

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

Service Appeal No. 1099/2019

Date of Institution ... 19.08.2019

Date of Decision ... 01.10.2021

Muhammad Ismail Constable No. 7902 FRP D.I.Khan.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Home Civil
Secretariat Peshawar and three others.

... (Respondents)

MR. GUL TIAZ KHAN MARWAT,
Advocate

--- For appellant.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney


--- For respondents.

MR. SALAH-UD-DIN
MR. ATIQ-UR-REHMAN WAZIR

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:-


Precise facts forming the background of the instant service appeal are that the appellant while posted as Constable in FRP D.I.Khan was removed from service on the ground of his absence from duty. The service appeal of the appellant was, however accepted by this Tribunal vide judgment dated 26.09.2016 and the matter was remanded back to the department for conducting of de-novo inquiry. The appellant was reinstated into service for the purpose of de-novo inquiry and the inquiry was also conducted, however the outcome of the same was not conveyed to the appellant,

therefore, he filed Execution Petition in this Tribunal. It was during the proceedings on the execution petition on 27.03.2019 that the respondents produced copy of the impugned order dated 15.02.2017 passed by the competent Authority, therefore, upon the request of learned counsel for the appellant, the execution petition was sent to the appellate Authority/Commandant FRP Peshawar for treating the same as departmental appeal against the order dated 15.02.2017. The appellate Authority rejected the same vide impugned order dated 30.05.2019, hence the instant service appeal.

2. Notices were issued to the respondents, who submitted their comments.

3. Learned counsel for the appellant has contended that the appellant did not remain gainfully employed after his removal from service, therefore, the intervening period with effect from 23.08.2011 to 25.01.2017 has been wrongly treated by the competent Authority as without pay; that after reinstatement of the appellant into service, there was no justification for treating the period with effect from 23.08.2011 to 25.01.2017 as without pay; that the appellant was kept out of service through wrong removal order being passed by the competent Authority, therefore, he became entitled to back benefits for the period from 23.08.2011 to 25.01.2017.

4. On the other hand, learned Deputy District Attorney for the respondents has contended that all legal and codal formalities were complied with in the de-novo inquiry conducted against the appellant, however he failed to justify his absence; that the competent Authority has already taken lenient view on humanitarian ground, therefore, the appellant cannot claim himself to be entitled to pay for the period during which he remained out of service.


5. Arguments heard and record perused.

6. A perusal of the record would show that the appellant was proceeded against departmentally on the ground of his absence from duty for about 77 days without seeking prior

permission of the competent Authority. The absence of the appellant without seeking ^{prior} period permission of the competent Authority is an admitted fact, therefore the burden was upon the appellant to show any legal and valid justification for his absence from duty. The appellant was duly associated during the inquiry proceedings, however he did not opt to produce any official/officer from the concerned hospital as witness in his defence regarding the plea of his illness. The appellant was in the very initial stage of his service and his conduct was unbecoming of a good official and in the given circumstance, the absence of the appellant from duty without leave, even if considered as not willful, was an act of disorder in the service discipline, which certainly constitutes misconduct. The appellant has been reinstated in service and the period of his absence from duty as well as the period during which, he remained out of service has been treated as without pay. The competent Authority has thus already taken lenient view in the matter, therefore, the impugned orders do not call for any interference by this Tribunal.

7. In view of the above discussion, the appeal in hand being devoid of any force stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
01.10.2021


(ATIQU-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)
CAMP COURT D.I.KHAN


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


Service Appeal No. 1099/2019


ORDER
01.10.2021

Mr. Gul Tiaz Khan Marwat, Advocate, for the appellant present. Mr. Muhammad Zubair, Head Constable alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand being devoid of any force stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
01.10.2021


(ATIQU-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)
CAMP COURT D.I.KHAN

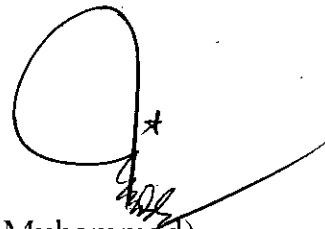

(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT D.I.KHAN

25.03.2021

Junior to counsel for the appellant and Mr. Muhammad Rasheed, DDA alongwith Mr. Muhammad Zubair, H.C for respondents present.

Representative of the respondents has submitted written reply/comments, which is placed on file. A copy of the same is also handed over to the junior to counsel for the appellant.

Adjourned to 22.06.2021 for rejoinder and arguments before D.B at camp court D.I.Khan.



(Mian Muhammad)
Member(E)
Camp Court D.I.Khan

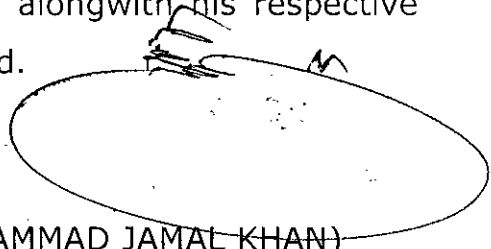
*Due to covid, 19 therefore to
come up for the same on 01/10/21*

*Am
Rasheed*

26.10.2020

No one is present for appellant. Mr. Muhammad Jan, Deputy District Attorney for the respondents is present.

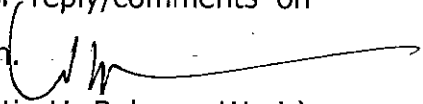
Learned Deputy District Attorney sought time for submission of reply on behalf of respondents. Time granted. File to come up for submission of written reply/comments on 25.11.2020 before S.B at Camp Court, D.I.Khan. Since the appellant is not present he be noticed alongwith his respective counsel for attendance for the date fixed.


(MUHAMMAD JAMAL KHAN)
MEMBER
CAMP COURT D.I.KHAN

25.11.2020

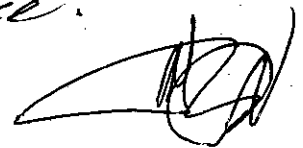
Counsel for appellant and Muhammad Jan, learned DDA alongwith Muhammad Zubair H.C for respondents present.

Representative of respondents seeks time to submit reply/comments. Granted. To come up for reply/comments on 27.01.2021 before S.B at Camp Court, D.I.Khan.


(Atiq-Ur-Rehman Wazir)
Member (E)
Camp Court, D.I.Khan

27.1.2021

Due to COVID 19, the case is adjourned to 25.3.2021 for the same.



24/3/2020

Due to COVID-19 the case is adjourned. To come up for the same 28/4/2020 at Camp Court, D.I Khan

Reader

28/4/2020

Due to COVID-19 the case is adjourned. To come up for the same 28/4/2020 at Camp Court, D.I Khan

Reader

21.09.2020

Counsel for appellant present.

Mr. Usman Ghani, District Attorney for respondents present.


Written reply/comments on behalf of respondents not submitted. Notice be issued to the respondents for written reply/comments on 26.10.2020 before S.B at Camp Court, D.I Khan.

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

Service Appeal No. 1099/2019


27.01.2020

Clerk to counsel for the appellant and Mr. Usman Ghani, District Attorney for the respondents present. Neither written reply on behalf of respondents submitted nor representative of the department is present, therefore, notices be issued to the respondents with the direction to direct the representative to attend the court and submit written reply on the next date positively. Adjourned to 24.02.2020 for written reply/comments before S.B at Camp Court D.I.Khan.


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

24.02.2020

Appellant in person and Mr. Usman Ghani, District Attorney for the respondents present. Neither written reply on behalf of respondents submitted nor representative of the department present, therefore, notices be issued to the respondents with the direction to direct the representative to attend the court and submit written reply on the next date positively. Adjourned to 24.03.2020 for written reply/comments before S.B at Camp Court D.I.Khan.


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

25.09.2019

Learned counsel for the appellant present. Preliminary arguments heard.

The appellant (Ex-Constable) has filed the present service appeal for the grant of back benefits/arrears of pay of the period during which he remained out of service (23.08.2011 to 25.01.2017).

Points urged consideration. The present service appeal is admitted for regular hearing subject to all just legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 25.11.2019 before S.B at Camp Court, D.I.Khan.


Appellant Deposited
Security & Process Fee

30/9/19


Member
Camp Court, D.I.Khan

25.11.2019

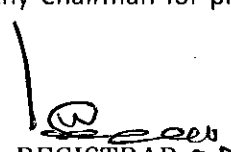

Appellant in person and Mr. Ziaullah, Deputy District Attorney for the respondents present. Neither written reply on behalf of respondents submitted nor representative of the department is present therefore, notices be issued to the respondents with the direction to direct the representative to attend the court and submit written reply on the next date positively. Case to come up for written reply/comments on 27.01.2020 before S.B at Camp Court D.I.Khan.


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

Form- A
FORM OF ORDER SHEET

Court of _____

Case No.- 1099/2019

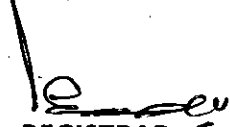
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	28/08/2019	<p>The appeal of Mr. Muhammad Ismail received today by post through Mr. Gul Tiaz Khan Marwat Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 28/8/19</p>
2-	16-9-2019	<p>This case is entrusted to touring S. Bench at D.I.Khan for preliminary hearing to be put up there on <u>25-9-2019</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Muhammad Ismail Constable No. 7902 FRP D.I.Khan received today i.e. on 19.08.2019 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

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

No. 1455 /S.T,

Dt. 21-8- /2019.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Gul Tiaz Khan Marwat Adv.
High Court D.I.Khan.

Received today on 24.8.2019

*Gul Tiaz
Adv:
24.8.19*

Sir,

Resubmitted with the remarks that execution petition Annexure "H" at page No. 19 to 23 has been treated as departmental appeal by the honourable Chairman of the Tribunal vide order dated 27.03.2019 at page No. 25, therefore the objection raised by the office is not sustainable as copy of departmental appeal Annexure "H" is already annexed with the appeal.


GUL TIAZ KHAN MARWAT
Advocate High Court DIKhan

24.8.2019

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No. 1099 /2019

Muhammad Ismail

..... **Appellant**

VERSUS

Govt: of KPK through Secretary Home Civil Secretariat
Peshawar and others. **Respondents**

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Dated: 17/08/2019

**Your Humble Appellant
Through Counsel**


**GUL TIAZ KHAN MARWAT
Advocate High Court DIKhan**

I

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No. 1099 /2019

Muhammad Ismail Constable No. 7902 FRP D.I.Khan

.....

Appellant Shaher Pakhtukhwa
Service Tribunal

VERSUS

Diary No. 1172

Dated 19-8-2019

1. Govt: of KPK through Secretary Home Civil Secretariat Peshawar.
2. The Inspector General of Police KPK Peshawar.
3. Commandant FRP/ Additional Inspector General of Police KPK Peshawar.
4. The Superintendent of Police FRP D.I.Khan

.....**Respondents**

APPEAL U/S 4 OF KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 30.05.2019 PASSED BY RESPONDENT NO. 3, COPY SUPPLIED TO THE APPELLANT ON 22.07.2019 VIDE WHICH DEPARTMENTAL APPEAL DATED 27.03.2019 AGAINST THE IMPUGNED ORDER OB NO. 153/FRP DATED 15.02.2017 PASSED BY RESPONDENT NO. 4, COPY WHEREOF SUPPLIED TO THE APPELLANT ON 27.03.2019, VIDE WHICH INTERVENING PERIOD OF LITIGATION CONSUMED IN SERVICE APPEAL NO. 461/2013 HAS BEEN TREATED AS LEAVE WITHOUT PAY.

Respected Sir,

1. That the Appellant was appointed as Constable in FRP D.I.Khan.

Filed to-day
Registrar
19/8/19

Re-submitted to-day
and filed.
Registrar
19/8/19

Guiz

2. That the Appellant was removed from service vide order dated 23.08.2011 passed by Respondent No. 4 on the basis of absent from duty for 77 days i.e. w.e.f 06.06.2011 to 10.08.2011. Copy of order is enclosed as **Annexure - A.**
3. That against the imposition of major penalty of removal from service, the Appellant filed service appeal before this learned tribunal which came up for hearing on 26.09.2016 and this learned tribunal was pleased accept the appeal of Appellant and set aside the impugned order of removal from service dated 23.08.2011 and remanded the case back to the department for conducting de-novo inquiry however, the issue of salary and back benefits to the Appellant were ordered subject to de-novo inquiry. Copy of judgment is enclosed as **Annexure-B.**
4. That after the decision of appeal, the Appellant was reinstated into service vide office orders No. 503 dated 17.01.2017 and No. 181-83/FRP dated 30.01.2017 and the Appellant took the charge on 26.01.2017. Copies of Order is enclosed as **Annexure-C&D** respectively.
5. That the Appellant was served with charge sheet and statement of allegations to which the Appellant filed reply explaining his position and also prayed for payment of back benefits of the period for which the Appellant remained out of service due to issuance of order of

Jan 2

removal from service dated 23.08.2011. Copies of Charge sheet, statement of allegations and reply are enclosed as **Annexure E,F&G** respectively.

6. That after submission of reply to the charge sheet and statement of allegations by the Appellant neither any final show cause notice has been issued to the Appellant nor an opportunity of personal hearing has been provided to the Appellant and nor any final order has so far been communicated to the Appellant and the Appellant anxiously waited for the result of the inquiry conducted de-novo but no order whatsoever has been communicated to the appellant.

7. That facing with these circumstances and having no other remedy, the appellant filed CMA/Execution Petition No. 494/2018 which came for hearing before a single Bench comprising honourable Chairman of Tribunal on 27.03.2019 and the respondents there and then produced a copy of impugned order dated 15.02.2017 and the learned Chairman of the Tribunal was pleased to treat the execution petition as departmental appeal to be decided by the Appellate Authority/ Respondent No. 3 in accordance with law. Copies of petition, impugned order dated 15.02.2017 and order of Tribunal dated 27.03.2019 are enclosed as **Annexure H&J**.

June 2

8. That after the decision dated 27.03.2019, the appellant was summoned by the respondent No. 3 and after providing personal hearing, the impugned order dated 30.05.2019 has been passed by the Respondent No. 3, copy supplied to the Appellant on 22.07.2019 after submission of application for provision of copy to the Appellant in respect of rejection of departmental appeal of the appellant has been rejected. Copies of application of appellant dated 18.07.2019 and order dated 30.05.2019 are enclosed as **Annexure K&L** respectively.
9. That the Appellant feeling aggrieved from all the impugned orders/actions and inactions of respondents 3&4 individually and collectively, the appellant seeks the indulgence of this learned tribunal under its appellate jurisdiction inter alia on the following grounds.

GROUND:-

- A. That the impugned actions / inactions of Respondents of non-payment of arrears of pay/ salaries with effect from 23.08.2011 to 25.01.2017, the period vide which the appellant was kept out of service due to issuance of order of removal of service is against law, arbitrary, Malafide void abinitio, without lawful authority, without Jurisdiction and of no legal effect qua the rights of appellant.

Jun 2

- B. That the impugned action /inaction of non-payment of arrears of pay/ salary to the Appellant on the eve of reinstatement into service is against the fundamental rights guaranteed under the constitution.
- C. That the impugned action /inaction of nonpayment of arrears of pay/salary to the appellant on the eve of reinstatement into service is also against the provisions of fundamental rights guaranteed under Constitution of Islamic Republic of Pakistan as not only the appellant has been deprived of his vested rights of property and life but his entire family members who are the dependants upon the appellant have been deprived of last piece of morsel.
- D. That the Appellant has been met out discriminatory treatment and he has not been treated under the law as required under the provisions of fundamental rights guaranteed the Constitution of Islamic Republic of Pakistan.
- E. That this Honorable Tribunal is creation of Constitution under which fundamental rights of the citizens of the Country are protected and having vast Constitutional Power, this Honorable Tribunal is competent and authorized to correct the failure, faults, dereliction of duty, laches, defects in jurisdiction denial of justice, bias or disability and to set aside/struck down illegal and

Jan 2

order without lawful authority of the Departmental Authorities of Government Offices/Departments including the Respondents.

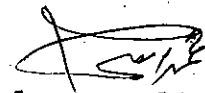
- F. That the Appellant remained jobless during the period vide which the appellant was kept out of service due to issuance of wrong and illegal order of major penalty passed by respondents i.e. from the date of removal from service with effect from 23.08.2011 to 25.01.2017 and he has never been gainfully employed elsewhere.
- G. That all the actions/inactions and orders passed by the respondents are void and illegal and no limitation runs against the void orders and it is also a settled principle of law that when the initial order is void then the superstructure built thereon shall have to fall on the grounds automatically.
- H. That counsel for the Appellant may please be allowed to raise additional ground during the course of arguments.

It is, therefore, humbly prayed on acceptance this Appeal this Honorable Tribunal may very graciously be pleased to accept the appeal of the Appellant and as a consequence thereof respondents may please be directed to pay the arrears of pay/ salary to Appellant with effect from 23.08.2011 to 25.01.2017.

June

Any other relief deems appropriate in the prevailing circumstances may also be granted.

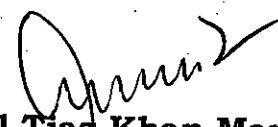
Your humble appellant,



Muhammad Ismail

Through Counsel

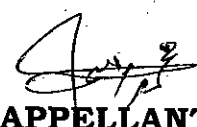
Dated: 17/08/2019



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

CERTIFICATE

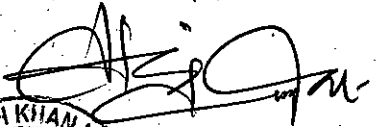
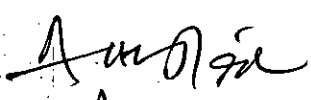
Certified that it is a first appeal by the appellant before this learned tribunal against the impugned orders of respondents.



APPELLANT

AFFIDAVIT

I, Muhammad Ismail Constable No 8170 FRP D.I.Khan, the appellant do hereby solemnly affirm and declare on Oath that the contents of appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.



17/8/19



DEPONENT



BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Civil Misc. Application No. _____/2019

In

Service Appeal No _____/2019

Muhammad Ismail

.....

Appellant**VERSUS**Govt: of KPK through Secretary Home Civil Secretariat
Peshawar and others.**Respondents****PETITION U/S 5 OF LIMITATION ACT CONTAINING THE
REQUEST FOR CONDONATION OF DELAY IN FILING OF
APPEAL.**

Respected Sir,

1. That the accompanied Appeal is being filed before this learned Tribunal against the order of dismissal of departmental appeal of appellant passed by respondent No. 3.
3. That when the petitioner came to know about the order of dismissal from service, the petitioner there and then filed department appeal to the respondent No. 3 which was also dismissed but the order was not communicated to the petitioner.
4. That the petitioner on gaining the knowledge of dismissal of departmental appeal by respondent No. 3 then filed departmental appeal before the respondent No. 2, which has been rejected vide order dated 30.05.2019 and the copy of the same has not been provided to the appellant upto 22.07.2019, therefore the appellant submitted as application on 18.07.2019 for provisions of copy of the impugned order, whereof the same has been provided to the appellant on 22.07.2019, therefore the limitation for



filing of appeal is to be run from date of provision of copy of order i.e. ~~22~~ 07.2019.

- 5. That keeping in view the circumstances explained above there is no delay in filing of Appeal on the part of appellant/petitioner and if there is any delay in filing of appeal.

It is, therefore, humbly prayed on acceptance this Petition, this Honorable Tribunal may very graciously be pleased to condon the delay if any in filing of appeal in the interest of justice.

Your humble appellant,

Muhammad Ismail

Through Counsel

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

Dated: 17/08/2019

AFFIDAVIT

Muhammad Ismail Constable No. 7902 FRP D.I.Khan, the appellant do hereby solemnly affirm and declare on Oath that the contents of appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.

DEPONENT

Attested
17/8/19



ORDER:-

This Order will dispose off departmental enquiry conducted against Recruit Constable Muhammad Ismail No.8170, FRP, of FRP, D.I.Khan Range, on the Charges that according to Daily Diary reports vide Mad No.10, dated 06.06.2011, of FRP Police Line, Distt. D.I.Khan, he absented himself from law-full duties with effect from 06.06.2011 to till date, with-out any leave or permission.

On the basis of his above, he was proceeded against departmentally and served with proper Charge Sheet and Statement of allegations. Mr. ALLOU-UD-DIN KHAN LINE OFFICER/FRP D.I.KHAN, was appointed as Enquiry Officer. After completion of all codal formalities, the Enquiry Officer submitted his finding report along-with other relevant papers, where in he recommended the said Constable for Major Punishment i.e Removal from service from the date of absence i.e 06.06.2011. He was served with Final Show Cause Notice on 17.08.2011, reply received which was not satisfactory.

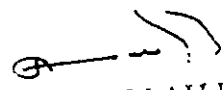
Keeping in view the facts stated above, as well as recommendation of enquiry officer, I MR. AMAN ULLAH KHAN, Superintendent of Police FRP D.I.Khan Range, D.I.Khan, in exercise of powers conferred upon me under the NWFP Removal from Service (Special Powers) Ord:- 2000 Amendment Act- 2005, hereby award Recruit Constable Muhammad Ismail No.8170/FRP, Major Punishment of Removal from service from the date of absence i.e 06.06.2011, and his period of absence i.e 06.06.2011 to till date, is treated as leave with-out pay.

ORDER ANNOUNCED.

Dated. 22.08.2011.

OB No. 801 /FRP

Dated 23 /08/2011.


(AMAN ULLAH KHAN)
Superintendent of Police,
FRP, D.I.Khan Range, D.I.Khan.

*Attended
Jun
sdh*

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

SERVICE APPEAL NO. 461/2013

Date of institution ... 17.01.2013
Date of judgment ... 26.09.2016



11
B

Muhammad Ismail, Ex-Constable # 8170, FRP
R/o Ama Khel, Tehsil & District Tank.

... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Home, Civil Secretariat, Peshawar.
2. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. Commandant, Frontier Reserve Police/Additional Inspector General of Police, Peshawar.
4. Superintendent of Police, Frontier Reserve Police, D.I.Khan.
5. Gul Manan, the then Line Officer/Inquiry Officer, FRP D.I.Khan.
6. Alao-ud-Din, Line Officer/Inquiry Officer, FRP, D.I.Khan.

... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER BEARING # 3630 DATED 13.12.2012 OF RESPONDENT-2 AND ORDER BEARING # 994-95/EC DATED 15.02.2012 PASSED BY RESPONDENT-3 VIDE WHICH APPEAL OF THE APPELLANT FOR REINSTATEMENT IN SERVICE AGAINST THE ORDER BEARING # OB# 801/FRP DATED 23.08.2011 PASSED BY RESPONDENT-4 WAS REJECTED/FILED.

Mr. Gul Tiaz Khan Marwat, Advocate.
Mr. Farhaj Sikandar, Government Pleader

.. For appellant.
.. For official respondents No. 1 to 4.

MR. MUHAMMAD AAMIR NAZIR
MR. ABDUL LATIF

.. MEMBER (JUDICIAL)
.. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AAMIR NAZIR, MEMBER:-

Muhammad Ismail, ex-

Constable Frontier Reserve Police, District Tank hereinafter called the appellant, through instant appeal under Section-4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974 has impugned order dated 23.08.2011 vide which the appellant was awarded major punishment of removal from service and his absence period with effect from 06.06.2011 was treated as leave without pay. Against the impugned order referred above, the appellant filed a

Attested
Gul
Ad

departmental appeal which was also rejected by the Appellate Authority vide order dated 15.02.2012. 12

2. Brief stated facts giving rise to the appeal are that the appellant was appointed as constable in Frontier Reserve Police, D.I.Khan and was performing his duty to the satisfaction of his superiors. That on 06.06.2011 the appellant fell ill and the doctor advised him for one month bed rest. That the appellant was bed ridden but the respondents issued him charge-sheet alongwith statement of allegations on the charges of absence from duty. That the appellant submitted reply to the charge-sheet and statement of allegations accompanied by medical certificates. That thereafter, a one sided inquiry was conducted and the competent authority, on the basis of one sided inquiry awarded him major punishment of removal from service vide and his absence period was treated as leave without pay vide order dated 23.08.2011. That against the impugned order, the appellant filed a departmental appeal which was also rejected by the Appellate Authority vide order dated 15.02.2012, hence the instant service appeal.

3. We have heard the arguments of learned counsel for the appellant and learned Government Pleader for official respondents No. 1 to 4 and have gone through the record available on file.

4. Learned counsel for the appellant argued before the court that despite the facts that the appellant was ill and was bed ridden, he was proceeded against without taking into consideration his medical certificates. That a one sided inquiry was conducted against the appellant and Competent Authority without any justification ordered his removal from service and also treated his absence period as leave without pay which fall within the preview of double jeopardy. That since the impugned order is illegal, therefore the same may be set-aside and the appellant be reinstated into service with all back benefits.

5. The learned Government Pleader on contrary argued before the court that the appellant was rightly removed from service as he willfully absented himself from duty. That the Competent Authority has adopted all the legal requirements before awarding him major punishment. That the appeal in hand is without any merits, hence may be dismissed.

6. Perusal of the case file reveals that the appellant while serving as Frontier Reserve Police, D.I.Khan was issued charge sheet alongwith statement of allegations on the ground

Attested
J. S. Khan

[Handwritten signature]

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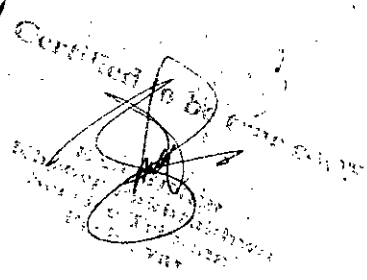
of his willful absence from duty with effect from 06.06.2011 till date. The appellant in response to charge-sheet and statement of allegations, submitted a reply stating therein that due to serious ailment, the doctor had advised him complete bed rest. Though the application of appellant was supported medical certificate yet, the Competent Authority initiated an inquiry against the appellant. The inquiry officer conducted a one sided inquiry without associating the appellant with inquiry proceedings. The inquiry officer has also not taken into consideration of plea of illness of the appellant and recommended him for major punishment. Similarly, the Competent Authority while considering the defective inquiry report, awarded the appellant major punishment of removal from service and has also treated the absence period of the appellant as leave without pay which is not justifiable under the law as it comes within the preview of double jeopardy. The Appellate Authority has also not considered the plea of ailment of the appellant and has rejected the departmental appeal vide order dated 15.02.2012. The respondents were bound to have associated the appellant with the inquiry proceedings while providing him full opportunity of defense and there-after should have passed an appropriate order justifiable under the law. The impugned removal order suffered illegality on two scores, firstly, the impugned order is based on one sided inquiry and secondly in the impugned order, appellant was awarded two punishment for single act of absence, one removal from service and other treating his absence period as leave without pay which is illegal and not warranted under the law. Hence, we are inclined to set-aside the impugned order dated 23.08.2011 and reinstate the appellant in service, while remand the case to the Competent Authority to conduct a de-novo inquiry against the appellant within two months for the date of receipt of this order by providing him full opportunity of defense and thereafter passed an appropriate order. The issue of salary and back benefits of the appellant will be subject to the de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
26.09.2016

Sd/- Muhammad Anwar Nazir,
Member

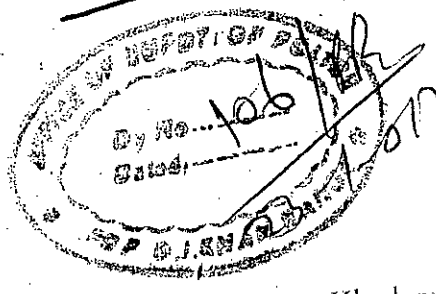
Sd/- Abdul Latif,
Member

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ORDER

As per directions of Inspector General of Police Khyber Pakhtunkhwa, Peshawar issued vide CPO letter No. 3141/E&I, dated 26.12.2016, the decision of Khyber Pakhtunkhwa, Service Tribunal, Peshawar dated 26.09.2016, in Service Appeal No. 461/2013 is hereby implemented, Ex-constable Muhammad Ismail No.8870 of FRP/DIKhan Range, is hereby reinstated in service subject to denove enquiry.

[Signature]
COMMANDANT,
Frontier Reserve Police
Khyber Pakhtunkhwa, Peshawar
[Signature]

N^o 5-3 /SI Legal, dated Peshawar the 17/01/2017.

Copy of above is forwarded for information and necessary action to the SP/FRP, DIK Range, DIK with directions to conduct denove enquiry into the matter and decided the case on merit and their outcome may be communicated to this office for onward submission to CPO, Peshawar. His service Roll alongwith D-file sent herewith.

[Signature]
OB/CHC/SRC/DO # Pro Active
07-03-2017

For information, Issue Change sheet & Statement of Allegation DSP/Mahammad Abrar is appointed as Enquiry Officer.

[Signature]
Attested
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[Signature]
Inspector of Police
FRP, DIKhan Range
23/01/2017

OB-67
23-01-2017

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ORDER.

On his re-instatement in Service subject to denove Enquiry vide Commandant FRP KPK Peshawar order endst: No. 503/SI Legal, dated 17.01.2017, and arrival in FRP Police Line D.I.Khan vide daily diary report Mad No. 07, dated 26.01.2017, Ex: Recruit Constable Mohammad Ismail No. 8170 is hereby allotted Constabulary No. 7902 of FRP D.I.Khan Range from the date of his arrival and posted in Platoon No. 187 FRP Police Line D.I.Khan with immediate effect.

**Superintendent of Police,
FRP, D.I.Khan Range, D.I.Khan.**

No. 181-83. /FRP, Dated of D.I.Khan 30 /01/2017.

Copy of above is submitted to the:-

1. Commandant FRP KPK Peshawar for kind information please.
2. Pay Officer FRP D.I.Khan.
3. OHC/SRC FRP D.I.Khan. ✓

Amid
**Superintendent of Police,
FRP, D.I.Khan Range, D.I.Khan.**
30-01-2017

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CHARGE SHEET.

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WHERE AS, I am satisfied that a formal enquiry as contemplated by Khyber Pakhtunkhwa Police Disciplinary Rules-1975 with amendment-2014 is necessary and expedient to be conducted into the allegation contained in the statement attached herewith.

AND WHEREAS, I am of the view that the allegation if established would call for award of a major penalty including dismissal from service as defined in Rules 4(i)(B) of the aforesaid rules.

a. according to daily diary report No.10 dated 06.06.2011 of FRP Police Line DIKhan, you absented yourself from law full duties with effect from 06.06.2011 to the date of Removal from service i.e 23.03.2011 without any leave or permission.

This act on your part reflects lack interest towards the performance of your duties and also gross misconduct which is punishable under the rules.

b. For the above you were proper Charge Sheeted and Enquiry Officer was appointed. The Enquiry Officer found you guilty of the charges and recommended for awarding major punishment. Final Show cause notice was issued and subsequently on finalization of proceeding you were Removed from service vide this office OB No.801/FRP dated 23.08.2011.

c. You lodged a petition in the Honorable service Tribunal KPK Peshawar to set aside the above said punishment order of your Removal from service. After hearing the Honorable court directed for your re-instatement in service and initiating denovo proceeding against you vide judgment dated 26.09.2016, hence you were re-instated in service vide Commandant FRP Khyber Pakhtunkhwa Peshawar order endst: No.503/SI-Legal dated 17.01.2017 subject to denovo enquiry with immediate effect and denovo proceeding initiated for the afore mentioned grave misconduct on your part which is punishable under the rules.

AND WHEREAS, as required by Police Rules 6(I) of the aforesaid rules, I Mr. HAMEED ULLAH BALOCH, Superintendent of Police FRP, D.I.Khan Range D.I.Khan, hereby charge you Recruit Constable Muhammad Ismail No.8170/FRP, with the misconduct on the basis of the statement attached to this charge sheet.

AND, hereby directed you further, under rules 6 (I) (B) of the said rules to put in written defence with-in 7-days of receipt of this Charge sheet as to why you proposed action should not be taken against you and also state at the same time whether you desire to be heard in person.

In case your reply is not received with-in the prescribed period, without sufficient cause, it would be presumed that you have no defence, to offer and the proceedings will be completed against you ex-parte.

*Attested
Jun 2
2017*

Mud
(HAMEED ULLAH BALOCH)
Superintendent of Police,
FRP, D.I.Khan Range, D.I.Khan.

27/01/17

DISCIPLINARY ACTION.

17 D E

I, Mr. HAMEED ULLAH BALOCH, Superintendent of Police FRP, D.I.Khan Range D.I.Khan, as a competent authority am of the opinion that you Recruit Constable Muhammad Ismail No.8170/FRP, have rendered yourself liable to be proceeded against and committed the following acts/omissions within the meaning of the Khyber Pakhtunkhwa Police Rules-1975 with amendment-2014.

STATEMENT OF ALLEGATION.

a. according to daily diary report No.10 dated 06.06.2011 of FRP Police Line DIKhan, you absented yourself from law full duties with effect from 06.06.2011 to the date of Removal from service i.e 23.08.2011 without any leave or permission.

This act on your part reflects lack interest towards the performance of your duties and also gross misconduct which is punishable under the rules.

b. For the above you were proper Charge Sheeted and Enquiry Officer was appointed. The Enquiry Officer found you guilty of the charges and recommended for awarding major punishment. Final Show cause notice was issued and subsequently on finalization of proceeding you were Removed from service vide this office OB No.801/FRP dated 23.08.2011.

c. You lodged a petition in the Honorable service Tribunal KPK Peshawar to set aside the above said punishment order of your Removal from service. After hearing the Honorable court directed for your re-instatement in service and initiating denovo proceeding against you vide judgment dated 26.09.2016, hence you were re-instated in service vide Comandant FRP Khyber Pakhtunkhwa Peshawar order endst: No.503/SI-Legal dated 17.01.2017 subject to denovo enquiry with immediate effect and denovo proceeding initiated for the afore mentioned grave misconduct on your part which is punishable under the rules.

This act on your part amounts to gross misconduct punishable under Khyber Pakhtunkhwa Police Rules-1975 with amendment-2014.

Hence the statement of allegation.

1. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegation Mr. Muhammad Ashraf DSP/FRP DIKhan Range is appointed as enquiry Officer to conduct proper departmental enquiry Khyber Pakhtunkhwa Police Rules-1975 with amendment-2014.

2. The enquiry Officer shall in accordance with the provision of the ordinance, provided reasonable opportunity of the hearing to the accused, record its findings and make, within ten (10) days of the receipt of this order recommendations as to punishment or other appropriate action against accused.

3. The accused and a well conversant representative of the department shall join the proceedings on the date time and place fixed by the enquiry officers.



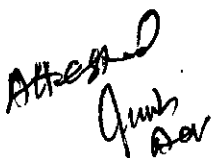
(HAMEED ULLAH BALOCH)
Superintendent of Police,
FRP, D.I.Khan Range, D.I.Khan.

No. 173-74 /FRP, dated D.I.Khan the 27 /01/2017.

Copy to:-

1. Mr. Muhammad Ashraf DSP/FRP DIKhan Range. The enquiry officer for initiating proceeding against the defaulter under the provision of NWFP Police Rules 1975. Enquiry papers containing ___ pages are enclosed.

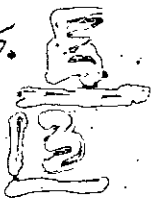
2. Recruit Constable Muhammad Ismail No.8170/FRP, with the direction to appear before the E.O on the date, time and place fixed by the E.O, for the purpose of enquiry proceeding.





(HAMEED ULLAH BALOCH)
Superintendent of Police,

بخدمت جناب سپرنٹنڈنٹ آف پولیس ایف آر پی ضلع ڈیرہ اسماعیل خان



عنوان :- جواب Statement of allegation ازاں کنشیل مجرا اسماعیل نمبر 8170

جناب عالی!

سائل بجواب Statement of allegation مورخہ 27/01/2017 حسب ذیل جواب پیش کرتا ہے
 ۱۔ یہ کہ مورخہ 06/06/2011 کو سائل کی اچانک طبیعت خراب ہو گئی تھی تو سائل کو پولیس / ایف سی ہسپتال ٹانک
 میڈیکل چیک اپ کے لئے گھر والے لے گئے اور جب سائل نے جناب ڈاکٹر صاحب سے چیک اپ کرایا تو ڈاکٹر
 صاحب نے سائل کو یرقان کی بیماری میں مبتلا پاتے ہوئے دوائی دی اور ساتھ ریٹ کرنے کی ہدایت کی اور جناب ڈاکٹر
 صاحب نے سائل کو میڈیکل سرٹیفیکیشن جس پر مندرجہ ذیل تاریخ بائے / عرصہ کے لئے بید ریست تجویز کیا اصل میڈیکل
 سرٹیفیکیشن قبل ازیں انکوائری کے وقت سائل نے اپنے جواب کے ساتھ لف کی تھی تاہم نقول لف ہیں۔

۱۔ 06/06/2011 تا 06/07/2011 30 یوم

۲۔ 06/07/2011 تا 06/08/2011 30 یوم

۲۔ یہ کہ قبل ازیں انکوائری میں سائل کو مکمل طور پر شنوائی کا موقع نہیں دیا گیا تھا اور نہ ہی ہسپتال کے کسی انکار یا دباؤ کے
 بیان قلم بند کیا تھا جس نے سائل کا علاج کیا تھا یا سائل کو بید ریست کچھ کر دیا تھا اور جلدی میں انصاف کے نقائص پورا کرتے
 ہوئے سائل کے خلاف انکوائری مکمل کر کے سائل کو سزا دی گئی تھی۔

۳۔ یہ کہ سائل نے سروس ٹریبونل میں اپیل دائر کی جو کہ عرصہ پانچ سال سے زیادہ زیر تجویز رہا اور اس دوران سائل نے
 روزگار رہا جس کا سائل قصور و انہیں اور یوں سائل پانچ سال سے زیادہ عرصہ اہلیہ کے تحفظ و جات و دیگر مالی مراعات سے
 محروم رہا۔

۴۔ یہ کہ سائل نے غیر حاضری دانستہ طور پر نہیں کی تھی بلکہ باسر مجبوری بوجہ بیماری غیر حاضری سرزد ہوئی تھی اور آنجناب
 کو غیر حاضری کو میڈیکل لیو میں تبدیل و شمار کرنے کا وسیع اختیار حاصل ہے

لہذا استدعا ہے کہ Statement of allegation کو داخل دفتر فرمائی جا کر سائل کی غیر حاضری کو
 میڈیکل لیو میں شمار کئے جانے کے احکامات صادر فرمائی جاوے اور سائل کو تمام سابقہ مالی مراعات کے ساتھ سروس پر بحالی کا
 حکم صادر فرمایا جاوے۔ سائل آئندہ کے لئے سخت غلط رہے گا۔

مورخہ 03/02/2017

سائل کو ذاتی طور پر شنوائی کا موقع بھی دیا جائے

ارضی

Attested
 Quis
 for

ڈیپوٹ کنشیل مجرا اسماعیل نمبر 8170 متعینہ پولیس لائن ضلع ڈیرہ اسماعیل خان

محمد اسماعیل

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BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

CMA No. 394 /2018

Muhamamad Ismail Constable No. 8170 FRP D.I.Khan

03439295237

..... **Petitioner**

VERSUS

1. Govt: of KPK through Secretary Home Civil Secretariat Peshawar.
2. The Inspector General of Police KPK Peshawar.
3. Commandant FRP/ Additional Inspector General of Police KPK Peshawar.
4. The Superintendent of Police FRP D.I.Khan

.....**Respondents**

PETITION CONTAINING THE REQUEST FOR IMPLEMENTATION OF JUDGMENT / ORDER OF THIS LEARNED TRIBUNAL CAMP COURT D.I.KHAN DATED 26.09.2016 PASSED IN SERVICE APPEAL NO. 461/2013 TITLED AS "MUHAMMAD ISMAIL V/S GOVT. OF KPK THROUGH SECRETARY HOME KPK PESHAWAR AND OTHERS".

Respected Sir,

1. That the Petitioner was appointed as Constable in FRP D.I.Khan.

Amir

*Attested
Amir
DA*

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2. That the Petitioner was removed from service vide order dated 23.08.2011 passed by Respondent No. 4 on the basis of absent from duty for 77 days i.e. w.e.f 06.06.2011 to 10.08.2011.
3. That against the imposition of major penalty of removal from service, the petitioner filed service appeal before this learned tribunal which came up for hearing on 26.09.2016 and this learned tribunal was pleased accept the appeal of petitioner and set aside the impugned order of removal from service dated 23.08.2011 and remanded the case back to the department for conducting de-novo inquiry however, the issue of salary and back benefits to the petitioner were ordered subject to de-novo inquiry. Copy of judgment is enclosed as **Annexure-A**.
4. That after the decision of appeal, the petitioner was reinstated into service vide office order No. 181-83/FRP dated 30.01.2017. Copy of Order is enclosed as **Annexure-B**
5. That the petitioner was served with charge sheet and statement of allegations to which the petitioner filed reply explaining his position and also prayed for payment of back benefits of the period for which the petitioner remained out of service due to issuance of order of removal from service dated 23.08.2011. Copies of Charge

Annex

*Attested
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sheet, statement of allegations and reply are enclosed as **Annexure C,D&E** respectively.

6. That after submission of reply to the charge sheet and statement of allegations by the Petitioner neither any final show cause notice has been issued to the petitioner nor an opportunity of personal hearing has been provided to the petitioner and nor any final order has so far been communicated to the petitioner and the petitioner is anxiously waiting for the result of the inquiry conducted de-novo.
7. That the Petitioner having no other remedy seeks the indulgence of this learned tribunal for implementation of its judgment / order under its inherent jurisdiction inter alia on the following grounds.

GROUND:-

- A. That it is/ was the legal, statutory and moral obligations of departmental Authority to implement the judgment / order of this learned Tribunal and to grant benefits of service for the period commencing from date i.e. 23.08.2011 on which date the petitioner was removed upto date of decision of appeal i.e. 26.09.2016 as it was not the fault of petitioner but it was the lapses of departmental Authorities due to which the petitioner remained out of service being jobless.

June 2

*Attested
June 2
Adv.*

- B. That the actions/in actions, conduct and modus operandi of Respondents to disobey and violate the judgment/ order is tantamount to abuse and obstruct the process of Court to disobey the order of Court of law/tribunal which is a visible contempt of Court for which he is liable to be proceeded under the law.
- C. That the Petitioner is not responsible for the acts, lapses and misdeed as well as wrong order of removal from service passed by the departmental Authorities/ Respondents due to which the petitioner was ousted from service who remained jobless from the date of removal of service i.e. 23.08.2011 upto acceptance of appeal on 26.09.2016 and thus the petitioner was deprived to serve the State.
- D. That the Petitioner has no other remedy for implementation of judgment of the Honourable Tribunal except to knock the door of this Honourable Tribunal for implementation of judgment.
- E. That the Honourable Tribunal got powers and jurisdiction to take cognizance in the matter and to implement the judgment and order so passed by this Honourable Tribunal.
- F. That counsel for the Petitioner may please be allowed to raise additional ground during the course of arguments.

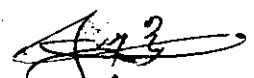
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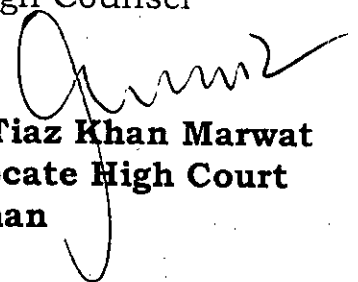
It is, therefore, humbly prayed on acceptance this
Petition, this Honorable Tribunal may very graciously be
pleased to issue direction to respondents to implement the
judgment/ order of this Honourable Tribunal in letter and
spirit so as to meet the ends of justice.

Your humble Petitioner,



Muhammad Ismail

Through Counsel



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

Dated: 28/08/2018

AFFIDAVIT

Muhammad Ismail Constable No. 7902 FRP D.I.Khan do
hereby solemnly affirm and declare on Oath that the contents
of Petition are true and correct to the best of my knowledge
and belief and nothing has been concealed from this Honorable
Tribunal.


DEPONENT

*Attested
Gul Tiaz
Marwat*

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I

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Execution Petition No. 394/18

Khyber Pakhtunkhwa
Service Tribunal

CMA No. _____/2018

Diary No. 1590

Dated 31-10-2018

Muhammad Ismail Constable No **8170** FRP D.I.Khan

03439295237

.....

Petitioner



VERSUS

1. Govt: of KPK through Secretary Home Civil Secretariat Peshawar.
2. The Inspector General of Police KPK Peshawar.
3. Commandant FRP/ Additional Inspector General of Police KPK Peshawar.
4. The Superintendent of Police FRP D.I.Khan

.....**Respondents**

PETITION CONTAINING THE REQUEST FOR IMPLEMENTATION OF JUDGMENT / ORDER OF THIS LEARNED TRIBUNAL CAMP COURT D.I.KHAN DATED 26.09.2016 PASSED IN SERVICE APPEAL NO. 461/2013 TITLED AS "MUHAMMAD ISMAIL V/S GOVT. OF KPK THROUGH SECRETARY HOME KPK PESHAWAR AND OTHERS".

Respected Sir,

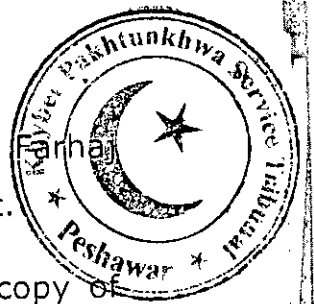
1. That the Petitioner was appointed as Constable in FRP D.I.Khan.

Jan 2

ATTESTED

[Signature]
EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

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27.03.2019

Counsel for the petitioner and Mr. Sikandar, District for the respondents present.

Learned District Attorney has produced copy of order dated 15.02.2017 passed by Superintendent of Police, FRP, D.I.Khan Range, D.Khan, whereby, the departmental enquiry against the appellant was filed while his absence of 77 days was treated as without pay. Simultaneously the period during which the appellant remained out of service was also treated as without pay.

Learned counsel for the petitioner, on the other hand, stated that although the petitioner was reinstated into service on 30.01.2017 subject to denovo enquiry in accordance with the judgment of the Tribunal dated 26.09.2016 but it was not communicated to the petitioner and the order dated 15.02.2017 came to surface in the court today. In the circumstances, learned counsel for the petitioner requests for transmission of instant petition to the departmental appellate authority/Commandant FRP, Peshawar for treating the same as departmental appeal of the petitioner against the order dated 15.02.2017.

In view of the request of learned counsel for the petitioner, instant execution petition shall be sent to respondent No. 3 for its decision as departmental appeal in accordance with law. A copy of the record shall be retained in the office.

Disposed of accordingly.

Chairman
Camp Court, D.I.Khan

ANNOUNCED
27.03.2019

Certified to be true copy
XAMINER
Khayber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application - 18-4-19
Number of Words - 650
Copying Fee -
Urgent -
Total -
Name of Copyist -
Date of Completion of Copy - 19-4-19
Date of Delivery of Copy - 19-4-19

ORDER:-

This Order is aimed to dispose off the denovo enquiry initiated against Recruit Constable Muhammad Ismail No.8170 of FRP D.I.Khan on the allegation that according to daily diary report No.10 dated 06.06.2011 of FRP Police Line DIKhan, he absented himself from law full duties with effect from 06.06.2011 without any leave or permission.

He was served with charge sheet and statement of allegation. SI/PC Alau Ud Din Line Officer, FRP D.I.Khan was nominated as Enquiry Officer. After completion of enquiry the Enquiry Officer found him guilty of the charges and recommended him for major punishment of removal from service. He was served with final Show Cause Notice, reply received which was found not satisfactory. Hence he was removed from Service vide order bearing O.B No.801/FRP, dated 23.08.2011. Later on lodged an appeal before the KPK Service Tribunal Peshawar bearing No.461/2013 which was subsequently accepted vide judgment dated 26.09.2016, whereby the honourable service tribunal directed to reinstate the appellant in service subject to denovo enquiry. Therefore denovo proceeding was initiated and **Mr. Muhammad Ashraf DSP/FRP D.I.Khan**, was deputed to conduct denovo enquiry as per rules. After completion of all codal formalities, the Enquiry Officer submitted his finding report wherein he recommended the absence period from 06.06.2016 to 23.08.2016 i.e (77) days and period the defaulter constable remained out of service be treated as without pay. He was also provided opportunity of personal hearing.

Keeping in view the facts stated above as well as recommendation of enquiry officer and by taking lenient view, **I MR. HAMEED ULLAH BALOCH**, Superintendent of Police FRP D.I.Khan Range, D.I.Khan, in exercise of powers vested in me under Khyber Pakhtunkhwa Rules 1975 with amendments-2014 hereby file the departmental enquiry paper and the absence period from 06.06.2011 to 23.08.2011 i.e (77) days is treated as with-out pay. Similarly the period he remained out of service is also treated as without pay.

ORDER ANNOUNCED.**Dated 14.02.2017.**OB No. 153 /FRP
Dated 15 /02/2017No 310 / dated DIKhan the 15 /02/2017.

Copy of above is submitted to Commandant FRP Khyber Pakhtunkhwa Peshawar for favour of information with reference to his office order endst: No.503/SI-legal dated 17.01.2017.

Attended
General
ADW

Hameed
(HAMEED ULLAH BALOCH)
Superintendent of Police,
FRP, DIKhan Range DIKhan.

Hameed
Superintendent of Police,
FRP, DIKhan Range DIKhan.

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Attested
Apr 2
Adu

ORDER

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This order will dispose of the departmental appeal preferred by constable Muhammad Ismail No. 8170/7902 of FRP DI Khan Range, against the order of SP FRP DI Khan Range, DIK issued vide OB No. 153, dated 15.02.2017, wherein his departmental enquiry was filed, while the absence and intervening period was treated as leave without pay.

Brief facts of the case are that the above named constable had been removed from service on 23.08.2011, due to absence from duty. Feeling aggrieved he submitted the Service Appeal No. 461/2013 before the Khyber Pakhtunkhwa Service Tribunal Peshawar, against the order of his removal from service.

The Khyber Pakhtunkhwa Service Tribunal accepted his appeal by setting aside the impugned order dated 23.08.2011, vide judgment dated 26.09.2016 and the case remanded back to department for the purpose of denovo enquiry. The Honorable Tribunal further directed that denovo proceedings will be completed within a period of two months and the issue of salary and back benefits shall be decided subject to the outcome of denovo enquiry.

The case was forwarded to CPO Peshawar vide this office Memo No.9083, dated 03.11.2016 for lodging an appeal in the Supreme Court of Pakistan, the same has returned by the CPO vide Memo No. 3141/E&I, dated 26.12.2016 with directions, that the Judgment of Service Tribunal may be implemented and denovo enquiry may be conducted through SP FRP DI Khan Range, DI Khan.

The said judgment was provisionally implemented vide this office order Endst: No. 503/SI Legal, dated 17.01.2017. The denovo enquiry was conducted through SP FRP DI Khan Range, DI Khan, and finally the same has been filed by the competent authority, however, the period of his 77 days absence and intervening period treated as leave without pay.

Feeling aggrieved the delinquent constable submitted the Execution Petition No. 394/18 before the Service Tribunal Peshawar for implementation of the judgment with request for back benefits, which was disposed off by the Honorable Tribunal and sent before respondent No. 03 i.e Commandant FRP Khyber Pakhtunkhwa, Peshawar for its decision as departmental appeal in accordance with law.

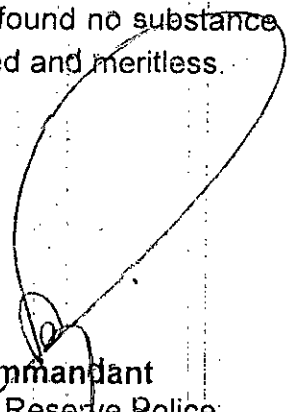
For disposal of departmental appeal the appellant was summoned and heard in person in Orderly Room held on 15.05.2019.

During the course of personal hearing, the applicant failed to present any justification regarding to his prolong absence. It is settled proposition of law that the law helps the diligent and not indolent.

From perusal of the relevant record it has been found that his appeal is badly time barred as impugned order was passed on 15.02.2017 and now he desired/approached for back benefits. The one, who wish to enforce his claim, must do it at the earliest laches deprive the litigant from enforcing his right.

Based on the findings narrated above, I, **Sajid Ali PSP** Commandant FRP Khyber Pakhtunkhwa, Peshawar, being the competent authority, has found no substance in the appeal, therefore, the same is rejected and filed being time barred and meritless.

Order Announced.


Commandant
Frontier Reserve Police
Khyber Pakhtunkhwa, Peshawar.

No 4755 /EC, dated Peshawar the 30 /05 /2019.

Copy of above is forwarded for information and necessary action to the SP FRP
DI KHAN Range, DI Khan.

*Alleged
Quint
Dad*

VAKALATNAMA

IN THE COURT OF ... KPK Service Tribunal Pasuruan D.I.Khan

Mohammad G. Smail VERSUS Govt + OP KPK etc

Title Service Appeal

I/we Mohammad G. Smail

The above named Appellant hereby appoint Gul Tiaz Khan Marwat Advocate High Court D.I.Khan, in the above mentioned case to all or any of the following acts, deeds and things.

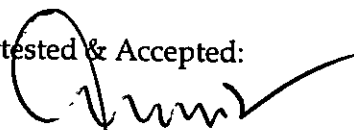
1. To appear, act and plead for me/us in the above mentioned case in this court/tribunal in which the same may be tried or heard or any other proceedings out of our connected therewith.
2. To sign and verify and file or withdraw all proceedings, petitions, appeals, affidavits, and applications for compromise or withdrawal, or for the submission to arbitration of the said case or any other documents, may be deemed necessary or advisable by them by the conduct, prosecution or defense of the said case at all its stages.
3. To receive payments of and issue receipts for all moneys that may be or become due and payable to us during the course on conclusion of the proceeding.
To do all other acts and things, which may deemed necessary or advisable during the course of proceedings.
AND hereby agree:
 - a. To ratify whatever advocates may do the proceedings.
 - b. Not to hold the advocates responsible if the said case be proceed ex-parte or dismissed in default in consequence of their absence from the court when it is called for hearing.
 - c. That the advocates shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains un-paid.
 - d. That advocates may be permitted to argue any other point at the time of arguments.

In witness whereof I/we have signed this vakalatnama here under the contents of which have been read/explained to me/us which is fully understood by me/us.

Date: 17/8/2018


Signature of Executants (s)

Attested & Accepted:


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

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1099/2019.

Muhammad Ismail No.7902, Ex-Constable FRP, DI Khan Range.....Appellant

VERSUS

1. Govt: of KPK through Secretary,
Home Civil, Secretariat, Peshawar.
2. The Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.
3. Commandant FRP,
Khyber Pakhtunkhwa, Peshawar.
4. Superintendent of Police FRP,
DI Khan Range,.....Respondents.

**Subject:- Para-wise reply on behalf of Respondents.
Respectfully Sheweth:**

PRELIMINARY OBJECTIONS

1. That the appeal is badly barred by law & limitation.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has no cause of action to file the instant appeal.
4. That the appellant has not come to this Honorable Court with clean hands.
5. That the appellant is estopped due to his own conduct to file the instant Service Appeal.
6. That the appellant trying to concealed material facts from this Honorable Tribunal.

FACTS

1. Para No.01 is pertains to the appellant record needs no comments.
2. Para No.02 is admitted to the extent that the appellant remained absent from lawful duty for a long period of 77 days, without any leave or prior permission of the competent authority and after proper enquiry he was removed from service.
3. Pertains to Honorable Tribunal's record. However, the judgment of this Honorable Tribunal has been implemented in letter & spirit. Proper denovo enquiry has been initiated against the appellant in accordance with law/rules.
4. Para No.04 is admitted to the extent that as per the decision of this Honorable Tribunal, the appellant was reinstated in to service and denovo enquiry was initiated against him and after adopting of all codal formalities, the competent authority has decided his case purely on merits and in accordance with rules.
5. Para No. 05 is admitted to the extent that in the light of decision of this Honorable Tribunal, the appellant was dealt with proper denovo enquiry as he was issued Charge Sheet with Summary of Allegations and Enquiry Officer was nominated. The appellant submitted his reply to the Charge Sheet which was found unsatisfactory.
6. Incorrect and denied. Proper (denovo) departmental enquiry has been initiated by the Enquiry Officer against the appellant as he was heard in person and also

cross examined by the Enquiry Officer during the course of enquiry, but he failed to satisfy the Enquiry Officer. The Enquiry Officer found him guilty of the charges leveled against him therefore, his absence/intervening period has recommended as without pay, by the Enquiry Officer as he did not perform any official duty during that period. Moreover, an opportunity of personal hearing was also provided to the appellant by the competent authority, but he failed to avail this opportunity. However, no any kind of penalty was imposed upon the appellant in the instant case so there is no need of final Show Cause Notice.

7. Para No. 07 is admitted to the extent that the judgment of this Honorable Tribunal has already been implemented in letter and spirit, therefore the Honorable Tribunal remanded the case to department as departmental appeal of the appellant.
8. Incorrect and denied. In the light of decision of this Honorable Court he was summoned and heard in person by the competent authority in connection with departmental appeal, but he failed to present any justification regarding his innocence. From perusal of the relevant record his departmental appeal was badly time barred therefore, rejected on the ground of time barred and merit as well. Moreover, the appellant was well aware from the rejection order as the same was announced by the competent in his presence during his personal hearing.
9. Incorrect and denied. The appellant has not come to this Honorable Tribunal with clean hands. Moreover, order was passed on 15.02.2017 and now he desired for back benefits which is badly barred by law and limitation.

GROUND

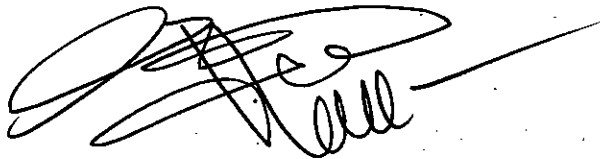
- A. Incorrect and denied. All the orders passed by the respondents are based on facts, legally justified and in accordance with law/rules. Moreover, the appellant was not entitled for back benefits, as he was not performed his official during that period.
- B. Incorrect and denied. The appellant legally not entitled for any arrears of pay/salaries, which he remained out from service.
- C. Incorrect and denied. The allegations are false and baseless, as the appellant has not deserved the back benefits, while in the light of denovo enquiry, he has reinstated in service by the respondents by taking lenient view otherwise he was commensurate for major punishment. Moreover, the respondent has never violated any rules in the case of appellant.
- D. Incorrect and denied. That the appellant trying to mislead this Honorable Tribunal by producing false and baseless grounds. He was dealt with proper (denovo) departmental enquiry and the Enquiry Officer found him guilty of the charges leveled against him and after fulfillment of due codal formalities, the competent

authority has correctly decided his case as per law/rules. It is pertinent to mention here that a similar case recently dismissed by this Honorable Tribunal in Service Appeal No. 827/2012 vide judgment dated 11.05.2015.

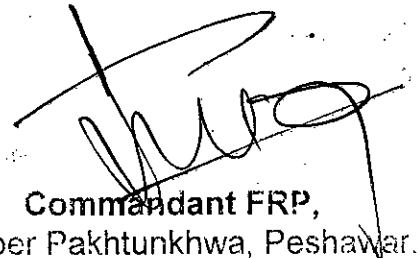
- E. Incorrect and denied. The appellant was reinstated in to service by the Competent Authority in view of lenient view otherwise the punishment of removal from service was commensurate with the gravity of his grass misconduct. Therefore, he is legally not entitled for the back benefits of the period of absence/intervening period from service as he has never performed official duties during such period. Moreover, the appellant was not deprived from any fundamental right by the respondents.
- F. Incorrect and denied. The allegations are false and baseless as the appellant was dealt with proper departmental enquiry, wherein he was found guilty of the charges leveled against him. All the codal formalities have been fulfilled during course of denovo proceedings by the respondents. Moreover, the appellant is not deserved for monthly salary of such period mentioned by the appellant in the Para as he has not performed official duty.
- G. Incorrect and denied. As explained in the preceding Para. Appellant was reinstated in to service on humanitarian grounds by the competent authority otherwise he is commensurate for major punishment of removal from service. Moreover, it is settled proposition of law that law helps the diligent and not indolent.
- H. The respondents may also be permitted to raise additional/grounds/proof at the time of arguments.

PRAYERS

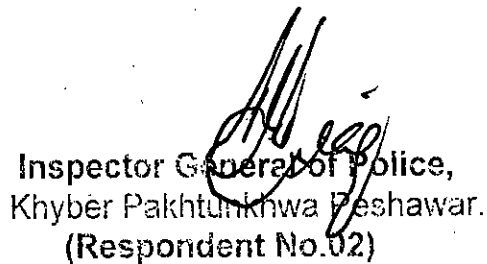
Keeping in view, the above stated facts & reasons it is most humbly prayed that the service appeal being barred by law may kindly be dismissed with costs please.



**Superintendent of Police FRP,
DI Khan Range DI Khan
(Respondent No. 04)**



**Commandant FRP,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 03)**



**Inspector General of Police,
Khyber Pakhtunkhwa Peshawar.
(Respondent No.02)**



**Government of KPK through Secretary,
Home Civil, Secretariat, Peshawar
(Respondent No.01)**

**Home Secretary,
Khyber Pakhtunkhwa**