

24.09.2019

Counsel for the appellant present.

Learned counsel requests for withdrawal of instant appeal with the option to file a fresh one, if need be.

Dismissed as withdrawn. File be consigned to the record room.

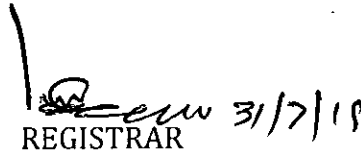
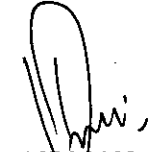
  
Chairman

Announced:  
24.09.2019

Form- A  
FORM OF ORDER SHEET

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

Case No.- 998/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	31/07/2019	<p>The appeal of Mr. Ibrar Hussain presented today by Mr. Muhammad Ayub Khan Shinwari Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR 31/7/19</p>
2-		<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>24-9-19</u></p> <p> CHAIRMAN</p>

*Handwritten notes:*  
24/9/19  
P-8

In The Khyber Pakhtunkhwa Service Tribunal, Peshawar

Service Appeal No 998 /2019

Ibrar Hussain

versus

IG, KP & Others

INDEX

S. No	Description of Documents	Dated	Annex	Pg No
1.	Service Appeal and Affidavit			1-4
2.	Application and affidavit			5-6
3.	Copy of impugned order		A	7
4.	Copy of Departmental appeal		B	8
5.	Copy of application		C	9
6.	<i>Wakalatnama</i>			10

Appellant,

Through

  
Muhammad Ayub Khan Shinwari  
Advocate Peshawar

**CHAMBER**

Office No 7-A,  
Haroon Mansion,  
Khyber Bazar, Peshawar  
Cell: (Clerk) 03219068514

1

**In The Khyber Pakhtunkhwa Service Tribunal, Peshawar**

**Khyber Pakhtunkhwa  
Service Tribunal**

Service Appeal No 998 / 2019

Diary No. 1107

Dated 31/7/2019

Ibrar Hussain,  
Ex-Sub Inspector, P.S Wari, Upper Dir

.....Appellant

Versus

1. Inspector General of Police, Government of Khyber Pakhtunkhwa, Peshawar.
  2. Deputy Inspector General of Police; Malakand Region, Said Sharif, Swat.
  3. Regional Police Officer, Malakand at Saidu Sharif, Swat.
  4. District Police Officer, Upper Dir
- .....Respondents

**Filed to-day**

**Registrar**

31/7/19

Service Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against Order dated 22-06-2018.

Prayer:

On acceptance of this Service Appeal the impugned Order dated 22-06-2018 whereby the Appellant is Compulsory Retired from service may kindly be set aside and the Respondents may kindly be directed to reinstate the Appellant in service with all back benefits.

Respectfully Sheweth,

Brief but relevant facts of the case are as follows:

1. That the Appellant was appointed as Constable in the Police Department and was later on promoted as Sub Inspector.

2. That ever since his appointment the Appellant had performed his duties to the best of his abilities and to the entire satisfaction of his superiors.
3. That vide Office Order 22-06-2018 the appellant has been awarded major penalty of Compulsory Retirement from service on the charge of absence from duty with effect from 09-02-2018 till date i.e., 22-03-2018. (Copy of Office Order is attached herewith as **Annex-A**)
4. That against the aforesaid Order, the Appellant filed Departmental Appeal which has not been decided. (Copy of Departmental Appeal is attached herewith as **Annex-B**)
5. That it is important to mention here that the impugned order whereby the Appellant is Compulsory Retired from service besides being *coram non judice* is passed without holding any inquiry, without issuing any show cause notice, without giving any chance of hearing and without giving any final show cause notice to the Appellant.

Hence the instant Service Appeal on the following amongst other grounds:

**Grounds:**

- a. That the impugned order is against the law, illegal, unlawful, without lawful authority and void ab initio, hence untenable and liable to be set aside.
- b. That the treatment met to the Appellant is against law, rules and policy on the subject matter, which is his inalienable right under the Article 4 of the Constitution of Islamic Republic of Pakistan, 1973.
- c. That the appellant filed an application dated 05-03-2018 before the respondents for proceeding on pension, despite the pendency of his application the impugned order has been passed without deciding his application. (Copy of application is filed herewith and attached as **Annex-C**)
- d. That the impugned order whereby the Appellant is Compulsory Retired from service is passed without holding any inquiry, without issuing any show cause notice, without giving any chance of hearing, without giving any final show cause notice, without producing any witness/evidence against the Appellant and without affording him any opportunity of cross examination.
- e. That the punishment awarded to the appellant does not commensurate the charge against him and it is a cardinal principle of service law that serious misconduct might be visited with major penalty so that not only the offender was brought to justice but also to make it an example for others. Where gravity of charge was of a lesser degree and circumstances reflected absence of bad faith and willfulness, which amounted to mere negligence, then minor

punishment might be a preferred course. Award of minor penalty provided an opportunity to the delinquent public servant to reform himself.

- f. That the impugned Order whereby the Appellant is Compulsory Retired from service is based on malafide for extraneous consideration.
- g. That the impugned order has been passed in utter disregard of the rule 9 and other mandatory provisions of the Khyber Pakhtunkhwa Servants (Efficiency and Discipline) Rules, 2011 and Khyber Pakhtunkhwa Police Rules, 1975.
- h. That the impugned Order is a non speaking order and no reasons are given for passing the impugned order which is against the Section 24-A of the General Clauses Act, 1897 furthermore the impugned Order is *Coram non Judice*.
- i. That the impugned order is against the principles of natural justice because before passing the impugned order no chance of hearing was given to the Appellant.
- j. That the impugned order is against the fundamental rights enshrined and protected under the Constitution of Islamic Republic of Pakistan, 1973.
- k. That the impugned Order is passed in utter disregard of the dictums of the Superior Courts.
- l. That the Appellant craves permission of this Honorable Tribunal to rely on other grounds at the time of arguments and produce any additional document if required in support of his Service Appeal.

It is, therefore, prayed that on acceptance of this Service Appeal the impugned Order dated 22-06-2018 whereby the Appellant is Compulsory Retired from service may kindly be set aside and the Respondents may kindly be directed to reinstate the Appellant in service with all back benefits.

Any other relief which has not been specifically prayed for and deemed fit and appropriate by this Honorable Tribunal in the circumstances may graciously be granted.

Through

  
Appellant,

  
Muhammad Ayub Khan Shinwari  
Advocate Peshawar

In The Khyber Pakhtunkhwa Service Tribunal, Peshawar

Service Appeal No \_\_\_\_\_/2019

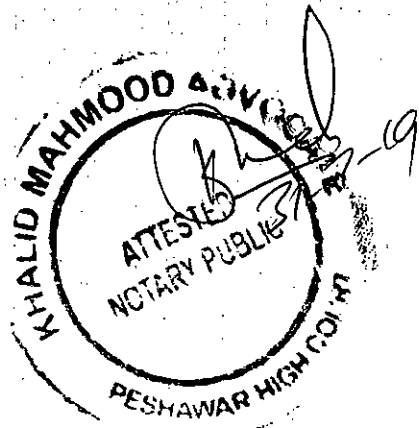
Ibrar Hussain

versus

IG, KP & Others

Affidavit

I, Ibrar Hussain, Ex-Sub Inspector, P.S Wari, Upper Dir do hereby solemnly affirm and declare on oath that the contents of the accompanying Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.



*Ibrar Hussain*  
Deponent

## IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No \_\_\_\_\_/2019

Ibrar Hussain

versus

IG, KP &amp; Others

**Application for condonation of delay in filing of the title service appeal****Respectfully Sheweth,**

The appellant submits as follows:

1. That the title Service Appeal is pending adjudication before this Honorable Tribunal, wherein no date of hearing is fixed yet.
2. That the impugned order is void order and no limitation runs against void order.
3. That the grounds mentioned in the accompanying title service appeal may kindly be read as an integral part of the instant application.
4. That the Appellant crave permission of this Honorable Tribunal to rely on other grounds at the time of arguments and produce any additional document if required in support of his Service Appeal.

It is, therefore, prayed on acceptance of the instant application the delay in filing the title service appeal may kindly be condoned and be decided on merits.



Appellant,

Through

**Muhammad Ayub Khan Shinwari**

Advocate Peshawar.



6

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No \_\_\_\_\_/2019

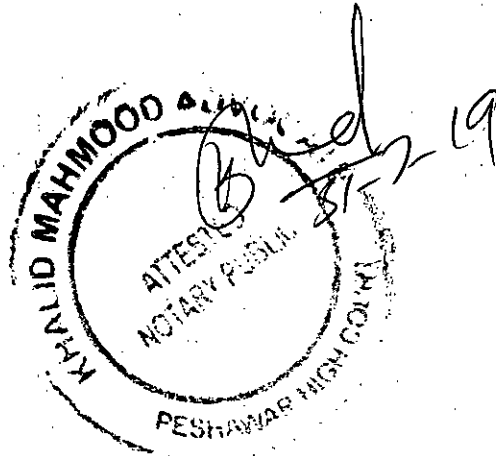
Ibrar Hussain

versus

IG, KP & Others

**Affidavit**

I, Ibrar Hussain, Ex-Sub Inspector, P.S Wari, Upper Dir do hereby solemnly affirm and declare on oath that the contents of the accompanying application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.



*Ibrar*  
Deponent

Annex A 7

354

OFFICE OF THE  
DISTRICT POLICE OFFICER,  
DIR UPPER.

ORDER:

This order is passed on the Departmental Enquiry conducted against ~~SI Ibrar Hussain~~ while posted in PS Wari, absented himself from his lawful duty 09.02.2018 till date, so this amounts a gross negligence on his part.

In order to initiate proper Departmental Enquiry Charge Sheet and Statement of Allegation served upon him. Mr. Zafar Khan DSP HQrs was appointed as Enquiry Officer. The Enquiry Officer in its finding report stated that liable/guilty and also added that the defaulter SI has also submitted an application for retirement from Police service on 31.03.2018 due to domestic problem and recommended him for compulsory retirement from service.


On the receipt of the finding report and other connected papers the same was perused, the above named defaulter Officer was called and heard in person in Orderly Room, but he did not satisfy the undersigned.

Therefore, in exercise of powers vested to the undersigned takes lenient view and agreed with the findings and recommendation of the Enquiry Officer, SI Ibrar Hussain is hereby awarded Major Punishment of Compulsory retirement from Police service from the of his absence i.e 09.02.2018.

Order announced.

OB No. 354

Dated: 22-06- /2018.



District Police Officer  
Dir Upper.

ATTESTED.

آئی جی پی صاحب  
چیئر مین، نیشنل فورس  
پرائیویٹ

کابینہ سربراہ، جہاز

Annex B 8

عنوان: درخواست پر مراد خصوصی دائرہ

جہاز بائی

1۔ یہ کہ مسائل حل کیے ہو نہیں میں پر فوری آئی جی کے دوران  
تعمیراتی کی بنیاد پر نوکری سے پر فوری کر دیا گیا

2۔ یہ کہ مسائل نے تعمیراتی کی وجوہات کے مطابق نہیں آئی جی  
تعمیراتی اور ان کے ساتھ ساتھ

3۔ یہ کہ اس دوران مسائل کی نوکری کسی بھی وجوہات کو قابل طور  
نہ لائے ہوئے تھے۔ جبکہ مسائل کے پیشین کے حقوق  
کو بھی تسلیم نہ ہوئی تھی اور نہ ہی کوئی شنوائی کا موقع دیا گیا ہے

4۔ یہ کہ مسائل نے صرف 3/5 کو ایک درخواست پر حضور متعلقہ آئی جی  
معرض تلاش کی کہ مسائل کو اس کے پیشین کے حقوق سے محروم نہ کیا جا  
سکتا تھا۔

یہ کہ مسائل نے صرف 3/5 کو ایک درخواست پر حضور متعلقہ آئی جی  
معرض تلاش کی کہ مسائل کو اس کے پیشین کے حقوق سے محروم نہ کیا جا  
سکتا تھا۔

Pain

ATTESTED

ابراہیم حسین زئی

22/4/18

012 49741

ظاہر ہے

درخواست برادینشن

تعدادی

بنا علی / خودمان گذارش صدر سائیل کثرت کیل مور - 01

1991 کو حکم لولیشن میں کفری ہو کر تاحال ایسا دیوی اور

ذرائع سرانجام دے رہا ہے۔ سائیل کا حکم لولیشن

میں عرصہ ملازمت 25 سال مور 12/15 ای کو لولیشن

سائیل کو گو بلو مشکل ہے۔ اور کورسی خود  
|| حکم لولیشن سے پیش پر جاننا چاہتا ہے۔

ذریعہ درخواست لولیشن سائیل کو حکم میں

ملازمت لولیشن پر اندازہ مور 03/18 ای سے مکمل طور پر

پیشن پر صرف کرنا کا حکم صادر فرمایا جاوے۔

Dani  
ASWANI As Wani

المصنف

3/18

تعدادی / 1003

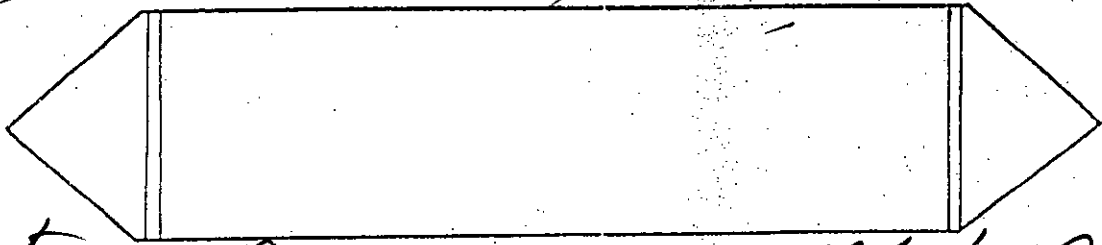
For witness

ASWANI

3/18

ATTESTED

بعدالت جدیسر سے درمیان محدود خدمتوں کے



Appellant 2019ء پنجاب  
بنام لہری جی پی ڈی  
وہزارہ حسین

مورخہ 29/7/2019  
مقدمہ SERVICE APPEAL  
دعویٰ  
جرم

### باعث تحریر آنکھ

دیکھ کر

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و کل کارروائی متعلقہ آن مقام سروس فہرستوں کیلئے محدود خدمتوں کے

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ بر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور صوبی چیک دروپیا عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری کی طرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

Filed Stamp

2019  
ATTEST  
واہ الب

المرقوم 27/7

Handwritten signature and stamp area.

کے لئے منظور ہے۔

Handwritten signature: دہرہ

بمقام