

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

Service Appeal No. 356/2019

Date of Institution ... 12.03.2019
Date of Decision ... 29.10.2021

Farman Ullah Ex-Constable No.591 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 27.10.2010, 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 neither charge sheet alongwith statement of allegations was served on appellant nor the appellant was associated with the inquiry proceedings and that on the basis of defective inquiry report, the appellant was awarded major punishment which is against the law.

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 27.10.2010, whereas, departmental appeal was filed on 19.04.2018 which was rejected being time barred on 31.07.2018.

5. From the record, it is evident that appellant was enlisted as Constable on 18.07.2007. He absented himself from duty vide D.D. No. 12 dated 17.07.2010 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 for disciplinary action after seven days of his willful absence. If he in pursuance to the lawful process does not come up to explain the reasons of his absence, the ex-parte decision against him is the requirement of law irrespective of any factual position under which he absented himself from attendance of the duty.

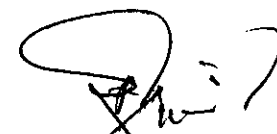
6. In the instant case, appellant remained absent since 17.07.2010 and was dismissed on 27.10.2010 w.e.f 17.07.2010. He filed departmental appeal on 19.04.2018 which was dismissed being time barred vide order dated 31.07.2018.

7. 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.

8. For what has been discussed above, instant service appeal is dismissed. Parties are left 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.

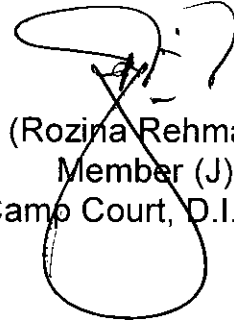
Vide our judgment of today of this Tribunal placed on file, instant service appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

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 Unsubar to come
up for the same on 28/9/21


Oh
Rehman

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

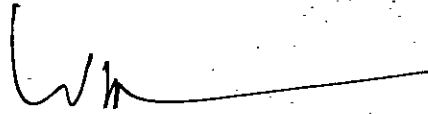

(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT D.I.KHAN

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 D.I.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 24.05.2021*



24.02.2021

Nemo for parties.

Riaz Khan Paindakheil 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

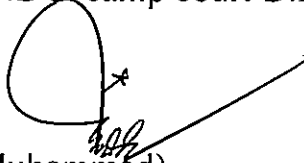


(Rozina Rehman)
Member (J)
Camp Court, D.I.Khan

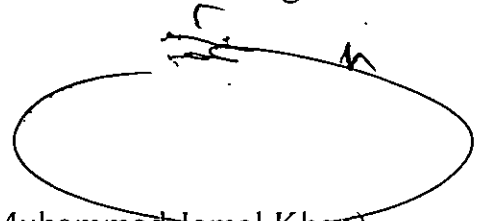
26.10.2020

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

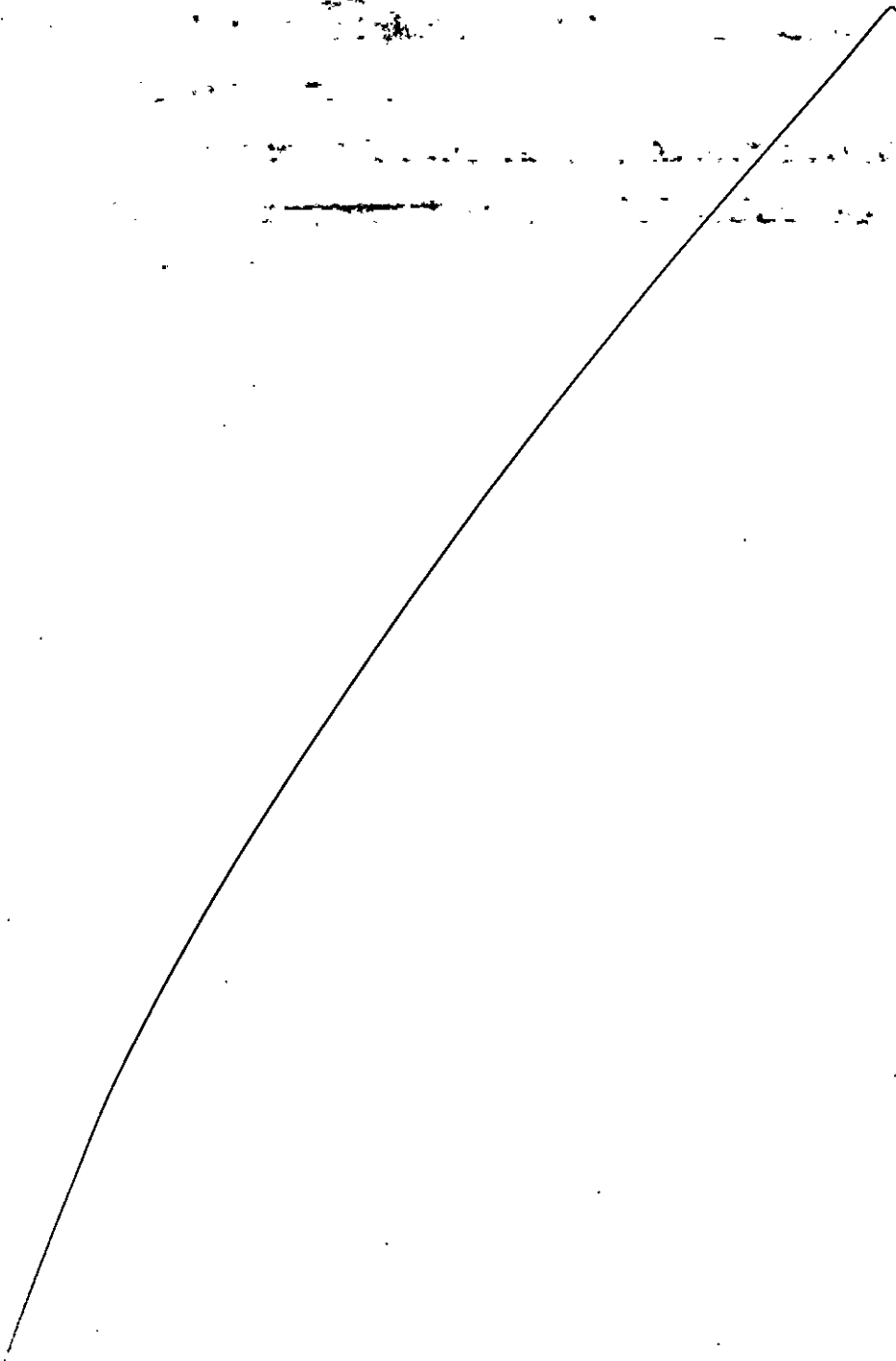
Since the Members of the High Court as well as of the District Bar Association D.I.Khan are observing strike today, therefore, the case is adjourned to 24.11.2020 for arguments before D.B at camp court D.I.Khan.



(Mian Muhammad)
Member(E)




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



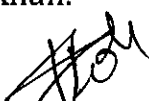
26.11.2019


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

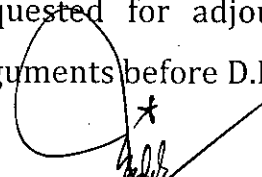
Clerk of counsel for the appellant and Mr. Usman Ghani, District Attorney alongwith Mr. Nadeem, LHC for the respondents present. Clerk of counsel for appellant requested for adjournment on the ground that learned counsel for the appellant is not available today due to general strike of the Khyber Pakhtunkhwa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



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


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

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

24.09.2019

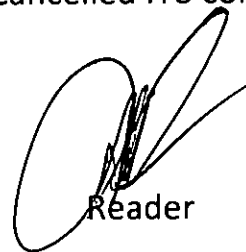
Clerk to counsel for the appellant present. Nadeem H.C representative of the respondent department present and seeks time to furnish written reply/comments. Granted To come up for written reply/comments on 22.10.2019 before S.B at Camp Court D.I.Khan.



Member
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

22/10/2019

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

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 Farman Ullah present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in Police Department. He was imposed major penalty of dismissal from service on the allegation of absence from duty vide order dated 22.10.2010. The appellant filed departmental appeal (Undated) which was rejected on 31.07.2018. The appellant filed revision on 01.09.2018 before the Inspector General of Police but the same was also not responded hence, the present service appeal on 12.03.2019. Learned counsel for the appellant further contended that neither any absence notice was issued to the appellant nor proper inquiry was conducted therefore, 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 deposit security and process fee within 10 days, thereafter, notice be issued to the respondents for written reply/comments for 24.09.2019 before S.B at Camp Court D.I.Khan.

Appellant Deposited
Security & Process Fee

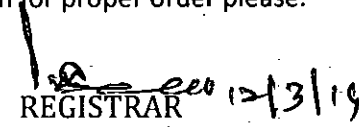



15/7/19

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

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 356/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	12/03/2019	The appeal of Mr. Farmanullah 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.  REGISTRAR 12/3/19
2-	1-4-19	This case is entrusted to touring S. Bench at D.I.Khan for preliminary hearing to be put up there on <u>22-04-19</u>  CHAIRMAN
	22.04.2019	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.  Member Camp Court, D.I.Khan.
	23.04.2019	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.  Member Camp Court, D.I.Khan.

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 356 /2019

Farman Ullah

..... **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	Copies of Appeal and order of D.I.G dated 31.07.2018	D&E	13-16
6	Copy of Revision Petition to I.G.P	F	17-19
8	Vakalatnama		20

Dated: 28 /02/2019

Your Humble Appellant

FARMAN ULLAH
Through Counsel

GUL TIAZ KHAN MARWAT
Advocate High Court Dikhan

03009092488

I

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 356 /2019

Farman Ullah Ex-Constable No. 591 Tank Police R/O
Village Kaka Khel P/O Mullazai Tehsil & District Tank.

..... **APPELLANT**
Khyber Pakhtukhwa
Service Tribunal

VERSUS

Diary No. 334

Dated 12/3/2019

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,

Filed to-day

Registrar

12/3/19.

1. That the appellant was appointed as constable in the Tank Police 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.
3. That the appellant was shown as absent from duty vide DD No. 12 dated 17.07.2010 and charge sheet dated

Jan 2

16.09.2010 was issued but the same was not served personally on the Appellant and Inquiry Officer was also appointed vide order dated 26.08.2010. 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-1745 dated 27.10.2010 vide which major penalty of dismissal from service of Appellant was passed from the date of absence i.e. 17.07.2010. 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 31.07.2018. Copies of Appeal and Order are enclosed as **Annexure D&E**.
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 F**.
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.
- 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

Just

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.
- J. That the Appellant has been met out discriminatory treatment and he has not been treated under the law as

Qureshi

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.

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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,

فرمان اللہ

Farman Ullah

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.

فرمان اللہ

APPELLANT

7

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No _____/2019

Farman Ullah

..... **APPELLANT**

VERSUS

Govt: of KPK through Secretary Home Department etc.

AFFIDAVIT

Farman Ullah Ex-Constable No. 591 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
[Signature]
SALEM BALI
R.O & A.C
Oath Commissioner D.I. Khan

فرمان اللہ

DEPONENT

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Civil Misc. Application No. _____/2019

In

Service Appeal No _____/2019

Farman Ullah

..... **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

Jun

9

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,

فرمان اللہ

Farman Ullah

Through Counsel

Amir

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

Dated: 28 /02/2019

AFFIDAVIT

Farman Ullah Ex-Constable No. 591 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
SALIM B. KHAN
R.O & A.
Oath Commissione D.I. Khar

فرمان اللہ

DEPONENT

ORDER

12 C

This is an order in the Departmental Enquiry of Constable Farmanullah No. 591 of this District Police committed the following acts of omission commission:-

That he while posted as Constable in Police Station, Mullazai have absented himself from official duty without any leave or permission vide DD SI: No. 12 dated 17.07.2010 till this order.


He was issued charge sheet and statement of allegation under the NWFP Removal from Service (special Powers) Ord: 2000. Inspector Sanaullah Khan, Reserve Inspector, Tank was nominated to conduct proper departmental enquiry into the matter. The enquiry officer completed the inquiry and submitted inquiry report.

On having been gone through the findings, recommendation of the Enquiry Officer, and material placed on record, I, MUHAMMAD IJAZ ABID, District Police Officer, Tank (Competent Authority) do hereby award a Major Punishment of DISMISSAL FROM SERVICE from the date his absence i.e. 17.07.2010.

Order Announced

27-10-2010

Attest
Jinnat
Sovv.


(MUHAMMAD IJAZ ABID)
District Police Officer,
Tank.

OB No. 1745
27.10.10

13 D

BEFORE THE WORTHY REGIONAL POLICE OFFICER, DERA ISMAIL KHAN REGION.

Subject:- APPEAL / REPRESENTATION OF EX-CONST: FARMAN ULLAH NO. 591 OF POLICE DEPTT: TANK AGAINST THE IMPUGNED ORDER OF DPO/TANK WHEREBY THE APPELLANT WAS AWARDED MAJOR PENALTY OF DISMISSAL FROM SERVICE VIDE ORDER NO. 1745 DT: 27/10/2010.

Prayer

R/Sir,

On acceptance this departmental appeal, the impugned order of DPO/Tank regarding Dismissal of appellants 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 18.07.2007 vide OB No. 921 dated 26.07.2007. After qualifying basic departmental training remained posted at various positions in Police Department Tank and served to the best satisfaction of my Senior Command. While posting in Police Station Mullazai District Tank, I was absented from performance of official duty vide DD No. 12, dated 17.10.2010 without any justification.

The appellant 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 enquiry was conducted. No chance of self defense and cross examination was provided even the charge sheet was also not served upon the appellant. After completion of ex-parte proceedings, the Inquiry Officer has submitted a defective finding report to DPO/Tank upon which the appellant was awarded Major Punishment of Dismissal from Service vide Order Book 1745 dated 27/10/2010 which is unjustified and violative of law because the enquiry was initiated and completed in his absentia and no chance of self defense or cross examination was provided, thus requires to be set aside.

Respectfully submitted:-

1. That the appellant 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 Mullazai District Tank, the appellant was charged sheeted on the allegations of his willful absence and Inspector Sana Ullah Khan of Police Department Tank was nominated as Inquiry Officer for conducting departmental proceedings against the appellant.
3. That I was issued charge sheet alongwith statement of allegations containing false and baseless allegations which was not served upon the appellant which is illegal and violative to law / rules Annexure "A".
4. That the Inquiry Officer was nominated. During enquiry no chance of self defense or cross examination was provided by the Inquiry Officer nor any witness was examined in my presence.

Appellant
Farmans
Sana

- 14
5. That the Inquiry Officer has submitted a defective enquiry report containing false and fabricated report which is against the norms of justice.
 6. That the Authority without fulfillment of 'Codal formalities 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 Provisions 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 willful absence from performance of duties vide DD No. 12, dated 17.10.2010 PS Mullazai whereas the appellant was not absent but lying ill thus the charge sheet issued to the appellant illegal and violative of law.
- That I was issued charge sheet alongwith statement of allegations containing false and baseless allegations but not served upon the appellant which is illegal and unjustified.
- That the departmental proceedings initiated against the appellant was the result of personal ill will and was based on false statement because the charges were never proved in the enquiry nor any chance of self defense or cross examination was provided to the appellant during enquiry thus the proceedings so conducted and completed were a mere eye wash and nullity in the eyes of law.
- That all the proceedings conducted against the appellant were violative of law and against the mandatory provision of Khyber Pakhtunkhwa Police Rules 1975, the order impugned is thus liable to be set at naught.
- That the Inquiry Officer while conducting proceedings did not adhered to the mandatory Provisions of Khyber Pakhtunkhwa, Police Rules 1975, he conducted the enquiry in a novel way.
- That all the proceedings conducted against the appellant were illegal and unlawful as it runs counter to the express Provisions of the Khyber Pakhtunkhwa Police Rules 1975.
- That during proceedings neither charge sheet was served upon the appellant nor any chance of self defense was provided thus the proceedings conducted and completed against the appellant are illegal, malafide and not tenable.
- That the impugned order of DPO/Tank is not based on justice, the order impugned is 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.

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

Farman Ullah
(FARMAN ULLAH NO. 591)
Ex-Constable

Police Deptt, Tank R/o Kaka Khel Mullazai.

*Attended
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No. 2720 /ES, Dated 31/07/2018 DI Khan the

ORDER

My this order will dispose of the departmental appeal, preferred by Ex Constable Farman Ullah No. 591 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. 1745 dated 27.10.2010 after found him guilty of the following allegations:-

That the appellant he while posted at Police Station Mullazai absented himself from lawful duties vide DD No.12 dated 17.07.2010 till the order of dismissal from service (total 99 days).

His service record, inquiry papers and comments were received from DPO Tank which were perused and it was found that inquiry into the matter was conducted by Inspector Sanaullah RI Police Lines Tank. The enquiry officer submitted his findings report and stated that the appellant has been proceeded abroad (Abu Dhabi) and recommended to award him major punishment of dismissal from service. The competent authority after providing him the opportunity of showing cause has passed the order dated 27.10.2010.

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. 1501/ES dated 23.04.2018. The DPO Tank has submitted the comments and service record of the appellant vide memo: No. 1770 dated 10.05.2018, 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 03 years and 03 months. The appellant appeared before the undersigned in Orderly Room held on 17.07.2018 stating therein that he was not proceeded abroad. Consequently, DPO Tank was addressed to seek proof from FIA vide this office memo: No. 2579/ES dated 18.07.2018. DPO Tank made correspondence with the Asstt. Director, Regional Passport Office Tank and submitted the report of Asstt. Director, Regional Passport Office Tank vide his office memo: No. 2690 dated 24.07.2018 that Passport No. AB-8959203

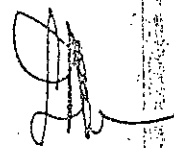
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dated 24.08.2016 issued from Abu Dhabi to the appellant.
transpired that the punishment order was passed by DPO Tank on 27.10.2010
but the defaulter constable preferred the instant appeal on 19.04.2018 which is
grossly time barred.

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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

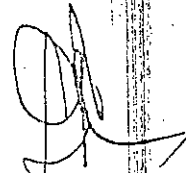


(DAR ALI KHAN KHATTAK)PSP
REGIONAL POLICE OFFICER
DERA ISMAIL KHAN

No. 2721 /ES

Copy of above is sent to the DPO Tank for information with
reference to his office memo: No. 1770 dated 10.05.2018 alongwith his service
record.

Encl:-
Service Roll
Fauji Missal



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

Handwritten signature/initials

Handwritten signature/initials

District Police Officer
Tank

Handwritten notes:
SVP
PPS
3-8-18
S. Pallone
f sec
3-8-18

OB No 789
14 03-08-2018

Handwritten signature/initials

3/8/18

THROUGH PROPER CHANNEL.

Subject:- APPEAL / REPRESENTATION OF EX-CONSTABLE FARMAN ULLAH NO. 591 AGAINST THE IMPUGNED ORDER OF DPO/TANK WHEREBY HE WAS AWARDED MAJOR PUNISHMENT OF DISMISSAL FROM SERVICE VIDE OB NO. 1745, DATED 27.10.2010 AND FILING OF DEPARTMENTAL APPEAL BY RPO/DIKHAN VIDE ORDER NO. 2720-21/ES, DATED 31.07.2018

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 18.07.2007 vide OB No. 921 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 in PS Mullazai District Tank, I was shown absent from performance of duty vide DD No. 12, dated 07.10.2010 without any justification for which the appellant was Charge Sheeted. The Charge Sheet along with Summary of allegations was not served upon the appellant. Inspector Sana Ullah, DSB 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. 1745, dated 27.10.2010 against which the appellant has lodged departmental appeal before the Regional Police Officer, Dera Ismail Khan Region which was filed vide Order No. 2720-21/ES, dated 31.07.2018 (Copy enclosed) which are illegal and requires to be set aside forthwith..

Respectfully submitted:-

- a. That the appellant was posted in PS Mullazai and serving to the best satisfaction of his Senior Command. No chance of complaint was provided.
- b. That the appellant while posted in PS Mullazai was shown as absent from performance of duty vide DD No. 12, dated 17.10.2010 upon which he was charge sheeted. The Inquiry Officer was nominated.
- c. That the appellant was charge sheeted containing false and baseless allegations which was not served upon the appellant which was legal right of the appellant and violative of relevant law / rules.

*Attest
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- 18
- 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:-

GROUNDS 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 PakhtunKhwā 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 PakhtunKhwā, 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 PakhtunKhwā 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.

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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.

Dated
1.9.2018

فرمان اللہ نظام

(FARMAN ULLAH)

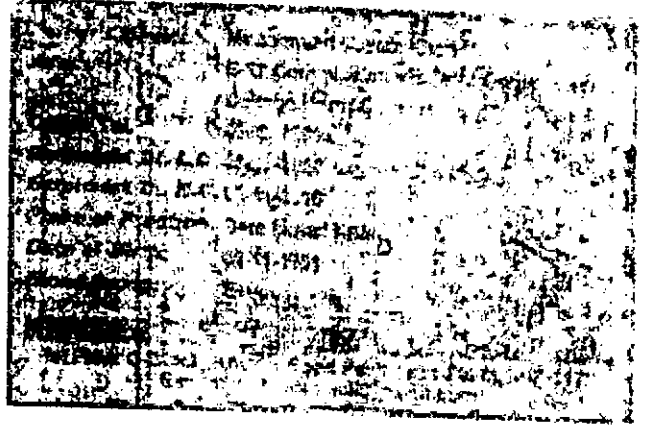
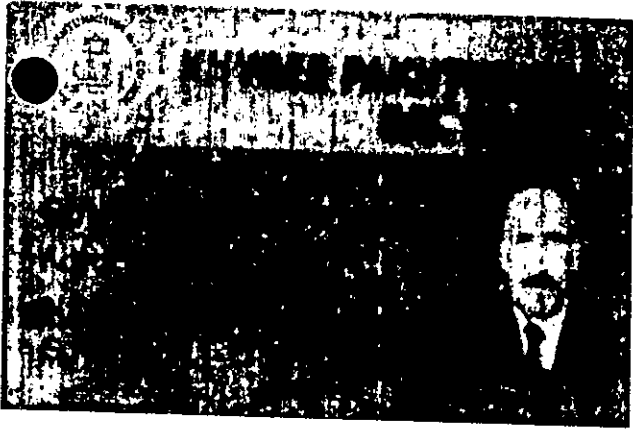
Ex- Constable No. 591.

Police Department Tank,

R/o village Kaka Khel, Mullazai Tank.

Attested
Juz
Sadi

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VAKALATNAMA

IN THE COURT OF KPK Service Tribunal Peshawar

Farmanullah... VERSUS Govt of KPK & others

Title Service Appeal

I/we Farmanullah

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

فرمان اللہ

Signature of Executants (s)

Accepted by:

Gul Tiaz Khan Marwat

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

BEFORE THE HON'ABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHAW
PESHAWAR.

APPEAL No. 356- /2019.

EX-Const. Farman Ullah:

(Appellant).

Versus

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

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

3. District Police Officer,
Tank.

(Respondents)

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 Police Station Mullazai has absented himself from performance of duty vide DD No. 22, dated 15.07.2010 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:

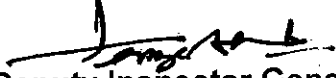
- a. Incorrect because the appellant was not present in the area / country and reportedly proceeded abroad to UAE, thus after fulfillment of all legal formalities required under the relevant law / rules, the Competent Authorities have passed appropriate order which are legal and justified.
- b. Incorrect, 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 HON'ABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

APPEAL No. 356/2019.

Ex-Const: Farmanullah

(Appellant)

Versus

1. Inspector General of Police,
Khyber Pakhtunkhwa Peshawar.


(Respondents)

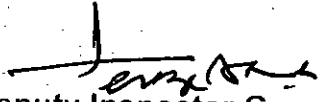
2. Deputy Inspector General of Police,
Dera Ismail Khan Region.

3. District Police Officer, Tank.

Subject: **AUTHORITY LETTER.**

Sub Inspector Sher Afzal, Legal Branch Tank is hereby authorized to appear before the Honorable Service Tribunal Khyber Pakhtunkhwa on our behalf. He is also authorized to deposit any reply/documents/record etc before the Court on our behalf.


**INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA PESHAWAR.**
Respondent No. 02


**Deputy Inspector General of Police,
Dera Ismail Khan.**
Respondent No. 03


**District Police Officer,
Tank.**
Respondent No. 04.