Department Tank r/o Kaka Khel Mullazai.

*Attested
Jun 2
Bach*

BEFORE THE HON'ABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHAW
PESHAWAR.

APPEAL No. 366- /2019.

EX-Const. Muhammad Arif No. 555

(Appellant).

Versus

1. Inspector General Of Police,
Khyber Pakhtunkhwa, Peshawar.

2. Deputy Inspector General of Polic,
Dera Ismail Khan Region.

(Respondents)

3. District Police Officer,
Tank.

Para-Wise comments on behalf of Respondents.

Respectfully Shewith,

Para-wise comments on behalf of Respondents are submitted as under:-

PRELIMINARY OBJECTION:

1. That the appellant has got no cause of action and locus standi to file the present appeal.
2. That the appeal is for bad misjoinder/non-joinder of necessary parties.
3. That the appeal is not maintainable and badly time barred.
4. That the appellant has not come with clean hands to the Hon'able Tribunal.
5. That the appellant is estopped due to his own conduct.
6. That the appellant has concealed the material facts from the honorable Tribunal.
7. That the appeal is not maintainable and incompetent.
8. That Hon' able Service Tribunal has no jurisdiction to entertain the instant appeal.

BRIEF ON FACTS.

1. Pertinent to record.
2. Subject to proof also maintained bad entries if any from his Service record.
3. Incorrect because the appellant while posted in judicial lock up, Tank has absented himself from performance of duty vide DD No. 23, dated 01.11.2009 without any legal or reasonable cause for which he was properly charged sheeted. The inquiry Officer was nominated thus legal action taken and completed against the appellant was legal and justified.
4. Incorrect because the appellant was absent from performance of duty without any leave or reasonable cause for which he was rightly charged sheeted. The Inquiry

Officer was nominated. The enquiry was conducted. During departmental enquiry, all possible efforts were made to ensure the availability of delinquent official / appellant for recording his defense reply but of no use because he was not present in the area / country and reportedly appellant had proceeded abroad to UAE (Abu Dubai). The ex-parte departmental enquiry report was received upon which an appropriate order of dismissal from service from the date of absence of the appellant was passed by the competent Authority which is legal and justified.

5. Incorrect because after perusal of enquiry file and other relevant documents, the Appellant Authorities have filed the Representation / Review Petition of the appellant which are legal and correct.
6. As discussed in Para No. 5 above.
7. Incorrect because the appellant has got no cause of action and the instant Service Appeal is not maintainable being badly time barred.

GROUND:

- a. Incorrect because the appellant was not present in the area / country and reportedly proceeded abroad to UAE, thus after fulfillment of all legal formalities required under the relevant law / rules, the Competent Authorities have passed appropriate order which are legal and justified.
- b. Incorrect, because the order passed by the Competent Authorities against the appellant is legal and is within the parameter of relevant law.
- c. Incorrect, because during departmental proceedings all kind of legal formalities required under the relevant law / rules were observed thus the order passed by the Competent Authority and correct.
- d. Incorrect, because the appellant was absent from duty and reportedly proceeded abroad to UAE without any approval or permission of the Competent Authority for which he was properly charge sheeted. The Inquiry Officer was nominated. The departmental inquiry was conducted. During departmental inquiry. All kinds of efforts were utilized to ensure the availability of the delinquent official / appellant for recording his defense reply but no of use subsequently ex-parte action was initiated and completed. After the completion of necessary departmental proceedings, Major punishment of Dismissal from Service from the date of absence was awarded to appellant which is legal.
- e. Incorrect, because departmental proceedings initiated and completed against the appellant is legal and is within Parameter of relevant law / rules.
- f. Incorrect, because the appellant was absent from duty and reportedly proceeded abroad to UAE without any approval or permission of the Competent Authority for which he was properly charge sheeted. The inquiry Officer was nominated. The efforts were utilized to ensure the availability of the delinquent official / appellant initiated and completed. After the completion of necessary proceedings, Major punishment of Dismissal from Service from the date of absence was awarded to the appellant which is legal.
- g. Incorrect, because the appellant was not present in the area / country and reportedly proceed abroad to UAE , thus after fulfillment of all legal formalities

required under the relevant law / rules, the Competent Authorities have passed appropriate orders which are legal and justified.

- h. Incorrect, because during departmental proceedings all kind of legal formalities were observed thus the order passed by the Competent Authority is legal and correct.
- i. As discussed above in Para No. "h" above.
- j. Incorrect, because the entire departmental proceedings were initiated and completed purely on merit without any malafide or favor or disfavor.
- k. Needs no comments.
- l. Irrelevant Para. Needs no comments.
- m. Incorrect because departmental proceedings initiated and completed against the appellant is legal and is within parameter of relevant law / rules.
- n. That the Respondents may also be allowed to raise additional objection at the time of arguments.

In view of above, it is humbly prayed that on acceptance of Para-wise comments, the Service Appeal may kindly be dismissed being meritless and badly time barred.



Inspector General of Police
Khyber Pakhtunkhwa Peshawar
Respondent No. 2



Deputy Inspector General of Police,
Dera Ismail Khan Region.
Respondent No. 3



District Police Officer,
Tank.
Respondent No. 4

**BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER AKHTUNKHWA
PESHAWAR.**

APPEAL No. 366/2019.

Ex-Const. Muhammad Arif No. 555.

(Appellant).

Versus

1. Inspector General of Police,
Khyber PakhtunKhwa, Peshawar.


2. Regional Police Officer,,
Dera Ismail Khan Region.

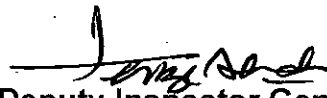
3. District Police Officer,
Tank.


) Respondents.

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENTS.

We, the respondents do hereby solemnly affirm and declare on oath that the contents of Comments / Written reply to Appeal are true & correct to the best of our knowledge and nothing has been concealed from this Honorable Tribunal.


Inspector General of Police
Khyber Pakhtunkhwa Peshawar
Respondent No.2


Deputy Inspector General of Police
Dera Ismail Khan Region.
Respondent No.3


District Police Officer,
Tank.
Respondent No.4