

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT SWAT

Service Appeal No. 868/2016

Date of Institution... 10.08.2016

Date of decision... 30.01.2018

Muhammad Tahir son of Muhammad Rasool, resident of Tawoda China, Tehsil Timergara, District Dir Lower. ... (Appellant)

Versus

1. District Police Officer, Dir Lower at Timergara and 2 others. ... (Respondents)

SYED ABDUL HAQ,
Advocate

... For appellant.

MR. KABIRULLAH KHATTAK,
Addl. Advocate General

... For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. GUL ZEB KHAN,

... CHAIRMAN
MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellant was dismissed from service due to his absence on 07.04.2016 against which he filed a departmental appeal on 11.4.2016 which was rejected on 08.6.2016 and communicated to him on 11.07.2016. Thereafter he filed the present service appeal on 10.08.2016.

ARGUMENTS

3. The learned counsel for the appellant argued that the penalty of dismissal from service was too harsh. That not only the appellant was dismissed but the period of absence was also treated as leave without pay.

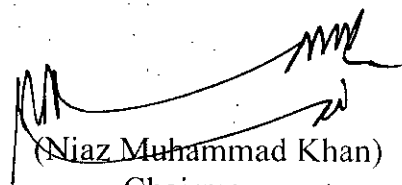
4. On the other hand, the learned Addl. Advocate General argued that the present appeal was time barred as the appellate order was passed on 08.6.2016 and the appellant filed the present service appeal on 10.08.2016. That the authority was quite competent to pass the dismissal order under the rules. That all the codal formalities were fulfilled.

CONCLUSION

5. The present appeal is within time as the date of communication of the order of departmental authority is 11.07.2016 as endorsed at the footings of the order. This Tribunal in a number of appeals has decided that the treatment of absence period into any kind of leave would legalize the absence and no action can be taken on the basis of the said period. In this respect reliance is placed on 2006-SCMR-434.

6. As a sequel to the above discussion, the present appeal is accepted and the appellant is reinstated in service. The intervening period shall be treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.


(Gul Zeb Khan)
Member

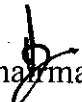

(Niaz Muhammad Khan)
Chairman
Camp Court, Swat

ANNOUNCED
30.1.2018


868/2016

10.03.2017

Appellant in person and Mr. Akhtar Said, H.C alongwith Mr. Muhammad Zubair, Sr. Government Pleader for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 09.08.2017 at camp court, Swat.


Chairman
Camp court, Swat

09.08.2017

Appellant in person and Mr. Muhammad Zubair, District Attorney alongwith  Mr. Zawar Khan, SI (Legal) for the respondents present. Appellant seeks adjournment. Adjourned. To come up for arguments on 9.11.2017 before the D.B at camp court, Swat.


Member


Chairman
Camp court, Swat

09.11.2017//

Counsel for the appellant and Addl. AG alongwith Zewar Khan, SI (Legal) for the respondents present. Counsel for the appellant seeks adjournments. Granted. To come up for arguments on 30.01.2018 before the D.B at camp court, Swat.


Member


Chairman
Camp Court, Swat

10.11.2016

Learned counsel for the appellant argued that the appellant was serving as constable when subjected to enquiry and dismissed from service vide impugned order dated 07.04.2016 where-against he preferred departmental appeal which was also rejected vide order dated 08.06.2016 communicated to the appellant on 11.07.2016 and hence the instant service appeal on 10.08.2016.

That no regular enquiry was conducted against the appellant and harsh punishment in the shape of dismissal from service was imposed for the alleged absence and as such the impugned orders are against facts and law and liable to be set aside.


Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 06.01.2017 before S.B at camp court, Swat.

Appellant Deposited
Security & Process Fee


Chairman
Camp Court, Swat.

06.1.2017

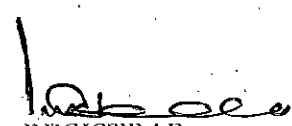

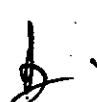
Agent of counsel for the appellant and Mian Amir Qadar, GP for the respondents present. Written reply not submitted. Requested for adjournment. To come up for written reply/comments on 10.03.2017 before S.B at camp court, Swat.


Chairman
Camp court, Swat

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 868/2016

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	26/08/2016	<p>The appeal of Mr. Muhammad Tahir resubmitted today by Syed Abdul Haq Advocate may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	29-08-2016	<p>This case is entrusted to Touring S. Bench at Swat for preliminary hearing to be put up there on <u>08-09-2016</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	08.09.2016	<p>None present for the appellant. Notice be issued to appellant and his counsel. To come up for preliminary hearing on 10.11.2016 before S.B at camp court, Swat.</p> <p style="text-align: right;"> Chairman Camp Court, Swat.</p>

The appeal of Mr. Muhammad Tahir ex-constable in police department Distt. Dir Lower received today i.e. on 10.08.2016 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Copy of departmental appeal is not attached with the appeal which may be placed on it.

No. 1294 /S.T.

DC 10/8 /2016

Syed Abdul Haq Advocate
High Court Swat.

Resubmission of the complete

REGISTRAR
SERVICE TRIBUNAL
KHAYBER PAKHTUNKHWA
PESHAWAR.

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA AT PESHAWAR

APPEAL No. 868-M of 2016

Muhammad Tahir (Appellant)

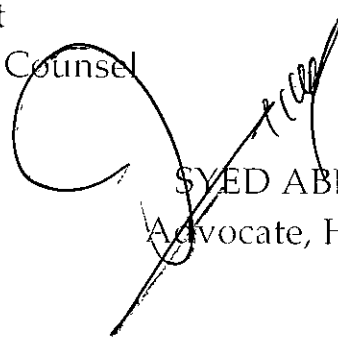
VERSUS

District Police Officer Dir Lower and others..... (Respondents)

INDEX

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5.	Copies service card and domicile certificate	A & A-1	14-15
6.	Copy of impugned order regarding dismissal from service dated 07-04-2016.	B	16
7.	copy of order dated 08-06-2016	C-1	17-19
9.	Wakalatnama		20

Appellant
Through Counsel


SYED ABDUL HAQ
Advocate, High Court

Bar Room Mingora Bench Swat.
Cell No: 033-9546154

1

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA AT PESHAWAR

Appeal No. 868 -M of 2016

Khyber Pakhtukhwa
Service Tribunal

Diary No. 839

Dated 10-08-2016

Muhammad Tahir son of Muhammad Rasool
Resident of Tawoda China, Tehsil Timergara,
District Dir Lower (Ex-Constable in Police Department)


.....Appellant

VERSUS


1. District Police Officer, Dir Lower at Timergara.
2. Regional Police Officer / Deputy Inspector General
Malakand Division at Saidu Sharif, Swat.
3. Inspector General of Police Govt. of Khyber Pakhtunkhwa at
Peshawar.

.....Respondents

SERVICE APPEAL UNDER SECTION 4, OF
THE KPK SERVICE TRIBUNAL ACT, 1974,
AGAINST THE ORDER DATED 08-06-2016,
WHEREBY APPEAL FILED BY THE
APPELLANT WAS DISMISSED BY THE
RESPONDENT NO. 2, RESULTANTLY THE

Filed to-day

Registrar
10/8/16

Re-submitted to -day
and filed.


Registrar
20/8/16

2

APPELLANT WAS DISMISSED FROM SERVICE BY.

PRAYER IN APPEAL

On acceptance of this appeal the order passed by Respondent No. 2 who maintained the order passed by the Respondent No. 1 dated 07-04-2016 may kindly be set aside and the appellant may kindly be re-instated in service as constable with all back benefits.

Any other relief which are proper in the instant circumstances of the may also be granted.

Respectfully Sheweth,

- 1) That the appellant is permanent resident of Tehsil Timergara, District Dir Lower, and was appointed as Constable in Police Department vide appointment order dated 26-12-2010. (Copy of service card and domicile certificate are attached as annexure "A" & "A-1" respectively)

- 2) That the appellant has clean service record and always remains devoted to his profession and serve duty at different station like 1) Police Station Khal, 2) Police Station Timergara, 3) Police Station Lal Qila District Dir lower and no complaint whatsoever has been raised by any concerned officer against him.
- 3) That the appellant was transferred as constable to Police Station Lal Qila while in his service hours he suffered from malaria and he submitted application for leave but due to sever malarial decease and due to long distance from the posted place he was unable to pursue his application properly as the appellant was sole major member of his entire family.
- 4) That when the appellant became healthy and appear at concerned Police Station Lal Qila, he was appraised that departmental inquiry has been commenced against appellant.
- 5) That during service the concerned authority handed over office order dated 07-04-2016 where in the appellant was

dismissed from Service although it is very astonishing that the appellant was remained unaware from the entire proceedings conducted by the concerned officers malafidely. (Copy of impugned order regarding dismissal from service dated 07-04-2016 is attached as annexure "B")

6) That the appellant feeling aggrieved filed appeal before the Respondent No. 2 / Regional Police Officer who without adopting due procedure of law / probe maintained the order passed by the Respondent No. 1 vide impugned order dated 08-06-2016. (copy of order *and J Ahmed* dated 08-06-2016 is attached as annexure "C") *(C-1)*

7) That the Respondent No. 2 without any intimation dismissed the appeal and when the appellant got knowledge about the fat of the case he approached to the concerned office and got the copy on 11-07-2016, *so the appeal is within time.*

8) That extremely aggrieved from the orders, the appellant have no other remedy except to file instant appeal before this Honorable Tribunal on the following grounds.

GROUND:-

- a. That the order of respondent No. 2 as well as respondent No. 1 are illegal, against the rules & regulation and exercised their power not vested to them.
- b. That in case of imposing major penalty principle of natural justice requires that a regular inquiry was to be conducted in the matter and opportunity of defense of personal hearing was to be provided to the civil servant proceeded against him otherwise the procedure against him without following the rules would be amount to condemned unheard. So, on this ground to the impugned orders regarding dismissal is liable to be set aside.
- c. That issuance of show cause notice and holding of inquiry was necessary under section 3 removal from service ordinance 2000 but Respondents fails to issue show cause notice nor any inquiry was hold and major penalty of dismissal was imposed upon him without adopting mandatory procedure resulting in

manifest injustice so, the impugned orders are liable to be set at naught.

d. That the penalty of dismissal from service imposed upon appellant for absence from service is illegal being violative of section 7 (a).

e. That the Respondents while passing the impugned orders regarding dismissal appellant whose absentee was treated as leave without pay so, such absentee cannot be treated as absent from duty, furthermore it is settle law when absence is treated is leave without pay then civil servant cannot be treated as absent and at least he would not be awarded major penalty of dismissal from service.

f. That the appellant was illegally treated & dismissal from service is too harsh so, the impugned orders are not maintainable in the eye of law.

g. That in service law concept of penalty was to make an attempt to reform the individual wrong doer (if any) but such penalty deprived the appellant from

the right of earning, which defeat the reformatory concept of punishment in administration of justice so, the orders passed by the Respondents No. 1 & 2 are not sustainable on this ground too.

- h. That further grounds, with leave of this Honorable Court, would be raised at the time of arguments before this Honorable Court.

Therefore in view of the above submissions, it is most humbly prayed that on acceptance of this appeal the order passed by Respondent No. 2 who maintained the order passed by the Respondent No. 1 dated 07-04-2016 may kindly be set aside and the appellatant may kindly be re-instated in service as constable with all back benefits.. Any other relief which are proper in the instant circumstances of the may also be granted.

M. Farid
Appellant
Through Counsel

[Signature]
SYED ABDUL HAQ
Advocate, High Court

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA AT PESHAWAR

APPEAL No. _____ -M of 2016

Attaur Rahman (Appellant)

VERSUS

Deputy Commissioner and others..... (Respondents)

STATEMENT OF FACTS AND CERTIFICATE:

(As per directions of my client) No such like Appeal earlier has been filed by the appellants on the subject matter before this Honorable Court.


ADVOCATE

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA AT PESHAWAR

APPEAL No _____ -M of 2016

Muhammad Tahir (Appellant)

VERSUS

District Police Officer Dir Lower and others..... (Respondents)

ADDRESSES OF THE PARTIES

APPELLANT

Muhammad Tahir son of Muhammad Rasool Resident of
Tawoda China, Tehsil Timergara, District Dir Lower (Ex-
Constable in Police Department)

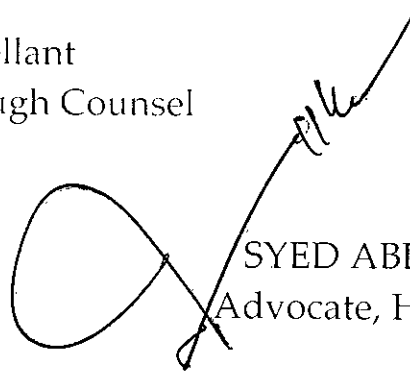
NIC No:

Cell No:

RESPONDENTS

1. District Police Officer, Dir Lower at Timergara.
2. Regional Police Officer / Deputy Inspector General
Malakand Division at Saidu Sharif, Swat.
3. Inspector General of Police Govt. of Khyber Pakhtunkhwa at
Peshawar.

Appellant
Through Counsel



SYED ABDUL HAQ
Advocate, High Court

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA AT PESHAWAR

APPEAL No _____ -M of 2016

Muhammad Tahir (Appellant)

VERSUS

District Police Officer Dir Lower and others..... (Respondents)

AFFIDAVIT

I, **Muhammad Tahir** son of Muhammad Rasool Resident
of Tawoda China, Tehsil Timergara, District Dir Lower, do
hereby solemnly affirm and declare on oath that the contents
of the above titled Appeal is true and correct to the best of
my knowledge and belief.

M. Tahir

DEPONENT

ATTESTED
Tariq Aziz Advocate
OATH COMMISSIONER
District Courts Swat.
Licence No-2455
No. 23 Date. 08/08/2010

Identified by
Syed Abdul-Haq
[Signature]

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA AT PESHAWAR

APPEAL No _____ -M of 2016

Muhammad Tahir (Appellant)

VERSUS

District Police Officer Dir Lower and others..... (Respondents)

APPLICATION FOR SUSPENSION THE
IMPUGNED ORDERS PASSED BY THE
RESPONDENTS NO. 1 & 2 REGARDING THE
DISMISSAL OF THE APPELLANT TILL THE
FINAL ISPOSAL OF THE INSTANT SERVICE

APPEAL.

Respectfully Sheweth:-

1. That the appellant / applicant being filed the instant service appeal in this Honorable court, where in no date is fixed so far.
2. That the appellant / applicant has a strong prima facie case and hopeful about the successes of the instant appeal.

3. That the balance of conveyance lies in favor of appellant / applicant as the impugned orders are patently illegal passed lack backing of law and are not sustainable.
4. That the appellant is the sole major member of his entire family, and healthy person and due to pendency of the instant appeal the appellant / applicant would suffer financial loss.
5. That the alleged absentee is merely amounts to misconduct and as per law no one be awarded such major penalty.
6. That above mentioned service appeal may be consider integral part of this application / petition.

It is, therefore, humbly prayed, that on acceptance this petition / applicant the above mentioned orders may kindly be suspended till the final disposal of the instant service appeal.

Appellant through
Through

Date: 09/08/016

SYED ABDUL HAQ
Advocate High Court

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA AT PESHAWAR

APPEAL No. _____ -M of 2016

Muhammad Tahir (Appellant)

VERSUS

District Police Officer Dir Lower and others..... (Respondents)

AFFIDAVIT

I, Muhammad Tahir son of Muhammad Rasool Resident of Tawoda China, Tehsil Timergara, District Dir Lower, do hereby solemnly affirm and declare on oath that the contents of the accompany application is true and correct to the best of my knowledge and belief.

M. Tahir
Deponent

ATTESTED .
Tariq Aziz Advocate
OATH COMMISSIONER
District Courts Swat.
Licence No-2455
No. 28/08/16

No. 25/08/01/2016

Identified by


Syed Abdul-Haq Ado

[Signature]

POLICE *Amir "A"*

Khyber Pakhtoon Khwa S.No. 1298

District Dir Lower




Muhammad Dahir
Constable No. 2192

Dir (L)
District Police Officer,
Dir Lower at Timergara

19

CK

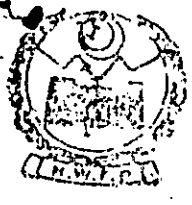
DIR (L)



POLICE

F/Name: Muhammad Rasool
 NIC No: 15302-1225191-7
 Tell: No: 0345 278 8960
 D.O.Birth: 10.02.1991
 D.O.Appo: 26.12.2010
 Blood G: A+
 Height: 5' 8"
 Eyes: Black
 D.O.Issue: 18.05.2011 D.O.Exp: 17.05.2014
 Address: Village Towda Chona RO Towda
 China Distt: Dir(L).

AWD



DOMICILE CERTIFICATE

N.W.F.P.
DISTRICT DIR LOWER

Declaration

No 10567 date 16/8/2007

I Muhammad TAHIR declare that I was born of parents who are permanently Domiciled in North West Frontier Province by birth, having settled in it. I belong to village/Mohallah Tawda-china Tehsil Timergara District Dir Lower having been born in it.

Tahir Khan
Signature of applicant

Pursuance to the declaration filed above by Muhammad TAHIR Son/Daughter/ Wife-of Muhammad Rasool it is hereby certified that the said Mr/Mrs/Miss Muhammad TAHIR is born of parents who are permanent residents of N.W.F.P. District Dir Lower belonging to it by birth / settled in it. I have satisfied myself from my personal-knowledge/verification overleaf that the above declaration is true.

This 16th day of August 2007



Seal

Deputy District Officer
Revenue & Estate Office
Timergara, Dir (L)

Countersigned

[Signature]
Collector / District Officer
Revenue & Estates.
District Dir Lower
Revenue & Estate

[Handwritten signatures and initials]

تصدیق

تصدیق کی جاتی ہے۔ کہ کسی اسماءہ محمد طاہر ولد اہنت انور محمد رسول
 سکول شاہین پبلک سکول گلڈن ٹیپ ٹیچنگ تعلیم رہ چکا ہے۔ جسکا جسکی داخلہ نمبر 192
 اور تاریخ پیدائش ہے۔ 10-02-1991

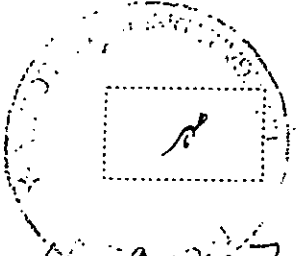
PRINCIPAL
 Shaheen Public High
 School Khadagzai Dir (L)
 دستخط پرنسپل اہیڈ ماسٹر

(1) یہ کہ کسی اسماءہ محمد طاہر ولد اہنت انور محمد رسول
 ساکن ٹوڈہ جینٹلمن قوم سہالا خیل ذیلی شاخ دو شنجیل کا کی اصلی پیدائش ہے
 جو کہ میرے طلعہ زینت میں واقع ہے۔

(2) یہ کہ کسی اسماءہ مذکورہ نے قبل ازیں کوئی ڈومیسائل سرٹیفکیٹ حاصل نہیں کیا۔
 (3) یہ کہ فارم طلبہ اہل جیساں تصویر درخواست کنندہ کی ہے جو کہ میری تصدیق کردہ ہے۔
 (4) یہ کہ سال اسائنڈ ڈومیسائل سرٹیفکیٹ کا حقدار ہے جس کو میری ذاتی ذمہ داری پر ڈومیسائل سرٹیفکیٹ دیا جائے۔

تصدیق کنندہ نمبر 1- نام سعید بیگم ولدیت جان عالم سکونت ٹوڈہ جینٹلمن
 شناختی کارڈ نمبر 15302R265273-8 دستخط سعید بیگم مہر
 General Manager UIC
 High. Khadagzai Dir (L)

تصدیق کنندہ نمبر 2- نام علیم سعید ولدیت شیخ بیگم فان سکونت ٹوڈہ جینٹلمن
 شناختی کارڈ نمبر 5-0889330-16302 دستخط علیم سعید مہر



تصدیق متعلقہ تحصیلدار
 دستخط
 نام
 2117
 تاریخ 7-3-16

نوٹ: 1- ڈومیسائل فارم پر تصویر کند سے چہاں کجائے۔
 2- فارم میں اگر بری منظر کے کو آف اگر بری میں ناپ کے جائیں۔
 3- فولڈ شدہ اور پٹے ہوئے فارم قابل قبول نہیں ہوئے۔
 4- مذکورہ فارم جو کہ تمام تحصیل دفاتر میں دستیاب ہیں کے علاوہ کوئی اور یا نوٹو کاپی فارم قابل قبول نہیں ہوگا۔ (دفتر تحصیلدار)

Handwritten signature and initials at the bottom left of the page.

Rs. 5.00

Annex "B"

16

OFFICE OF THE DISTRICT POLICE OFFICER, DIR LOWER AT TIMERGARA


ORDER

This order will dispose of the departmental enquiry conducted against Constable Muhammad Tahir No.2192 that he while posted to Police Station Lal Qilla absented himself from duty on 21-11-2015 to 29-11-2015 (08 days), 13-12-2015 to 20-12-2015 (07 days), 02-01-2016 to 27-01-2016 (25 days), 12-03-2016 to date without any leave or prior permission from his superior. Therefore he was served charge sheet coupled with statement of allegation and Mr. Hidayat Ullah Shah /SDPO Circle Timergara was appointed as enquiry officer to conduct proper departmental enquiry against him and submit his finding.

The enquiry officer during the course of enquiry recorded the statement of all concerned, as well as the delinquent Officials. The Enquiry Officer in his finding report recommended him major punishment.

Therefore, I Qasim Ali (PSP), District Police Officer, Dir. Lower in exercise of power vested to me under (E & D) Rules 1975 with amendment 2014, Dismissed him from service and the period of absence is treated as leave without pay.

ORDER ANNOUNCED


District Police Officer,
Dir Lower at Timergara

29

OB; No. 396 /EB
Dated 07 /04/2016





Amir "C"

(17)

OFFICE OF THE REGIONAL POLICE OFFICER, MALAKAND REGION,
AT SAIDU SHARIF SWAT


ORDER:

This order will dispose off appeal of Ex-Constable Muhammad Tahir No. 2192 of Dir Lower District for reinstatement in service.

Brief facts of the case are that Ex-Constable Muhammad Tahir while posted to Police Station Lal Qilla, absented from his duty with effect from 21/11/2015 to 29/11/2015 (08 days), 12/12/2015 to 20/12/2015 (07 days), 02/01/2016 to 27/01/2016 (25 days), 12/03/2016 to date without any leave or prior permission from his superior, which was gross misconduct on his part. Therefore he was issued charge sheet coupled with statement of allegations and Mr. Hidayat Ullah Shah SDPO/Circle Targara was appointed as Enquiry Officer to conduct proper departmental enquiry against him. The Enquiry Officer conducted proper departmental enquiry, recorded the statements of all concerned. The Enquiry Officer in his finding report recommended him for major punishment. Therefore, the District Police Officer, Dir Lower dismissed him from service and the period of absence was treated as leave without pay, vide his office OB No. 396/EB, dated 07/04/2016.

He was called in Orderly Room on 07/06/2016, heard him in person. The appellant could not produce any cogent reason for his absence from duty. Therefore, his appeal is rejected.

Order announced

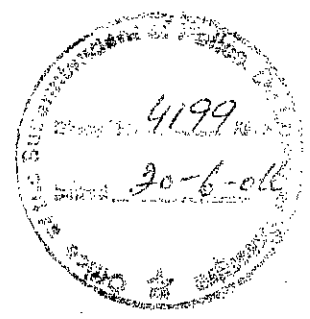

(AZAD KHAN) TSt, PSP
Regional Police Officer,
Malakand, at Saidu Sharif Swat

5090 /E,

08-06-2016.

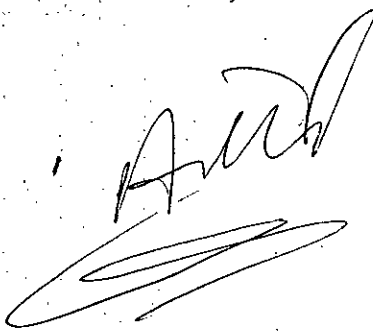
Copy to District Police Officer, Dir Lower for information and necessary action with reference to his office Memo: No. 23161/EB, dated 27/04/2016. His service record is returned back with for record in your office.

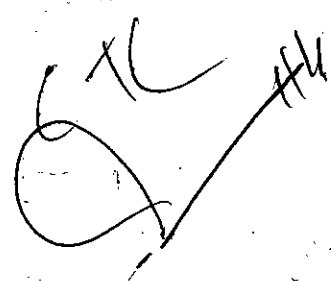
EC/LS S-Roll ✓ *****
F-missal



EC/OSI
For n.a, Pls

This order copy is issued
to concerned on his request
on 11/07/2016





Handwritten notes on the left margin, including "5090" and "08-06-2016".

شکار ہو کر سٹی بزنس عدلیہ معاہدہ مختلف ڈائمنڈس کے پاس
جا رہا ہے عدلیہ معاہدہ اور ایسٹن کوئی سوالات نہیں ہوئی۔

رہ، یہی والد سیکل کافی ٹرم سے خارج ذرا ہے اور ٹرموں
کوئی دوسرا فرد بھی موجود تھا جو سیکل باہر عبوری طور پر
سیکل کو حوزہ 071 04 / 2016 کو برخواست کیا گیا ہے۔

یہ سیکل کی ڈھانسی مسداؤ عمرانہ ہے بلکہ باہر عبوری سرز
ہوئی ہے حین سیکل آئندہ نئے قیادہ کرانی ڈیٹا
فوش اسلوی سے انجام دوسرا۔

س، یہ سیکل نہایت ہی نریب ولاچار ہے اور گو فرد کا واحد نفس ہے
نہر جیت کنسٹبل اپنی خواہ سے گز اوقات آتا ہے
مذہب سے اور سٹی بھی کافی ٹرم ہے، ہمارے جن کے عدلیہ معاہدہ
ہی کافی فرج آتا ہے۔

3443
No 3313 / E
DT 13-4-016
DPO Dr. Lower

For Comments a/ajnit
s. Recmd and sign Ato

الستدلیہ کے سیکل کو بحال کرنے کی اصلاحات

صدر زماں جائے - 11.04.16

4 سیکل محمد طاہر کنسٹبل دیپو لاہور سٹی۔

بلڈ نمبر (2192)

Mob. No. 0300 9744354

Regional Police Officer,
Malakand, at Saidu Sharif Swat.
12/4/2016

خدمت جناب ڈی۔ آئی جی صاحب ملائمت ڈویژن انجام سورت

پائل / در وقت عباد دوبارہ بحالی سیکل
بکیت کنسیل ڈیپارٹمنٹ پولیس

جناب بحالی

سائل حسب ذیل عرض ارسال ہے

- 1- یہاں سے سیکل ڈیپارٹمنٹ چھیننے کے لئے ڈیپارٹمنٹ کے اصل پاسنڈہ اور ایک سٹریٹ فائرمان سے تعلق رکھتا ہے سڑک دھن دھن کی شہرت ہے
- 2- یہاں سے سیکل بکیت ڈیپارٹمنٹ کنسیل ڈیپارٹمنٹ کے پاس پاسنڈہ 26/11 کو تین سال پہلے ہوا تھا اور اس دوران مختلف معافوں اور صورتوں میں تین سال پہلے سے اس سے رجوع کیا گیا ہے اور اس دوران مختلف معافوں اور صورتوں میں تین سال پہلے سے اس سے رجوع کیا گیا ہے
- 3- یہاں سے سیکل کو جوڑنے کے لئے 07/11 کو جناب سپر ڈیپارٹمنٹ کے پاس رجوع کیا گیا ہے اور اس دوران مختلف معافوں اور صورتوں میں تین سال پہلے سے اس سے رجوع کیا گیا ہے
- 4- یہاں سے سیکل کو جوڑنے کے لئے دوبارہ بحالی اور مذکورہ حکم کی سرکاری کاپیاں اور فرسٹا رہے
- 5- یہاں سے سیکل کے ساتھ برخواستگی کی اپنی ڈیوٹی انتہائی اہم اور اس سے رجوع کیا گیا ہے اور اس دوران مختلف معافوں اور صورتوں میں تین سال پہلے سے اس سے رجوع کیا گیا ہے
- 6- یہاں سے سیکل کو جوڑنے کے لئے دوبارہ بحالی اور مذکورہ حکم کی سرکاری کاپیاں اور فرسٹا رہے

محکمہ لیاؤ اور

20ء منجانب ایڈوائس

مورخہ

مقدمہ طائر بنام D.P.O صلہ سیر ریٹس

دعویٰ Service Appeal

جرم زبردفعہ

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام Service Tribunal Peshawar کیلئے Syed Abdul-Haq کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ و تقرر ثالث و فیصلہ برحلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرانے اجراء اور وصولی چیک روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق ذرا اس پر دستخط کرنیکا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری نیکطرفہ یا اپیل کی برآمدگی اور منسوخی اور دائر کرنے۔ اپیل نگرانی و نشر ثانی و پیروی کرنے کا اختیار ہوگا۔ اور یہ صورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے۔ اور اس کا ساختہ پرداختہ منظور و قبول ہوگا۔ اور دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب سے ہوگا۔ اس کے مستحق وکیل صاحب موصوف ہوں گے نیز بقایا و خرچہ کی وصولی کرنے کا اختیار حاصل ہوگا۔ اگر کوئی تاریخ پیشی مقام مذکور سے باہر کو وکیل صاحب پابند نہ ہوں گے۔ کہ پیروی مقدمہ مذکور کریں۔ لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

2016ء

المرقوم اگست

09

گواہ شد

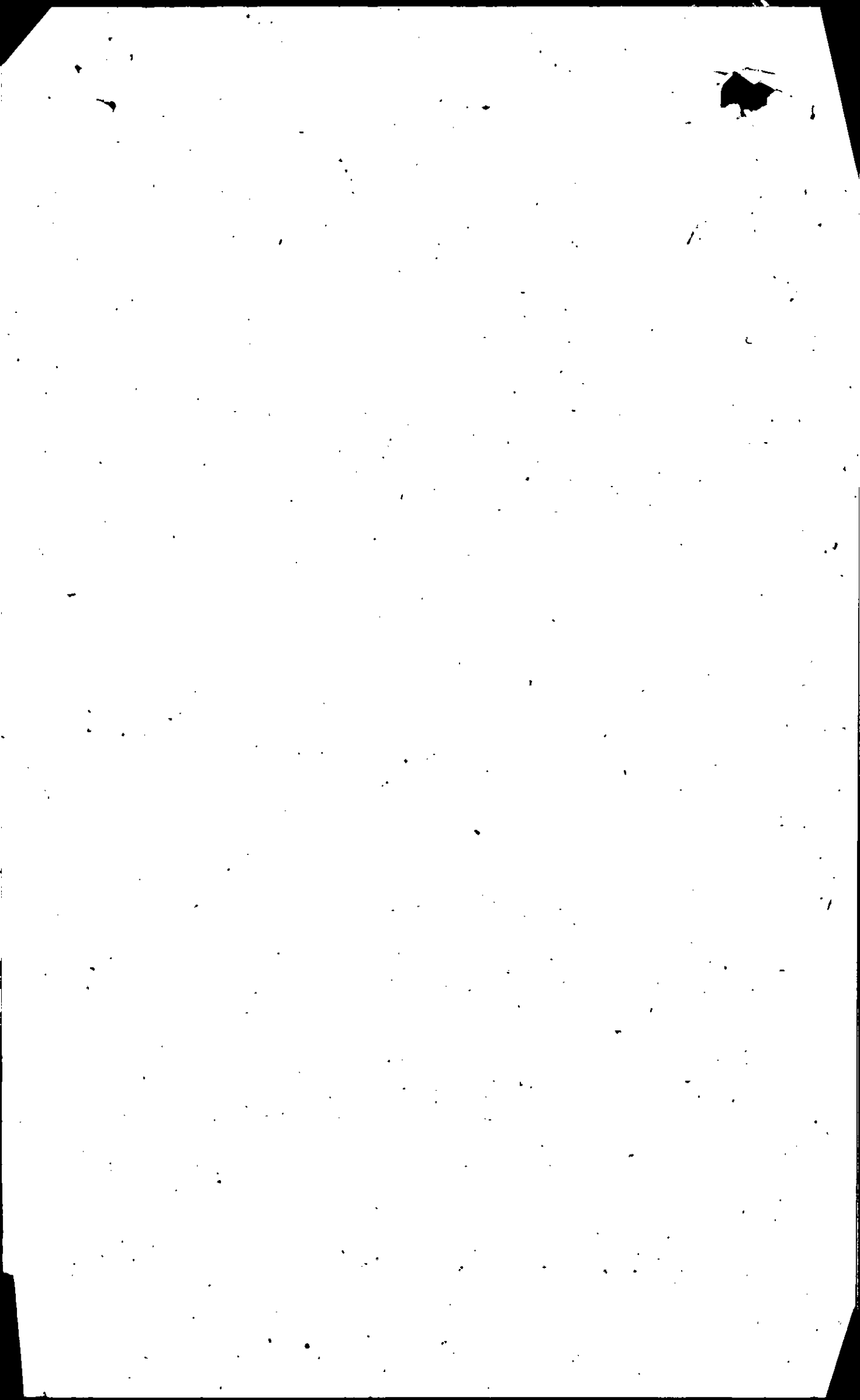
Attested and accepted



Syed Abdul-Haq Adv

M0B7 03110950959 Gwat.

M0B7 0348974357/CNIC# 15302-1225197



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal 868/2016.

Ex Constable Muhammad Tahir No 2192 s/o Muhammad Rasool r/o
Lower Dir Appellant.

VERSUS

- 1) Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
- 2) Regional Police Officer Malakand at Saidu Sharif, Swat.
- 3) District Police Officer Dir Lower..... Respondents.

PARA WISE REPLY ON BEHALF OF RESPONDENTS.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS.

- 1) That the present service appeal is not maintainable in its form.
- 2) That the appellant has not come to this August tribunal with clean hands.
- 3) That the present appeal is badly time barred.
- 4) That this Honorable Service Tribunal has no jurisdiction to entertain the present service Appeal.
- 5) That the appellant has got no cause of action or locus standai.
- 6) That the appellant has suppressed the material facts from this Honorable Tribunal.

ON FACTS:

1. Pertains to record, hence needs no comments.
2. Incorrect, the appellant absented himself from duty without seeking any permission from his seniors therefore he was proceeded according to rules. (copy of Naqal Mad is Annex "A")
3. Incorrect, the appellant neither produced any medical documents, nor moved any application timely. The plea of the appellant that the place of posting was far flung is also incorrect.

4. *Incorrect, proper departmental enquiry has been initiated and he was properly charge sheeted and timely information was given to the appellant about initiation of enquiry. (Copy of charge sheets and statement and Allegation are B & C.)*
5. *Incorrect, the appellant was properly charge sheeted and opportunity of personal hearing was given to appellant. The appellant was informed about entire active proceeding. The impugned order was issued after adopting proper procedure. (copy of the inquiry is "D").*
6. *Incorrect, the respondents No-2 acted in accordance with Law and rules , while dealing the case of appellant. The impugned order is in accordance with Law.*
7. *Incorrect, the appellant was timely informed by respondent No. 2 about the dismissal of appeal and on his request, copy has been provided accordingly.*
8. *Needs no comments . However reply on the grounds are as under.*

ON GROUND

- (A). *Incorrect, the Orders of respondent No. 1 and 2 are based on facts , rules and regulation and Laws.*
- (B). *Incorrect, Proper Inquiry has been conducted and opportunity of personal hearing was given to the appellant.*
- (C). *Incorrect, show cause Notice was issued to the appellant and proper enquiry conducted against the appellant and thus all the proceedings has been done in according with law and Police Rules while RS/-2000/- has according been repealed.*

4. *Incorrect, proper departmental enquiry has been initiated and he was properly charge sheeted and timely information was given to the appellant about initiation of enquiry. (Copy of charge sheets and statement and Allegation are B & C).*
5. *Incorrect, the appellant was properly charge sheeted and opportunity of personal hearing was given to appellant. The appellant was informed about entire active proceeding. The impugned order was issued after adopting proper procedure. (copy of the inquiry is "D").*
6. *Incorrect, the respondents No-2 acted in accordance with Law and rules , while dealing the case of appellant. The impugned order is in accordance with Law.*
7. *Incorrect, the appellant was timely informed by respondent No. 2 about the dismissal of appeal and on his request, copy has been provided accordingly.*
8. *Needs no comments . However reply on the grounds are as under.*

ON GROUND

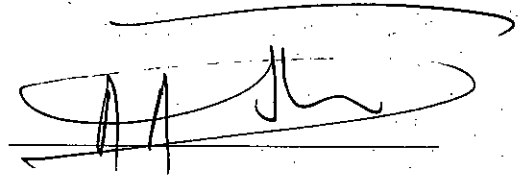
- (A). *Incorrect, the Orders of respondent No. 1 and 2 are based on facts , rules and regulation and Laws.*
- (B). *Incorrect, Proper Inquiry has been conducted and opportunity of personal hearing was given to the appellant.*
- (C). *Incorrect, show cause Notice was issued to the appellant and proper enquiry conducted against the appellant and thus all the proceedings has been done in according with law and Police Rules while RS/-2000/- has according been repealed.*

- (D). *Incorrect, the penalty awarded by respondent is according to law after fulfilling of all codel formalities and no violation has been committed.*
- (E). *Incorrect, the dismissal order is according to law / rules and awarded after fulfilling of all codel formalities.*
- (F). *Incorrect, the appellant was issued charge sheet + statement of allegation and proper opportunity was given to him during departmental enquiry.*
- (G) *appellant being guilty of misconduct was treated in accordance with Law*
- (H) *The respondents also seeks leave of this Honourable Tribunal to rely on Additional Grounds at the time of arguments/hearing.*

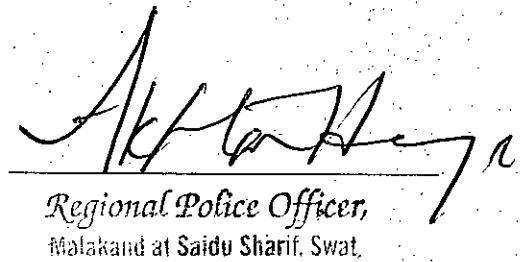
PRAYER:

It is therefore humbly prayed that on acceptance of this Para-wise reply the service appeal may graciously be set aside along with costs.

Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar.

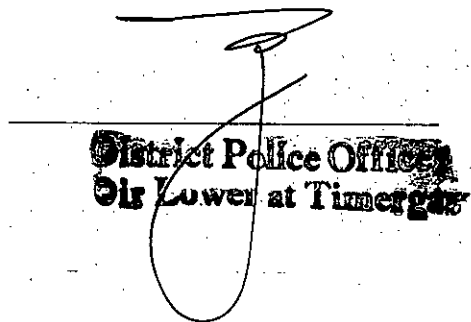


Regional Police Officer,
Malakand at Saidu Sherif, Swat.



Regional Police Officer,
Malakand at Saidu Sharif, Swat.

District Police Officer,
Dir Lower



District Police Officer
Dir Lower at Timergarh

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal 868/2016.

Ex Constable Muhammad Tahir No 2192 s/o Muhammad Rasool r/o
Lower Dir Appellant.

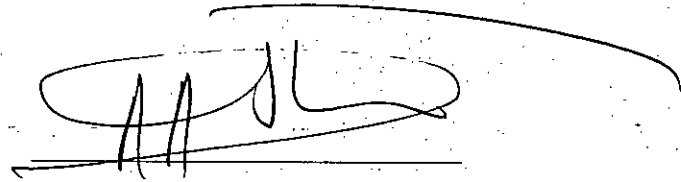
VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
2. Regional Police Officer Malakand at Saidu Sharif, Swat.
3. District Police Officer Dir Lower..... Respondents.

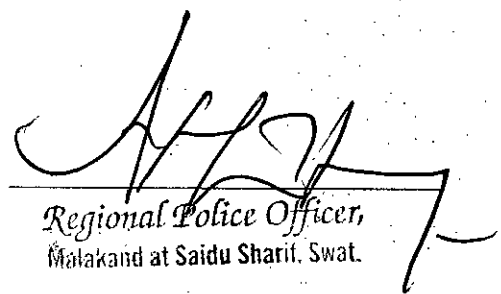
AFFIDAVIT

We the following respondents do hereby solemnly affirm and declare on Oath that the contents of Para-wise comments are true and correct to the best of our knowledge and belief and that nothing has been concealed from this Honorable Tribunal.

Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar.

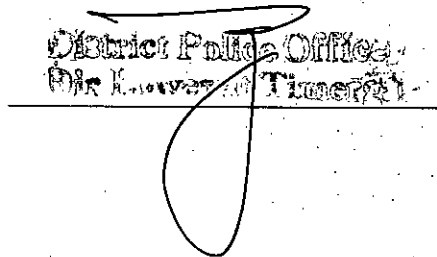


Regional Police Officer,
Malakand at Saidu Sherif, Swat.



Regional Police Officer,
Malakand at Saidu Sharif, Swat.

District Police Officer,
Dir Lower.



District Police Officer,
Dir Lower at Timergah.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal 868/2016.

Ex Constable Muhammad Tahir No 2192 s/o Muhammad Rasool r/o
Lower Dir Appellant.

VERSUS

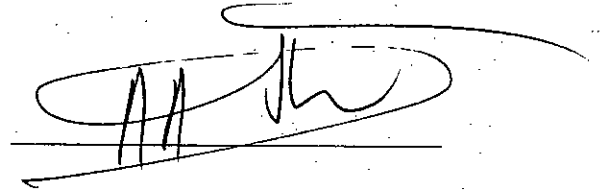
1. Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
2. Regional Police Officer Malakand at Saidu Sharif, Swat.
3. District Police Officer Dir Lower..... Respondents.

POWER OF ATTORNEY

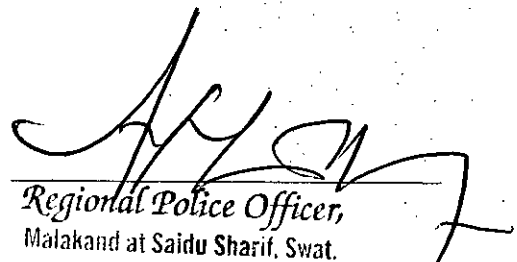
We the following respondents do hereby authorize Mr. Muqdar Khan SI Legal Dir Lower to appear on our behalf before the Honourable service Tribunal in the above Service appeal and pursue the case on each and every date.

He is also authorized to submit all the relevant documents in connection with the above case.

Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar.

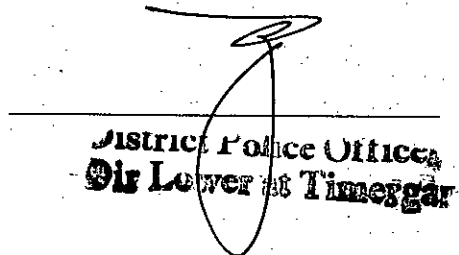


Regional Police Officer,
Malakand at Saidu Sherif, Swat.



Regional Police Officer,
Malakand at Saidu Sharif, Swat.

District Police Officer,
Dir lower.



District Police Officer,
Dir Lower at Timergar

فائینڈنگ رپورٹ

جناب عالی!

بحوالہ انکوائری نمبری 1670/EB مورخہ 15-02-2016 مجاریہ جناب DPO صاحب معروض خدمت ہوں کہ کنسٹیبل محمد طاہر نمبر 2192 پر الزام ہے کہ مذکورہ کنسٹیبل تھانہ لعل قلعہ سے مورخہ 21-11-2015 تا 29-11-2015 تک، مورخہ 13-12-2015 تا 20-12-2015 تک، 02-01-2016 تا 27-01-2016 تک کل 40 ایام بغیر افسران بالا کے اجازت کے غیر حاضر رہ چکا ہے۔

جسکے خلاف حسب احکام افسران بالا باقاعدہ انکوائری شروع کی گئی۔ دوران انکوائری SHO یونس رحمن، MASI محمد عثمان، طارق منیر اور کنسٹیبل محمد طاہر نمبر 2192 کے بیانات قلمبند کر کے لف انکوائری کی گئی۔

بیانات و دیگر معلومات سے پایا گیا کہ کنسٹیبل محمد طاہر نمبر 2192 مورخہ 26-12-2010 کا بھرتی شدہ ہے۔ تودہ چینہ کا سکوتی ہے۔ تھانہ لعل قلعہ کے گارد کاٹ پاٹنی پل میں بحیثیت ریگولر کنسٹیبل تعینات ہے۔

دوران تعیناتی مذکورہ کنسٹیبل بحوالہ مد 29 مورخہ 21-11-2015 حسب اطلاع انچارج کاٹ پاٹنی پل غیر حاضر ہو کر بدستور غیر حاضری پر محمد عثمان MASI نے مذکورہ کے خلاف بندش تنخواہ کا استدعا کر کے بحوالہ آرڈر بک نمبر

1083 مورخہ 03-12-2015 تنخواہ بندش کا حکم صادر کیا گیا ہے۔ کنسٹیبل محمد طاہر نمبر 2192 نے بحوالہ مد 24 مورخہ 29-11-2015 کو 08 یوم غیر حاضری کرنے کے بعد اپنی حاضری کی رپورٹ کی ہے۔ مورخہ 13-12-2015 کو مذکورہ بحوالہ مد

37 مورخہ 13-12-2015 سے غیر حاضر ہو کر بحوالہ مد 20 مورخہ 20-12-2015 کو تھانہ لعل قلعہ میں 07 یوم غیر حاضری کر کے اپنے حاضری کی رپورٹ کی ہے۔ اسی طرح حسب اطلاع انچارج کاٹ پاٹنی پل کنسٹیبل محمد طاہر نمبر 2192 کے خلاف رپورٹ غیر

حاضری بحوالہ مد 32 مورخہ 02-01-2016 درج روز نامہ چھپو کر بدستور غیر حاضری پر محرر محمد عثمان کے استدعا کے پیش نظر افسران بالا نے بحوالہ آرڈر بک نمبر 116 مورخہ 26-01-2016 بندش تنخواہ کا حکم صادر کیا ہے۔ مذکورہ نے بحوالہ مد 32 مورخہ

27-01-2016 پچیس (25) ایام غیر حاضری کرنے کی بعد اپنی حاضری کی رپورٹ کی ہے۔ دوران انکوائری مذکورہ کنسٹیبل پیش کر کے ان کا بیان قلمبند کیا گیا مگر انکوائری سے فارغ ہوتے ہوئے بحوالہ مد 27

مورخہ 12-03-2016 سے پھر بدستور غیر حاضر چلا آ رہا ہے۔ نقلدات حاضری، غیر حاضری لف انکوائری کی گئی ہے۔ انکوائری ہو کر پایا گیا کہ کنسٹیبل محمد طاہر نمبر 2192 مورخہ 21-11-2015 تا 29-11-2015 تک، مورخہ

13-12-2015 تا 20-12-2015 تک، 02-01-2016 تا 27-01-2016 تک بالترتیب 40 = 25 + 07 + 08 ایام غیر حاضر رہ چکا ہے۔ اسی طرح اپنے عادت سے باز نہ آ کر تھانہ لعل قلعہ سے بحوالہ مد 27 مورخہ

12-03-2016 سے بدستور غیر حاضر چلا آ رہا ہے، غیر حاضری بلا تنخواہ میں شمار کرنے کے ساتھ ساتھ Major Punishment دینے کی سفارش کی جاتی ہے۔

انکوائری رپورٹ مرتب ہو کر گزارش ہے۔

ڈی۔ ایس۔ پی سرکل میجر گره
ضلع درہلوئیہ
05-04-2016

OR

Major Punishment
6/4/2016

F/C
D/o District
Provis

- 2) Date of Enlistment
- 2) These are 19 Ba in his service
- 2) He become absent 74 days at d/o

AA

Enquiry No. 1670
Dated Timergara the 15/02/2016

DISCIPLINARY ACTION

I, **Qasim Ali (PSP)**, District Police Officer, Dir Lower at Timergara, competent authority as of the opinion that you **Constable Muhammad Tahir No. 1670** have rendered yourself liable to be proceeded against departmentally as you have committed the following acts /omission in the Rule 2 (iii) of Police Rules 1975

STATEMENT OF ALLIGATION

That he while posted to Police Station Lal Qilla was found absent on 21-11-2015 to 29-11-2015 (08 days), 13-12-2015 to 20-12-2015 (07 days), 02-01-2016 to 27-01-2016 (25 days) total 40 days, without any leave or prior permission from his superior, which is gross misconduct on his part.

2. For the purpose of scrutinizing the conduct of said office, with reference to the above allegation **Mr. Hidayat Ullah Shah/ SDPO Circle Adenzai** is appointed as enquiry officer.

3. The enquiry officer shall conducted proceedings in accordance with provisions of Police Rules 1975 and shall provide reasonable opportunity of defense and hearing to the accused officer, record its findings and make within twenty five (25) days of the receipt of his order, recommendation as to punishment or other appropriate action against the accused officer.

4. The accused officer shall join the proceeding on date, time and place fixed by the Enquiry Officer.

District Police Officer,
Dir Lower at timergara

No. 9408-9 /EC,

dated 16/02/2016

1. **Mr. Hidayat Ullah Shah/SDPO Timergara**, (Enquiry Officer) for initiating proceeding against above defaulter official within 25 days, under Police Rules 1975 in the Light of attached 12 documents.

2. Above named defaulter official.

11 B

4

Enquiry No. 1670
Dated Timergara the 15

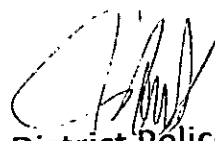
CHARGE SHEET

I, Qasim Ali (PSP), District Police Officer, Dir Lower at Timergara competent authority, hereby charge you Constable Muhammad Tahir No. [redacted] committed as follows:-

That he while posted to Police Station Lal Qilla was found absent on 11-2015 to 29-11-2015 (08 days), 13-12-2015 to 20-12-2015 (07 days), 02-01-2016 to 27-01-2016 (25 days) total 40 days, without any leave or prior permission from his superior, which is gross misconduct on his part.

By the reason of above, you appear to be guilty of miss-conduct and have rendered yourself liable to all or any penalties specified in Rule-4 of the disciplinary Rules, 1975.

- 2- You are: therefore, required to submit your written reply within 07 days of the receipt of this charge sheet to the enquiry officer.
- 3- Your written reply, if any, should reach to the enquiry officer, within the specified period, failing which it shall be presumed that you have no defense to put in and in that case ex-parte action shall follow against you.
- 4- Intimation as to whether you desire to be heard in person or not?
- 5- A statement of allegation is enclosed.


District Police Officer,
Dir Lower at timergara

No. 9410 /EC,
Dated 16/01/2016

Copy to Constable Muhammad Tahir No.2192 through SHO/PS Lal Qilla
SDPO/Timergara

Handwritten notes in Urdu on the left margin, including "ک", "پان", "دست", "فرد", "ک", "15", "11", "12", "13", "14", "15", "16", "17", "18", "19", "20", "21", "22", "23", "24", "25", "26", "27", "28", "29", "30", "31", "32", "33", "34", "35", "36", "37", "38", "39", "40", "41", "42", "43", "44", "45", "46", "47", "48", "49", "50", "51", "52", "53", "54", "55", "56", "57", "58", "59", "60", "61", "62", "63", "64", "65", "66", "67", "68", "69", "70", "71", "72", "73", "74", "75", "76", "77", "78", "79", "80", "81", "82", "83", "84", "85", "86", "87", "88", "89", "90", "91", "92", "93", "94", "95", "96", "97", "98", "99", "100".

(Anmenture 'A')

تعلقہ

تعلقہ 32 دورہ:

صفحہ

32 دورہ / دورہ 32
کسٹیل نظام 2192 غیر جانبدار شدہ بحوالہ 32 دورہ 32
ہوں۔ 1۔ جانبدار / جانبداروں۔ جانبداری کی جانبداری / جانبداری

پس مذکورہ کی جانبداری / جانبداری کی جانبداری / جانبداری
مناسب کارروائی / مناسب کارروائی کی خدمت میں ارسال کی جائیگی۔
مذکورہ کو این جانبداری / جانبداری کی جانبداری / جانبداری

تعلقہ جانبداری / جانبداری
تعلقہ جانبداری / جانبداری

1 شہرہ / شہرہ 21 11/15
2 " " 20 12/15
3 " " 25 27/16
28-01-016

جانبداری / جانبداری
مذکورہ تعلقہ (25)
جانبداری / جانبداری

جانبداری / جانبداری
جانبداری / جانبداری

Issue of charge sheet & summary of allegation

SHO/L Gills
29/01/016

SDPO maidan -
29/01/016 -

SHO/DIK

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No 314 /ST

Dated 12 /02/2018

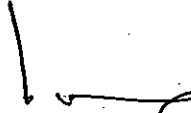
To

The District Police Officer,
Government of Khyber Pakhtunkhwa,
Dir Lower at Timergara.

Subject: **ORDER/JUDGEMENT IN APPEAL NO. 868/2016, MR. MUHAMMAD
TAHIR.**

I am directed to forward herewith a certified copy of Judgment/Order dated 30/01/2018 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


**REGISTRAR ,
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.**

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