

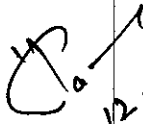
Sr. No	Date of order/ proceeding	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	27.12.2019	<p align="center"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u> Service Appeal No. 233/2016</p> <p>Date of Institution 14.03.2016 Date of Decision 27.12.2019</p> <p>Muhammad Shakeel Ex-Constable No.2625, District Police Mardan.</p> <p align="right">Appellant</p> <p align="center">Versus</p> <ol style="list-style-type: none"> The Provincial Police Officer Peshawar. The Deputy Inspector General of Police, Mardan Region-I, Mardan. The District Police Officer, Mardan. <p align="right">Respondents</p> <p>Mr. Muhammad Hamid Mughal-----Member(J) Mr. Ahmad Hassan-----Member(E)</p> <p align="center"><u>JUDGMENT</u> <u>MUHAMMAD HAMID MUGHAL, MEMBER:</u> Appellant with counsel present. Mr. Zia Ullah learned Deputy District Attorney alongwith Atta ur Rehman Inspector present.</p> <p>2. The appellant (Ex-Constable) has filed the present service appeal against the order dated 13.10.2014 whereby he was dismissed from service on the ground of absence from lawful duty without prior permission or leave w.e.f 04.01.2014 till date, against the order dated 24.11.2014 through which his</p>

27.12.2019

departmental appeal was filed and against the order dated 16.02.2016 regarding rejection of his departmental appeal/review under Rule 11-A of Khyber Pakhtunkhwa Police Rules, 1975.

3. Learned counsel for the appellant argued that the appellant joined the Police Department in the year 2008; that in the month of January 2014 the appellant became seriously ill and was under treatment; that when the appellant was recovered, he came to office to join duties but he was told that he has been dismissed from service; that the departmental appeals filed by the appellant remained unsuccessful. Further argued that the appellant could not attend to his duties due to genuine reasons; that legal requirements were not observed prior to the issuance of punishment of dismissal from service; that no opportunity of defense and personal hearing was afforded to the appellant.

4. As against that learned DDA argued that the medical prescriptions relied upon by the appellant in support of his illness were found fake and bogus; that the appellant has a series of red/bad entries in his short service record; that the appellant was not ill rather he absented himself from duty intentionally; that the appellant was issued charge sheet and summary of allegation and A.S.P City was appointed as inquiry officer; that the inquiry officer held the appellant responsible and recommended him for major punishment; that the appellant has not obtained permission from S.H.O for proceeding to hospital and there is nothing on record to show his illness; that the appellant was


27.12.2019

summoned/informed through concerned police station to attend the office of inquiry officer but he did not bother to join inquiry proceeding; that the appellant was provided full opportunity of defense but he failed to avail the same.

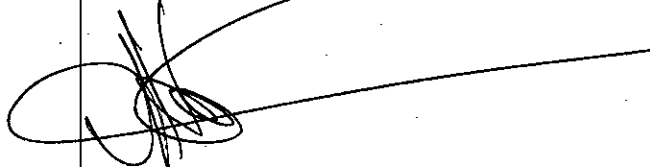
5. Arguments heard. File perused.

6. The appellant remained absent from duty for sufficient period without any permission even without submitting any application for leave.

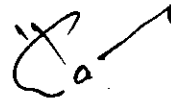
7. The appellant has taken the ground of his illness to justify his absence, however upon verification of the medical prescription/documents submitted by him, the same were found fake and bogus which fact is mentioned in the order dated 16.02.2016 of the appeal/review Board. Copy of charge sheet/statement of allegation is available on file. In the inquiry report, the inquiry officer has mentioned that several messages were conveyed to Muharrir P.S Choorra and Reader Traffic as well as the constable (appellant) was contacted so many times through his mobile to attend the office of inquiry officer but he did not appear before him and according to the report Traffic Reader, the constable (appellant) is still absent. The inquiry officer recommended the appellant for major punishment. The present service appeal was adjourned many times due to request of adjournment from appellant's side. In the given circumstances, this Tribunal is of the considered opinion that the appellant had no interest to perform duty.

27.12.2019

8. As a sequel to above, the appellant has not been able to seek indulgence of this Tribunal. Consequently the present service appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.



(Ahmad Hassan)
Member

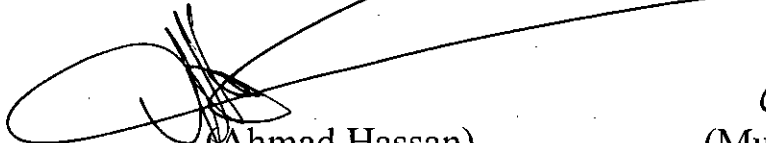


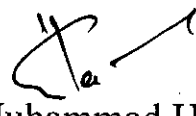
(Muhammad Hamid Mughal)
Member

ANNOUNCED
27.12.2019

27.12.2019

Appellant with counsel present. Mr. Zia Ullah learned Deputy District Attorney alongwith Atta. ur. Rehman Inspector present. Vide separate judgment of today of this Tribunal, placed on file the present service appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.



(Ahmad Hassan)
Member



(Muhammad Hamid Mughal)
Member

ANNOUNCED.
27.12.2019

07.08.2019

Learned counsel for the appellant present. Mr. Muhammad Jan learned Deputy District Attorney alongwith Attā ur Rehman Inspector present. Appellant absent. Adjourn. To come up for arguments on 23.10.2019 before D.B.


Member


Member

23.10.2019

Learned counsel for the Appellant present. Mr. Kabirullah Khattak learned Addl. AG alongwith Mr. Atta Ur Rehman Inspector (legal) for the respondents present.

Learned counsel for the appellant requests for adjournment due to engagement of learned senior counsel for the appellant before the Honourable High Court today.

Adjourned to 27.12.2019 for arguments before D.B.


Member


Chairman

SA 233/16

21.03.2019 Appellant in person and Addl. AG alongwith Attaur Rahman, S.I (Legal) for the respondents present.


Due to second day of the strike on the call of Bar Council, instant matter is adjourned to 08.05.2019 before the D.B.

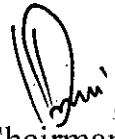

Member


Chairman


08.05.2019 Appellant in person and Mr. Muhammad Jan, DDA alongwith Mr. Atta Ur Rehman, SI for respondents present.

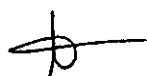
Due to paucity of time, the instant matter is adjourned to 27.06.2019 for arguments before D.B.


Member


Chairman

27.06.2019 Junior to counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney alongwith Mr. Atta Ur Rehman SI for the respondents present. Junior to counsel for the appellant seeks adjournment. Adjourned. Case to come up for arguments on 07.08.2019 before D.B.


(Hussain Shah)
Member


(M. Ahmad Hassan)
Member

31.10.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 19.12.2018.


READER

19.12.2018

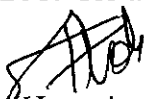
Junior to counsel for the appellant and Mr. Kabirullah Khattak learned Additional Advocate General alongwith Mr. Atta ur Rehman S.I for the respondents present. Junior to counsel for the appellant requested for adjournment that as senior counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 11.02.2019 before D.B.



(Hussain Shah)
Member


(Muhammad Amin Kundi)
Member

11.02.2019

Counsel for the appellant present. Mr. Riaz Ahmad Paindakheil, Assistant AG alongwith Mr. Atta-ur-Rehman, S.I (Legal) for the respondents present. Learned counsel for the appellant requested for adjournment. Member copy of the present appeal is also not available on record. Appellant is directed to furnish the same on or before the next date of hearing. Adjourned to 21.03.2019 for arguments before D.B.

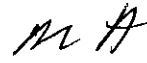

(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

28.02.2018

Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Atta-ur-Rehman, S.I (legal) for the respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 03.05.2018 before D.B.


Member (Executive)


Member (Judicial)


03.05.2018

Due to retirement of the worthy Chairman, the Tribunal is incomplete, therefore the case is adjourned. To come up for same on 18.07.2018 before D.B

18.07.2018


Counsel for the appellant present. Mr. Atta Ur Rehman, SI alongwith Mr. Muhammad Jan, DDA for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 11.09.2018 before D.B.



(Ahamd Hassan)
Member


(Muhammad Hamid Mughal)
Member

11.09.2018

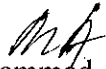
Junior to counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 30.10.2018 before D.B



(Hussain Shah)
Member


(Muhammad Hamid Mughal)
Member

22.06.2017


Junior in counsel for the appellant Mr. Ziaullah, Deputy for the respondent present. Junior in counsel for the appellant requested for adjournment Adjourned. To come up for argument on 09.10.2017 before D.B.

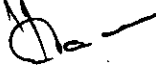

(Muhammad Amin Khan Kundi)
Member


(Gul Zeb Khan)
Member

09.10.2017

Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Khalid Mehmood, Head Constable for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 28.12.2017 before D.B.


(Muhammad Amin Khan Kundi)
Member


(Muhammad Hamid Mughal)
Member

28.12.2017

Clerk to counsel for the appellant and Addl: AG alongwith Mr. Atta Ur Rehman, SI for respondents present. Arguments could not be heard due to incomplete bench. Adjourned. To come up for arguments on 28.02.2018 before D.B.


Member

31.08.2016

Counsel for the appellant and Mr. Muhammad Ghani, S.I alongwith Mr. Ziaullah, GP for respondents present. Written reply on behalf of respondents No. 1 to 3 submitted. The appeal may be placed before Chairman for assigning the appeal to appropriate D.B for rejoinder and final hearing for 04.11.2016.


Member

04.11.2016

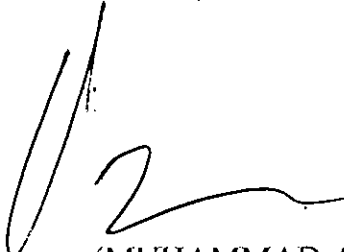
Counsel for the appellant and Asst: AG alongwith Mr. Muhammad Ghani, S.I, for respondents present. Rejoinder submitted. To come up for arguments on 09.03.2017.


(PIR BAKHSH SHAH)
MEMBER


(ABDUL LATIF)
MEMBER

09.03.2017

Counsel for the appellant and Mr. Atta ur Rahman SI alongwith Mr. Muhammad Jan, GP for respondents present. Counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on 22.06.2017 before D.B.


(MUHAMMAD AAMIR NAZIR)
MEMBER


(ASHFAQUE TAJ)
MEMBER


30.03.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Constable when subjected to inquiry on the allegations of wilful absence and dismissed from service vide impugned order dated 13.10.2014 where-against he preferred departmental appeal which was also rejected vide impugned order dated 24.11.2014 where-after appellant preferred revision petition under rule 11-A of Police Rules which was also rejected on 16.2.2016 and hence the instant service appeal on 14.3.2016.

That neither any show cause notice was issued nor charge sheet served on appellant and he was condemned unheard and the prescribed procedure for inquiry not followed.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 31.5.2016 before S.B.

Appellant Deposited
Security & Process Fee


Chairman

31.05.2016

Appellant with counsel and Mr. Muhammad Ghani, S.I alongwith Addl. AG for the respondents present. Requested for adjournment. To come up for written reply/comments on 26.07.2016 before S.B.


Chairman

26.7.2016

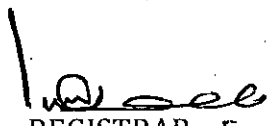


Appellant in person and Addl. AG for the respondents present. Written reply not submitted. Addl. AG requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 31.08.2016 before S.B.


Chairman

Form- A
FORM OF ORDER SHEET

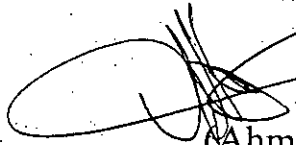
Court of _____

Case No. 233/2016

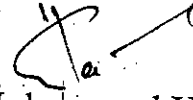
S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	14.03.2016	<p>The appeal of Mr. Muhammad Shakeel presented today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2	21.3.16	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>22.3.16</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	22.03.2016	<p>Counsel for the appellant present. Seeks adjournment. Adjourned for preliminary hearing to 30.3.2016 before S.B.</p> <p style="text-align: right;"> Chairman</p>

27.12.2019

Appellant with counsel present. Mr. Zia Ullah learned Deputy District Attorney alongwith Atta ur Rehman Inspector present. Vide separate judgment of today of this Tribunal, placed on file the present service appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.



(Ahmad Hassan)
Member





(Muhammad Hamid Mughal)
Member

ANNOUNCED.
27.12.2019



07.08.2019 Learned counsel for the appellant present. Mr. Muhammad Jan learned Deputy District Attorney alongwith Atta ur Rehman Inspector present. Appellant absent. Adjourn. To come up for arguments on 23.10.2019 before D.B.


Member

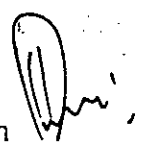

Member

23.10.2019 Learned counsel for the Appellant present. Mr. Kabirullah Khattak learned Addl. AG alongwith Mr. Atta Ur Rehman Inspector (legal) for the respondents present.

Learned counsel for the appellant requests for adjournment due to engagement of learned senior counsel for the appellant before the Honourable High Court today.

Adjourned to 27.12.2019 for arguments before D.B.



Member


Chairman

SA 233/16

21.03.2019 Appellant in person and Addl. AG alongwith Attaur Rahman, S.I (Legal) for the respondents present.

Due to second day of the strike on the call of Bar Council, instant matter is adjourned to 08.05.2019 before the D.B.


Member

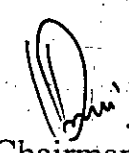

Chairman

08.05.2019

Appellant in person and Mr. Muhammad Jan, DDA alongwith Mr. Atta Ur Rehman, SI for respondents present.

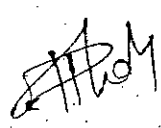
Due to paucity of time, the instant matter is adjourned to 27.06.2019 for arguments before D.B.

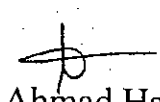

Member


Chairman

27.06.2019

Junior to counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney alongwith Mr. Atta Ur Rehman SI for the respondents present. Junior to counsel for the appellant seeks adjournment. Adjourned. Case to come up for arguments on 07.08.2019 before D.B.


(Hussain Shah)
Member


(M. Ahmad Hassan)
Member

31.10.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 19.12.2018.

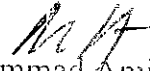

READER

19.12.2018

Junior to counsel for the appellant and Mr. Kabirullah Khattak learned Additional Advocate General alongwith Mr. Atta ur Rehman S.I for the respondents present. Junior to counsel for the appellant requested for adjournment that as senior counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 11.02.2019 before D.B.



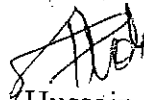
(Hussain Shah)
Member



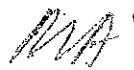
(Muhammad Amin Kundi)
Member

11.02.2019

Counsel for the appellant present. Mr. Riaz Ahmad Paindakheil, Assistant AG alongwith Mr. Atta-ur-Rehman, S.I (Legal) for the respondents present. Learned counsel for the appellant requested for adjournment. Member copy of the present appeal is also not available on record. Appellant is directed to furnish the same on or before the next date of hearing. Adjourned to 21.03.2019 for arguments before D.B.



(Hussain Shah)
Member



(M. Amin Khan Kundi)
Member

28.02.2018

Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Atta-ur-Rehman, S.I (legal) for the respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 03.05.2018 before D.B.

Member (Executive)

M A
Member (Judicial)

03.05.2018

Due to retirement of the worthy Chairman, the Tribunal is incomplete, therefore the case is adjourned. To come up for same on 18.07.2018 before D.B

18.07.2018

Counsel for the appellant present. Mr. Atta Ull Rehman, SI alongwith Mr. Muhammad Jan, DDA for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 11.09.2018 before D.B.

(Signature)
(Ahmad Hassan)
Member

(Signature)
(Muhammad Hamid Mughal)
Member

11.09.2018

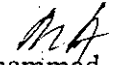
Junior to counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 31.10.2018 before D.B

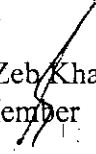
(Signature)
(Hussain Shah)
Member

(Signature)
(Muhammad Hamid Mughal)
Member

22.06.2017


Junior in counsel for the appellant Mr. Ziaullah, Deputy for the respondent present. Junior in counsel for the appellant requested for adjournment Adjourned. To come up for argument on 09.10.2017 before D.B.



(Muhammad Amin Khan Kundi)
Member


(Gul Zeb Khan)
Member

09.10.2017

Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Khalid Mehmood, Head Constable for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 28.12.2017 before D.B.


(Muhammad Amin Khan Kundi)
Member


(Muhammad Hamid Mughal)
Member

28.12.2017

Clerk to counsel for the appellant and Addl: AG alongwith Mr. Atta Ur Rehman, SI for respondents present. Arguments could not be heard due to incomplete bench. Adjourned. To come up for arguments on 28.02.2018 before D.B.


Member

31.08.2016

Counsel for the appellant and Mr. Muhammad Ghani, S.I alongwith Mr. Ziaullah, GP for respondents present. Written reply on behalf of respondents No. 1 to 3 submitted. The appeal may be placed before Chairman for assigning the appeal to appropriate D.B for rejoinder and final hearing for 04.11.2016.


Member

04.11.2016


Counsel for the appellant and Asst: AG alongwith Mr. Muhammad Ghanir, SI for respondents present. Rejoinder submitted. To come up for arguments on 09.03.2017.



(ABDUL LATIF)
MEMBER


(PIR BAKHSH SHAH)
MEMBER

09.03.2017

Counsel for the appellant and Mr. Alta ur Rahman SI alongwith Mr. Muhammad Jan, GP for respondents present. Counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on 22.06.2017 before D.B.


(MUHAMMAD AAMIR NAZIR)
MEMBER


(ASHFAQUE TAJ)
MEMBER

30.03.2016

Appellant Deposited
Security Access Fee

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Constable when subjected to inquiry on the allegations of wilful absence and dismissed from service vide impugned order dated 13.10.2014 where-against he preferred departmental appeal which was also rejected vide impugned order dated 24.11.2014 where-after appellant preferred revision petition under rule 11-A of Police Rules which was also rejected on 16.2.2016 and hence the instant service appeal on 14.3.2016.

That neither any show cause notice was issued nor charge sheet served on appellant and he was condemned unheard and the prescribed procedure for inquiry not followed.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 31.5.2016 before S.B.


Chairman

31.05.2016

Appellant with counsel and Mr. Muhammad Ghani, S.I alongwith Addl. AG for the respondents present. Requested for adjournment. To come up for written reply/comments on 26.07.2016 before S.B.


Chairman

26.7.2016

Appellant in person and Addl. AG for the respondents present. Written reply not submitted. Addl. AG requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 31.08.2016 before S.B.


Chairman

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 233 /2016

Muhammad Shakeel

V/S

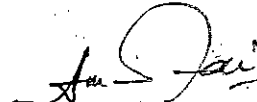
Police Deptt:

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3.	Copy of order dated 13.10.2016	B	17
4.	Copy of departmental appeal	C	18-19
5.	Copy of rejection order	D	20
6.	Copy of revision/ mercy petition	E	21-22
9.	Copy of mercy petition/ review	F	23
14	Vakalat nama	-----	24

APPELLANT

THROUGH:


(M.ASIF YOUSAFZAI)

&


(TAIMUR ALI KHAN)

ADVOCATES, PESHAWAR

- C) That one sided inquiry was conducted against the appellant without providing chance of defence to the appellant, which is in violation of law and rules. Therefore the impugned order is liable to be set aside on this ground alone.
- D) That no charge sheet was served to the appellant which is the violation of law and rules.
- E) That no show cause notice was issued to the appellate before imposing major punishment of dismissal from service, which is violation of law and rules.
- F) That proper inquiry should be conducted against the appellant regarding the illness of the appellant and proper statement of the MS Distt: Health quarter Hospital should be recorded with providing proper opportunity of cross examination of the statement to the appellant.
- G)
- H) That the absence period has already been declared as leave without pay, therefore there remained no ground to penalized the appellant.
- I) That the appellant has not been treated under proper law despite he was a civil servant of the province, therefore, the impugned order is liable to be set aside on this score alone.
- J) That the penalty of dismissal from service is very harsh which did not commensurate with the guilt of the appellant.
- K) That the appellant did not intentionally absent from his duties but he was ill. As the illness is beyond the control of human, therefore the appellant was compel to remain absent from his duties due to the treatment of his mother.
- L) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant joined the police force in the year 2008 and completed all his due trainings etc and also have good service record throughout.
2. That the appellant has Sciatica problem and the problem became severe due to which the appellant rushed to different Doctors. The treatment of the appellant took about 6 months. (Copy of the medical prescriptions are attached as Annexure-A)
3. That as the appellant was under treatment, therefore the appellant could not perform his duty and remained absent from the duty.
4. That when the appellant become recover he has come to office to joined his duty again but he was told that he was dismissed from service vide order dated 13.10.2014 on the basis of one sided inquiry and without serving charge sheet and show cause notice to the appellant. (copy of order dated 13.10.2014 is attached as Annexure-B)
5. That against the order dated 13.10.2014, the appellant filed departmental appeal but the same was also rejected for no good ground on dated 24.11.2014. Then the appellant filed revision/mercy petition to the PPO which was also rejected on dated 16.02.2016 (Copy departmental appeal, rejection order, revision/mercy petition and rejection of revision/mercy petition/ are attached as Annexure-C,D&E)
6. That now the appellant come to this august tribunal on the following grounds amongst others.

GROUND:

- A) That the impugned order dated 16.02.2016, 24.11.2014 & 13.10.2014 are against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.
- B) That the appellant has been condemned unheard and has not been treated according to law and rules.

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 233/2016

Muhammad Shakeel, Ex- constable, No.2625,
District Police Mardan.

Al. W. F. Provincial
Service Tribunal
Entry No. 211
Dated 14-03-2016

(APPELLANT)

VERSUS

1. The Provincial Police Officer, KPK, Peshawar.
2. The Deputy Inspector General of Police, Mardan Region-I, Mardan.
3. The District Police Officer Mardan.

(RESPONDENTS)

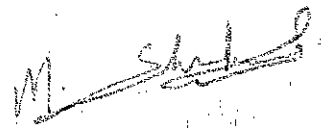
APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 16.02.2016, WHEREBY THE REVISION/MERCY PETITION UNDERS-11(A) OF THE KPK POLICE RULES, 1975 OF THE APPELLANT HAS BEEN REJECTED AGAINST THE ORDER OF THE DIG MARDAN DATED 24.11.2014, WHEREBY HE MAINTAINED THE ORDER DATED 13.10.2014 PASSED BY THE DISTRICT POLICE OFFICER, MARDAN.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 16.02.2016, 24.11.2014 AND 13.10.2014 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.

14/3/16

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



APPELLANT
Muhammad Shakeel

THROUGH:



(M.ASIF YOUSAFZAI)

& 

(TAIMUR ALI KHAN)

ADVOCATES, PESHAWAR

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 233 /2016

Muhammad Shakeel

V/S


Police Deptt:

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4.	Copy of departmental appeal	C	18-19
5.	Copy of rejection order	D	20
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APPELLANT

THROUGH:


(M.ASIF YOUSAFZAI)

&


(TAIMUR ALI KHAN)
ADVOCATES, PESHAWAR

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 233/2016

Muhammad Shakeel, Ex- constable, No.2625,
District Police Mardan.

**K.P. Provincial
Service Tribunal**
Diary No 211
dated 14-03-2016

(APPELLANT)

VERSUS

1. The Provincial Police Officer, KPK, Peshawar.
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(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 16.02.2016, WHEREBY THE REVISION/MERCY PETITION UNDERS-11(A) OF THE KPK POLICE RULES, 1975 OF THE APPELLANT HAS BEEN REJECTED AGAINST THE ORDER OF THE DIG MARDAN DATED 24.11.2014,. WHEREBY HE MAINTAINED THE ORDER DATED 13.10.2014 PASSED BY THE DISTRICT POLICE OFFICER, MARDAN.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 16.02.2016, 24.11.2014 AND 13.10.2014 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.

~~Filed to the~~
~~Registrar~~
14/3/16

RESPECTFULLY SHEWETH:

FACTS:

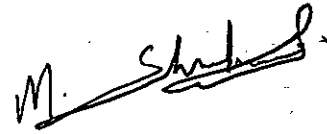
1. That the appellant joined the police force in the year 2008 and completed all his due trainings etc and also have good service record throughout.
2. That the appellant has Sciatica problem and the problem became severe due to which the appellant rushed to different Doctors. The treatment of the appellant took about 6 months. (Copy of the medical prescriptions are attached as Annexure-A)
3. That as the appellant was under treatment, therefore the appellant could not perform his duty and remained absent from the duty.
4. That when the appellant became recover he has come to office to joined his duty again but he was told that he was dismissed from service vide order dated 13.10.2014 on the basis of one sided inquiry and without serving charge sheet and show cause notice to the appellant. (copy of order dated 13.10.2014 is attached as Annexure-B)
5. That against the order dated 13.10.2014, the appellant filed departmental appeal but the same was also rejected for no good ground on dated 24.11.2014. Then the appellant filed revision/mercy petition to the PPO which was also rejected on dated 16.02.2016 (Copy departmental appeal, rejection order, revision/mercy petition and rejection of revision/mercy petition/ are attached as Annexure-C,D&E)
6. That now the appellant come to this august tribunal on the following grounds amongst others.

GROUND:

- A) That the impugned order dated 16.02.2016, 24.11.2014 & 13.10.2014 are against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.
- B) That the appellant has been condemned unheard and has not been treated according to law and rules.

- C) That one sided inquiry was conducted against the appellant without providing chance of defence to the appellant, which is in violation of law and rules. Therefore the impugned order is liable to be set aside on this ground alone.
- D) That no charge sheet was served to the appellant which is the violation of law and rules.
- E) That no show cause notice was issued to the appellate before imposing major punishment of dismissal from service, which is violation of law and rules.
- F) That proper inquiry should be conducted against the appellant regarding the illness of the appellant and proper statement of the MS Distt: Health quarter Hospital should be recorded with providing proper opportunity of cross examination of the statement to the appellant.
- G)
- H) That the absence period has already been declared as leave without pay, therefore there remained no ground to penalized the appellant.
- I) That the appellant has not been treated under proper law despite he was a civil servant of the province, therefore, the impugned order is liable to be set aside on this score alone.
- J) That the penalty of dismissal from service is very harsh which did not commensurate with the guilt of the appellant.
- K) That the appellant did not intentionally absent from his duties but he was ill. As the illness is beyond the control of human, therefore the appellant was compel to remain absent from his duties due to the treatment of his mother.
- L) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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



APPELLANT
Muhammad Shakeel

THROUGH:



(M.ASIF YOUSAFZAI)

&



(TAIMUR ALI KHAN)

ADVOCATES, PESHAWAR

TREATMENT AT HOME

Cap. Khalid Hussain
141

Cap. Muhammad
141

Cap. Muhammad
141

Sgt. Sayid Ali
141

Sgt. Arshad
141

Sgt. Arshad
141

Medical Certificate issued by
Dr. Khalid Hussain

Dr. Khalid Hussain

Cap **ACENAC** SR

DISCHARGE CARD

ORTHOPAEDIC UNIT
District Head Quarter Hospital
MARDAN

Incharge Orthopaedic Surgeon
Dr. Muhammad Shabid Durran
M.B.B.S, M.S
PH.D. ORTHO

Medical Officer
Dr. Zahir Shah
M.B.B.S, M.S
Dr. Saif
MD, MS
Dr. Khalil-ur-Rehman
M.B.B.S
D.O.T

Pt's Name Muhammad Shabid

Address Changrae Mardan

DA 2.3.14 Adm No. 271/22 D.D. 25.3.14

Diagnosis Wrist sprain (L.R.P.)
at long S.S. 141

Treatment Rest & Analgesic

Cap **ACENAC** SR

ATTESTED

ATTESTED

CLINICAL RECORD

Typical cold
Abundant pi
Vas. inj
Fever
Cerebral pain (LBP)
Rt. leg Sciatica

INVESTIGATIONS

ANAL
MP
X-Ray C-Spine
X-Ray Rt. leg
MCV
H&A
Ur. R/E

Cap ACENAC SR

TREATMENT AT HOSPITAL

ij. Acetaminophen O.D.
ij. Ketorolac O.D.
ij. Ritalin O.D.
ij. Plavix O.D.
ij. Elagolol O.D.
ij. R.D. course O.D.

OPERATION

Cap ACENAC SR

No.

Rs. 5/-

OUT-PATIENTS DEPARTMENT

NAME _____

YEARLY NO _____

DATE _____

DISEASE Lumbago Spina Pain

COUNTER SIGNED Atiqur Reza

FACE VALUE (UPPER 5)

(7)

*observed complete home bed rest
7th effect from 25.4.14 to 5.5.14*

Urine R/B

MEDICAL SUPERINTENDENT
D.H.Q. HOSPITAL MARDAN

Tab. Avelox

1-1 400mg

Tab. Felder

1-1

Cap. Esso

1-1 500mg

Sp. Mosogor-V

1-1-1

Sp. Uccand

1-1-1

MEDICAL OFFICER
D.H.Q Hospital Mardan

ARRESTED

DO NOT WRITE IN THESE SPACES

NO. 25
 OUT-ORDERED DOCUMENTS
 NAME: _____
 AGENCY NO. 287
 DATE: 28. 2. 54
 MESSAGE: _____
 COMMENTS: _____

Office 2/25

Mr. A. G. ...

Mr. ...

Mr. ...

Mr. ...

Mr. ...
 Mr. ...
 Mr. ...

1/25
 2/25
 3/25
 4/25
 5/25
 6/25
 7/25
 8/25
 9/25
 10/25
 11/25
 12/25

No.

Rs. 5/-

OUT-PATIENTS DEPARTMENT

NAME

Out Patient

YEARLY NO.

8888

DATE

17-5-2014

DISEASE

Upper limb pain

COUNTER SIGNED

Dr. J. S. Datta

FACE VALUE RAJEEV S.

8

*Advised complete home bed rest
w.e.f 17.5.2014 to 9.6.2014*

MEDICAL SUPERINTENDENT
D.H.Q. HOSPITAL MARDHA

- Cap. Vellof sing*
- Cap. Revle*
- Cap. Vellral*
- Cap. Dijen MP*
- Cap. Ibent*

J. S. Datta

MEDICAL OFFICER
D.H.Q. Hospital Mardha

TESTED

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 10. ...

1. ...
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 3. ...

13

No. **OUT-PATIENTS DEPARTMENT**
NAME: M. A. Qureshi
62280

Rs. 5/-
FACE VALUE RUPEES 5/-

No. **OUT-PATIENTS DEPARTMENT**

9

WARD: 10271
DATE: 10.6.2014

DISEASE: Urinary Infection

COUNTER SIGNED: Scialca
Urine AB

Advised Complete home bed rest
W.e.f 10.6.2014 to 2.7.2014.
MEDICAL SUPERINTENDENT
D.H.Q HOSPITAL MARDIA

Dr. Bolex
111

Tab Peldin
111

Cap. Norel
111

Sp. Noronacid
111

Sp. Tressia
111

MEDICAL OFFICER
D.H.Q Hospital M---

ATTESTED

ATTESTED

Name	Mohammad
Sex	M
Age	20/19
Personal	Normal
Occupation	ON
Referral	
Diagnosis	
Investigation	
Prescription	
Remarks	
Signature	
Date	

12

7. *Sp. Tressia*
111

8. *Advised Complete home bed rest for a*

9. *month.*

10. *Dr. Qureshi*
ATTESTED

Doctor's Signature
with stamp

CENTRAL GOVERNMENT HOSPITAL

COUNTY 10.10.1952
 STAGE 1st Stage
 DATE 27.9.1952
 VENUE NO. 12572
 No. 10

D.H.O. Hospital, London
 MEDICAL OFFICER
 (Signature)
 (Signature)
 (Signature)
 (Signature)
 (Signature)
 (Signature)
 (Signature)

TREATMENT FOR HOME	
1.	Mr. Adams
2.	Mr. Brown
3.	Mr. Green
4.	Mr. White
5.	Mr. Black
6.	Mr. Grey
7.	Mr. Pink
8.	Mr. Blue
9.	Mr. Yellow
10.	Mr. Purple

Doctor's signature
 with stamp
 (Signature)

No.

Rs. 5/-

OUT-PATIENTS DEPARTMENT

Name

YEARLY NO

DATE

DISEASE

COUNTERSIGNED

FACE VALUE IN PIES 5/-

15

MEDICAL SUPERINTENDENT
D.H.Q. HOSPITAL, MARDAN

Cap. Velosfog
H

Cap. Neunoy
H

Tab. Felder
H

Syr. Normacid
H

Syr. Trimecabel
H

Use N/B

Achard Complete home for 10 Ten days

ATTESTED
★

MEDICAL OFFICER
D.H.Q. Hospital Mardan

[Handwritten Signature]

No.

Rs. 5/-

OUT-PATIENTS DEPARTMENT

NAME

26259 J. J. J.

YEARLY NO.

1632

DATE

21.10.2014

DISEASE

COUNTERSIGNED

Fitness Certificate

MEDICAL SUPERINTENDENT
D.H.O. HOSPITAL, MARDAN

*I certify that I have examined Mr. Mahmood Ullah
80 Noor Mohammad to be an*

21.10.2014

*He is now fit to resume his
duty.*

ATTESTED

J. J. J.

**MEDICAL OFFICER
D.H.O Hospital Mardan**

21.10.2014

FACE VALUE PAPER 5/-

16

Handwritten notes on a lined page, possibly a ledger or account book. The text is mostly illegible due to blurring and bleed-through.

Handwritten notes, possibly a list or account entries, located in the middle section of the page.

Handwritten notes, possibly a list or account entries, located in the lower middle section of the page.

Handwritten notes at the bottom of the page, possibly a signature or a date.

ORDER

Constable Shakeel No. 2625, while posted at Police Lines has committed the following acts, which is gross misconduct on his part as defined in Rule 02 (B) of Police Rules 1975.

Brief facts are that you Constable Shakeel No. 2625, has posted at Police Station Chooria Mardan has deliberately absented yourself from his lawful duty without prior permission or leave vide DD No. 24 dated 04.01.2014 till date.


In this connection, Constable Shakeel No. 2625, was charge sheeted vide his office No. 437/R, date 10.02.2014 and also proceeded him against departmentally through inquiry officer Mr. Syed Muhammad Bilal ASP/City Mardan, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsement No. 471/City, dated 10.07.2014 in which the allegations have been established against him.

The undersigned agreed with the findings of enquiry officer and the alleged Constable Shakeel No. 2625, is hereby dismissed from service while the absence period counted as leave without pay, in exercise of the power vested in me under the above quoted rules.

Order announced

O.B. No. 1739/14

Dated 1/11/2014


(Signature)
District Police Officer,
Mardan.

No. 1739/14 dated Mardan the 15/11/2014

Copy for information and necessary action to:-

1. The S.P Operations, Mardan.
2. The DSP/HQrs Mardan.
3. The Pay Officer (DPO) Mardan.
4. The E.C (DPC) Mardan.
5. The CASI (DPØ) Mardan.

ATTESTED


C
M
18

BEFORE THE DEPUTY INSPECTOR GENERAL OF POLICE MARDAN REGION -1
MARDAN

Subject: APPEAL AGAINST THE ORDER OF DISTRICT POLICE OFFICER MARDAN ISSUED VIDE HIS OFFICE ENDORSEMENT NO. 2080 DATED 13-10-2014, WHERE BY THE APPELLANT WAS AWARDED THE PUNISHMENT "DISMISSAL FROM SERVICE".

R/Sir,

It is submitted that :

1. The DPO Mardan had issued charge sheet No.437/R Dated 10-02-2014 against the Appellant with the following allegations:-

" That you Constable Shakeel No.2625 while posted at police station choora Mardan has deliberately absented yourself from lawful duty without prior permission or leave vide No.24 dated 04-01-2014 till date".

2. That the brief facts of the matter are that appellant, in the month of January, 2014 remained posted in PS Choor. During this period the appellant became seriously ill due to the severe fever. The petitioner tried to get leave from the Moharar of the police station but he refused. The petitioner went for his treatment to his village and was absented from 04-01-2014 vide DD No.24 of PS Choor. The appellant had continued his treatment from various doctors. Medical prescriptions are enclosed.
3. During the period of absence without issuing any show cause Notice / charge sheet to the appellant, the one sided departmental inquiry was initiated against the petitioner. The appellant was not given any opportunity to produce his Ali Bi / Defense in his support and Ex-Parte action was taken against the appellant by issuing the subject order of Dismissal from service. (Copy enclosed)

CONCLUSION:

It is requested that the Appeal of the Appellant may kindly be accepted and Order of the punishment be set aside on the following grounds:-

4. The allegations i.e the alleged absence is not intentional but was due to the petitioner illness.
5. The appellant was not issued show cause notice / charge sheet. Similarly, the appellant was not given any opportunity of "PERSONAL HEARING" by the competent authority at the time of passing of impugned punishment Order, which is contrary to the Police rules 1975, hence great injustice was extended.
6. The Appellant was also not given "FINAL SHOW CAUSE NOTICE" by the competent authority, which was the necessary requirement as per relevant rules and thus the illegal Order was passed in absentia.
7. In addition to the above facts, the E.O has also made certain irregularities and has dashed the rules and regulations to the ground. The present inquiry as Ex-parte, so far conducted is just an eye wash and amounts to fill in the blanks.

ATTESTED
★

8. The Appellant was enlisted as constable in police department in the year, 2008. The appellant performed his duties efficiently, honestly, with great zeal and never showed any in efficiency and negligence during his service. The appellant was not dealt departmentally prior to this inquiry.
9. That the appellant is the elder son of HC Norr Muhammad Khan (Late) . The appellant family along with his widow mother consist of 06 members which totally depends on the petitioner police service. Due to the dismissal of petitioner service , the whole police family is suffering from financial crises.

Keeping in view of the facts and circumstances mentioned above, it is humbly requested that the Appeal of the Appellant may kindly be accepted and the impugned Order passed by DPO Mardan may kindly be set aside.

Yours Obediently,

Constable Shakeel No. 2525

District Police Mardan

(Now Dismissed from service)

ATTESTED


ORDER.

This order will dispose-off the appeal preferred by Ex-Constable Shakeel No. 2625 of Mardan District Police against the order of District Police Officer, Mardan wherein he was dismissed from service vide District Police Officer, Mardan OB No. 2080 dated 13.10.2014

Brief facts of the case are that he while posted at Police Station Choom Mardan, deliberately absented himself from the lawful duty vide daily diary No. 24 dated 04.01.2014 to the date of dismissal. In this connection he was charge sheeted and proceeded him against departmentally through the then Assistant Superintendent of Police City, Mardan, the appellant was summoned/informed through concerned Police Station to attend office of Enquiry Officer but he neither appeared before the Enquiry Officer nor sent any application etc by mentioning therein that he is unable to attend the office of enquiry officer due to some reason. He was fully provided opportunity of defence but he did not avail that opportunity and avoided to appear before the enquiry Officer, who after fulfilling necessary process, submitted his findings to District Police Officer, Mardan and the allegation was established against him, therefore he was dismissed from service.

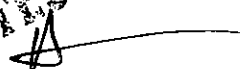
I have perused the record and also heard the appellant in Orderly Room held in this office on 19.11.2014, but he failed to justify his absence and could not produce any cogent reason about his absence period. Therefore, I MUHAMMAD SAEED Deputy Inspector General of Police, Mardan Region-I, Mardan in exercise of the powers conferred upon me reject the appeal and do not interfere in the order passed by the competent authority, thus the appeal is filed.

UNOFFICIAL ANNOUNCEMENT


(MUHAMMAD SAEED)PSP
Deputy Inspector General of Police,
Mardan Region-I, Mardan.

No. 7673 /ES, Dated Mardan the 24-11- /2014.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 943/LB dated 14.11.2014. His service record is

ATTESTED


To.

The Inspector general of police,
Khyber pakhtunkhwa, Peshawar

Subject: **Mercy Petition** against the Dismissal Order from service of the applicant issued vide DPO /Mardan Office O.B No.2080 Dated 31-10-2014 & Rejection of Appeal by DIG Mardan issued vide his Office letter No. 7673 / E.S Dated 24-11-2014

Respected Sir,

The petitioner submits as under:

- i) The DPO Mardan had issued charge sheet No.437/R Dated 10-02-2014 against the Appellant with the following allegations:-
" That you Constable Shakeel No.2625 while posted at police station choora Mardan has deliberately absented yourself from lawful duty without prior permission or leave vide No.24 dated 04-01-2014 till date".
- ii) That in the light of the charge sheet, a departmental inquiry was initiated against the appellant. The appellant submitted a comprehensive reply to the charge sheet before the inquiry officer which is reproduced below:
 - a) That the brief facts of the matter are that appellant, in the month of January, 2014 remained posted in PS Choorā. During this period the appellant became seriously ill due to the severe fever. The petitioner tried to get leave from the Moharar of the police station but he refused. The petitioner went for his treatment to his village and was absented from 04-01-2014 vide DD No.24 of PS Choorā. The appellant had continued his treatment from various doctors. **(Medical prescriptions are enclosed already with inquiry file) . .**
 - b) During the period of absence without issuing any show cause Notice / charge sheet to the appellant, the one sided departmental inquiry was initiated against the petitioner. The appellant was not given any opportunity to produce his Ali Bi / Defense in his support and Ex-Parte action was taken against the appellant by issuing the subject order of Dismissal from service.

CONCLUSION:

It is requested that the Appeal of the Appellant may kindly be accepted and Order of the punishment be set aside on the following grounds:-

- a. The allegations i.e the alleged absence is not intentional but was due to the petitioner illness.
- b. The appellant was not issued show cause notice / charge sheet. Similarly, the appellant was not given any opportunity of "PERSONAL HEARING" by the competent authority at the time of passing of impugned punishment Order, which is contrary to the Police rules 1975, hence great injustice was extended.

ATTESTED



- c) The Appellant was also not given "FINAL SHOW CAUSE NOTICE" by the competent authority, which was the necessary requirement as per relevant rules and thus the illegal Order was passed in absentia.
- d) In addition to the above facts, the E.O has also made certain irregularities and has dashed the rules and regulations to the ground. The present inquiry as Ex-parte, so far conducted is just an eye wash and amounts to fill in the blanks.
- e) The Appellant was enlisted as constable in police department in the year, 2008. The appellant performed his duties efficiently, honestly, with great zeal and never showed any in efficiency and negligence during his service. The appellant was not dealt departmentally prior to this inquiry.
- f) That the appellant is the elder son of HC Noor Muhammad Khan (Late). The appellant family along with his widow mother consist of 06 members which totally depends on the petitioner police service. Due to the dismissal of petitioner service , the whole police family is suffering from financial crises.
- iii) That petitioner reply to the charge sheet was not considered by the E.O.The inquiry officer submitted his finding before the DPO Mardan and recommended the appellant for punishment. The DPO Mardan awarded major punishment to the petitioner and dismissed him from service vide O.B No.2080 dated 13-10-2014. (Copy enclosed)
- iv) That the petitioner filed an appeal against the order of dismissal before the DIG Mardan Region-I Mardan but the petitioner appeal was rejected vide DIG Mardan office letter No.7673 / E.S dated 23-11-2014. (Copy enclosed)

PRAYER:

The points raised in this merci petition are in detail and worth perusal. The petitioner was dismissed from service due the allegation of absence from his duty and nothing else. The petitioner had not absented himself deliberately but this was due petitioner serious illness, for which medical documents are already enclosed as a proof.

Keeping in view of the facts and circumstances mentioned above, it is humbly requested that the merci petition of the petitioner may kindly be accepted. The impugned Orders passed by DPO Mardan and DIG mardan may kindly be set aside and the petitioner may be re-instated in service from the date of dismissal please.

Yours Obediently,

ATTESTED
A


EX-constable(Muhammad Shakeel No. 2625)

District Police Mardan



622572 632
18-2-16

①

OR
19-11-14
23

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar

No. S/ 1352 / 16, Dated Peshawar the 16/02/2016.

ORDER

This order is hereby passed to dispose of departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 submitted by Ex- Constable Muhammad Shakeel No. 2625. The appellant was preferred a review petition against the dismissal order of DPO/Mardan. He preferred appeals before the RPO/Mardan against the order of DPO/Mardan which was filed by RPO vide order No. 7673/ES, dated 24.11.2014.

He preferred an appeal before the Appellate Authority i.e IGP, Khyber Pakhtunkhwa. His case was examined in the Appeal Board meeting was held on 17.12.2015, the appellant was also heard in person and produced medical papers and also contended that his absence from duty was not deliberate but he was suffering from chronic disease. The board recommended that the case may be remanded back to the appellant authority i.e RPO/Mardan vide this office memo: No. S/358/16, dated 11.01.2016 for examining the case afresh and confirm the truth of illness of the petitioner. The outcome may please be communicated to this office within 30 days for the perusal of W-IGP.

The RPO/Mardan vide his memo: No. 974/ES, dated 02.01.2016 has intimated that Medical prescription/documents in r/o Ex-Constable Muhammad Shakeel No. 2625 of Mardan District Police have been verified through DSB Branch, Mardan from Medical Superintendent District Headquarter Hospital, Mardan which is found totally fake and bogus.

Keeping in view the above the appeal of Ex-Constable Muhammad Shakeel No. 2625 is hereby filed/rejected.

Najeeb
(NAJEEB-UR-RAHMAN BUGVI)
AIG/Establishment
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

No. S/1353-61/15.

Copy of the above is forwarded to the:

1. Regional Police Officer, Mardan.
2. District Police Officer, Mardan.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. PRO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
5. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
7. PA to AIG/Establishment CPO, Peshawar.
8. Office Supdt: E-IV CPO Peshawar.
9. Central Registrar, CPO.

No. 1453/ES
dt: 18/2/16

EC RPO Mardan
for information
M. A. Khan
A. Khan
R. D. Mardan
17/2

ATTESTED

C

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.

Service Appeal No. 233/2016.

Muhammad Shakeel Ex-Constable No. 2625.....Appellant.

VERSUS.

District Police Officer, Mardan

& others.....Respondents.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS:-

1. That the appellant has not come to this Honourable Tribunal with clean hands.
2. That the appellant has got no cause of action.
3. That the appellant has concealed material facts from this Honourable Tribunal.
4. That the appellant is estopped by his own conduct, by law to bring the instant appeal.
5. That the present appeal is bad in its present form hence not maintainable and liable to be dismissed.
6. That the appeal is bad due to non-joinder of necessary parties and mis-joinder of unnecessary parties.
7. That the instant appeal is barred by law & limitation.

REPLY ON FACTS.

1. Incorrect. The appellant was appointed as constable on 15.01.2009 and has a series of red /bad entries in his short service, comprising almost 05 years. **(Copies of red/bad entries are attached as Annex-A)**
2. Incorrect. The medical prescriptions referred herein in the instant service appeal are totally fake and bogus, as the same has been verified through DSB Mardan from the office of the Medical Superintendent DHQ Hospital Mardan. **(Copy of DSB verification letter is attached as Annexure-B)**
3. Incorrect. The applicant had not become ill rather he absented himself from duty intentionally. Had he become ill, he would have recorded proper report in the Roznamcha and would have obtained permission from SHO for proceeding to Hospital but there is nothing as such on record to show his illness.
4. Incorrect. The applicant was issued charge sheet with summary of allegation, and the then ASP City was appointed as Enquiry Officer. The applicant was summoned/informed through concerned Police Station to attend office of Enquiry Officer but he neither appeared before the Enquiry Officer nor sent any application, etc, by mentioning therein that he is unable to attend the office of Enquiry officer due to some reason. He was provided full opportunity of defence but he failed to avail this and avoided to appear before the Enquiry Officer which resulted into his dismissal from service.
5. Correct to the extent of rejection of his departmental appeals but on valid grounds.
6. Incorrect. The appellant holds no legal grounds to stand on here before this August Tribunal.

REPLY ON GROUNDS


- A. The impugned orders are in accordance with law, facts, norms of justice and material on record, therefore, tenable in the eyes of laws.
- B. Incorrect. The appellant has been treated as per rules/law.


A 31/8/2016

- C. Incorrect. Proper inquiry was conducted through ASP/City Mardan, who held him responsible and recommended him for punishment. **(Copy of inquiry is attached as Annexure-C).**
- D. Incorrect. Proper charge sheet was served upon the appellant as required by rules/law. **(Copy of charge sheet is attached as Annexure-D)**
- E. Incorrect. Proper procedure was adopted under rules/law.
- F. Incorrect. As explained in the preceding Para.
- G. The absence period was declared without pay as the appellant had not performed the duty and therefore, could not be paid while relying on the principle of "No work no pay".
- H. Incorrect. The appellant, being Police official, has been treated under Special Law i.e Police Rules and punished as well.
- I. Incorrect. The appellant has been punished, as he deserved, under the relevant rules/law.
- J. Incorrect and baseless, so, could not be admitted as factual.
- K. The respondents also seek permission of the Honourable Court to present grounds, if any, at the time of arguments.

PRAYER:-

It is, therefore, prayed that the appellant's plea holds no legal grounds to stand on in the instant appeal for reasons: of his habitual absentees, stained service carrier & being properly proceeded against under relevant rules/law during departmental enquiries. His appeal may please be dismissed with costs.


**Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.**
(Respondent No. 01)


**Dy: Inspector General of Police,
Mardan Region-I, Mardan.**
(Respondent No. 02)


**District Police Officer,
Mardan.**
(Respondent No. 03)

16. LEAVE, ABSENCE AND IN SERVICE

All periods not counting "approved service" to entered in red ink.

1		2			3	4
DATE		EXTENT			No. of District Order	Description of leave i.e. Privilege, hospital, sick leave, or furlough, or of absence, or forfeiture of approved service. All entries to be initialed, by Superintendent of Police.
From	To	Years	Months	Days		
		(1)		(2)	3125 16-8-10	Leave w/ 1/2 Pay DPO/MR
		(2)		(2)	4873 23-12-10	do DPO/MR
		(3)		(5)	366 21-1-11	do DPO/MR
		(4)		(2)	495 28-1-11	do DPO/MR
		(5)		(3)	888 21-2-11	do DPO/MR
		(6)		(18)	1441 11-4-11	do DPO/MR
		(7)		(4)	1557 20-4-11	do DPO/MR
		(8)		(3)	2068 26-5-11	do DPO/MR
		(9)		(2)	2291 15-6-11	do DPO/MR
		(10)		(3)	2496 1-7-11	do DPO/MR
		(11)		(1)	2774 22-7-11	do DPO/MR

⑤ $\frac{3921}{4-11-11}$ Leave w/o pay - ~~DP/MP~~

12

⑥ $\frac{3164}{29-11-12}$ do - ~~DP/MP~~

13

⑦ $\frac{3552}{19-2-12}$ do - ~~DP/MP~~

14

⑧ $\frac{196}{31-6-13}$ do - ~~DP/MP~~

15

⑨ $\frac{439}{18-2-13}$ do - ~~DP/MP~~

16

⑩ $\frac{568}{21-2-13}$ do - ~~DP/MP~~

17

⑪ $\frac{256}{28-1-14}$ do - ~~DP/MP~~

18

⑫ $\frac{4402}{12-5-14}$ leave w/o pay - ~~DP/MP~~

19

OR
19-11-14
①

Government of Khyber Pakhtunkhwa
Office of the Deputy Inspector General of Police
Mardan Region-I, Mardan
Phone No. 0937-9230113, Fax No. 0937-9230115.

From: The Deputy Inspector General of Police,
Mardan Region-I, Mardan.

To: The Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.

No. 974/ES.

02 January, 2016.

Subject: APPEAL AGAINST PUNISHMENT.

Memo:

Kindly refer to your office Memo: No. S/358/16 dated 11.01.2016 on the subject noted above.

It is submitted that medical prescription/documents in respect of Ex-Constable Muhammad Shakeel No. 2625 of Mardan District Police have been verified through DSB Branch, Mardan from Medical Superintendent District Headquarter Hospital, Mardan which is found totally fake & bogus (copy enclosed) please.

97/c

(MUHAMMAD SAEED) PSP
Deputy Inspector General of Police,
Mardan Region-I, Mardan.

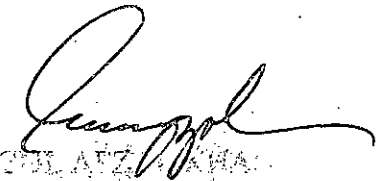
CHARGE SHEET UNDER NWFP POLICE RULES 1975

I, **Gul Afzal Khan** District Police Officer, Mardan as competent authority hereby charge you **Constable Shakil No. 2625**, as follows.

That you constable, while posted at Police Station Choorra, deliberately absented himself from the lawful duty vide DD No. 24 dated 04.01.2014 to-date without any leave / permission of the competent authority. You are recommended for departmental action by DSP/Rural, Mardan vide his office letter No. 1, dated 27.01.2014.

This amounts to grave misconduct on your part, warranting departmental action against you, as defined in section - 6 (1) (a) of the NWFP Police Rules 1975.

1. By reason of the above, you appear to be guilty of misconduct under section - 02 (iii) of the NWFP Police Rules 1975 and has rendered yourself liable to all or any of the penalties as specified in section - 04 (i) a & b of the said Rules.
2. You are therefore, directed to submit your written defense **within seven days** of the receipt of this charge sheet to the enquiry officer.
3. Your written defence if any, should reach to the enquiry officer within the specified period, failing which, it shall be presumed that you have no defense to put-in and in that case, an ex-parte action shall follow against you.
4. Intimate whether you desired to be heard in persons.


GUL AFZAL KHAN
District Police Officer
Mardan

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

No. 437 /R.D.A-P.R-1975.

Dated 10-02- /2014

DISCIPLINARY ACTION UNDER NWFP POLICE RULES - 1975

1. **Gul Afzal Khan** District Police Officer, Mardan as competent authority am of the opinion that Constable **Shakil No. 2625**, rendered himself liable to be proceeded against as he committed the following acts/omission within the meaning of section-02 (iii) of NWFP Police Rules 1975.


STATEMENT OF ALLEGATIONS

That **Constable Shakil No. 2625**, while posted at Police Station Choorra, deliberately absented himself from the lawful duty vide DD No. 24 dated 04.01.2014 to-date without any leave / permission of the competent authority. He is recommended for departmental action by DSP/Rural, Mardan vide his office letter No. 1, dated 27.01.2014.

2. For the purpose of scrutinizing the conduct of the said official with reference to the above allegations **Syed Muhammad Bilal ASP/City Mardan** is appointed as Enquiry Officer.

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

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


(GUL AFZAL KHAN)
District Police Officer,
Mardan

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

No. 437 /R, dated Mardan the 10-02- /2014.

Copy of above is forwarded to the:

1. ASP/City Mardan for initiating proceedings against the accused official / Officer namely Constable **Shakil No. 2625**, under Police Rules, 1975.
2. Constable **Shakil No. 2625**, with the directions to appear before the Enquiry Officer on the date, time and place fixed by the enquiry officer for the purpose of enquiry proceedings.

***** !!! *****

ENQUIRY REPORT OF CONSTABLE SHAKIL NO.2625

The Undersigned was deputed to conduct Enquiry of Constable Shakil No.2625 by the Worthy District Police Officer Mardan through office Letter No.437/R/D.A.P.R. Dated 10/02/2014.

BRIEF FACTS.

That Constable Shakil No.2625, while posted at Police Station Lund Khwar, deliberately absented himself from the lawful duty vide DD No.24 dated 04/01/2014 to- dated without any leave / permission of the competent authority .He is recommended for departmental action by DSP/TBI, Mardan vide his office letter No.01,dated 27/01/2014.

PROCEEDINGS.

The proceedings of the enquiry have been conducted strictly in accordance with the NWFP Police Rules 1975.

STATEMENT OF CONSTABLE SHAKIL NO.2625

To finalize the enquiry in hand, several messages were conveyed to Moharrar PS Choorra and Reader Traffic as well as the alleged constable was contacted so many times through his mobile to attend office of the enquiry officer but so far he didn't appear before the undersigned.

FINDINGS.

The alleged constable was found guilty because neither he attends office of the undersigned nor taking proper interest in his official duties. According to the report of Traffic Reader the alleged constable is still absent. Report attached.

RECOMMENDATION.

Keeping in view finding of the enquiry, the undersigned recommends that the alleged constable may be given major punishment.

No 471/WG
DL 10-7-14

Deputy Superintendent Of Police
City Circle Mardan.

R
Summon The said Constable
On
10.7

On light of the above enquiry, he is indisciplined and habitual absentee. He is not taking interest in his service. So he is dismissed from service.
On
10.7

3
9

1

OFFICE OF THE MEDICAL SUPERINTENDENT
DISTRICT HEADQUARTERS HOSPITAL MARDAN
Ph # 0937-9230145 Fax # 9230226
msdhq09379230145@gmail.com

No. 735 /MS/PA Dated Mardan the 28 /01/2016


To:

The Deputy Inspector General of Police,
Mardan Region-I, Mardan.

Subject:
Memo

VERIFICATION.

Reference your letter No.803/ES dated 26th January, 2016, on the subject cited above and to state that requisite medical prescription / documents in respect of Ex-Constable Muhammad Shakeel No.2625 of Mardan District is totally fake and bogus is returned herewith in original for further necessary action as desired please.



Medical Superintendent,
D.H.Q Hospital, Mardan.

Attested

mm
insp/legal
LEGAL
Mardan

ORDER

Constable Shakkeel No. 2625, while posted at Police Lines has committed the following acts, which is gross misconduct on his part as defined in Rules 02 (iii) of Police Rules 1975.

Brief facts are that you Constable Shakeel No. 2625, has posted at Police Station Chooria Mardan has deliberately absented yourself from his lawful duty without prior permission or leave vide DD No. 24 dated 04.01.2014 till date.

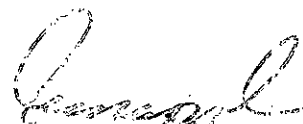
In this connection, Constable Shakeel No. 2625, was charge sheeted vide this office No. 437/R, date 10.02.2014 and also proceeded him against departmentally through inquiry officer Mr. Syed Muhammad Bilal ASP/City Mardan, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsement No. 471/City, dated 10.07.2014 in which the allegations have been established against him.

The undersigned agreed with the findings of inquiry officer and the alleged Constable Shakkeel No. 2625, is hereby dismissed from service with the absence period counted as leave without pay, in exercise of the power vested in me under the above quoted rules.

Order announced

O.E No. 2080

Dated 15/10/2014


(Gul Afzal) (Signature)
District Police Officer,
Mardan.

No. 10359-65 dated Mardan the 15/10/2014

Copy for information and necessary action to:-

1. The S.P Operations, Mardan.
2. The DSP/HQrs Mardan.
3. The Pay Officer (DPO) Mardan.
4. The E.C (DPO) Mardan.
5. The OASI (DPO) Mardan.


ORDER.

This order will dispose-off the appeal preferred by **Ex-Constable Shakeel No. 2625** of Mardan District Police against the order of District Police Officer, Mardan wherein he was dismissed from service vide District Police Officer, Mardan OB No. 2080 dated 13.10.2014

Brief facts of the case are that he while posted at Police Station Chooria Mardan , deliberately absented himself from the lawful duty vide daily diary No. 24 dated 04.01.2014 to the date of dismissal. In this connection he was charge sheeted and proceeded him against departmentally through the then Assistant Superintendent of Police City, Mardan, the appellant was summoned/informed through concerned Police Station to attend office of Enquiry Officer but he neither appeared before the Enquiry Officer nor sent any application etc by mentioning therein that he is unable to attend the office of enquiry officer due to some reason. He was fully provided opportunity of defence but he did not avail that opportunity and avoided to appear before the enquiry Officer, who after fulfilling necessary process, submitted his findings to District Police Officer, Mardan and the allegation was established against him, therefore he was dismissed from service.

I have perused the record and also heard the appellant in Orderly Room held in this office on **19.11.2014**, but he failed to justify his absence and could not produce any cogent reason about his absence period. Therefore, I **MUHAMMAD SAEED** Deputy Inspector General of Police, Mardan Region-I, Mardan in exercise of the powers conferred upon me reject the appeal and do not interfere in the order passed by the competent authority, thus the appeal is filed.

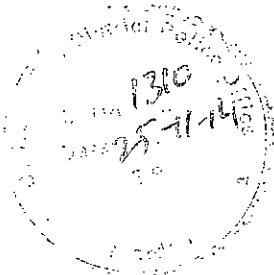
ORDER ANNOUNCED.



(**MUHAMMAD SAEED**)PSP
Deputy Inspector General of Police,
Mardan Region-I, Mardan.

No. 7673 /ES, Dated Mardan the 24-11- /2014.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 943/LB dated 14.11.2014. His service record is returned herewith.

(*****)



OBJECTION
FOR

DPO's Office

**BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.**

Service Appeal No. 233/2016.

Muhammad Shakeel Ex-Constable No. 2625.....Appellant.

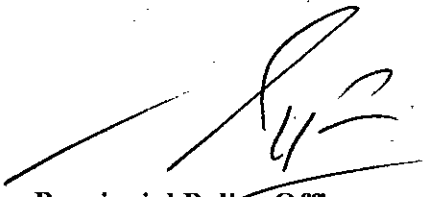
VERSUS.


District Police Officer, Mardan


& others.....Respondents.

COUNTER AFFIDAVIT.

We, the respondents do hereby declare and solemnly affirm on oath that the contents of the Para-wise comments in the service appeal cited as subject are true and correct to the best of our knowledge and belief and nothing has been concealed from this Honourable Tribunal.


**Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 01)**


**Dy: Inspector General of Police,
Mardan Region-I, Mardan.
(Respondent No. 02)**


**District Police Officer,
Mardan.
(Respondent No. 03)**

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.

Service Appeal No. 233/2016.

Muhammad Shakeel Ex-Constable No. 2625.....Appellant.

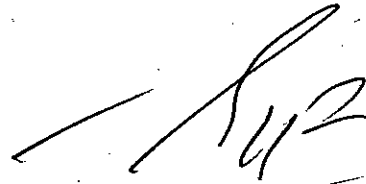
VERSUS.

District Police Officer, Mardan

& others.....Respondents.

AUTHORITY LETTER.

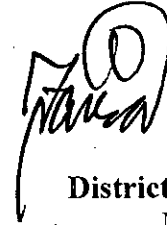
Mr. Muhammad Shafiq Inspector Legal, (Police) Mardan is hereby authorized to appear before the Honourable Service Tribunal, Khyber Pakhtunkhwa, Peshawar in the above captioned service appeal on behalf of the respondents. He is also authorized to submit all required documents and replies etc. as representative of the respondents through the Addl: Advocate General/Govt. Pleader, Khyber Pakhtunkhwa Service Tribunal, Peshawar.



Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 01)



Dy: Inspector General of Police,
Mardan Region-I, Mardan.
(Respondent No. 02)



District Police Officer,
Mardan.

(Respondent No. 03)

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 233/2016

Muhammad shakeel

VS

Police Deptt:

.....

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

- (1-7) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

1. Incorrect. While para 1 of the appeal is correct.
2. Incorrect. Mere annexing DSB verification letter cannot make the medical prescription fake and bogus as the medical Admission Card/prescription of the appellant contain specific admission No.& Date which should require specific verification to contradict the same.
3. Incorrect. The appellant has severe problem of Sciatica, and in emergency he rushed doctors, therefore he was unable to inform to high ups about his illness.
4. Incorrect. the appellant was not given opportunity of his defence and one sided inquiry was conducted against him without adopting proper procedure of inquiry by serving charge sheet statement of allegation, show cause notice etc. which is mandatory under the law.
5. First portion of Para 5 is correct hence no comments while the rest of para is incorrect as the appellant was compel to remain

absent from his duty due to his illness but his departmental appeal as well as revision were rejected for no good ground.

6. Incorrect. The appellant has good cause of action and comes to this Honourable Tribunal on valid ground.

GROUND:

- A) Incorrect. The impugned orders dated 16.02.2016 and 24.11.2014 are against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.
- B) Incorrect. The appellant has not been treated according to law and rules as he was condemned unheard.
- C) Incorrect. One sided inquiry was conducted against the appellant without providing chance of defence to the appellant which is the violation of law and rules.
- D) Incorrect. While para D of the appeal is correct.
- E) Incorrect. No proper procedure was adopted before passing the order of dismissal from service which is liable to be set aside.
- F) In correct. As explained in the proceeding para.
- G) Incorrect. The absence period of the appellant has already condoned by the department by treating his leave period as leave without pay, therefore there remain no ground to penalize the appellant for same cause.
- H) Incorrect. While para H of the appeal is correct.
- I) Incorrect. While para I of the appeal is correct.
- J) Incorrect. While para J of the appeal is correct.
- K) Legal.

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

APPELLANT

Through:



(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT,
&

(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.



DEPONENT

ATTESTED



04-11-2016