

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. 812/2016

Date of Institution ... 10.08.2016

Date of Decision ... 11.04.2018

Muhammad Saddique (Ex-Inspector) R/O Nawan Kalay (Cornal Sher Khan Kalay),
P.S Kalu Khan District, Swabi. ... (Appellant)

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa Peshawar and two others.

ARBAB SAIFUL KAMAL, ... For appellant
Advocate

MR. ZIAULLAH, ... For respondents.
Deputy District Attorney,

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. MUHAMMAD AMIN KHAN KUNDI, ... MEMBER

JUDGMENT

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

FACTS

2. The appellant was dismissed from service due to absence on 30.7.2013 from the date of absence i.e. 11.09.2008. The appellant filed departmental appeal against this order on 12.09.2015 which was not responded to and thereafter he filed the present service appeal on 10.08.2016.

ARGUMENTS.

3. The learned counsel for the appellant argued that no limitation would run as the order was made from retrospective date and the retrospectivity of the order is void. He next argued that the appellant had served for a period of 33 years and the penalty was too harsh. He requested that he would not press the appeal on merit if penalty is converted into one of compulsory retirement.

4. On the other hand, the learned Deputy District Attorney argued that the appeal was time barred. That the Authority could not be made bound not to impose the penalty of dismissal in case of willful absence.

CONCLUSION.

5. No limitation would run in the present appeal as the order has been made from retrospective date and in view of judgment of this Tribunal dated 02.03.2018 of the Larger Bench in service appeal No. 562/2016 entitled "*Rahim-ud-Din Vs. Inspector General of Police, Khyber Pakhtunkhwa Peshawar and two others*" no limitation would run against the void order. However, it was held in that very judgment that the void portion can be separated from the portion which is legal in the impugned order and the effect of the order can be by modified. (The date when the order was passed). This appeal is therefore, within time.

6. The only allegation against the appellant was absence from duty and after rendering 33 years of service he should have not been dismissed from service on this allegation. The request of the learned counsel for the appellant is genuine, therefore, the penalty is converted from dismissal to compulsory retirement from the date when the impugned order was passed. However, he shall not be entitled for back benefits from the date of absence till the date final order was passed. The

appeal is disposed of accordingly. Parties are left to bear their own costs. File lbe
consigned to the record room.



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER



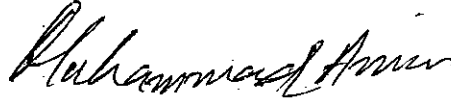
(NIAZ MUHAMMAD KHAN)
CHAIRMAN

ANNOUNCED
11.04.2018

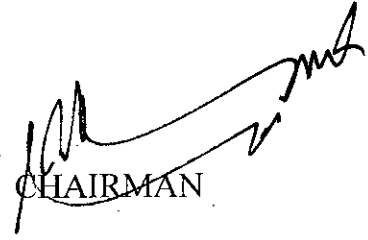
11.04.2018

Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

This appeal is disposed of as per our detailed judgment of today. Parties are left to bear their own costs. File be consigned to the record room.



MEMBER



CHAIRMAN

ANNOUNCED

11.04.2018

26.10.2017

None present on behalf of the appellant. Mr. Farhaj Sikandar, District Attorney alongwith Allah Nawaz, Inspector (legal) for the respondents present. Notice be issued to the appellant and his counsel for rejoinder/arguments. To come up for arguments/rejoinder on 29.11.2017 before D.B

at ~~opposite~~ *Seat as per orders of Chairman*
dated 10-7-17.


(Muhammad Hamid Mughal)

Member
Camp Court D.I.Khan

29.11.2017

Counsel for the appellant and Addl: AG for respondents present. Rejoinder submitted which is placed on file. To come up for arguments on 08.02.2018 before D.B.

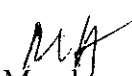

Member


Chairman

08.02.2018

Counsel for the appellant and Mr. Kabeerullah Khattak, Addl. AG for the respondents present. Wakalatnama in respect of Mr. Saiful Kamal, Advocate submitted, which is placed on file. Since this case also involves the issue of retrospectivity because the dismissal order has been given retrospective effect, therefore, this case is adjourned for arguments after the decision of Larger Bench on this point. To come up for arguments on 11.04.2018 before the D.B.


Abdul Ali, ASI District Tank also turned up and noted the next date of hearing.


Member


Chairman

06.03.2017

Clerk to counsel for the appellant and Addl: AG for respondents present. Written reply not submitted. Requested for adjournment. To come up for written reply/comments on 03.04.2017.


(MUHAMMAD AAMIR NAZIR)
MEMBER


03.04.2017

Muhammad Sohail, son of the appellant and Addl: AG for respondents present. Written reply not submitted. Learned AAG requested for transfer of case to D.I.Khan as the matter pertains to territorial jurisdiction of D.I.Khan. The appeal is assigned to D.I.Khan for written statement for 26.07.2017 before S.B.


Chairman

26.07.2017

Counsel for the appellant present. Mr. Muhammad Khan, Head Constable alongwith Mr. Farhaj Sikandar, District Attorney for the respondents also present. Written reply on behalf of respondents submitted and copy handed over to learned counsel for the appellant for rejoinder. Adjourned. To come up for rejoinder on 26.10.2017 before S.B at Camp Court D.I.Khan.


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

27.12.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Inspector and has put in almost 33 years service when dismissed from service on the allegation of willful absence vide impugned order dated 30.07.2013 where-against he preferred departmental appeal on 12.09.2015 which was not responded and hence the instant service appeal on 10.08.2016.

That the punishment is excessive and the service rendered by the appellant was not taken into account and as such appellant was deprived of the financial benefits accrued due to his long service. That the punishment should have been in shape of compulsorily retirement.

Since monetary benefits are involved as such appeal is admitted to regular hearing. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 01.02.2017 before S.B.

Appellant Deposited
Security & Process Fee


Chairman

01.02.2017

Counsel for the appellant and Asstt. AG for the respondents present. Requested for adjournment. To come up for written reply/comments on 06.03.2017 before S.B.


Chairman


27.09.2016

Counsel for the appellant present. Counsel for the appellant requested for adjournment. To come up for preliminary hearing on 19.10.2016 before S.B.


Chairman

19.10.2016

Counsel for the appellant present. Learned counsel for the appellant requested for adjournment. Adjourned for preliminary hearing to 15.11.2016 before S.B.


(ABDUL LATIF)
MEMBER

15.11.2016

Counsel for the appellant present. Learned counsel for the appellant requested for adjournment. Adjourned for preliminary hearing on 01.12.2016 before S.B.


Member

01.12.2016



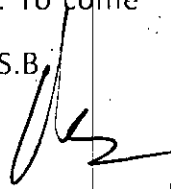
Agent of counsel for the appellant present. Seeks adjournment as counsel for the appellant is not in attendance. Adjourned for preliminary hearing to 27.12.2016 before S.B.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 812/2016

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	10/08/2016	<p style="text-align: center;">The appeal of Mr. Muhammad Sadique presented today by Mr. Shaukat Zaman Advocate may be entered in the Institution Register and put up to Learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	11/8/2016	<p style="text-align: center;">This case is entrusted to S. Bench for preliminary hearing to be put up there on. <u>18-08-2016</u></p> <p style="text-align: right;"> MEMBER</p>
	18.08.2016	<p style="text-align: center;">Clerk to counsel for the appellant present. Requested for adjournment. Request accepted. To come up for preliminary hearing on 27.9.2016 before S.B.</p> <p style="text-align: right;"> Member</p>

BEFORE THE HONOURABLE
SERVICES TRIBUNAL, KPK PESHAWAR

Service Appeal No. 812 /2016

Muhammad Sadique

(Appellant)

V E R S U S

Provincial Police Officer etc.

(Respondents)

I N D E X

S. No.	Documents	Annexure	Page No.
1	Service Appeal		1-4
2	Affidavit		5
3	Addresses of Parties		6
4	Condonation of Delay Application		7
5	Copy of charge sheet, statement of allegation	A-B	8-10
6	Copy of inquiry report	C	11
7	Copy of FIR and impugned order	D-E	12-14
8	Copy of departmental appeal	F	15-16
9	Wakalat Nama		17

Appellant
Through *Muhammad Sadique*
Shaukat Zaman
Shaukat Zaman
Advocate, High Court,
Peshawar

Dated: 03.08.2016

①

BEFORE THE HONOURABLE
SERVICES TRIBUNAL, KPK PESHAWAR

Service Appeal No. 812 /2016

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 824

Dated 10-8-2016

Muhammad Sadique (Ex-Inspector)

R/o Nawan Kalay (Cornal Sher Khan Kalay), P.S. Kalu Khan District
Swabi

(Appellant)

V E R S U S

- 1) Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar
- 2) Deputy Inspector General of Police Mardan Region
- 3) District Police Officer, Tank

(Respondents)

Appeal U/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, against the order dated 30.07.2013 passed by respondent No. 3 whereby the appellant was dismissed from service and against not taking action on departmental appeal of the appellant.

Filed to-day

Registrar

10/8/16

Prayer:

On acceptance of this appeal, the impugned order dated 30.07.2013 of respondent No. 3 may kindly be set aside and the appellant may kindly be reinstated in service with all back benefits.

Respectfully Sheweth,

Brief facts of the instant appeal are as under:

- 1) That the appellant was initially appointed as Constable in Police Department, subsequently the appellant was promoted as Head Constable, ASI and finally SI.
- 2) That from the day one of initial appointment, the appellant has performed his duty with full devotion, dedication and upto the entire satisfaction of his superiors, hence the appellant has maintained unblemished service record and also possess very good reputation among his colleagues.
- 3) That the appellant was issued charge sheet and statement of allegation containing baseless and frivolous allegation, which were not served upon the appellant in time. (Copy of charge sheet, statement of allegation are attached as Annexure A & B respectively)
- 4) That the inquiry officer, without following the codal formalities and without extending proper opportunity of defense, concluded the inquiry in slipshod manner. (Copy of inquiry report is attached as Annexure C)
- 5) That the competent authority, without following mandatory provision of law of issuance show cause notice, passed the impugned order. (Copy of FIR and impugned order is attached as Annexure D & E respectively)
- 6) That the impugned order was communicated to the appellant on 20.07.2016 the appellant forthwith filed

representation within the statutory period of law. (Copy of departmental appeal is attached as Annexure F)

- 7) That no decision has yet been communicated to the appellant regarding disposal of departmental appeal, hence instant appeal on the following grounds.

GROUNDS

- a) That the impugned order is illegal and void-ab-initio.
- b) That mandatory provision of law and rules have badly been violated by the respondents and the appellant has not been treated according to law.
- c) That the appellant did nothing that would amount to misconduct.
- d) That no proper inquiry was conducted to find out the true facts and circumstances.
- e) That neither show cause notice was communicated / issued to the appellant nor copy of inquiry report was provided to the appellant and as such the impugned order is not maintainable in the eyes of law.
- f) That the impugned order is not speaking and thus untenable in the eyes of law.
- g) That the appellant has been punished without any commission or omission on his part.

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- h) That absence of the appellant was neither willful and deliberate but due to unavoidable circumstances mentioned in detail in departmental appeal.
- i) That the appellant's representation may be considered as integral part of this appeal.
- j) That any other ground will be taken at the time of arguments.

It is, therefore, prayed that appeal of the appellant may kindly be accepted as prayed for in the heading of appeal.

Appellant
Through *Muhammad Sadique*
Shaukat Zaman
Shaukat Zaman
Advocate, High Court,
Peshawar

Dated: 03.08.2016

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BEFORE THE HONOURABLE
SERVICES TRIBUNAL, KPK PESHAWAR

Service Appeal No. _____/2016

Muhammad Sadique

_____ (Appellant)

V E R S U S

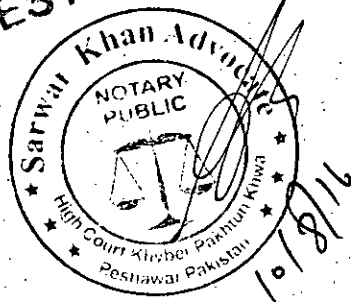
Provincial Police Officer etc.

_____ (Respondents)

AFFIDAVIT

I, Muhammad Sadique (Ex-Inspector) R/o Nawan Kalay (Cornal Sher Khan Kalay), P.S. Kalu Khan District Swabi, do hereby solemnly affirm and declare on Oath that the contents of service appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this honourable tribunal.

ATTESTED



Sadiq
DEPONENT

6

BEFORE THE HONOURABLE
SERVICES TRIBUNAL, KPK PESHAWAR

Service Appeal No. _____/2016

Muhammad Sadique

(Appellant)

V E R S U S

Provincial Police Officer etc.

(Respondents)

ADDRESSES OF PARTIES

Appellant

Muhammad Sadique (Ex-Inspector)

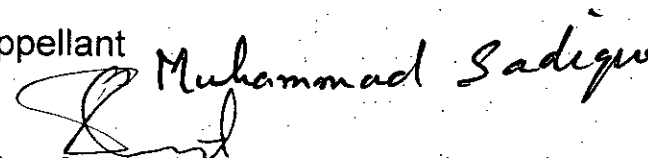
R/o Nawan Kalay (Cornal Sher Khan Kalay), P.S. Kalu Khan District
Swabi

Respondents

- 1) Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar
- 2) Deputy Inspector General of Police Mardan Region
- 3) District Police Officer, Tank

Through

Appellant


Shaukat Zaman
Advocate, High Court,
Peshawar

Dated: 03.08.2016

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BEFORE THE HONOURABLE
SERVICES TRIBUNAL, KPK PESHAWAR

Service Appeal No. _____/2016

Muhammad Sadique

(Appellant / Petitioner)

V E R S U S

Provincial Police Officer etc.

(Respondents)

Application for Condonation of Delay

Respectfully Sheweth,

- 1) That the above captioned appeal is filed in which no date of hearing has yet been fixed.
- 2) That the impugned order was not communicated to the appellant in time.
- 3) That final order (decision on departmental appeal) has not yet been communicated to the appellant.
- 4) That law favour disposal of cases of merits rather on technicalities.

It is, therefore, requested that delay, if any, may be condoned to meet the ends of justice.

Through

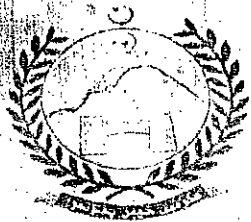
Appellant / petitioner

Muhammad Sadique
Shaukat Zaman

Advocate, High Court,
Peshawar

Dated: 03.08.2016

Annex - A



GOVERNMENT OF
KHYBER PAKHTUNKHWA
OFFICE OF THE DISTRICT POLICE OFFICER,
CHARSADDA
TEL: 0919220061 FAX: 0919220067

No. 4002 /EC
Dated 20/11/2012

6159
23/11/12

To: The District Police Officer,
Swabi.

Subject: DEPARTMENTAL ENQUIRY / SERVICE OF CHARGE SHEET / SUMMARY OF ALLEGATION.

Memo: Please refer to DPO/Tank letter No. 5831 dated 16.11.2012 in respect of Charge Sheet together with statement of allegation in respect of SI Sadique Khan of this District presently on loan to District Tank are enclosed in original for service upon on the address given below:-

Father Name: Amir Nawaz
Address: Nawan Kalay Kalu Khan District Swabi.

The duplicate copy duly signed by above delinquent officer may please be sent direct to DPO/Tank under intimation to this office please.

Amir Nawaz
23/11/12

[Signature]
District Police Officer,
Charsadda

No. 570/RS/EC-29/11/12

Copy of above is forwarded to the District Police Officer, Tank for information please.

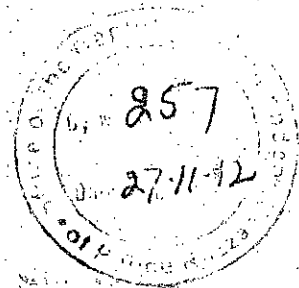
360/Kalu Khan DSP/Swabi Raza

for info inform for necessary action
the police officer
about his enquiry

District Police Officer,
Charsadda

DSP/R 27/11

[Signature]
22/11/12



ET.

1. FARIDULLAH KHAN District Police Officer Tank being a competent authority under the NWFP Police Rules 1975 do hereby inform you SI Saddique Khan while posted at Addl: SHO PS SMA Tank as follows:-

That you have committed the following serious misconduct:-

According to report on 18.11.2008, you SI Saddique Khan while posted as Addl: SHO PS SMA/Tank proceeded on three months sanctioned earned leave vide Notification No. 5343, dated 18.11.2008. On expiry of leave, you were required to report your arrival back for duties but remained absent without any permission or extension in your leave till to-date which amounts to grave misconduct on your part and punishable under the rules.


2. You appear to be guilty of misconduct of under section-3 of the NWFP Police Rules 1975 and have rendered yourself liable to any one of the penalties including dismissal from service in Section-3 of the ordinance ibid.

3. You are therefore required to submit your written defense within seven (7) days of the receipt of this Charge Sheet to the Inquiry Officer.

4. Your written defense, if any should be reach the Inquiry Officer within specified period, failing which it shall be presumed that you have no defense to put in and in that case exparte action shall be taken against you.

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

6. A statement of allegation is enclosed.


(FARIDULLAH KHAN)
District Police Officer,
Tank

BY ACTION.

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I, FARIDULLAH KHAN District Police Officer Tank, in the
competent authority am of the opinion that SI Saddique Khan rendered himself liable to be
proceeded against for committing the following:-

SUMMARY OF ALLEGATION.


According to report, on 18.11.2008, SI Saddique Khan while posted as
Addl: SHO, PS SMA/Tank has proceeded on three months sanctioned earned leave vide
Notification No. 5343, dated 18.11.2008. On expiry of leave, he was required to report his arrival
back for duties but remained absent without any permission or extension in his leave till to-date
which amounts to grave misconduct on his part and punishable under the rules.

Hence this statement of allegation is issued.

2. For this purpose of scrutinizing the conduct of said official with reference
to above allegation, MR. Tauseed Khan DSP/HR is appointed as Inquiry
Officer to conduct proper Departmental Inquiry under the NWFP Police Rules 1975.

3. The Inquiry Officer shall in accordance with the provision of the
ordinance provide reasonable opportunity of the hearing to the accused, record its findings and
make recommendation as to punishment or other appropriate action against the official within
seven (7) days of the receipt of this order.


The official and a well conversant representative of the Department shall
join the proceedings on the date, time and venue fixed by the Inquiry Officer.


(FARIDULLAH KHAN)
District Police Officer,
Tank

No. 51229-301 dated Tank the 16/11/2012.

Copy to the:-
1- MR. Tauseed Khan DSP/HR the Inquiry Officer for initiating
proceeding against the defaulter under the provision of NWFP Police Rules 1975 and submit
findings report within stipulated period as per prescribed rules.

2- SI Saddique Khan, Addl: SHO PS SMA, Tank with the direction to appear before the Inquiry
Officer on the date, time and venue fixed by the Inquiry Officer for the purpose of inquiry
proceedings.


(FARIDULLAH KHAN)
District Police Officer,
Tank

حوالہ نمبر وصول انکوائری بر غلاف سب انسپکٹر صدیق خان نمبر 73/P تبدیل شدہ اسٹیج چار سہدہ برائے شائع ٹانگ ایسٹ غیر حاضری کی صورت میں 4 سال بلکہ 4 مہینے میں ہونا چاہئے۔

1- جناب IGP صاحب منوبہ غیر پیشین خوانہ نے حوالہ آرڈر لیٹر نمبر 18527-301/ES مورخہ 05-7-2008 SI صدیق خان کو شائع چار سہدہ سے شائع ٹانگ تبدیل کرنے کا حکم جاری کیا اور تنخواہ کے طور پر شائع چار سہدہ سے منسلک رہ کر تاہم اس تنخواہ شائع چار سہدہ سے لیا گیا۔

2- SI مذکور نے تبدیل حکم کی تعمیل میں بحوالہ نمبر 17 روزنامہ 27-8-2008 پر لیس لائن ٹانگ میں حاضری کی تھی تقریباً 12/2/08 میں گزارنے کے بعد اس کی تحریر فی استدعا پر مورخہ 2-11-2008 کو سہ ماہیہ DPO صاحب تھیل اینڈ ڈیزل نے تین ماہ رخصت کا اسٹینڈرڈ کر کے مذکور رخصت پر چلا گیا۔

3- مورخہ 11-9-2009 کو رخصت کا اس سے حاضر ہونا تھا مگر وہ ایس حاضرت آکر شائع ٹانگ میں اس کی غیر حاضری وغیرہ بھی درج نہ ہوئی اور اس پر سہ ماہیہ چاہی۔

4- تاہم ستمبر 2011 میں SI مذکور نے جناب IGP صاحب کو واپس شائع چار سہدہ تبدیل ہونے کا پورے راج کیا جناب IGP صاحب کی طرف سے بحوالہ لیٹر نمبر 19769-70/E-II مورخہ 10-10-2012 کو جناب DIG صاحب پر ورج اور DPO ٹانگ سے رپورٹ طلب ہوئی تو اس کے لیے موصول ہونے پر معلوم ہوا کہ SI مذکور مورخہ 12-11-2008 کو تین ماہ رخصت کا اس پر جانے کے بعد ایس حاضرت نہیں آیا ہے اور یہ دستور غیر حاضر و عدم پتہ ہے۔ DPO ٹانگ نے جناب IGP صاحب کو حالات بالا تحریر کر کے ساتھ ہی مورخہ 11-11-2012 کو SI مذکور کے خلاف انکوائری شروع کر کے چارج شیٹ جاری کیا ہے جو ساتھ DPO چار سہدہ بحوالہ SI مذکور کے چارج شیٹ وصول کیا گیا انکوائری آفیسر آجیہ خان DSP اور ڈی کوآرڈر ٹانگ مقرر ہوئے۔

5- آجیہ خان DSP ٹانگ نے SI مذکور کو پیش ہونے کے لیے DPO چار سہدہ اور SI منسکوٹی شائع DPO منسکوٹی کے ساتھ حاضرت کی مگر SI مذکور کو پیش نہ ہوا DSP ڈی کوآرڈر آجیہ خان شائع ٹانگ سے تبدیل ہونے پر انکوائری پر مورخہ 08-3-2013 کو DPO ٹانگ نے میرے نام مارک کی۔

6- SI صدیق خان کو انکوائری آفیسر کے پاس پیش ہونے اور چارج شیٹ کا جواب دینے کی خاطر متعدد بار DPO ضامیان چار سہدہ منسکوٹی سے خط و کتابت جاری رہا جو DPO صاحب چار سہدہ نے ہم الی لیٹر نمبر 4990 مورخہ 12-5-2013 SI مذکور کی تنخواہ نہ کرنے کا حکم کے بعد ہی DPO منسکوٹی نوٹس لکھا جس پر آخر کار مورخہ 13-6-2013 بحوالہ کورٹ لیٹر نمبر 3009 مورخہ 6-6-2013 جاری ہوا۔ DPO چار سہدہ SI صدیق خان کو تحریر کی جواب پر زبان اردو پڑھ کر ایک موصول ہوا جو مورخہ غیر حاضری ایس این ایف کی نسبت غیر پیشین بخش ہے۔ چنانچہ انکوائری ختم ہے۔

انکوائری و عملہ خط و کتابت سے پایا جاتا ہے کہ SI صدیق خان نے دراصل سہ ماہیہ آفیسر ہونے سے پہلے کے ایک غیر حاضری صورت کی کوئی خاص وجہ پیش نہ کر سکا اور نہ ہی انکوائری آفیسر کے رویہ و اجتناب کی خاطر پیش ہوا اور اس پر ایسا کیا ہے۔ سخت سزا دینا چاہئے اور ساتھ ہی دوران و عرصہ غیر حاضری کی جہتی تنخواہ کی واپس ریکوری کی سفارش کی جانی ہے۔ قائل رپورٹ سر او ایس ایف علم تھیل ہے۔

آجیہ خان
(ڈی او ایس جی)

18/6/13
انکوائری آفیسر



(B)

— Amel —
OFFICE OF THE
DISTRICT POLICE OFFICER
DISTRICT TANK

OFFICE ORDER:


My this order will dispose off departmental enquiry initiated against Offg. Sub Inspector Siddique Khan No. 737/P while posted as Additional SHO Police Station, Shaheed Mureed Akbar, Tank has proceeded on three months sanctioned earned leave vide this office Notification No. 5343, dated 18.11.2008. On expiry of leave, he was required to report back for performance of official duties but remained absent without any further extension or permission of the Competent Authority till the issuance of this order. He was properly Charge Sheeted. The Charge Sheet along with statement of allegations was got served upon him through his home address through DPO/Charsadda vide this office Memo: No. 5831, dated 16.11.2012. The duplicate copy duly signed by him was received through DPO/Swabi vide his office Memo: No. 10493/ES, dated 10.12.2012. Mr. Tauheed Khan, DSP/HQrs, Tank was nominated as Inquiry Officer with the directions to conduct discrete enquiry into the matter and submit finding report within stipulated period. During enquiry, the defaulter Offg. Sub Inspector was informed repeatedly through concerned District Police Officers with the direction to join the enquiry proceedings but of one use. In the meanwhile, Mr. Tauheed Khan, DSP/HQrs, Tank was transferred and the enquiry papers were returned as incomplete. Subsequently, the enquiry file was entrusted to Mr. Arbab Khan, DSP/Investigation, Tank for completion vide this office order dated 08.03.2013. The Inquiry Officer informed the delinquent official through various forums for joining the enquiry proceedings but no change have been seen in the attitude of defaulter Offg. Sub Inspector Siddique Khan No. 737/P. The record is available on file. His reply to the Charge Sheet was received through DPO/Charsadda vide his office Memo: No. 3009/EC, dated 06.06.2013 and is available on file. After finalization of enquiry proceedings, the Inquiry Officer has submitted Finding Report in which the defaulter Offg. Sub Inspector was held responsible for the allegations mentioned in the Charge Sheet. The enquiry file was received and perused. After perusal of enquiry report, a Final Show Cause Notice was issued and properly got served upon him through concerned DPOs at his home address. " Siddique Khan Son of Nawaz Khan R/o Nawan Kalay (Cornal Sher Khan Kalay) PS Kalu Khan District Swabi " vide DPO/Charsadda office Memo: No. 3565/EC, dated 02.07.2013. Copy placed on file. No reply to

(Continued)

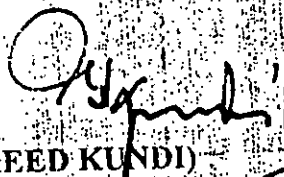
14 29

the Final Show Cause Notice has been received so far. The non-cooperative attitude of the defaulter official clearly shows that he is not joining the enquiry proceeding willingly and there is no chance of his appearance before the Competent Authority for his personal hearing or submission of reply in near future. To keep the enquiry further pending will only loss the precious time of the department and nothing else, Therefore, I ANWAR SAEED KUNDI (PSP), District Police Officer, Tank as Competent Authority under the powers vested in me under Police Rules 1975 of Khyber PakhtunKhwa, keeping in view the present non-cooperative attitude of the defaulter Offg: Sub Inspector Siddique Khan No. 737/P and recommendation of the Inquiry Officer, award Major Punishment of Dismissal from Service from the date of his absence i.e. 11.09.2008, The monthly salaries already received by him fraudulently also be recovered and deposited into Govt. Exchequer through proper receipt The copy of this order be sent to DPO/Charsadda for recovery of monthly salaries already paid to him and further depositing into Govt. exchequer.

Order announced.
30.07.2013


(ANWAR SAEED KUNDI)
(PSP)
District Police Officer,
Tank.

No. 2998 / dated Tank the 30-7-2013
Copy of above is sent to District Police Officer, Charsadda for information and necessary action.


(ANWAR SAEED KUNDI)
(PSP)
District Police Officer,
Tank.

O.B No. 944
DT: 30-07-2013

16 KP
Pl look into the matter
& take up the principle
of us time

اپیل

گورنمنٹ ممبر

PP0 صاحب

SHAH RAM KHAN TARAKAI
Senior Minister
Minister Health & Information Technology
Govt of Khyber Pakhtunkhwa

میلنگ

میں کنستبل SHO تھانہ سرو ضلع جارسدہ میں لے جاتے تھے
اس دوران ایچ آر جی فون پر غور کیا گیا۔ ایک شخص کسانو مارا
گیا۔ ملا شریف کو گرفتار کر کے 1340 روپے وصول کیا۔ سر تھانہ
ملا شریف کا مدد غم اور مر لائن سے کر کے، ریلوے سائمنٹ پائپ لیا
ملا شریف تندرہ بطور مالک مالتی تھے میں محفوظ رکھا۔ 25 نوم
برہم پور معصوم شاہ اف بٹگرام میں تعلق ANP سے اور وزیر اعلیٰ
آفیسر صدر کا سکریٹری تھا، جسے فون کر کے مقلد ملا شریف
تبدیل کر کے اپنے آپ کو ادنیٰ کو بھجوایا۔ یہ ایک دلچسپ سائمنٹ ملا شریف
کا تھا۔ میں نے سر تھانہ سے ملا شریف سے رابطہ کیا۔ جس سے بتلایا
کہ اس سے وہ ملا شریف ڈسٹرکٹ مالتی تھے میں داخل کیا گیا
یہاں اس ادنیٰ کو بتلایا گیا۔ کہ ملا شریف ڈسٹرکٹ مالتی تھے میں
داخل کیا گیا۔ یہاں سے مندرجہ مذکورہ سے پھر معصوم شاہ کو ہی اطلاع دیا
جس سے وہ آگ بگولہ ہو کر شلی فون کر کے نازیبا الفاظ استعمال
کئے اور کیا۔ کہ آپ ہمارے ساتھیوں کے کام لیں گے۔ یہاں اس
نے پھر ملا شریف آفیسر صدر بٹگرام CM کو شجاعتا کر کے مالم 19P صاحب
گزار کر دیا۔ وہاں سے دو ماہ کی لائن لیا اور حاصل کی۔ دوران لائن لیا
بیٹا مسی شاہ نعل قتل ہو کر میں نے اصرار ملام شاہ محمد
وہ شاہ جہاں نے وہ وہ ام نے خلاف دعویداری کی۔ اسی امام میں
عدالت سے سر بیٹے کا قاتل شاہ محمد کو ریکارڈ کر کے گھر سے گھر
مانے نال شاہ محمد ہار کر کے ساتھ سے صلح پھیرا تھا۔ علی
وہ سے میں رات کو دعویداری شروع کر دی۔ دوران دعویداری
میرا دریاں ٹانگا کرنے سے ٹوٹ گیا۔ علی وہ سے میں صلح پھیرے
کا قاتل نہیں رہا۔ علی صلح معاملہ کرنے میں صلح پھیرے
میرا لکل ریسٹ ڈیوہ ڈاکر معائنہ سے حاصل کرنے میں سے وقتاً فوقتاً
صلح ٹانگا کو بھجوایا ہوں۔ میں ٹانگا کے فون سے اسرار ہے

(2)

عبدالعلی کا اغذات نظر انداز کر کے سیر حلف بلکھونہ
 انکوائری کر کے جسے سیرا کا مستحق قرار دیا۔ یہ سب
 کچھ سیر حلف بلکھونہ پورٹی 2۔ اور جسے بیگناہ سیرا باب
 کر آیا 2۔
 شدتاً حکم سیری سیرا کو معاف کر کے دُعا گو
 دیوں گا

12/09/13

تحریر

محمد صدیق علی خان
 صاحب
 منظم منجم ٹانڈا

محمد علی احمد صاحب

ط
 نقل FIR لبرام
 شاہ منیل مفتوح
 اور انکوائری رپورٹ
 سمراہ لف 2۔
 2

			
<p>ایڈووکیٹ/دستخط بارکول ابار ایسوسی ایشن رابطہ نمبر:</p>		<p>58477 پشاور بار ایسوسی ایشن، خیبر پختونخوا</p>	

بعدالت جناب: سرورس ٹریبونل کے لیے در

<p>منجانب: اسپرائٹ</p>  <p>صدر قاضی مدد بنام اسپرائٹ آف ایسیرٹورس خیبر پختونخوا</p>	<p>دعویٰ: علت نمبر: موردہ: جرم: تھانہ:</p> 
<p>بامث تحریر آگہ</p>	

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ

آں مقام کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر حالت و فیصلہ برطن دینے جواب دعویٰ اقبال دعویٰ اور درخواست ازہر قسم کی تصدیق زریں مد دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا تاخیر یا بکفرہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر جانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہو گا اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ماخذ مذکورہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا وہ وکیل موصوف و جوائن کے کار حصار ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ مندر ہے۔

المرقوم:

مقام کے لئے منظور ہے۔

دستخط
صدر قاضی
ضلع

BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR.

Subject: Service Appeal No. 812/2016

Mr. Muhammad Siddique Ex- Sub Inspector No. 737/P, (Appellant)
R/o Nawan Kalay Cornol Sher Khan Kalay PS Kalu Khan
District Swabi.

Versus

- 1) Provincial Police Officer, Khyber PakhtunKhwa, Pesh }
2) Dy Inspector General of Police, Mardan Region, Mardan } Respondents.
3) District Police Officer, Tank }

Subject:- REPLY/ PARAWISE COMMENTS ON BEHALF OF RESPONDENTS.

Respectfully Shewith,

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

PRELIMINARY OBJECTIONS:

1. That the appellant has got no cause of action and locus standi to file the present appeal.
2. That the appeal is bad for mis-joinder/non-joinder of necessary parties.
3. That the appeal is time barred.
4. That the appellant has not come with clean hands.
5. That the appellant is estopped due to his own conduct.
6. That the appellant has concealed the material facts from Honorable Tribunal.
7. That the appeal is not maintainable & is incompetent.

Reply on Facts:-

- 1) Correct to the extent.
- 2) Relates to Record.
- 3). Incorrect because the appellant was posted in Police Department Tank. He has proceeded on three months sanctioned Earned Leave vide Notification No. 5343, dated 18.11.2008. On expiry of E/Leave, the appellant was required to report back for duties but he did not report his

arrival back for duties and remained absent without any further extension in his leave or permission of Competent Authority up-to 30.07.2013 i.e. (Date of Dismissal from Service) for which he was properly charge sheeted. The charge sheet along with statement of allegations was got served upon the appellant through his parent District i.e. DPO/Charsadda vide this office Memo: No. 5831, dated 16.01.2012, The DPO Charasadda further sent the same to DPO/Swabi for proper service upon the appellant at his home address and the duplicate copy duly signed by him was sent back to DPO/Office, Tank vide DPO/Swabi office Memo: No. 10493/ES, dated 10/12/2012.

4) Incorrect because during enquiry, the Inquiry Officer has observed all the codal formalities and utilized all possible resources to ensure the appearance of the appellant before the Inquiry Officer for examination and recording his defense reply into the allegations leveled against him in the Charge Sheet but the appellant did not join the enquiry proceedings deliberately and subsequently after lapse of sufficient space of time and provision of opportunities of self defense, the Inquiry Officer drafted finding report into the enquiry in accordance with relevant law / rules which is legal and justified.

5) Incorrect because to ascertain factual position of the circumstances and provide chance of self defense, the appellant was properly charge sheeted. The Charge sheet along with statement of allegations was got served upon the appellant at his parent District and home address through DPOs/Charsadda vide this office Memo: No. 5831, dated 16.01.2012 and token of its receipt vide DPO/Swabi office Memo: No. 10493/ES, dated 10/12/2012.6). (Copy enclosed). The Inquiry Officer was nominated. During enquiry, sufficient space of time was provided to the appellant by utilizing all possible resources to ensure his availability for personal hearing and submission of self defense reply into the allegations leveled against him in the Charge Sheet but the appellant did not join the enquiry proceedings intentionally and subsequently the Inquiry Officer submitted an authenticated finding report in accordance with the relevant law / rules in which the appellant was held responsible upon which a Final Show Cause

Notice was issued and got served upon the appellant at his home address properly but neither the appellant appeared before the Competent Authority for his personal hearing nor submit his defense reply and finally the Competent Authority has passed the order of dismissal from service from the date of absence from duty i.e. 11.09.2008 of the appellant vide Order Book No. 944, dated 30.07.2013 in accordance with the relevant existing law / rules which is legal and justified.

6) Incorrect because the order of Dismissal from Service was endorsed to the DPO/Charsadda for further course of action vide this office Endst. No. 2998, dated 30.07.2013 forthwith. His departmental appeal was received into this office through RPO/Dera Ismail Khan vide Endst. No. 802/C.Cell, dated 06.10.2016 and the requisite comments were submitted vide this office Memo: No. 7841, dated 19.10.2016 forthwith which was badly timed barred.

7) Needs no comments.

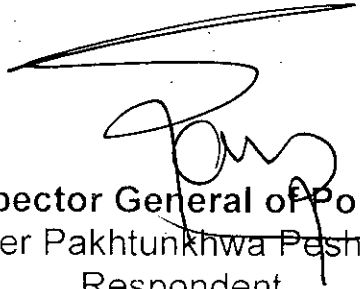
REPLY TO GROUNDS:

- a) Incorrect. The order passed by the Competent Authority is legal and justified.
- b) In correct because the departmental enquiry was conducted in accordance with relevant law / rules. The appellant was properly charge sheeted. The charge sheet along with statement of allegation was got served upon the appellant through DPO/Charsadda via DPO/Swabi. Proper opportunities of self defense were provided but he did not avail the opportunities intentionally till the finalization of departmental enquiry proceedings, During enquiry, the allegations leveled in the Charge sheet against the appellant were stand proved. Therefore, In light of recommendation of the Inquiry Officer and observance of all the codal formalities, the appellant was awarded Major Punishment of Dismissal from Service by the Competent Authorities which is correct.

- c) Incorrect because the appellant was posted in Police Department, Tank. He was granted three months Earned Leave on full pay vide Notification No. 5343, dated 18.11.2008. On expiry of E/Leave, the appellant was required to for duty at his place of posting but he did not report his arrival back for duties report back and remained absent without any further extention in his leave or reasonable cause for such huge period of 04-Years and 04-Months which was serious misconduct and punishable under the relevant disciplinary rules.
- d) Incorrect because the appellant was properly charge sheeted. The Charge Sheet along with statement of allegation was got served upon the appellant at his home address through DPO/Charsadda viz DPO/Swabi. During enquiry, lot of time was provided to the appellant for joining the enquiry proceedings and submission of self defense reply but he did not join the enquiry proceedings deliberately till passing the order of his Dismissal from Service by the Competent Authority.
- e) As discussed in Para No. 5 above.
- f) Incorrect because the order passed by the Competent Authority is legal and justified.
- g) As discussed in Para No. C above.
- h) Incorrect because the appellant was posted in Police Department Tank. He was proceeded on three months sanctioned Earned Leave vide Notification No. 5343, dated 18.11.2008. On expiry of E/Leave, the appellant was required to report back for duties at his place of posting but he did not report his arrival back for duties and remained absent without any further extention in his leave or permission of Competent Authority up-to 30.07.2013 i.e. (Date of Dismissal from Service) for which he was properly charge sheeted which is legal and justified.
- i) Incorrect, The appellant failed to lodge the appeal within stipulated period which is badly time barred.
- j) That the Respondents may also be allowed to raise additional objection at the time of arguments.

PRAYER

It is, therefore most respectfully prayed that on acceptance of the instant Para-wise Comments / Reply the appeal of the appellant being devoid of legal footings & merit may graciously be dismissed.



Inspector General of Police
Khyber Pakhtunkhwa Peshawar
Respondent



Dy: Inspector General of Police,
Mardan Region Mardan.
Respondent



District Police Officer,
Tank.
Respondent

BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR.

Subject: Service Appeal No. 812/2016

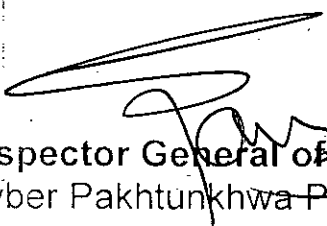
Mr. Muhammad Siddique Ex- Sub Inspector (Appellant).
R/o Nawan Kalay Cornol Sher Khan Kalay PS Kalu Khan
District Swabi.


Versus

- 1) Provincial Police Officer, Khyber PakhtunKhwa, Pesh }
2) Dy Inspector General of Police, Mardan Region, Mardan } Respondents.
3) District Police Officer, Tank}

Subject **AUTHORITY LETTER.**

Inspector Legal Tank of this district police is hereby authorized to appear before the Honorable the Service Tribunal Khyber Pakhtunkhwa Peshawar 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


Dy: Inspector General of Police,
Mardan Region Mardan.
Respondent


District Police Officer,
Tank.
Respondent

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

Subject: Service Appeal No. 812/2016

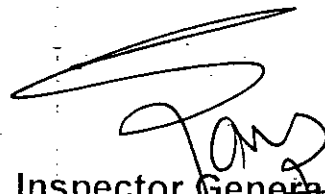
Mr. Muhammad Siddique Ex- Sub Inspector (Appellant).
R/o Nawan Kalay Cornol Sher Khan Kalay PS Kalu Khan
District Swabi.

Versus

- 1) Provincial Police Officer, Khyber PakhtunKhwa, Pesh } Respondents.
- 2) Dy Inspector General of Police, Mardan Region, Mardan } Respondents.
- 3) District Police Officer, Tank} Respondents.

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENTS.

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



Inspector General of Police
Khyber Pakhtunkhwa Peshawar
Respondent



Dy: Inspector General of Police,
Mardan Region Mardan.
Respondent



District Police Officer,
Tank.
Respondent