

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 874/2019

Date of Institution ... 20.06.2019

Date of Decision ... 05.01.2022

Aurangzeb Ex-Constable No. 390 District Buner.

... (Appellant)

VERSUS

The Regional Police Officer, Malakand, at Saidu Sharif Swat and one another.

... (Respondents)

Uzma Syed,  
Advocate

... For Appellant

Noor Zaman Khattak,  
District Attorney

... For respondents

**AHMAD SULTAN TAREEN**  
**ATIQ-UR-REHMAN WAZIR**

...  
...

**CHAIRMAN**  
**MEMBER (EXECUTIVE)**

**JUDGMENT**

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

Brief facts of the

case are that the appellant while serving as constable in police department was proceeded against on the charges of absence from duty and was ultimately dismissed from service vide order dated 30-05-2009, against which the appellant filed departmental appeal followed by service appeal No 1385/2017, which was allowed vide judgment dated 29-01-2019 with direction to the appellate authority for re-deciding the appeal of the appellant within three months on merit and in accordance with law. On receipt of the judgment, the respondents once again regretted his departmental appeal vide order dated 27-05-2019, against which the appellant filed the instant service appeal with prayers that the impugned orders dated 30-05-2009 and 23-05-2019 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the impugned orders are void, against law and norms of natural justice, hence not tenable and liable to be set aside; that the appellant has not been treated in accordance with law, as such the respondents violated Article 4 and 25 of the Constitution; that codal formalities required for imposition of major penalty of dismissal from service has not been fulfilled, while issuing the impugned orders; that the respondents acted in arbitrary and malafide manner, while issuing impugned dismissal orders dated 30-05-2009 and 27-05-2019; that the impugned order is void in a sense that retrospective effect have been given; that imposing major penalty of dismissal for 25 days absence is a harsh punishment and contrary to the norms of natural justice; that the appellant absented due to life threat to his person and his family due to militancy in the region, hence his absence was not willful, but was due to compelling reasons; that no regular inquiry has been conducted in the matter, which is must before imposition of major penalty of dismissal from service; that the appellant has been condemned unheard as no opportunity of defense was afforded to the appellant.

03. Learned District Attorney for the respondents has contended that it is correct that some of the police personnel including the appellant absented from their duty during the period of militancy but after pak army operation, the absent police personnel joined their duty but the appellant failed to resume his duty well in time; that being member of a disciplined force, the appellant absented himself from lawful duty, thus he was rightly dismissed from service; that vide judgment of this tribunal dated 29-01-2019, departmental appeal of the appellant was examined and the appellant was called in orderly room but the appellant failed to prove his innocence, hence his departmental appeal was rejected being barred by time.


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

05. Placed on record is an earlier judgment of this tribunal in service appeal No 1385/2017 in favor of the appellant, which shows that the appellant was dismissed from service without conducting any inquiry against the appellant, nor any showcause was served upon the appellant and the appellant was condemned unheard. In view of the illegality on part of the respondents, the impugned orders were set aside and the appellant was re-instated in service with direction to the respondents to re-decide appeal of the appellant in accordance with law. In a manner, the period of limitation was condoned in submission of departmental appeal, but the respondents again filed his appeal on the issue of limitation without touching merits of the case, which amounts to negation of the verdict of this tribunal and on this score alone, the impugned orders are liable to be set aside. Besides, the respondents in many other similar cases has already re-instated other police personnel, who had deserted due to militancy and many others were re-instated by this tribunal, hence under the principle of consistency, the appellant also deserve the same treatment.

06. In view of the foregoing discussion, the instant appeal is accepted. The impugned orders dated 30-05-2009 and 23-05-2019 are set aside and the appellant is re-instated in service. The intervening period is treated as extraordinary leave without pay. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED  
05.01.2022

  
(AHMAD SULTAN TAREEN)  
CHAIRMAN

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

ORDER

05.01.2022

Learned counsel for the appellant present. Mr. Noor Zaman Khattak, District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the instant appeal is accepted. The impugned orders dated 30-05-2009 and 23-05-2019 are set aside and the appellant is re-instated in service. The intervening period is treated as extra ordinary leave without pay. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

05.01.2022



(AHMAD SULTAN TAREEN)  
CHAIRMAN

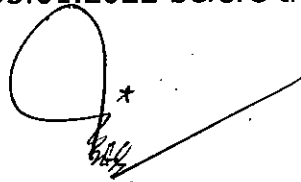


(ATIQ-UR-REHMAN WAZIR)  
MEMBER (E)

04.10.2021

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Addl: AG for respondents present.

Learned counsel for the appellant seeks adjournment as she has not prepared the brief. Granted. To come up for arguments on 05.01.2022 before the D.B.



(Mian Muhammad)  
Member(E)



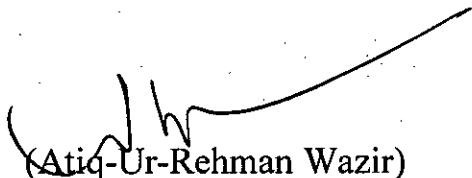
Chairman

21.12.2020

Appellant alongwith his counsel is present. Additional: AG alongwith Mr. Nowsherwan, Inspector for respondents present.

The bare perusal of the impugned order dated 30.05.2009 would reveal that retrospective effect has been given and since the issue of retrospectivity is pending adjudication before the Larger Bench of this Hon'ble Tribunal, therefore, till a judgment in the matter is made by the Larger Bench, appeal is adjourned to 08.03.2021 for further proceedings before D.B.

08.03.2021

  
(Atiq-Ur-Rehman Wazir)  
Junior to counsel  
Member (E)

(M. Jamal Khan)  
Member (J)


Kabir Ullah Khattak learned Additional Advocate General for respondents present.


Due to non-availability of D.B, case is adjourned to 11.06.2021 for the same as before.

  
Reader

11.06.2021

Nemo for the appellant. Mr. Zahir Shah, S.I alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present. Notice for prosecution of the appeal be issued to appellant as well as his counsel and to come up for arguments before the D.B on 04.10.2021.

  
(ATIQU-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

*Noted*  
*31/6/2021*

01.04.2020 Due to public holiday on account of COVID-19, the case is adjourned to 09.06.2020 for same as before.

  
Reader

09.06.2020 Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG alongwith Syed Dawood Shah, S.I for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 18.08.2020 for arguments before D.B.

  
(Mian Muhammad)  
Member


  
(M. Amin Khan Kundi)  
Member

18.08.2020 Due to summer vacations, the case is adjourned to 26.10.2020 for the same.

2020 for the same

  
Reader

26.10.2020 Proper D.B is on Tour, therefore, the case is adjourned for the same on 21.12.2020 before D.B.

  
Reader

24.10.2019

Counsel for the appellant present. Mr. Kabirullah Khattak learned Addl: AG alongwith Farman Ullah H.C for the respondents present.

Representative of respondents submitted reply which is placed on record. To come up for arguments on 09.01.2020 before the D.B. The appellant may submit rejoinder within a fortnight, if so advised.

  
Chairman

09.01.2020

Due to general strike of the Khyber Pakhtunkhwa Bar Council, the case is adjourned. To come up for arguments on 02.03.2020 before D.B.

  
Member

  
Member

02.03.2020

Counsel for the appellant present. Addl: AG for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 31.03.2020 before D.B.

  
Member

  
Member




08.08.2019

Counsel for the appellant present.

Contends that the appellant was dismissed from service on 30.05.2009 where-against ultimately service appeal No. 1385/2017 was preferred before this Tribunal. While deciding the appeal the matter was remitted to the departmental appellate authority for re-decision of departmental appeal of appellant. At post remand stage an order was passed on 23.05.2019 by the respondent No. 1 whereby the appeal was once again rejected albeit without giving any reason for its rejection.

In view of arguments of learned counsel and available record, instant appeal is admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 30.09.2019 before S.B.

  
8/8/19  
Appellant Deposited  
Security & Process Fee

  
Chairman

30.09.2019 Appellant in person and Addl. AG alongwith Noshrawan, Inspector for the respondents present.

Representative of the respondents seeks time to furnish comments on behalf of the respondents. To come up for requisite reply/comments on 24.10.2019 before S.B.

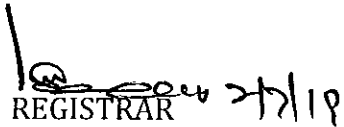

  
Chairman

Form- A

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No.- 874/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	02/07/2019	<p>The appeal of Mr. Aurang Zeb resubmitted today by Uzma Syed Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>02/08/2019.</u></p> <p style="text-align: right;"> CHAIRMAN</p>

R11

The appeal of Mr. Aurangzeb Ex-Constable District Buner received today i.e. on 20.06.2019 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copies of charge sheet, statement of allegations, reply thereto, enquiry report and application (Annexures-A to D) are not attached with the appeal which may be placed on it.
- 2- Copies of impugned order dated 30.5.2009 mentioned in the heading of appeal and order dated 03.02.2016 mentioned in para-5 of the memo of appeal are not attached with the appeal which may be placed on it.
- 3- Copy of departmental appeal against the Impugned order is not attached with the appeal which may be placed on it.
- 4- Annexures-H and I mentioned in the grounds of appeal are missing.
- 5- Annexures of the appeal may be flagged.
- 6- Annexures of the appeal may be attested.
- 7- Four more copies/sets of the appeal along annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1109 /S.T,

Dt. 21-6- /2019.

*[Signature]*  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Uzma Syed Adv. Pesh.

*Sir,*

*all objections (1 to 7) were  
removed accordingly.*

*[Signature]*

*2-7-2019*

BEFORE THE KHYBER PAKHTUNKHWA SER VICE TRIBUNAL PESHAWAR

Appeal No. 874 /2019

Aurangzeb

V/S

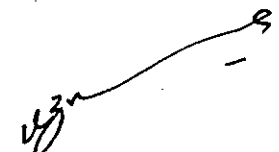
Police

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S.NO	Description of Documents	Annexure	Page No
1	Memo of appeal		1 - 3
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5	Wakalatnama		12

Appellant  
اورنگ زب  
Aurangzeb

Through:-

  
Uzma Syed

①

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 874 /2019

Aurangzeb Ex-Constable No. 390  
District Buner

Khyber Pakhtukhwa  
Service Tribunal

Diary No. 871

Dated 20/6/2019

.....(Appellant)

**VERSUS**

1. The Regional Police officer, Malakand, at Saidu Sharif Swat .
2. District Police Officer Buner.

.....(Respondents)

**APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 23.5.2019 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT AGAINST THE ORDER DATED 30.05.2009 WAS REJECTED FOR NO GOOD GROUNDS.**

Filed to-day

Registrar

20/6/19

**PRAYER:**

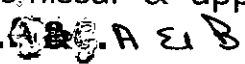


**THAT THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 23.05.2019 and 30.05.2019 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.**

Re-submitted to-day  
and filed.

Registrar

20/6/19

**R/SHWETH:**  
**ON FACTS:**

1. That appellant was enlisted as constable NO. 390 in the respondent department after fulfilling all the codall formalities required for appointment to the post and was performing his duty quite efficiently, whole heartedly and up to the entire satisfaction of his high ups.
2. That in 2009 when militancy was on its peak in Malakand division, police force and their families were the main target of the militants due to which many police personnel absented themselves from duty.
3. That due to the above stated compelling reasons the appellant also remained absent from duty from 05.05.2009 till passing of impugned order i.e 30/05/2009 for a total period of 25 days.
4. That the appellant was dismissed from service vide the dismissal order dated 30.05.2009 against which the appellant filed Departmental Appeal which was rejected vide appellate order dated 29.11.2017. Copy of the Dismissal & appellate order is attached as annexure ..... 
5. That on receiving the appellate order dated 29.11.2017 the appellant filed service appeal no. 1385/2017 with in time before the Khyber Pakhtunkhwa Service Tribunal. That the service appeal was finally heard and was allowed with observation that the same is remit to departmental authority for re-deciding the appeal of the appellant, within three months, on its merits and accordance with law vide judgment dated 29/01/2019. Copy of judgment is attached as annexure ..... 
6. That after receiving the judgment of this honorable court the appellate authority issued the impugned appellate order dated 27/05/2019 in utter violation of the judgment dated 29/01/2019, whereby the departmental appeal of the appellant was once again regretted without any cogent reasons. Copy of impugned appellate order dated 27/05/2019 is attached as annexure ..... 
7. That appellant feeling highly aggrieved and having no other remedy but to file the instant appeal on the following grounds amongst the others.

**GROUND:**

- A- That impugned dismissal orders dated 30.05.2009 and 27/05/2019 issued by the respondents are void, against the law, facts and norms of natural justice hence not tenable and are liable to be set aside.

- B- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the codal formalities required for the major penalty of dismissal from service was not fulfilled by the respondents while issuing the impugned orders dated 30/05/2009 and 27/05/2019.
- D- That the respondents acted in an arbitrary and malafide manner while issuing the impugned dismissal orders dated 30/05/2009 and 27/05/2019.
- E- That the impugned dismissal order is void-ab initio in a sense that retrospective effect have been given w.e.f. 05/05/2009.
- F- That imposing major penalty of dismissal for 25 days absentia is a harsh punishment and against natural justice.
- G- That appellant remained absent due to life threats to his person and family because of militancy in the region, hence his absentia is not willful but due fore mentioned compelling reasons .
- H- That, no regular or fact finding inquiry is conducted in the matter which is pre-requisite as per RSO 2000 as well as judgments of the Supreme Court of Pakistan in punitive matters.
- I- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that appeal of the appellant may be accepted as prayed for, please.

Dated: 29.06.2019

APPELLANT

اورنگ زب  
**AURANG ZEB**

THROUGH:

وزم  
**UZMA SYED**  
ADVOCATE  
High Court Peshawar

Anex - A

(A) (4)

Phone : 0939-510470  
Fax : 0939-510501

ORDER

Where is you Fl. Audauf Zeb 390. While posted CP. Kinjar Galai according to the report received in this office vide D D No: 6 dated 5/5/2009 you left the place of duty with out valid cause and intimation to your office in charge since then you have been un authorized absence from duty that is from this constitute misconduct on your part and a such you are liable to action under section 5 sub section(4) of the removal from service (Special Power ordinance 2000)(Amended Ordinance 3:01).

I have come to the conclusion that either the accused police officer has ceased to be efficient and exhibit cowardice or reasonably suspected of being associated with those engaged in subversive activities during operation of the militants in Buner District.

I, as competent authority, am, therefore, satisfied to proceed under section (5) of sub section (4) of the removal from service (Special power ordinance 2000) (Amendment ordinance 2001 and dispense with the enquiry proceeding as laid down in the said ordinance and am further satisfied that there is no need of holding departmental enquiry since the accused Police official Audauf Zeb 390 has been found guilty of gross misconduct as defined in the ordinance, I, Mr. ABDUR FASHID D. P. O. Buner as competent authority therefore impose major penalty by dismissing him from service from the date of his absence.

Da

DISTRICT POLICE OFFICER  
BUNER.

OB No. 56

DATE 30/5/2009

OB

Date

*[Signature]*  
**ATTESTED**



BETTER COPY.

*Better copy*

Annexure-A

ORDER

Where is you FC, Aurangzeb,390, while posted CP, Kingargalai according to the report received in without valid cause and I intimation to your office in charge, since then you have been un-authorized absence from duty that is from this constitute mis-conduct on your part and a such you are liable to action under section 5 sub section(4) of the removal from service (Special Power Ordinance 2000) Amended Ordinance 2001.

I have to conclusion that either the accused police officer has ceased to be efficient and exhibit cowardher or reasonably suspected of being associated with those engaged in subversive activities during operation of the militants in Bunner District.

I, as competent authority, am therefore, satisfied to proceed under section (5) of sub section (4) of the removal from service (Special power ordinance 2000) (Amendment ordinance 2001 and dispense with the inquiry proceeding as laid down in the said ordinance and am further satisfied that there is no need of holding departmental inquiry since the accused police official Aurangzeb, 390has been found guilty of grass misconduct as defined in the ordinance. I, Mr. Abdur Rashid D.P.O Bunner as Competent Authority, therefore, impose major penalty by dismissing him from service from the date of his absence.

DISTRICT POLICE OFFICER  
BUNER.

*[Signature]*  
**ATTESTED**



OFFICE OF THE  
REGIONAL POLICE OFFICER, MALAKAND

AT SAIDU SHARIF SWAT.

Ph: 0946-9240381-83 & Fax No. 0946-9240390

Email: digmalakand@yahoo.com

ORDER:

The following Ex-Constables / Ex-SPF of the Districts noted against ea submitted applications for reinstatement in Service. Their applications were thoroughly examin and found long time barred having no legal justification to consider, hence hereby filed:-

S. No	Name and No	District	Date of Dismissal
1	Ex-Constable Noor-ul-Amin No. 75/RB	Swat	12/10/2009
2	Ex-Constable Naseer Ullah Khan No. 1428	Swat	26/01/2009
3	Ex-Constable Ubaid Ullah No. 1662	Swat	12/12/2008
4	Ex-Constable Saeed Ullah No. 1655	Swat	05/12/2008
5	Ex-Constable Muhammad Ibrahim No. 399	Swat	15/02/2008
6	Ex-Constable Bakht Zaman No. 1719	Dir Lower	16/01/2012
7	Ex-Constable Atta Ullah No. 568	Dir Lower	05/05/2008
8	Ex-Constable Tahir Khan No. 781	Dir Lower	07/07/2008
9	Ex-Constable Ruhul Amin No. 1012	Buner	01/08/2014
10	Ex-Constable Aurang Zeb No. 890	Buner	30/05/2009
11	Ex-Constable Fawseef Ahmad No. 258	Shanghis	02/01/2009
12	Ex-Constable Sher Wali No. 1050	Dir Upper	01/07/2016
13	Ex-Constable (SPO) Nihar Muhammad No. 781	Buner	15/08/2016
14	Ex-Constable (SPO) Iqbal Ur Rehman No. 474	Buner	10/08/2017
15	Ex-Constable (SPO) Zafar Ali No. 318	Buner	02/02/2017
16	Ex-Constable (SPO) Muhammad Tariq No. 57	Buner	14/03/2016
17	Ex-Constable (SPO) Lajbar Khan No. 279	Buner	14/03/2016
18	Ex-Constable (SPO) Bakhtawar Zeb No. 471	Dir Lower	11/01/2017
19	Ex-Constable (SPO) Muhammad Rafiq No. 152	Dir Lower	09/02/2016
20	Ex-Constable (SPO) Shah Farid No. 245	Dir Lower	11/01/2017
21	Ex-Constable (SPO) Naik Amal No. 817	Dir Lower	16/09/2016
22	Ex-Constable (SPO) Rahmatullah No. 459	Dir Lower	03/02/2017
23	Ex-Constable (SPO) Muhammad Farwishi No. 195	Dir Lower	24/02/2017
24	Ex-Constable (SPO) Nadat Khan No. 2358	Swat	14/06/2017
25	Ex-Constable (SPO) Umar Rahman No. 2828	Swat	07/11/2016
26	Ex-Constable (SPO) Sher Ali No. 2001	Swat	30/10/2012

*Handwritten signature/initials*


**ATTACHED**

6

27.	Ex-Constable (SPO) Muhammad Rahim No. 2417	Swat	26/04/2017
28.	Ex-Constable (SPO) Khan Muhammad No. 2353	Swat	05/11/2015
29.	Ex-Constable (SPO) Taj Muhammad No. 714	Swat	24/05/2013
30.	Ex-Constable (SPO) Muhammad Ghafoor No. 3053	Swat	16/12/2016
31.	Ex-Constable (SPO) Muhammad Zahir Shah No. 2045	Swat	27/11/2013
32.	Ex-Constable (SPO) Hadi Khan No. 1902	Swat	10/04/2017
33.	Ex-Constable (SPO) Kishwar Ali No. 3080	Swat	18/09/2015
34.	Ex-Constable (SPO) Muhammad Alam No. 1965	Swat	19/04/2017
35.	Ex-Constable (SPO) Nazir Muhammad No. 3016	Swat	03/12/2013
36.	Ex-Constable (SPO) Taj Muhammad No. 2106	Swat	19/08/2015
37.	Ex-Constable (SPO) Waheed Gul No. 896	Swat	26/10/2016
38.	Ex-Constable (SPO) Hazrat Umar No. 2132	Swat	25/01/2016
39.	Ex-Constable (SPO) Syed Hassan No. 1194	Dir Lower	04/06/2015

The applicants of yours respective Districts may be informed accordingly.

Attested

  
 (AKHTAR HAYAT KHAN)  
 Regional Police Officer,  
 Malakand, at Saidu Shafiq Swat

13714-19 IE.

dated 29-11-2017.

Copy to All District Police Officers, in Malakand Region for information and necessary action. The applicants of your respective District may be informed accordingly please.

ATTESTED

1  
Annex - C

7

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 1385/2017

Date of Institution ... 11.12.2017

Date of Decision ... 29.01.2019



Aurangzeb Ex-Constable No. 390 District Buner. ... (Appellant)

VERSUS

The Regional Police Officer, Malakand Saidu Sharif, Swat and another.  
... (Respondents)

Present.

Miss Uzma Syed & S.Nauman Ali Bukhari,  
Advocates

... For appellant

Mr. Muhammad Riaz Paindakhel,  
Asstt. Advocate General

... For respondents.

MR. HAMID FAROOQ DURRANI,  
MR. HUSSAIN SHAH,

... CHAIRMAN  
... MEMBER(E)

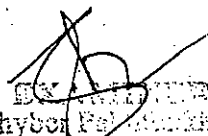
JUDGMENT


HAMID FAROOQ DURRANI, CHAIRMAN:-

1. Appellant is aggrieved of orders dated 30.05.2009 and 29.11.2017 passed by the respondents No. 2 and 1, respectively. The former order pertains to dismissal of service of appellant while the latter is regarding rejection of his departmental appeal.

2. The facts, as gatherable from record, are that th appellant, while posted at Kingargalai was found absent from duty w.e.f. 05.05.2009. He

**ATTESTED**

  
CHAIRMAN  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

  
**ATTESTED**

was, therefore, proceeded against departmentally and the order dated 30.05.2009 was passed under the provisions of Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000. Pertinently, the enquiry proceedings were dispensed with in the matter. The departmental appeal of appellant was rejected on the sole ground of being bared by time.

✓ 3. We have heard learned counsel for the appellant and learned Assistant Advocate General on behalf of the respondents.

It was the contention of learned counsel for the appellant that the impugned order of dismissal from service, though passed on 30.05.2009, was given effect from the date of absence of appellant i.e. 05.05.2009. In her view the order was, therefore, void and the delay in submission of departmental appeal was not to be counted to the detriment of appellant. It was further contended that admittedly no enquiry was conducted against the appellant, however, he was awarded major punishment of dismissal from service and there was consistent view of the Apex Court requiring holding of proper enquiry in similar matters. She relied on judgments reported as 2000-SCMR-1743 and 2008-SCMR-609.

On the other hand, learned Asstt. Advocate General argued that the departmental appeal of appellant was hopelessly time-barred and in view of the travel history of appellant starting from 20.08.2009 and ending on 15.06.2017, his appeal was rightly dismissed.

ATTESTED

ATTESTED

Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

(9)

4. It is conspicuously noted that proceedings against the appellant were held under the erstwhile Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 which, no doubt, contained provisions for dispensing with the enquiry but <sup>for</sup> reasons to be recorded in writing. At the same time, the provisions contained in Section 3 of the Ordinance *ibid* made it mandatory for the departmental authority to issue order in writing and inform the accused of the action proposed to be taken with regard to him and the grounds of the action. Reasonable opportunity of showing cause against the proposed action was also to be given to the accused under the law *ibid*. The exceptions to the said mandatory provisions were in terms that where the competent authority was satisfied that in the interest of security of Pakistan or any part thereof it was not expedient to give such opportunity or in cases where a person, being proceeded against upon conviction by a court of law, was sentenced to imprisonment or fine.

In the case in hand the enquiry proceedings were admittedly not held against the appellant while the dispensing with of such proceedings was not supported by reasons as required by the law. It is also a fact that no show cause notice, as obligated by Section 3 of Khyber Pakhtunkhwa Removal from Service (Special Power) Ordinance, 2000 was served upon the appellant before imposing major penalty of dismissal from service. In the circumstances, it can be safely held that the illegality on the part of departmental authority was not curable without setting aside the impugned orders regardless the delay in submission of departmental appeal.

ATTESTED

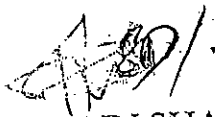
ATTESTED

Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar



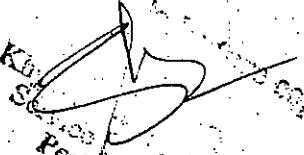
5. In view of the above facts and also following the judgment of this Tribunal passed in Appeal No. 264/2012, decided on 06.10.2017, we allow the appeal in hand and remit the matter to departmental appellate authority for re-deciding the appeal of appellant, within three months, on its merits and in accordance with law.

Parties are left to bear their respective costs. File be consigned to the record room.


  
 (HUSSAIN SHAH)  
 MEMBER(E)

  
 (HAMID FAROOQ DURRANI)  
 CHAIRMAN

**ANNOUNCED**  
 29.01.2019

  
 Certified true copy  
 K. S. Peshawar

Date of Presentation \_\_\_\_\_ 04-02-18  
 Number of \_\_\_\_\_ 1680  
 Copies \_\_\_\_\_ 10  
 Urgent \_\_\_\_\_ 2  
 Total \_\_\_\_\_ 12  
 Name \_\_\_\_\_  
 Date of \_\_\_\_\_ 04-02-18  
 Date of Delivery of Copy \_\_\_\_\_ 04-02-18

  
**ATTESTED**



OFFICE OF THE  
REGIONAL POLICE OFFICER, MALAKAND

AT SAIDU SHARIF SWAT.

Ph: 0946-9240381-88 & Fax No. 0946-9240390

Email: digmalakand@yahoo.com

ORDER:

This order will dispose off appeal of Ex-Constable Aurang Zeb of Buner District for reinstatement in service.

Brief facts of the case are that Ex-Constable Aurang Zeb of Buner District was enlisted on 04/07/2006 as Constable having 02 years 10 months and 26 days of service. The Appellant was awarded with major punishment of dismissal from Service vide DPO Buner office OB No. 56 dated 30/05/2009. He deliberately absented himself from his lawful duty during the past insurgency of 2009. As a result he was dismissed from service under the provision of Khyber Pakhtunkhwa removal from service (special power) ordinance 2000. The appellant preferred departmental appeal before this office which was filed being time barred vide this office Endst No. 13714-19/E, dated 29/11/2017. The Appellant filed service appeal before Khyber Pakhtunkhwa Service Tribunal Peshawar. His case was accepted by Service Tribunal Peshawar and directed to remit the matter to departmental appellate authority for re-deciding the case.

As per directions of the Honorable Court of Service Tribunal, KPK Peshawar, he was called in Orderly Room on 20/05/2019 and heard him in person. The appellant could not produce any cogent reason in his defense. His appeal was already filed by this office being long time barred. However according to the directions of Honorable Court his appeal was again examined / scrutinized and filed.

Order announced.

(MUBHAMMAD SAEED), PSP  
Regional Police Officer,  
Malakand, at Saidu Sharif Swat  
\*\*Naqi\*\*

No. 6124 /E,

Dated 27/05 /2019.

Copy to District Police Officer, Buner for information and necessary action with reference to his office Memo: No. 3052/Enq: dated 02/05/2019. Service Roll / Fauji Missal and court judgment of the above named official is returned herewith for record in your office.

\*\*\*\*\*

Enquiry Clerk

7 Distt: Police Officer.  
Buner

ATTESTED



12

**VAKALAT NAMA**

NO. \_\_\_\_\_/20

IN THE COURT OF KP Service Tribunal Peshawar

Awagzeb (Appellant)  
(Petitioner)  
(Plaintiff)

VERSUS

Police de Pkt (Respondent)  
(Defendant)

I/We, Awagzeb

Do hereby appoint and constitute **SYED NOMAN ALI BUKHARI AND UZMA SYED Advocate High Court Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated 20 / 06 / 2019

اوگرزب  
(CLIENT)

ACCEPTED

UZMA SYED  
Advocate High Court Peshawar.

**SYED NOMAN ALI BUKHARI**  
Advocate High Court Peshawar.

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR**

Service Appeal No. 874/2019

Aurang Zeb Ex-Constable No. 390

District Buner

.....Appellant


**VERSUS**

1. The Regional Police Officer, Malakand Region at Saidu Sharif Swat.
2. The District Police Officer, Buner.

..... Respondents

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3.	Authority Letter	--	4
4.	Abroad Traveling History	A	5-6
5.	Order Copy of Departmental Appellate Authority	B	7

  
**DISTRICT POLICE OFFICER,  
BUNER.**  
(Respondent No. 02)

P-①

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR**

Service Appeal No. 874/2019

Aurang Zeb Ex-Constable No. 390

District Buner

.....Appellant

**VERSUS**

1. The Regional Police Officer, Malakand Region at Saidu Sharif Swat.
2. The District Police Officer, Buner.

..... Respondents

**PARA-WISE COMMENTS ON BEHALF OF RESPONDENTS.**

**Respectfully sheweth:**

**Preliminary Objections:-**

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

**ON FACTS:**

1. Para No. 01 relates to the service record of the appellant hence needs no comments.
2. Incorrect. That during the period of militancy some of Police men including appellant absented deliberately from their lawful duty, but when the Pak-Army operations was started and the situation became normal, the absentee Police personnel joined their duty while the appellant along with some others failed to make their arrival for lawful duty.
3. Incorrect. Being a member of discipline force, the appellant absented himself from his lawful duty. Thus he was rightly dismissed from service. However in this Para the appellant himself admitted his absentee.
4. Correct to extent that, the appellant was dismissed from service on 30.05.2009 and after availing long period of about 09 years he filed departmental appeal which was rejected being long time barred. It has also come into light through FIA record that the appellant had gone abroad on 20 August 2009 and his detail travelling history is attached as Annexure "A".
5. Pertains to record.
6. Incorrect. After receiving, the judgment dated 29.01.2019 of this Honorable Tribunal, to comply the directions in same judgment, the respondent No. 01 being departmental appellate authority called the appellant in Order Room and heard in

3

person but he could not produce any solid reason in his defence. However his appeal was again examined / Scrutinized and filed. Thus order of departmental appellate authority passed according to the law and rules. (Copy of same order is Annexed as Annexure "B".)


7. That the service appeal of the appellant is liable to be dismissed on the following grounds.


**GROUND**

- a. Incorrect. That the dismissal order dated 30.05.2009 and 27.05.2019 issued by the respondents being passed according the law, rules and justice.
- b. Incorrect. That the appellant has been treated by the respondent department in accordance with law rules and the respondents have not committed any violation of the constitution of Islamic Republic of Pakistan.
- c. Incorrect. That after fulfilling all the codal formalities the impugned orders have been passed by the respondents.
- d. Incorrect. That the respondents have not been committed any arbitrary and malafide manner while passing the impugned orders.
- e. Incorrect. That the impugned dismissal order of the appellant being passed according to the law and rules. Therefore the same order is not a void order.
- f. Incorrect. Police department being a discipline force, the appellant deliberately absented from his lawful duty without any permission. Thus he was rightly dismissed from service and he has been estopped due to his own conduct.
- g. Incorrect. Being a member of Police Force, duty of the appellant was required to the respondent department against the Anti-Social elements but he showed cowardice and deliberately absented himself from his lawful duty.
- h. Incorrect. That in some cases the department has mandate before passing any penalty to dispense enquiry proceedings as per RSO 2000.
- i. That the respondents also seek permission of this Honorable Tribunal to adduce more points / grounds at the time of arguments.

✓ **PRAYER:**

In view of the above detailed comments and grounds, it is prayed that the service appeal of the appellant may graciously be dismissed with cost.

  
*Regional Police Officer,*  
Malakand at Saidu Sharif Swat  
**REGIONAL POLICE OFFICER,**  
**MALAKAND REGION AT SAIDU SHARIF SWAT**  
(Respondent No. 01)

  
**DISTRICT POLICE OFFICER,**  
**BUNER.**  
(Respondent No. 02)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 874/2019

Aurang Zeb Ex-Constable No. 390  
District Buner

.....Appellant

**VERSUS**

- 1. The Regional Police Officer, Malakand Region at Saidu Sharif Swat.
- 2. The District Police Officer, Buner.

..... Respondents

**AFFIDAVIT**

We the above respondents do hereby solemnly affirm and state on oath that the <sup>the</sup> contents of the accompany Para-wise comments are correct and true to the best of our knowledge and belief and nothing has been concealed from this Honorable Tribunal.



*Regional Police Officer,*  
**REGIONAL POLICE OFFICER,**  
*Malakand at Saidu Sharif, Swat*  
**MALAKAND REGION AT SAIDU SHARIF**  
**SWAT**  
**(Respondent No. 01)**



**DISTRICT POLICE OFFICER,**  
**BUNER.**  
**(Respondent No. 02)**

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**BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR**

**Service Appeal No. 874/2019**

**Aurang Zeb Ex-Constable No. 390**

**District Buner**

.....Appellant

**VERSUS**

1. The Regional Police Officer, Malakand Region at Saidu Sharif Swat.
2. The District Police Officer, Buner.

..... Respondents

**AUTHORITY LETTER**

We, the above respondents do hereby authorize and allow Nowsherwan Inspector Legal District Buner to file the accompany Para wise comments in Honorable Service Tribunal Khyber Pakhtunkhwa Peshawar on our behalf and do whatever is needed in the court.

*Regional Police Officer,*  
*Malakand at Saidu Sharif Swat*  
**REGIONAL POLICE OFFICER,**  
**MALAKAND REGION AT SAIDU SHARIF SWAT**  
**(Respondent No. 01)**

*District Police Officer,*  
*Buner*  
**DISTRICT POLICE OFFICER,**  
**BUNER.**  
**(Respondent No. 02)**

(5) Annexure "A"

OFFICE OF THE DIRECTOR / IBMS  
FEDERAL INVESTIGATION AGENCY (HEADQUARTERS)  
ISLAMABAD

No. FIA/IBMS/Police/Query/ 527/

Dated: 01 October, 2018

**SUBJECT: SERVICE APPEAL NO.1385/2017 OF EX-CONSTABLE AURANG ZEB NO.390.**

Refer to your letter No. 5093/legal dated 24-09-2018 and addl:Dir/Diary No.2433 dated 28-09-2018 regarding travel information of following person.

CNIC No: 1510155681431

2. As per PISCES / IBMS database, travel history on above mentioned particular is found in System, and R11 Form is attached for ready reference.
3. This is a system generated Information based upon given particulars.

(District Police Officer)  
Buner

Address:

OFFICE OF THE DISTRICT POLICE OFFICER  
BUNNER.

*[Signature]*  
01-10-18  
ASSISTANT DIRECTOR  
Reporting/IBMS  
FIA (HQ), Islamabad

*Si legal*  
*for information*  
*M/s.*

*Do/Buner*

5552  
08/10/2018

(Circular stamp containing handwritten text: 0139, SI, Buner, 08/10/2018)

6

FEDERAL INVESTIGATION AGENCY  
INTEGRATED BORDER MANAGEMENT SYSTEM  
FIAHQ G-9/4 PESHAWAR MOR, ISLAMABAD  
Fax No: 051-9107225, Tel No: 051-90412210  
R-11 (TRAVEL HISTORY)



TRAVEL HISTORY FOUND ON: 1510155681431

Required By: District Police Officer Buner

Department: POLICE

Diary No: 2433 28-09-18

Letter Number: 5093/Legal

Request Date: 24-Sep-2018

Query Date: 01-Oct-2018

TRAVELER'S CNIC/CNIC

1510155681431

PERSONAL INFORMATION:

NAME: AJRANG ZEB N

BIRTH DATE: 01-FEB-1986

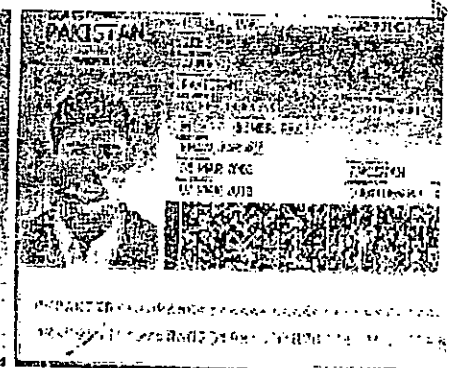
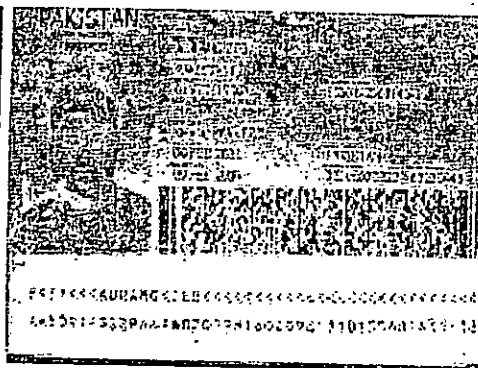
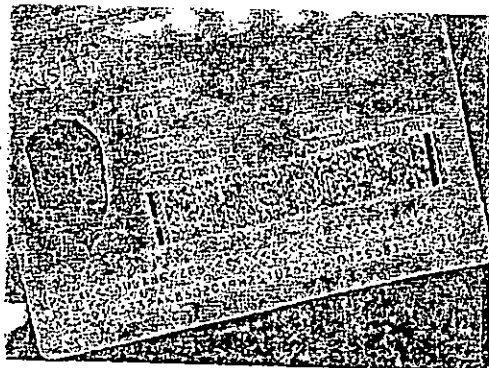
FATHER/HUSBAND NAME: PERVEZ KHAN

NATIONALITY: Pakistan



TRAVEL DETAILS:

S.NO	TRAVEL DATE	FLIGHT/NO	TRAVEL STATUS	PASSPORT NO	SITENAME	DESTINATION
1	20-Aug-09 14:36:57	SV895	departing	AK5091431	Benazir Bhutto International Airport Islamabad	
2	20-Sep-09 08:47:44	PK756	arriving	AK5091432	Peshawar International Airport	
3	24-Feb-12 20:46:55	PK755	departing	AK5091432	Peshawar International Airport	Riyadh
4	23-Dec-13 08:54:58	PK756	arriving	AK5091432	Peshawar International Airport	Riyadh
5	10-Jun-14 16:06:04	SV793	departing	AK5091432	Peshawar International Airport	Riyadh
6	1-Feb-16 16:00:14	NL724	arriving	AK5091433	Peshawar International Airport	Riyadh
7	15-Jul-16 4:10:02	NL723	departing	AK5091433	Peshawar International Airport	Riyadh
8	15-Jun-17 11:16:53	SV728	arriving	AK5091433	Benazir Bhutto International Airport Islamabad	Riyadh



CHECKED BY:

Time: 11:35:46 am

(NOT FOR COURT USE)





9

Annexure "B"

**OFFICE OF THE  
REGIONAL POLICE OFFICER, MALAKAND**

**AT SAIDU SHARIF SWAT.**

**Ph: 0946-9240381-88 & Fax No. 0946-9240390**

**Email: digmalakand@yahoo.com**

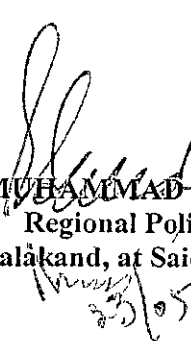
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As per directions of the Honorable Court of Service Tribunal, KPK Peshawar, he was called in Orderly Room on 20/05/2019 and heard him in person. The appellant could not produce any cogent reason in his defense. His appeal was already filed by this office being long time barred. However according to the directions of Honorable Court his appeal was again examined / scrutinized and filed.

Order announced.

  
(MUHAMMAD SAEED), PSP  
Regional Police Officer,  
Malakand, at Saidu Sharif Swat  
\*\*Naqi\*\*

No. 6124 /E,

Dated 27/05 2019.

Copy to District Police Officer, Buner for information and necessary action with reference to his office Memo: No. 3052/Enq: dated 02/05/2019. Service Roll / Fauji Missal and court judgment of the above named official is returned herewith for record in your office.

\*\*\*\*\*~\*\*\*\*\*



**KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR**

No. 159 /ST

Dated: 24/01 /2022

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281  
Fax:- 091-9213262


To

The District Police Officer,  
Government of Khyber Pakhtunkhwa,  
Buner.

Subject: JUDGMENT IN APPEAL NO. 874/2019, MR. AURANGZEB.

I am directed to forward herewith a certified copy of Judgement dated 05.01.2022 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR