

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1123/2019

Date of Institution: 04.09.2019

Date of Decision: 03.12.2020

Aqil Shah Ex-Constable No. 653 District Police Buner.

... (Appellant)

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and 2 others

... (Respondents)

Mr. Naqeeb Ullah Khalil

Advocate

... For Appellant

Mrs. Zara Tajwar

Deputy District Attorney

... For Respondents

Mrs. Rozina Rehman

... **Member (J)**

Mr. Atiq Ur Rehman Wazir

... **Member (E)**



JUDGMENT: -.

Mr. ATIQ UR REHMAN WAZIR:- Brief facts of the case are that the appellant

Mr. Aqil Shah Ex-Constable was earlier dismissed from service on 17-01-2009,

against which the appellant filed Service Appeal No. 240/2018 before this

Tribunal, which was accepted vide judgment dated 29-08-2018; that respondent

filed CPLA before the august Supreme Court against judgment of this Tribunal,

but did not implement the judgment, hence the appellant filed execution petition

No. 405/2018 and on the directions of this Court, the appellant was provisionally

re-instated into service for the purpose of de novo Inquiry on 12-04-2019 and as

a result of the inquiry, the appellant was again dismissed from service on 30-05-

2019. The appellant preferred departmental appeal on 13-06-2019, which was rejected on 09-08-2019, hence the instant Service Appeal with prayers that respondents may be directed to re-instate the appellant in service w.e.f 29-08-2018 with all back benefits as the appellant was re-instated into service by this Tribunal vide judgment dated 29-08-2018 and de novo inquiry was optional.

2. Written reply/comments were submitted by respondents.

3. Arguments heard and record perused.

4. Learned counsel for the appellant contended that the appellant was re-instated into service by this Tribunal vide Judgment dated 29-08-2018. Learned counsel for the appellant contended that respondent filed CPLA before the august Supreme Court against the judgment, which is still pending, but inspite of clear decision of the court, respondent No. 3 did not honor judgment of this Tribunal even after lapse of three months, which compelled the appellant to file Execution Petition No. 405/2018 for compliance of judgment. Learned counsel for the appellant further contended that on the directions of this Tribunal, the appellant was provisionally re-instated into service for the purpose of de novo inquiry on 12-04-2019. Learned counsel for the appellant contended that respondents were required to re-instate him as per judgment and de novo inquiry was an option, but the respondents again dismissed him from service because of de novo inquiry. The appellant preferred departmental appeal on 13-06-2019, which was also rejected, hence the instant service appeal on the grounds that the impugned dismissal order dated 30-05-2019 is in violation of the directions of this Tribunal and also against the law and rules. He submitted that the de novo inquiry conducted was also against law and rules, as proper procedure was not adopted and inquiry officer did not record his statement, and

final show cause notice was also not served upon the appellant. The learned counsel prayed that the impugned order dated 30-05-2019 may be set aside and the appellant may be re-instated in to service w.e.f. 29-08-2018 with all back benefits.

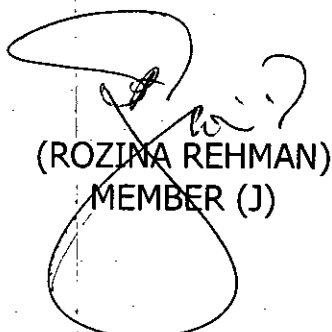
5. The learned Deputy District Attorney explained that the appellant was enlisted as constable on 29-01-2008. Earlier he was dismissed from service under Section 5(4) of Removal from Service Ordinance (RSO) 2000 on the charges of absence from training in PTC Hangu, as he was having less than one year of service and was in probation period. Learned Deputy District Attorney contended that this Tribunal granted him relief on 29-08-2018 with directions to the respondents to re-instate him in to service and the respondents were at liberty to conduct de novo inquiry against the appellant. In compliance of the judgment, the appellant was re-instated into service and de novo inquiry was conducted against him. The learned Deputy District Attorney argued that since the appellant was in probation period having less than one year of service, so he was required to be proceeded against under rule 12.21 of Police Rules 1934, but keeping in view the orders of this Tribunal, he was properly proceeded against under Police Rules 1975. Inquiry officer was appointed, who conducted proper inquiry and served the appellant with show cause notice and statement of allegation as well as afforded opportunity of personal hearing, but the appellant could not defend his case, hence the inquiry officer recommended his dismissal from service and he was dismissed from service according to law. The learned Deputy District Attorney further added that there is no concept of final show cause notice in Police Rules, 1975 and the appellant was provided every opportunity of defense but his case being devoid of merit was dismissed for the

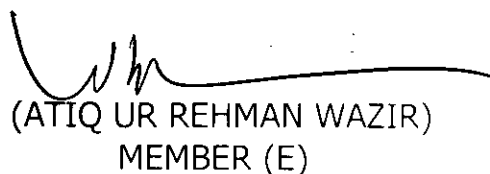
second time. The learned Deputy District Attorney prayed that case of the appellant without any substance may be dismissed with costs.

6. We have heard learned counsel for the parties and perused the record. Record reveals that the appellant twice failed to prove his willful absence otherwise. Stance of the appellant to the effect that his absence was due to illness of her sister was not supported by any evidence in shape of medical prescriptions. It was also noted that the petitioner was in probation period having less than one year of service, when he was dismissed earlier in 2009 and was rightly proceeded against under Section 5(4) of RSO 2000 and under the rule *ibid*, there was no need of holding an inquiry. Again as per judgment of this Tribunal, the respondents re-instated him in service and also exercised the option of *de novo* inquiry as per judgment and he was proceeded against under Police Rules 1975 after fulfilling all the required formalities and providing every opportunity of defense, but he failed to defend his case, thus was dismissed again.

7. In view of the situation, the case being devoid of merit is dismissed. No orders as to costs. File be consigned to record room.

ANNOUNCED
03.12.2020


(ROZINA REHMAN)
MEMBER (J)


(ATIQ UR REHMAN WAZIR)
MEMBER (E)

03.12.2020

Learned counsel for the appellant present.

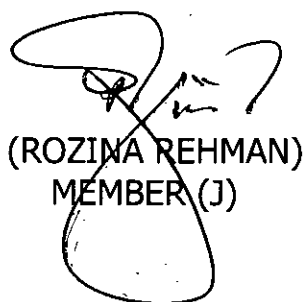
Zara Tajwar, learned Deputy District Attorney for respondents present.

Vide our detailed judgment of today of this Tribunal, placed on file, the present service appeal is dismissed. No order as to costs.

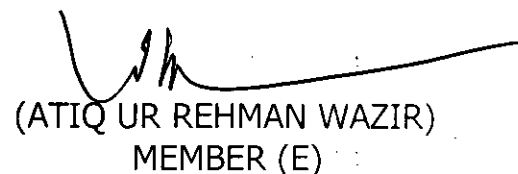
File be consigned to the record room.

ANNOUNCED

03.12.2020



(ROZINA REHMAN)
MEMBER (J)



(ATIQ UR REHMAN WAZIR)
MEMBER (E)

09.10.2020

Appellant alongwith counsel present.

Zara Tajwar, learned Deputy District Attorney alongwith Nowsherwan Inspector for respondents present.

Arguments on behalf of appellant heard.

Learned Deputy District Attorney requests for adjournment. Adjourned. To come up for remaining arguments and order on 09.11.2020 before D.B.



(Atiq ur Rehman Wazir)
Member (E)



(Rozina Rehman)
Member (J)

09.11.2020

Appellant in person present.

Zara Tajwar learned Deputy District Attorney for respondents present.

Learned Member (Judicial) is on leave, therefore, process could not be conducted in the instant case. Adjourned. To come up for remaining arguments and order, on 03.12.2020 before D.B.



(Atiq ur Rehman)
Member (E)

12.06.2020

Appellant with counsel present. Mr. Kabir Ullah Khattak learned Additional Advocate General present. Learned counsel for the appellant submitted rejoinder which is placed on file and seeks adjournment. Adjourned. To come up for arguments on 21.08.2020 before D.B.



(Rozina Rehman)
Member



(M. Amir Khan Kundi)
Member

21.08.2020

Due to summer vacation case to come up for the same on 18.09.2020 before D.B.



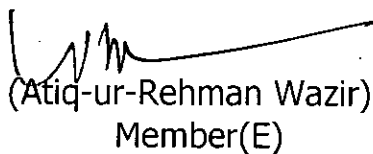
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18.09.2020

Counsel for appellant present.

Mr. Kabirullah Khattak learned Additional Advocate General alongwith Nowsherwan S.I for respondents present.

Learned Additional Advocate General requested for adjournment. Adjourned. To come up for arguments on 09.10.2020 before D.B.



(Atiq-ur-Rehman Wazir)
Member(E)



(Rozina Rehman)
Member (J)

10.01.2020

Appellant present in person. Addl. AG alongwith Syed Daud Shah, S.I for the respondents present.

Representative of respondents seeks further time to furnish reply/comments. Adjourned to 30.01.2020 on which date the requisite reply/comments shall positively be furnished.



Chairman

~~30.01.2020~~

~~Appellant in person present. Written reply not submitted. Syed Daud Shah S.I. representative of respondent Department absent. Respondents as well as absent representative be put to notice for reply. Adjourn. To come up for written reply/comments on 30.01.2020 before S.I.B.~~

30.01.2020

Appellant in person present. Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Nowsherawan S.I (Legal) present and submitted written reply/comments. Adjourn. To come up for rejoinder if any and arguments on 02.04.2020 before D.B.



Member

2.4.2020

Due to public holiday on account of (COVID-19) the case is adjourned. To come up for the same on 12.6.2020.



Member

17.10.2019

Counsel for the appellant present.

Contends that in pursuance to the judgment in Appeal No. 240/2018 this Tribunal required the respondents to conduct denovo enquiry against the appellant strictly in accordance with rules. On the other hand, the so-called denovo departmental proceedings were taken in haste. In the charge sheet dated 10.05.2019 the appellant was required to submit his written reply within two days to the enquiry officer while the relevant rules provided a minimum period of seven days for the purpose. It is further contended that the impugned order was apparently issued in pursuance to order of this Tribunal passed on 29.05.2019 during the execution proceedings in order to defeat the directions contained in the judgment in Appeal No. 240/2018.

In view of arguments of learned counsel and the available record, instant appeal is admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to the respondents for submission of written reply/comments on 16.12.2019 before S.B.


Appellant Deposited
Security & Process Fee


Chairman

16.12.2019

Counsel for the appellant and Addl. AG alongwith Noshawan, Inspector for the respondents present.

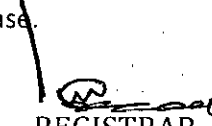

Representative of the respondents requests for time to furnish the requisite reply/comments. Adjourned to 10.01.2020 on which date reply/comments shall positively be submitted.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No.- _____ 1123/2019 _____

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	04/09/2019	<p>The appeal of Mr. Aqil Shah presented today by Mr. Hamad Hussain Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR 4/9/19</p>
2-	05/09/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>17/10/19</u></p> <p> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 1123 / .../2019

Aqil shah


Appellant

VERSUS

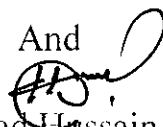
The Provincial Police Officer Khyber Pakhtunkhwa, Peshawar and others

INDEX

S.NO	Description of Documents	Annexure	Page
1	Memo of appeal		1-5
2	Copy of judgment dated 29/08/2018	A	6-9
3	copy of provisionally reinstatement order dated 12/04/19	B	10
4	Copy of order of honourable service tribunal 29/5/19 in E.P No. 205/19	C	11-12
5	copy of impugned order dated 30/05/2019	D	13
6	Copy of Departmental Appeal dated 13/06/19 and rejection order dated 09/08/19	E & F	14-17
7	Copy of charge sheet and statement of allegations	G	18-27
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Naqeeb Ullah Khalil

And


Hamad Hussain
Advocates Peshawar

Mobile no. 03120952763

dated: 04.9.19

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO.1123/...../2019

Aqil shah Ex-Constable No. 653 District Police Buner Appellant

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1727

Dated 04-9-2019

VERSUS

1. The Provincial Police Officer Khyber Pakhtunkhwa, Peshawar
2. The Regional Police Officer Malakand Division Swat.
3. The District Police Officer District Bunir. Respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED / DISMISSAL ORDER BEARING 3656-58/ENQ DATE 30/05/2019 ISSUED BY DISTRICT POLICE OFFICER DISTRICT BUNIR.

PRAYERS.

MOST HUMBLY PRAYED THAT ON ACCEPTANCE THE INSTANT SERVICE APPEAL THE RESPONDENTS DEPARTMENT MAY VERY KINDLY BE DIRECTED TO REINSTATE THE APPELLANT IN SERVICE W. E. F 29/08/2018 WITH ALL BACK BENEFITS AS THE APPELLANT WAS REINSTATED IN TO SERVICE BY THIS HONOURABLE TRIBUNAL VIDE JUDGMENT DATED 29/8/2018 BUT AFTER CONDUCTING OF ILLEGAL PROCEEDINGS OF DENOVO ENQUIRY THE APPELLANT WAS DISMISSED AGAIN FROM SERVICE ON 30/05/2019.

Filed to-day

Registrar
4/9/2019

Impugned dismissal order date 30/05/2019

Departmental appeal date 13/06/2019

Rejection of departmental appeal dated 09/08/2019

Filing of Service Appeal on ..04/.../09/.../2019

RESPECTFULLY SHEWETH,

“FACTS”

My humble submissions are as under.

1. That the appellant was earlier dismissed from service on 17/01/2009 against which the appellant filed Service Appeal No. 240/18 Aqil Shah vs Police etc before this Honourable Service Tribunal which was accepted vide judgment dated 29/08/2018 [**copy of judgment as Annexure –A**].
2. That after passing judgment dated 29/8/2019 by this Honourable Tribunal the respondents department filed CPLA before the august Supreme Court of Pakistan against the judgment dated 29/8/2019 of this Service Tribunal which is still pending.
3. That after elapsed of three months of the judgment dated 29/8/2018 when the appellant was not re-instated into service then the appellant filed an Execution Petition No. 405/2018 before this Honourable Service Tribunal for compliance of judgment dated 29/08/2018. On the directions of this Honourable Service Tribunal the District Police Officer Buner provisionally re-instated the appellant into service for the purpose of de-novo enquiry on 12/04/2019 [**copy of provisionally reinstatement order as Annexure –B**].
4. That during the execution petition on 29/05/2019 on the objections of the appellants counsel upon the compliance report submitted by District Police Officer Buner this Honourable Service Tribunal directed the respondents “that in the order it is provided that the petitioner is provisionally reinstated for the purpose of de-novo enquiry while, on the other hand in the judgment under implementation this Tribunal had set aside the impugned order upon acceptance of the appeal and the respondents were allowed option to conduct de-novo enquiry strictly in accordance with rules. In view of the above order dated 12/4/2019 does not appear to be in line with judgment under implementation, therefore,

the representative of the department is required to produce fresh implementation report / order positively on next date of hearing".
Adjourned to 04/07/2019 [copy of order dated 29/05/2019 of the Honourable Tribunal as Annexure –C].

5. That the District Police Officer Buner/ Respondent No. 3 dismissed the appellant from service vide order bearing No. 3656-58/Enq dated 30/05/2019 [copy of impugned order dated 30/05/19 as Annexure –D].
6. That the appellant submitted departmental appeal before the Regional Police Officer Malakand Division on 13/06/2019 which was filed/rejected on 09/08/19 [copy of departmental appeal and rejection order dated as Annexure – E & F].
7. Hence this service appeal, inter alia on the following grounds.

GROUNDS

- A. That the impugned dismissal order dated 30/05/2019 is against the law, rules and norms of natural justices hence liable to be set aside.
- B. That the impugned /dismissal order dated 30/05/2019 is violation of the directions of Honourable Khyber Pakhtunkhwa Service Tribunal and also against the law and rules because the Execution Petition No. 405/2018 was pending before this Honourable Service Tribunal for the proper compliance of judgment in service Appeal No. 240/18 dated 29/08/2018 and during pendency the respondents is bound to show full compliance with this Honourable Tribunal and the respondents department could not passed any adverse order against the appellant.
- C. That this Honourable Tribunal vide judgment dated 29/8/18 had set aside the impugned order and was directed that the respondents however at liberty to conduct de-novo inquiry in accordance with rules which is discretion to the respondents if deem to conduct de-novo inquiry. But

the respondents seeks it proper directions of the Honourable Tribunal for conducting of de-novo inquiry because the case was not remanded for the purpose of de-novo inquiry but the impugned order was set aside and the appeal was accepted and the de-novo inquiry was an option not was proper directions.

- D. That the appellant served charge sheet and statement of allegations by the enquiry officer instead of the competent authority i.e District Police Officer Buner which is against the law and rules [**copy of charge sheet as Annexure – G**].
- E. That proceedings of denovo inquiry was also not fulfilled in accordance with law, rules and rule 6 [1] [b] of the police rules 1975. Because charge sheet and statement of allegations was issued to the appellant by the inquiry officer instead of competent authority i.e. District Police Officer which is also against the rules 6 [1] [b] of the police rules 1975.
- F. That the enquiry officer not fulfilled enquiry proceedings in accordance with law and rules and completed the enquiry process within two days which is against the law/ rules, there is mandatory of 7 days for submission of written reply of the charge sheet and statement of allegations but the appellant was not provided 7 days time for submission of written reply of the charge sheet and statement of allegations.
- G. That the enquiry officer has not been recorded statement of the appellant by itself in accordance with law but in enquiry proceedings, the reader of the SP investigation / Enquiry Officer recorded the statement of the appellant which is against the law and rules.
- H. That the appellant was not served final show cause notice by the competent authority nor given opportunity of personal hearing before the competent authority i.e. District Police Officer but show cause notice was issued by SP investigation / Enquiry Officer, who is not competent authority thus the impugned order was passed in harsh manner but not in

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accordance with law and rules, hence the impugned order dated 30/05/2019 may kindly be set aside.

It is, therefore, humbly prayed that on acceptance this appeal the impugned order bearing No. 3656-58/Enq dated 30/05/2019 may be set aside and appellant may kindly be re-instated into service with all back benefits as the appellant was earlier reinstated in service by this Honourable Tribunal vide judgment dated 29/8/2019 but after conducting of illegal proceedings of denovo enquiry the appellant was dismissed again from service vide impugned order bearing No. 3656-58/Enq dated 30/05/2019 and the impugned order passed by the District Police Officer Buner may also be declared unlawful.

With such other relief as may be deemed proper and just in circumstance of the case may graciously be allowed.

Appellant

Constable Aqil Shah
No. 653 District Police Buner

Through

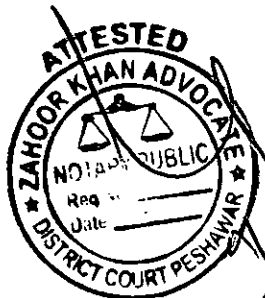
Naqeeb Ullah Khalil

And

Hamad Hussain
Advocates Peshawar
Mobile no. 03120952763

AFFIDAVIT

I, Aqil shah r/o District Bunir do hereby solemnly affirm and declare on oath that the contents of the instant service appeal are true and correct to the best of my knowledge and belief and nothing material has been concealed from this Hon'ble ~~Court~~ Tribunal.



4/9/19

DEPONENT

BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR

6

In Re S.A 240 /2018

Khyber Pakhtunkhwa
Services Tribunal

Page No. 197

Adil Shah Ex-Constable No. 653 R/o District Bunir.

Date 13-2-2018

----- (Appellant)

VERSUS

1. Provincial Police Officer Khyber Pakhtunkhwa Peshawar.
2. District Police Officer Bunir.
3. Deputy Inspector General of Police, Malakand.
4. IGP, Khyber Pakhtunkhwa Peshawar.

----- (Respondents).

APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT
1974 KHYBER PAKHTUNKHWA AGAINST THE
ORDER DATED 17-01-2009 WHERE BY THE
APPELLANT WAS DISMISSED FROM SERVICE
AND DEPARTMENTAL APPEAL DATE, 22-01-2018
HAS BEEN REJECTED ON NO GOOD GROUNDS

Prayer:-

On acceptance of this appeal the impugned
order dated 17-01-2009 may kindly be set
aside and appellant may kindly be re-
instated into service with all back benefits
of service and any other relief may kindly
be granted deemed fit in the circumstances

ATTESTED

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 240/2018

Date of Institution ... 13.02.2018

Date of Decision ... 29.08.2018

(5)

Aqil Shah Ex-Constable No. 653 R/o District Buner

(Appellant)

VERSUS

1. Provincial Police Officer Khyber Pakhtunkhwa Peshawar and three others.
(Respondents)

MISS. ROEEDA KHAN,
Advocate

--- For appellant.

MR. MUHAMAMD RIAZ PAINDAKHEL,
Assistant Advocate General

--- For respondents.

MR. AHMAD HASSAN,
MR. MUHAMMAD AMIN KHAN KUNDI

... MEMBER(Executive)
... MEMBER(Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER. Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellant joined the Police Department as Constable in 2007. Disciplinary proceedings were initiated and upon culmination major penalty of dismissal from service was imposed on him vide impugned order dated 17.01.2009. He filed an undated departmental appeal which was rejected on 25.01.2018. Thereafter Review Petition was filed on 22.01.2018 and rejected on 25.01.2018, hence, the instant service appeal.

ARGUMENTS

3. Learned counsel for the appellant argued that due to some domestic problems he was unable to perform duty and dismissed from service vide

ATTESTED
Peshawar

ATTESTED


impugned order dated 17.01.2009. Proper inquiry was not conducted. It is established from the impugned order that even ~~show-cause~~ notice was not served on the appellant before imposing the major penalty. According to the directions of the Supreme Court of Pakistan in numerous cases, in case major penalty is to be imposed than regular inquiry should invariably be conducted in the manner prescribed in the rules. Penalty awarded was not ^{only} very harsh but given ~~with~~ retrospective effect, so the impugned order was void ab-initio.

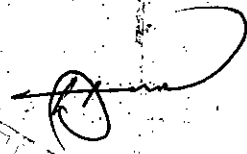
4. On the other hand learned Assistant Advocate General argued that before imposing of major penalty of dismissal from service upon the appellant all codal formalities were fulfilled and the appellant was rightly dismissed from service.

CONCLUSION

5. Major penalty of dismissal from service was awarded to the appellant vide order dated 17.01.2009. The record further revealed that no notice or even show-cause notice was served on the appellant before imposition of ~~above~~ penalty. The appellant was dismissed from service without conducted proper disciplinary proceedings. Respondents in the impugned order had not mentioned reasons why inquiry which was a mandatory provision of law not conducted? Action taken by the respondents goes against the procedure given in Police Rules, 1975 but also violation of directions of the Supreme Court of Pakistan given in various judgments that in case major penalty is to be imposed against a civil servant regular inquiry should be conducted. It can be safely said that action taken by the respondents was sheer violation of Article-4 & 10-A of the Constitution of Islamic Republic of Pakistan. Opportunity of fair trial was ~~denied~~ to him and condemned unheard. The impugned order is illegal, void ab-initio and unlawful.)H

ATTESTED


 Keyhole
 Service Tribunal
 Peshawar


 ATTESTED

6. As a sequel to the above, the appeal is accepted and the impugned order is set-aside. The respondents are at liberty to conduct de-novo inquiry strictly in accordance with rules. The period of absence as well as intervening period is treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

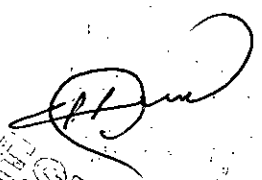
Announced
29.08.2018

Self- Alimul Haq, Member

Self- M. Amin Khan Kandi Member

Certified to be true copy
K. S. ...
Secretary

Date of Pre...	29.08.18
Number of ...	1600
Copying ...	10.00
Urgent ...	
Total ...	10.00
Name ...	
Date ...	05-09-18
Date of Del...	05-09-18

ATTESTED 

ORDER

In the light of the directions received vide CPO Peshawar letter No.184 dated 03/04/2019, Ex-Constable Aqil Shah is hereby provisionally re-instated for the purpose of de novo enquiry, till further orders.

O.B NO. 63

DATED: 18 04 /2019.

No. 2719-22 /Enq.

Date 18-04-2019

Copy of the above is submitted to:-

1. The Assistant Inspector General Of Police, Legal CPO Peshawar with reference to his office memo No. quoted above.
2. The Deputy Inspector General of Police, Enquiry & Inspection, CPO Peshawar for favor of information.
3. The Regional Police Officer, Malakand at Saidu Sharif Swat for favor of information.
4. All Concerned.

[Signature]
DISTRICT POLICE OFFICER,
BUNER

Attested

[Signature]
District Police Officer
Buner

[Signature]
ATTESTED

Y kindly

(11)
(17)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Execution Petition 405 2018

In

Service Appeal No 240/2018

2110

18-11-18

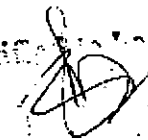
Aqil Shah Ex-Constable No 653, R/O Bunir Appellant

Versus

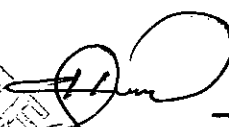
1. Provincial Police Office, Khyber Pakhtunkhwa Peshawar.
2. District police Officer, Bunir.
3. Deputy Inspector General of Police, Malankand. Respondents

**EXECUTION PETITION FOR IMPLEMENTATION OF
JUDGMENT OF THIS HONOURABLE TRIBUNAL DATED
29/08/3018 IN THE ABOVE MENTIONED APPEAL.**

RESPECTFULLY SHEWETH:-

Certified true copy

Khyber Pakhtunkhwa
Peshawar

1. That the petitioner had filed Service Appeal No 240/2018 against the impugned order dated 17/01/2009 whereby he was terminated from service.
2. That vide judgment and order of this Honourable Tribunal dated 29/08/2018 the appellant was reinstated in service. (Annexure-A).
3. That the petitioner submitted application to the respondent No 2 for reinstatement on 18/09/2018, but all in vain. (Application as Annexure- B).
4. That a period of more than 3 months elapsed but no steps have been taken by the respondents for implementation of the judgment of this Honourable Tribunal.

ATTESTED


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E.P. No. 405/2018
Amir Shah vs Govt



17.04.2019

Petitioner in person and Mr. Kabir Ullah Khan learned
Additional Advocate General alongwith Nosherawan SI present
submitted order dated 12.04.2019 and stated that the
petitioner has been reinstated for the purpose of de-novo inquiry
provisionally subject to the outcome of CPLA. Adjournment
requested. Adjourn. To come up for further proceedings on
29.05.2019 before S.B

Member

29.05.2019

Petitioner alongwith counsel and Addl. AG alongwith
Nosherawan Inspector (Legal) for the respondents present.

Learned counsel for the petitioner has submitted an
objection petition regarding the implementation report and
order passed by the District Police Officer, Buner on
12.04.2019.

In the order it is provided that the petitioner is
provisionally reinstated for the purpose of denovo enquiry
while ,on the other hand, in the judgment under
implementation this Tribunal had set aside the impugned
order upon acceptance of the appeal and the respondents
were allowed option to conduct denovo enquiry strictly in
accordance with the rules.

In view of the above order dated 12.04.2019 does
not appear to be in line with the judgment under
implementation, therefore, the representative of
respondents is required to produce fresh implementation
report/order positively on next date of hearing.

Adjourned to 04.07.2019 before S.B.

Certified to be true copy

Chairman
ATTESTED

ORDER

This order will dispose-of De-novo departmental enquiry against Ex-Constable Aqil Shah.

13

Briefs facts are that:-

Ex-Constable Aqil Shah No.653 was enlisted as recruit constable vide this office OB No.10, dated 29-01-2008 and was deputed for recruit course. He was returned to district vide Commandant PTC Hangu signal No.3345/GC, dated 15/09/2008, on account of his 28 days absence. Meanwhile, he did not report his presence in Police Lines Daggar. As a result he was dismissed from service under section (5) of sub-section (4) of the removal of Special Power Ordinance 2001 vide this office OB No.04, dated 17-01-2009. He submitted departmental appeal for re-instatement in to service but his appeal was filed vide CPO Peshawar memo No. S/471 dated 25/01/2018, being badly time barred for about 09 years. He instituted service appeal No.240/2018 before the Honorable Service Tribunal and his appeal was accepted on 29/08/2018 and the said court set-aside the impugned order and directed in the same judgment that the respondents are at liberty to conduct de-novo enquiry strictly according with rules. The period of absence as well as intervening period shall be treated as leave without pay.

Later on, the department approached the Law Department for lodging CPLA before the August Supreme Court of Pakistan against the said judgement of Service Tribunal Khyber Pakhtunkhwa Peshawar. After obtaining sanction from law department, CPLA was filed. In the meanwhile the said Ex-Constable filed execution petition No.405/018 before Service Tribunal Khyber Pakhtunkhwa Peshawar for implementation of judgement. The court was apprised about CPLA but the Honorable Chairman directed the department to produce status quo order of the August Court, otherwise implementation report. Thereafter, the department filed early hearing application through Law Department in CPLA before Supreme Court of Pakistan which was not accepted.

Therefore, Ex-Constable Aqil Shah was provisionally re-instated in light of the directions received vide CPO Peshawar memo No.1762/legal dated 01-04-2019 for the purpose of de-novo enquiry. SF Investigation Buner was appointed as Enquiry Officer. The Enquiry Officer conducted proper enquiry and submitted in its findings that the delinquent official could not defended his statement during inquiry nor produce any cogent reason for his absence. The Enquiry Officer recommended that Constable Aqil Shah No.653 is liable to be dismissed from service.

Therefore, I Muhammad Irshad District Police Officer Buner as competent Authority and in exercise of the power vested in me under Police disciplinary Rules-1975, award Constable Aqil Shah No.653, major punishment in shape of dismissal from service.

Order announced.

**DISTRICT POLICE OFFICER,
BUNER**

B No. 90, Dated: 30 /05/2019

o. 3656-58 /Enq, dated Daggar the 30 /05/2019.

Copy for information to:-

The Regional Police Officer, Malakand Region at Saidu S
favor of information, please.

The Assistant Inspector General of Police, Internal Acc
Branch Khyber Pakhtunkhwa Peshawar, with referenc
memo No.1999/CPO/IAB.

All concerned.

DISTRICT POLICE OFFICER,

14

To,

The Regional Police Officer,
Malakand Division Office at Saidu Shareef Swat.

Subject; - **DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER ISSUED BY DISTRICT POLICE OFFICER BUNER VIDE NO. 3656-58/ENQ DATED DAGGAR THE 30/05/2019, WHEREIN CONSTABLE AQIL SHAH NO 653 DISMISSED FROM SERVICE DESPITE HIS EXECUTION PETITION 405/18 AQIL SHAH VS POLICE IS PENDING BEFORE HONORABLE SERTIVE TRIBUNAL FOR IMPLEMENTATION.**

RESPECTED SIR,

ATTESTED

My humble submission are as under.

1. That the applicant was dismissed from service earlier on 17/01/2009 against which the applicant filed Service Appeal No. 240/18 Aqil Shah vs Police etc before the Honourable Khyber Pakhtunkhwa Service Tribunal which was accepted vide judgment dated 29/08/2018.
2. That in the meanwhile the respondents filed CPLA in the august Supreme Court of Pakistan against the judgment dated 29/8/2019 of Service Tribunal.
3. That after elapsed of threemonths of the judgment dated 29/8/2018 when the applicant was not re-instant into service then the applicant filed an Execution Petition No. 405/2018 before the Honourable Khyber Pakhtunkhwa Service Tribunal for compliance of judgment dated 29/08/2018. On the directions of Honourable Khyber Pakhtunkhwa Service Tribunal the District Police Officer Buner provisionally re-instated the applicant into service for the purpose of de-novo enquiry on 12/04/2019.
4. That on 29/05/2019 the applicant counsel submitted objections in the Execution Petition No. 405/2018 before the Honourable Khyber Pakhtunkhwa Service Tribunal up-on the re-instatement order dated 12/04/2019 for the proper compliance of the judgment dated 29/08/2018.
5. That on 29/05/2019 on the objections of the applicant counsel upon the compliance report submitted by District Police Officer Buner the Honourable Khyber Pakhtunkhwa Service Tribunal directed the respondents "that in the order it is provided that the petitioner is provisionally

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reinstated for the purpose of de-novo enquiry while, on the other hand in the judgment under implementation this Tribunal had set aside the impugned order upon acceptance of the appeal and the respondents were allowed option to conduct de-novo enquiry strictly in accordance with rules. In view of the above order dated 12/4/2019 does not appear to be in line with judgment under implementation, therefore, the representative of the department is required to produce fresh implementation report / order positively on next date of hearing". Adjoined to 04/07/2019 [copy of order dated 29/05/2019 of the Honourable Tribunal is attached].

6. That the District Police Officer Buner dismissed the applicant vide order bearing No. 3656-58/Enq dated 30/05/2019 and did not wait for directions of dated 29/05/2019 passed in the Execution Petition No. 405/2018 of the Honourable Khyber Pakhtunkhwa Service Tribunal for the proper compliance of judgment dated 29/08/2018 where is next date of hearing is 04/07/019 for submission of fresh compliance of report / order.
7. That the impugned dismissal order dated 30/05/2019 is violation of the directions of Honourable Khyber Pakhtunkhwa Service Tribunal and also against the law and rules because the Execution Petition No. 405/2018 is pending before the Honourable Khyber Pakhtunkhwa Service Tribunal for the proper compliance of judgment dated 29/08/2018 and during pendency the respondents is bound to show full compliance with Honourable Tribunal and the respondents department could not passed any adverse order against the appellant/ applicant .
8. That the Honorable Tribunal vide judgment dated 29/8/18 had set aside the impugned order and was directed that the respondents however at liberty to conduct de-novo inquiry in accordance with rules which is discretion of the respondents if deem to conduct de-novo inquiry. But the respondents seeks it proper directions of the Honorable Tribunal for conducting of de-novo inquiry because the case was not remanded for the purpose of de-novo inquiry but the impugned order was set aside and the appeal was accepted and the de-novo inquiry was an option not proper direction .
9. That the applicant served charge sheet and statement of allegations by the enquiry officer not by the competent authority i.e Di strict Police Officer Buner which is against the law and rules.
10. That the enquiry officer has not fulfilled enquiry in accordance with law and rules and completed the enquiry process within two days which is against the law/ rules and there is mandatory 7 days for submission of written reply of the charge sheet and statement of allegations but the applicant was not

ATTESTED

provided 7 day time for submission of written reply of the charge sheet and statement of allegations.

- 11. That the enquiry ^{of HCOT} has not been recorded statement of the applicant by itself in accordance with law but in enquiry process reader of the investigation officer recorded the statement of the applicant which is against the rules and law.
- 12. That the applicant was not served final show cause notice nor given opportunity of personal hearing before the competent authority and the impugned order was passed in harsh manner but not in accordance with law and rules.

It is, therefore, humbly submitted that on acceptance this departmental appeal the applicant may kindly be re-instated into service and the impugned order bearing No. 3656-58/Enq dated 30/05/2019 passed by the District Police Officer Buner may kindly be declared unlawful and may be cancelled/ withdrawn.

Yours obediently

Dated 13/06/2019

Constable Aqil Shah
No. 653 District Police Buner

Copy to the Provincial Police officer for information and necessary action please.

ATTESTED

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4/8



OFFICE OF THE
REGIONAL POLICE OFFICER, MALAKAND

AT SAIDU SHARIF SWAT.

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

Email: divomalakand@yahoo.com



ORDER:

This order will dispose off appeal of Ex-Constable Aqil Shah No. 653 of Buner District for reinstatement into service.

Brief facts of the case are that Ex-Constable Aqil Shah No. 653 was deputed for recruit course and was returned to District vide Commandant PTC, Hangu signal No. 3345/GC, dated 15/09/2008, on account of his 28 days absence. The appellant did not report his presence in Police Lines upon his return to the District. Hence he was dismissed from service under section (5) of subsection (4) of the removal of special power ordinance 2001 vide DPO Buner office OB No. 04 dated 17/01/2009. The appellant submitted departmental appeal for re-instatement in service but his appeal was filed vide CPO, Peshawar Memo: No. S/471, dated 25/01/2018, being badly time barred for about 9 years. He instituted service appeal No. 240/2018 before the Honorable Service Tribunal and his appeal was accepted on 29/03/2018. The court set-aside the impugned order and left the respondent at liberty to conduct De-novo enquiry. That the department has filed CPLA before the August court after obtaining sanction from Law Department. Meanwhile he filed execution petition No. 405/2018 before Service Tribunal for implementation of the judgment. Therefore, he was provisionally re-instated in light of the directions received vide CPO, Peshawar memo: No. 1762/Legal, dated 01/04/2019 for the purpose of denovo enquiry and SP Investigation Buner was appointed as Enquiry Officer. The enquiry officer recommended him for dismissal from service. Hence he was dismissed from service vide DPO Buner office OB No. 90 dated 30/05/2019.

He was called in Orderly Room on 05/08/2019 and heard him in person. The appellant could not produce any cogent reason in his defense. Therefore, his appeal for reinstatement is hereby filed.

Order announced.

[Signature]
SAEED), PSP
Regional Police Officer,
Malakand, at Saidu Sharif Swat
"Naqil"

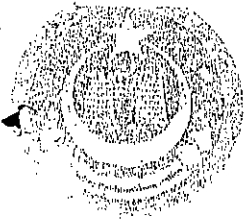
No. 8946 /E,

Dated 08/08 /2019.

Copy to District Police Officer, Buner for information and necessary action with reference to his office Memo: No. 4153/Enq, dated 01/07/2019. Service Roll and Enquiry File of the above named Constable are returned herewith for record in your office.

ANNEXED

[Signature]
DPO Buner



738
8-5-19

1

18

Phone: 091-9211947
091-9211769

Office of the Inspector General of Police
Khyber Pakhtunkhwa, Peshawar.

No. /CPO/IAB/C&E, dated Peshawar the 25/04/2019

To: The District Police Officer,
Buner

Subject: DENOVO DEPARTMENTAL ENQUIRY AGAINST
Memo: EX-CONSTABLE AQIL SHAH NO. 653

Please refer to your letter No. 2834/Enq dated 22.04.2019, on the subject cited above.

2. Denovo departmental enquiry against Ex-Constable Aqil Shah No. 653 may be conducted through Mr. Darvish Khan, SP/Investigation (District Complaint Officer) Buner and final outcome be communicated to this office, on or before 15.05.2019, before issuance of formal order, for the perusal of Worthy IGP

3. Being a court matter the proceedings shall be completed within the limitation period to avoid further legal complications.

AIG/C&E
Internal Accountability Branch
CPO, Peshawar

No: 1584-86 /E&I

Copy of above is forwarded for information to:-

1. The Regional Police Officer, Malakand
2. Mr. Darvish Khan, SP/Investigation (District Complaint Officer) Buner
3. The PSO to IGP.

[Signature]
AIG/C&E
Internal Accountability Branch
CPO, Peshawar

No complaint cell

for m/n and reports

[Signature]
SP/In Buner
07-5-2019

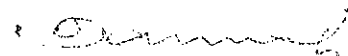
ATTACHED

GROUNDS OF ACTION

That you EX-Constable Aqeel Shah No. 653 while under training at PTC Hangu committed following misconducts:-

1. You EX-Constable Aqeel Shah No. 653 absented yourself for 28 days without any prior permission to your immediate officer, which shows your irresponsibility and misconduct on your part.

By reason of above you have been rendered yourself liable to be proceeded under Khyber Pakhtunkhwa Police Rules 1975, hence these grounds of action.


SUPERINTENDENT OF POLICE,
INVESTIGATION, BUNER
Dated: / / 2019


ATTESTED

(23)

No. 2155 / Invest.,
Dated: 10 / 5 / 2019

CHARGE SHEET

I, **Darwesh Khan** Superintendent of Police Investigation, Buner as competent authority, under Khyber Pakhtunkhwa, Police Disciplinary Rules-1975, hereby charge you **EX-Constable Aqeel Shah No.653** while posted under training recruit course at PTC Hangu as follow:-

I. You EX-Constable Aqeel Shah No. 653 was under training of recruit course at PTC Hangu, absented from the said course without leave or permission from the high-ups vide Commandant PTC Hangu signal No.3445/GC, dated 15.09.2008. Which shows your irresponsibility and misconduct on your part.

1. Which is / are gross misconduct on your part as defined in Rules 2 (iii) of Police Disciplinary Rules, 1975.
2. By reasons of the above, you appear to be guilty of misconduct and have rendered yourself liable to all or any of the penalties specified in Rule-4 of the Disciplinary Police Rules, 1975.
3. You are; therefore, require to submit your written reply within 02 days of the receipt of this Charge Sheet to the Enquiry Officer under Rule-6 Sub Rules (i) (b) of Police Disciplinary Rules 1975. / 7 days
4. Your written reply, if any, should reach the Enquiry Committee within the specified period, failing which it shall be presumed that you have no defense to put in and in that case ex-parte action shall follow against you.
5. Intimate as to whether you desire to be heard in person or not?
6. A statement of allegations is enclosed.

(Signature)
(DARWESH KHAN)

**SUPERINTENDENT OF POLICE,
INVESTIGATION, BUNER**

(Signature)
ATTESTED


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DISCIPLINARY ACTION

I, **Darwesh Khan** Superintendent of Police Investigation, Buner as competent authority, under Khyber Pakhtunkhwa, police Disciplinary Rules-1975, is of the opinion that **Ex-Constable Aqeel Shah No.653** while posted under training recruit course at PTC Hangu have rendered himself liable to be proceeded against departmentally and committed the following acts/omission as defined in Rule-2 (iii) of Police Disciplinary Rules 1975.

STATEMENT OF ALLEGATIONS

1. You EX-Constable Aqeel Shah No. 653 was under training of recruit course at PTC Hangu, absented from the said course without leave or permission from the high-ups vide Commandant PTC Hangu signal No.3445/GC, dated 15.09.2008. Which shows your irresponsibility and misconduct on your part.
2. For the purpose of scrutinizing the conduct of the said official with reference to the above allegations **Darwesh Khan (SP Investigation Buner)** has been appointed as Enquiry Officer vide PPO Khyber Pakhtunkhwa, Peshawar Memo: No.1584-86/E&1, dated 25.04.2019 under Rules 5 (4) of Police Disciplinary Rules 1975.
3. The Enquiry Officer shall conduct proceeding in accordance with provision of Police Disciplinary Rules 1975 and shall provide reasonable opportunity of defense and hearing to the accused official, record its findings and to make report within two (02) days of the receipt of this order, recommendation as to punishment or other appropriate Acton against the accused official under Rules 6 (V) of Police Disciplinary Rules 1975.
4. The accused official shall join the proceeding on the date, time and place fixed by the Enquiry Officer.


(DARWESH KHAN)
SUPERINTENDENT OF POLICE,
INVESTIGATION, BUNER

ATTESTED

25


بیان ازارت ایکس پی سی

NIC NO 151179257907

بیان ازارت ایکس پی سی کے بارے میں (1) (2) (3) (4) (5) (6) (7) (8) (9) (10) (11) (12) (13) (14) (15) (16) (17) (18) (19) (20) (21) (22) (23) (24) (25) (26) (27) (28) (29) (30) (31) (32) (33) (34) (35) (36) (37) (38) (39) (40) (41) (42) (43) (44) (45) (46) (47) (48) (49) (50) (51) (52) (53) (54) (55) (56) (57) (58) (59) (60) (61) (62) (63) (64) (65) (66) (67) (68) (69) (70) (71) (72) (73) (74) (75) (76) (77) (78) (79) (80) (81) (82) (83) (84) (85) (86) (87) (88) (89) (90) (91) (92) (93) (94) (95) (96) (97) (98) (99) (100)

APPROVED

Attested
SP 11/11/13



یہ بیان ایکس پی سی کے بارے میں ہے

XXX: کیا ایکس پی سی کے بارے میں بیان کیا گیا ہے؟
 آپ نے کیا جواب دیا ہے؟
 جواب: ہاں، ایکس پی سی کے بارے میں بیان کیا گیا ہے۔
 XXX: کیا ایکس پی سی کے بارے میں بیان کیا گیا ہے؟
 آپ نے کیا جواب دیا ہے؟

بہال ازالہ ایس کنٹریل عقیل شاہ

NIC-NO-15101-7825780-7

بیان یہاں کہ میں محمد لوہا ~~میں~~ ^{بہال} میں سال 2008 میں مورخہ 8/1 کو بحیثیت کنٹریل لبر (ہو) اور ریویوٹ کورس ایچ PTC دفترو لکھنؤ آیا گیا تھا۔ کہ تقریباً 8 ماہ کے بعد دوران ٹرننگ نذریم نون کے اطلاع ملی تھی کہ لکھنؤ میں جمعی بنی سندھ بھاری ہے۔ اطلاع کے بعد تقریباً 2 ماہوں کے فاصلے پر جمعی لکھنؤ اور ان بال کو پیش ہوا تھا۔ لیکن جمعی نہ مل سکی تھی۔ بعد میں سندھ ماہی کے سرینے والے تعطیل پر لکھنؤ آیا تو جمعی بنی شہر سندھ لکھنؤ سے مراد ان میں ایک لکھنؤ ڈاکٹر کسانو ڈاکٹر علاج تھی۔ میں فوراً سترداری کے خاطر مردان ہسپتال جا کر بین کے ساتھ رہا، چونکہ میری عدویہ لکھنؤ میں کوئی دوسرا نارسینہ فرد موجود نہیں تھا، جب آکر جبوری تعطیل پہنچ گیا اور اس وقت تک نہ جاسکا اور اس دوران 2 دن گزارے گئے۔ چونکہ دفترو میں ٹرننگ کا دورا سندھ ختم ہو کر دوسرا سا تھا ٹرننگ والی اس آفیس میں نے اپنی منی منلی دفتر سے معلومات کی تو بیتہ جلد نہ میں حکیمے سے منظر حاضر کی وجہ سے بہر خاصیت ہو چکا ہوں۔ البتہ اس سلسلے میں جمعی کوئی لکھنؤ دفتر سندھ سے موصول نہیں ہوئی تھی۔

یہی میرا بیان ہے جو کہ درست ہے۔

ATTESTED

XXXXX کیا جمعی ختم ہونے پر والی نہ جانے کی اطلاع

آپ نے کسی کو دی تھی

جواب نہ جی ہاں اپنے دوستوں ساتھیوں کو دیا تھا۔
XXXXX کیا آپ کو آپ کے منظر حاضر کے متعلق ایسی سے کسی اطلاع دی تھی

جواب نہ

29

Phone: 0930-512000
Fax: 0930-513000
Email: sspinvestigationbuner@yahoo.com

From: - **The Superintendent of Police,
Investigation, Buner**

To: **The District Police Officer,
Buner**

No. 2167 /Enq, dated Daggar the 14 / 05 / 2019.

Subject: - **FINDING OF DENOVO DEPARTMENTAL ENQUIRY AGAINST
EX-CONSTABLE AQIL SHAH NO.653.**

Memo:

Please refer to CPO KPK, Peshawar Memo: No.1584-86/E&I.
dated 25.04.2019.

In this behalf a proper Departmental Denovo Enquiry
conducted by the undersigned against Ex-Constable Aqil Shah No.653 with
issuing proper charge sheet/summery of allegations against the Ex-Constable Aqil
Shah No.653 vide this office No.2155/Enq, dated 10.05.2019.

BRIEF FACTS: of the case is that, the Ex-Constable Aqil Shah No.653 was
enlisted as recruit constable vide this office OB: No.10, dated 29.01.2008 and also
he was deputed for recruit course. During the recruit course he was returned to
the district as unqualified on account of (28 Days absence) vide Commandant PTC
Hangu signal No.3445/GC, dated 15.09.2008. The Ex-Constable concerned was
required to submit his arrival back for duty to Police Line Daggar, but he failed
which is gross misconduct on his part. During the course of Denovo Departmental
Enquiry statement of Ex-Constable Aqil Shah no.653 was got recorded, wherein
he disclosed that during the recess he came to his home, his sister was under
treatment in a private hospital due to her look after he did not returned to PTC
Hangu without informing his department. But he failed to produce any medical
documents regarding the illness/treatment of his sister in the support of his
statement.

Therefore he was dismissed from service under section (5) of
sub section (4) of the removal of (special power) amendment ordinance 2001 vide
DPO Buner OB: No.04, dated 17.01.2009 after expiry of more period of absence
132 days + 28 days previous period total 160 days.

In view of the above, it is suggested that the Ex-Constable Aqil
Shah No.653 could not be re-instated in service at this stage, therefore the penalty
of dismissal from service would be uphold.

Submitted, please.

(Signature)
**SUPERINTENDENT OF POLICE,
INVESTIGATION, BUNER**
ATTENDED


OFFICE OF THE SUPERINTENDENT OF POLICE INVESTIGATION BUNER

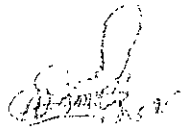
SHOW CAUSE NOTICE

(Under Rule 5 (3) KPK Police Rule 1975)

26
NO- 8145/Comm. Cell
8-5-2019

1. That you EX-Constable Aqeel Shah No. 653 while under training at PTC Hangu have rendered yourself liable to be proceeded under Rule 5(3) of the Khyber Pakhtunkhwa Police Rules 1975 for following misconduct;
 1. You EX-Constable Aqeel Shah No. 653 absented yourself for 28 days without any prior permission to your immediate officer, which shows your irresponsibility and misconduct on your part.
2. That by reason of above, as sufficient material is placed before the undersigned, therefore it is decided to proceed against you in general Police proceeding without aid of enquiry officer;
3. That the misconduct on your part is prejudicial to good order of discipline in the Police force,
4. That your retention in the police force will amount to encourage in efficient and unbecoming of good Police Officers;
5. That by taking cognizance of the matter under enquiry, the undersigned as competent authority under the said rules, proposes stern action against you by awarding one or more of the kind punishments as provided in the rules.
6. You are, therefore, called upon to show cause as to why you should not be dealt strictly in accordance with the Khyber Pakhtunkhwa Police Rules, 1975 for the misconduct referred to above.
7. You should submit reply to this show cause notice within 02 days of the receipt of the notice failing which an ex parte action shall be taken against you.
8. You are further directed to inform the undersigned that you wish to be heard in person or not.
9. Grounds of action are also enclosed with this notice.


SUPERINTENDENT OF POLICE
INVESTIGATION BUNER
Dated: 08/05/2019

Received by 

Dated: 0 / /2019.


ATTESTED

صباح عالی

حوالہ مستولہ سہو کا نام پر 2145 عالمہ جناب SP صاحب انوسس کیشن
9-5-18

یونٹر عہدہ میں درخواست ہونے کے بعد میں عہدہ ایسا یونٹر میں سال 2008 کو لکھی ہوئی
 لکھنؤ ریٹائرمنٹ کورس میں آئی نقدی چھوٹا ہوا۔ دوران ٹریننگ تقریباً 8 ماہ بعد
 جمعہ اپنے لکھنؤ سے نزدیکی ہونا اطلاع ملی تھی کہ لکھنؤ میں چھوٹی بہن سیدہ بیجا راجہ
 جسکی شہزادہ کی نیکو میں نافرمانی ہلا کو چلی تھی تعلقہ ٹریننگ میں درخواست کیا کہ
 پیش ہی ہوا تھا۔ لیکن چھٹی نہیں ملی تھی۔ بعد میں سرکاری تعلقہ میں ہی رہی
 کے بعد بہن نے وہاں چھٹی لکھنؤ خود آ کر لکھا۔ تو چھوٹی بہن شہزادہ کی بیوی
 ایک لکھنؤ ٹریڈ ٹیسٹنگ کے ڈائریکٹ کے ساتھ ڈائریکٹ لکھی۔ لکھنؤ میں ہی رہی
 کوئی دوسرا نام نہ نہ ہونا کی بنا پر لکھنؤ میں فوراً اپنے شہزادہ کی
 خاطر ہسپتال جا کر ڈاکٹر سے معائنہ کیا۔ جسکی وجہ سے میں بہن کے شہزادہ
 کے خاطر 28 دن ہسپتال میں رہا۔ اور چھٹی فتح ہونے پر واپس چلوی رہا
 جا سکا۔ اور بہن نے وہاں 28 دن ٹریننگ سے غیر حاضر رہا۔ اسی دوران
 ٹریننگ کا دورانہ فتح ہو کر دوسرا ماہ ٹریننگ واپس آئے تھے۔ جمعہ بعد
 اپنے دفتر سے معلوم ہوا۔ کہ میں لکھنؤ میں ہی رہے۔ یہ نہایت ہوا۔ اور
 اس کے جمعہ کوئی تحریر کی درخواست نہ ہوئی تھی۔ اس کے علاوہ نہ
 ہوگا نہ لکھنؤ میں ہی رہے۔

ATTESTED

قیمت
50 روپے

25230



ایڈوکیٹ: حماد حسین
بار کونسل/ ایسوسی ایشن نمبر: BC17-7873
رابطہ نمبر: 0017-0912765

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: سروس سٹریٹ، خیبر پختونخواہ

مخاطب: <u>سائل</u>	دعویٰ:
عائلہ سناہ	علت نمبر:
بنام	مورخہ:
پولیس کمیشنر	جرم:
	تھانہ:

باعث تحریر آنکہ

(Handwritten signature)

سائل: عائلہ سناہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ
آن مقام پشاور کیلئے حماد حسین ایڈوکیٹ کو وکیل مقرر
کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو
راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
زیریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز
دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
مقرر شدہ کو وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور و قبول ہوگا
دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے
باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: ۰۹-۰۱۹

مقام پشاور کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی فونو کاپی ناقابل قبول ہوگی۔

(Handwritten signature)
ATTESTED

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Service Appeal No. 1123/2019

Aqil Shah (Ex-Constable No. 653) District Police Buner

..... Appellant


VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
2. Regional Police Officer, Malakand Region at Saidu Sharif Swat.
3. District Police officer Buner.

..... Respondents

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**DISTRICT POLICE OFFICER,
BUNER.**
(Respondent No. 03)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Service Appeal No. 1123/2019

Aqil Shah (Ex-Constable No. 653) District Police Buner

..... Appellant

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
2. Regional Police Officer, Malakand Region at Saidu Sharif Swat.
3. District Police officer Buner.

..... Respondents

PARA-WISE COMMENTS ON BEHALF OF RESPONDENTS.

Respectfully sheweth:

Preliminary Objections:-

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

ON FACTS:

1. Correct to the extent that service appeal No. 240 / 2018 of the appellant was accepted on 29.08.2018 by this Honorable Tribunal with the direction that respondents are at liberty to conduct de-novo enquiry in accordance with rules.
2. That admittedly the respondent department filed CPLA against the judgment dated 29.08.2018, of this Honorable Tribunal.
3. Correct to the extent that during the pendency of CPLA, the appellant filed execution petition No. 405 / 2018 for implementation of the judgment dated 29.08.2018, therefore in compliance the appellant was provisionally re-instated into service on 12.04.2019 for the purpose of de-novo enquiry.
4. Incorrect and rebutted. That the appellant was re-instated into service in light of judgment dated 29.08.2018, of this Honorable Tribunal with the direction to the respondent department for conducted de-novo enquiry in the matter. Further added, that the respondent department filed CPLA before the Supreme Court of Pakistan, against the impugned judgment. Moreover the appellant was re-instated into service for the purpose of de-novo enquiry and the appellant was again recommended by the enquiry officer for major punishment hence, in the light of finding of enquiry officer, respondent No. 03 being the competent authority dismissed the appellant from service on 30.05.2019. (Copy of the said order as annexure A).
5. As explained in above Para No. 04.

6. Correct to the extent that the appellant filed departmental appeal before the respondent No. 02 who called the appellant in Orderly Room on 05.08.2019 and heard in person but the appellant could not produce any cogent reason in his defense. Therefore his departmental appeal was rejected.
7. That the service appeal of the appellant is liable to be dismissed on the following grounds.

GROUNDS

- A. Incorrect. That the impugned order dated 30.05.2019 is legal being passed as per law & rules.
- B. Incorrect. That the respondent department had filed CPLA before the Supreme Court of Pakistan against the judgment dated 29.08.2018, However during the pendency of CPLA, in compliance of execution petition appellant was provisionally re-instated for the purpose of de-novo enquiry and in the light of finding report of the enquiry officer appellant was rightly again dismissed from service.
- C. Incorrect. As explained in above Para No. B.
- D. Pertains to record.
- E. That in proceeding of de-novo enquiry, all codal formalities have been fulfilled.
- F. Incorrect. All codal formalities have been fulfilled by the enquiry officer and appellant was again dismissed from service by competent authority in light of recommendation of EO.
- G. Incorrect. That the enquiry officer has recorded the statement of the appellant himself.
- H. Incorrect. That after fulfillment all codal formalities the impugned order has been passed. That the respondents seek permission of this Honorable Tribunal to adduce more points / grounds at the time of arguments.

✓ PRAYER:

In view of the above facts and grounds it is most humbly prayed that the service appeal of the appellant may graciously be dismissed with costs.

Amal Khan

**PROVINCIAL POLICE OFFICER,
KHYBER PAKHTUNKHWA PESHAWAR
(Respondent No. 01)**

Regional Police Officer

**REGIONAL POLICE OFFICER,
MALAKAND REGION AT SAIDU SHARIF SWAT
(Respondent No. 02)**

Amal Khan

**DISTRICT POLICE OFFICER,
BUNER.
(Respondent No. 01)**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1123/2019

Aqil Shah (Ex-Constable No. 653) District Police Buner

..... Appellant

VERSUS

- 1. Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
- 2. Regional Police Officer, Malakand Region at Saidu Sharif Swat.
- 3. District Police officer Buner.

..... Respondents

AFFIDAVIT

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

**PROVINCIAL POLICE OFFICER,
KHYBER PAKHTUNKHWA PESHAWAR
(Respondent No. 01)**

*Regional Police Officer,
Malakand Region at Saidu Sharif Swat*
**REGIONAL POLICE OFFICER,
MALAKAND REGION AT SAIDU SHARIF SWAT
(Respondent No. 02)**

**DISTRICT POLICE OFFICER,
BUNER.
(Respondent No. 03)**

(4)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Service Appeal No. 1123/2019

Aqil Shah (Ex-Constable No. 653) District Police Buner

..... Appellant

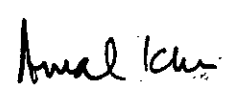
VERSUS

- 1. Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
- 2. Regional Police Officer, Malakand Region at Saidu Sharif Swat.
- 3. District Police officer Buner.

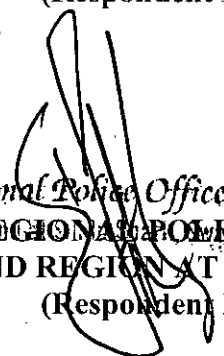
..... Respondents

AUTHORITY LETTER

We the above respondents do hereby authorize and allow Mr. Nowsherawan Inspector Legal Buner to file the accompany Para-wise comments in the court on our behalf and do whatever is needed in the court.



**PROVINCIAL POLICE OFFICER,
KHYBER PAKHTUNKHWA PESHAWAR
(Respondent No. 01)**



**REGIONAL POLICE OFFICER,
MALAKAND REGION AT SAIDU SHARIF SWAT
(Respondent No. 02)**



**DISTRICT POLICE OFFICER,
BUNER.
(Respondent No. 03)**

ORDER

S

Annex- 'A'

This order will dispose of De-novo departmental enquiry against Ex-Constable Aqil Shah.

Briefs facts are that:-

Ex-Constable Aqil Shah No.653 was enlisted as recruit constable vide this office OB No.10, dated 29-01-2008 and was deputed for recruit course. He was returned to district vide Commandant PTC Hangu signal No.3345/GC, dated 15/09/2008, on account of his 28 days absence. Meanwhile, he did not report his presence in Police Lines Daggar. As a result he was dismissed from service under section (5) of sub-section (4) of the removal of Special Power Ordinance 2001 vide this office OB No.04, dated 17-01-2009. He submitted departmental appeal for re-instatement in to service but his appeal was filed vide CPO Peshawar memo No. S/471 dated 25/01/2018, being badly time barred for about 09 years. He instituted service appeal No.240/2018 before the Honorable Service Tribunal and his appeal was accepted on 29/08/2018 and the said court set-aside the impugned order and directed in the same judgment that the respondents are at liberty to conduct de-novo enquiry strictly according with rules. The period of absence as well as intervening period shall be treated as leave without pay.

Later on, the department approached the Law Department for lodging CPLA before the August Supreme Court of Pakistan against the said judgement of Service Tribunal Khyber Pakhtunkhwa Peshawar. After obtaining sanction from law department, CPLA was filed. In the meanwhile the said Ex-Constable filed execution petition No.405/018 before Service Tribunal Khyber Pakhtunkhwa Peshawar for implementation of judgement. The court was apprised about CPLA but the Honorable Chairman directed the department to produce status quo order of the August Court, otherwise implementation report. Thereafter, the department filed early hearing application through Law Department in CPLA before Supreme Court of Pakistan which was not accepted.

Therefore, Ex-Constable Aqil Shah was provisionally re-instated in light of the directions received vide CPO Peshawar memo No.1762/legal dated 01-04-2019 for the purpose of de-novo enquiry. SP Investigation Buner was appointed as Enquiry Officer. The Enquiry Officer conducted proper enquiry and submitted in its findings that the delinquent official could not defended his statement during inquiry nor produce any cogent reason for his absence. The Enquiry Officer recommended that Constable Aqil Shah No.653 is liable to be dismissed from service.

Therefore, I Muhammad Irshad District Police Officer Buner as Competent Authority and in exercise of the power vested in me under Police Disciplinary Rules-1975, award Constable Aqil Shah No.653, major punishment in shape of dismissal from service.

Order announced.


DISTRICT POLICE OFFICER,
BUNER

OB No. 90, Dated: 30/05/2019

No. 3656.58 /Enq, dated Daggar the 30/05/2019.

Copy for information to:-

1. The Regional Police Officer, Malakand Region at Saidu Sharif Swat for favor of information, please.
2. The Assistant Inspector General of Police, Internal Accountability Branch Khyber Pakhtunkhwa Peshawar, with reference to his office memo No.1999/CPO/IAB.
3. All concerned.


DISTRICT POLICE OFFICER,
BUNER

Attchew

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 1123/2019

Aqil Shah EX Constable No. 653 District Police BunirAppellant

VERSUS

1. The Provincial Police Officer Khyber Pakhtunkhwa, Peshawar
2. The Regional Police Officer Malakand Division Swat.
3. The District Police Officer District Bunir. Respondents

**REJOINDER ON BEHALF OF APPELLANT AGAINST PARA WISE
COMMENTS SUBMITTED BY RESPONDENTS IN
THE ABOVE MENTIONED SERVICE APPEAL.**

RESPECTFULLY SHEWETH:-

Preliminary objections:-

1. That the respondents has concealed of facts in rest of para wise from this Honourable Tribunal hence liable to turned down.
2. That the respondents have not been mentioned plausible reply in rest of para(s) to the facts and grounds in the service appeal.
3. That the respondents reply is based on mis joinder and non-joinder in the service appeal.
4. That the respondents not submitted plausible justification in reply of the para (s) of the service appeal.

FACTS:-

1. Correct needs no comments.
2. That the respondents have filed CPLA in the august Supreme Court of Pakistan against the judgment dated 29/08/2018. The respondents could not produce suspension order from the august Supreme Court against the judgment dated 29/08/19. Despite filing CPLA the respondents also conducted de-novo inquiry which is illegal and against the law and constitution. Once the respondents filed CPLA in the august Supreme Court after that how can the respondents conduct de-novo inquiry Proceedings against the appellant for the purpose of implementation of the judgment when they are aggrieved from the

- judgment of this Honourable Tribunal and have filed CPLA in the august Supreme Court of Pakistan.
3. Incorrect. That after elapsed of three months of the judgment dated 29/8/2018 when the appellant was not re-instated into service then the appellant filed an Execution Petition No. 405/2018 before this Honourable Service Tribunal for compliance of judgment dated 29/08/2018. Wherein the respondents department was required to be re-instated the appellant with the conditional order of final decision of the CPLA from the august Supreme Court of Pakistan, but respondents could not wait for CPLA nor they could produced suspension order from the august Supreme Court against the judgment dated 29/08/2018, while the respondents conducted de-novo inquiry during pendency of the Execution Petition No. 405/18.
 4. Incorrect the as per directions in the Execution Petition No. 405/18 respondent No. 3 provisionally reinstated the appellanton 12/04/19 for the purpose of de-novo enquiry whereas the appellant was submitted objection application regarding the re-instatement order dated 12/04/2019 for the purpose of de-novo inquiry. However on 29/05/2019 this Honourable Tribunal was directed the respondents to produce proper implementation order regarding re-instatement of the appellant, but the respondents conducted de-novo inquiry against the appellant and once again the appellant was dismissed on 30/05/2019, despite directions dated 29/05/2019 by this Honourable for filing fresh implementation order on the next date of hearing wherein the respondent could not complied with the order of this Honourable dated 29/05/2019.
 5. That the respondent No. 3 could not produced suspension order nor do they waitfor final decisionof theCPLA form the august Supreme Court of Pakistanagainst the judgment dated 29/08/2019 of this Honourable Tribunal. Once the respondents conducted de-novo inquiry against the appellant resultantly the appellant was once againdismissed from Service on 30/05/2019which is against the rules and natural justice and violation of principals & policy. However the inquiry officer havenot fulfilled inquiry proceedings in accordance with law, rules and rule 6 [1] [b] of the police rules 1975. Because Show Cause notice was issued on 08/05/2019 while Charge Sheet was

issued on 10/05/2019 to the appellant by the inquiry officer instead of Competent Authority (District Police Officer) in accordance with rule 6 [1] [b] of the police rules 1975, as there is mandatory (07) days for submission of reply of Charge Sheet as well as Show Cause Notice instead of (02) Two days given by inquiry officer in charge sheet and show cause notice.

6. Incorrect: - That the Regional Police Officer Malakand / Appellant Authority (Respondent No.2) have ignored facts of the departmental appeal as well as illegal inquiry proceedings conducted by inquiry officer, because Show Cause notice was issued on 08/05/2019 while Charge Sheet was issued on 10/05/2019 to the appellant by the inquiry officer instead of competent authority i.e. District Police Officer which is also against the rules 6 [1] [b] of the police rules 1975.

Grounds:-

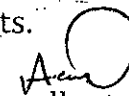
- A. Incorrect:- That the respondents No. 3 dismissed the appellant from Service after conducting de-novo inquiry but the inquiry officer not fulfilled inquiry proceedings in accordance with law, rules and rule 6 [1] [b] of the police rules 1975. Because Show Cause notice was issued on 08/05/2019 while Charge Sheet was issued on 10/05/2019 to the appellant by the inquiry officer instead of competent authority i.e. District Police Officer which is also police rules 1975 mentioned above as there is mandatory (07) days for submission of reply of the Charge Sheet as well as Show Cause notice instead of (02) Two days as given by inquiry officer in Charge Sheet and Show Cause notice.
- B. Incorrect and denied, as per directions in the Execution Petition No. 405/18 the respondent No. 3 provisionally reinstated the appellant on 12/04/19 for the purpose of de-novo enquiry whereas the appellant was submitted objection application regarding the re-instatement order dated 12/04/2019 for the purpose of de-novo inquiry. However on 29/05/2019 this Honourable Tribunal was directed the respondents to produce proper implementation order regarding re-instatement of the appellant, but the respondents conducted de-novo inquiry against the appellant and once again the appellant was dismissed on 30/05/2019, despite directions dated 29/05/2019 by this Honourable for filing fresh implementation order on the next date

4


of hearing wherein the respondent could not complied with the order of this Honourable dated 29/05/2019.

- C. As already explained in Para B of the grounds.
- D. Incorrect as per record during inquiry proceedings, the inquiry officer exercise power of the DPO (Competent Authority) whileto conduct de-novo inquiry and issued Show Cause notice on 08/05/2019 while Charge Sheet was issued on 10/05/2019 to the appellant by the inquiry officer instead of Competent Authority i.e. District Police Officer which is also against the rules 6 [1] [b] of the police rules 1975 and there is mandatory (07) days for submission of reply of the Charge Sheet as well as Show Cause notice instead of (02) Two days given by inquiry officer in charge sheet and show cause notice[copy of show cause notice and charge sheet are attached].
- E. As Explain in the Grounds (Para-D).
- F. As Explain in the Grounds (Para-A).
- G. Incorrect: - That the inquiry officer has not been recorded statement of the appellant by himself but statement was recorded by the Clerk / Muharer attached with inquiry officer which is also against the law and rules.
- H. As Explain in the Grounds (Para-D).

It is, therefore, most humbly on acceptance of the rejoinder and the instant of the appellant may graciously be accepted and the impugned order bearing No. 3656-58/Enq dated 30/05/2019 may be set aside and appellant may kindly be re-instated into service with all back benefits.


Appellant

Through


Hamad Hussain
Advocates Peshawar
Mobile no. 03120952763

AFFIDAVIT

I, Aqil shah R/o District Bunir do hereby solemnly affirm and declare on oath that the contents of the instant service appeal are true and correct to the best of my knowledge and belief and nothing material has been concealed from this Hon' able Tribunal.

ATTESTED




DEPONENT

11-6-2020