

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 1360/2015

Date of institution ... 16.10.2015

Date of judgment ... 07.12.2018

Said Riaz Ex-Constable No. 1351 District Police Bannu.

... (Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.

2. Regional Police Officer, Bannu Range Bannu.

3. District Police Officer, Bannu.

... (Respondents)

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST
THE ORDER DATED 30.08.2013, WHEREBY THE
APPELLANT HAS BEEN DISMISSED FROM SERVICE,
AGAINST WHICH THE DEPARTMENTAL APPEAL AND
MERCY PETITION OF THE APPELLANT HAVE ALSO BEEN
REJECTED VIDE ORDERS DATED 23.10.2015 AND
22.09.2015, RESPECTIVELY.

Miss. Roeda Khan, Advocate.

.. For appellant.

Mr. Riaz Ahmad Paindakheil, Assistant Advocate General

.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (JUDICIAL)

MR. AHMAD HASSAN

.. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: -

Counsel

for the appellant present. Mr. Riaz Ahmad Paindakheil, Assistant Advocate General for the respondents present. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant was serving in Police Department as Constable. He was dismissed from service by the competent authority vide order dated 30.08.2013 on the allegation of absence from duty since 06.04.2013. The appellant filed departmental appeal

which was dismissed by the departmental authority vide order dated 23.10.2013 thereafter, the appellant filed revision petition before the Inspector General of Police (Undated) which was rejected vide order dated 22.09.2015 hence, the present service appeal on 16.10.2015.

3. Respondents were summoned who contested the appeal by filing of written reply/comments.

4. Learned counsel for the appellant contended that the appellant was ill and it was beyond the control of the appellant to attend the duty. It was further contended that the appellant has also annexed medical prescriptions with the memo of appeal in this regard. It was further contended that neither proper inquiry was conducted nor opportunity of personal hearing and defence was provided to the appellant. It was further contended that neither any show-cause notice was issued to the appellant nor the appellant was handed over copy of inquiry report before passing of impugned order and the impugned order is also very harsh therefore, it was contended that the impugned order is illegal and liable to be set-aside. It was further contended that the impugned order was passed retrospectively i.e from the date of absence therefore, the impugned order is void ab-initio and no limitation run against the void order.

5. On the other hand, learned Assistant Advocate General for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was serving in Police but he remained absent from duty without permission of the higher authority. It was further contended that a proper inquiry was conducted and thereafter the appellant was rightly dismissed from service. It was further contended that the appeal of the appellant is also time barred and prayed for dismissal of appeal.

6. Perusal of the record reveals that the impugned order was passed on 30.08.2013 by the competent authority on the allegation of absence from service


McKinnin
7.12.2018

with effect from the date of his absence i.e 06.04.2013 therefore, the impugned order being retrospective, illegal and void. Furthermore, the appellant has stated in the memo of appeal that he was ill and it was beyond his control to attend the duty. Moreover, the record further reveals that neither opportunity of hearing and defence was provided to the appellant nor show-cause notice was issued to the appellant nor copy of inquiry report was handed over to the appellant, even respondents has admitted in para-D of the written reply that the final show-cause notice was not issued to the appellant and it was held ⁱⁿ by this Tribunal in Service Appeal No. 1014/2012 titled Saqib Gul Versus District Police Officer decided on 23.11.2017 that this Tribunal has already delivered a judgment in Service Appeal No. 1040/2014 entitled Gul Khan Versus Provincial Police Officer decided on 26.09.2017 wherein it has been decided that issuance of final show-cause notice alongwith final inquiry report is must under the rules and reliance was also placed on PLD 1981 Supreme Court page 176 therefore, the impugned order is illegal and liable to be set-aside. As such, we accept the appeal, set-aside the impugned ^{order} and reinstate the appellant into service with the direction to the respondents to conduct de-novo inquiry strictly in accordance with law and rules within in a period of 90 days from the date of receipt of this judgment. The issue of back benefits will be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

07.12.2018


(AHMAD HASSAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

26.10.2018

Due to retirement of Hon'able Chairman, the Tribunal is defunct. Therefore, the case is adjourned for the same on 07.12.2018 before D.B.


Readdy

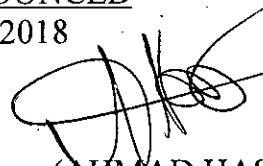
07.12.2018

Counsel for the appellant present. Mr. Riaz Ahmad Paindakheil, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of three pages placed on file, we accept the appeal, set-aside the impugned ^{order} and reinstate the appellant into service with the direction to the respondents to conduct de-novo inquiry strictly in accordance with law and rules within in a period of 90 days from the date of receipt of this judgment. The issue of back benefits will be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

07.12.2018





(AHMAD HASSAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

07.06.2018


Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Muhammad Farooq H.C for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 07.08.2018 for arguments before D.B.

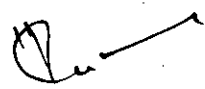

(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

07.08.2018

Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 18.09.2018 before D.B


(Muhammad Amin Kundi)
Member


(Muhammad Hamid Mughal)
Member

18.09.2018

Learned counsel for the appellant and Mr. Kabirullah Khattak learned Additional Advocate General alongwith Mr. Asghar Ali Head Constable for the respondent present. Learned counsel for the appellant seek adjournment. Adjourned. To come up for arguments on 26.10.2018 before D.B.

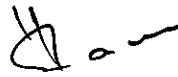

(Hussain Shah)
Member


(Muhammad Amin Kundi)
Member

02.10.2017


Yasir Salim, Advocate on behalf of appellant present. Mr. Kabir Ullah Khahtak, Assistant Advocate General for respondents present. Yasir Salim, Advocate stated that he will submit fresh wakalat nama on next date fixed. To come up for arguments on 18.12.2017 before D.B.


Member
(Executive)


Member
(Judicial)

18.12.2017

None present for the appellant. Mr. Muhammad Jan, Deputy District Attorney alongwith Muhammad Farooq, Inspector (Legal) for the respondents present. To come up for arguments on 22.02.2018 before the D.B.


Member


Chairman

22.02.2018

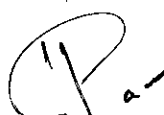
Due to none availability of D.B the case is adjourned. To come up on 03.04.2018 before D.B


Member

03.04.2018

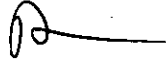
Learned counsel for the appellant and Mr. Riaz Pindakheil, learned Assistant Advocate General for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 07.06.2018 before D.B


(Ahmad Hassan)
Member


(Muhammad Hamid)
Member

18.10.2016

Counsel for the appellant and Addl: AG for respondents present. Counsel for the appellant requested for time to file rejoinder. To come up for rejoinder and arguments on 16.02.2017.



(ABDUL LATIF)
MEMBER



(PIR BAKHSH SHAH)
MEMBER

16.02.2017

Clerk to counsel for the appellant and Mr. Muhammad Farooq, Inspector alongwith Assistant AG for respondents present. Arguments could not be heard due to general strike of the bar. To come up for arguments on 21.06.2017 before D.B.



(AHMAD HASSAN)
MEMBER

21.06.2017

Counsel for the appellant and Mr. Muhammad Farooq, Inspector Legal alongwith Mr. Kabir Ullah Khattak, Assistant AG for the respondents present. Counsel for the appellant requested for adjournment. Adjourned. To come up for ^{rejoinder} arguments on 02.10.2017 before D.B.



(Muhammad Amin Khan Kundi)
Member



(Gul Zeb Khan)
Member

27.1.2016

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 30.8.2013 where-against he preferred departmental appeal which was rejected on 23.10.2013 where-after review petition was preferred under rule-11 A of Police Rules which was also rejected on 22.9.2015 and hence the instant service appeal on 16.10.2015.

That the absence of the appellant was not wilful as he was ill and that the inquiry was not conducted in the prescribed manners.

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 11.4.2016 before S.B.

Appellant Deposited
Security & Process Fee


Chairman

11.04.2016

None present for the appellant. Mr. Mir Faraz Khan, Inspector (Legal) alongwith Sr.GP for the respondents present. Written reply not submitted. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on 31.05.2016 before S.B.


Chairman

31.05.2016




Agent of counsel for the appellant and Mr. Asghar Ali, H.C alongwith Addl. AG for the respondents present. Written reply of respondents submitted. The appeal is assigned to D.B for rejoinder and final hearing for 18.10.2016.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1360/2015

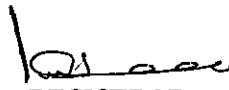
S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	03.12.2015	<p>The appeal of Mr. Said Riaz resubmitted today by Mr. Sajid Amin Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2	4-12-15	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>28-12-15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
28.12.2015		<p>Counsel for the appellant present. Seeks adjournment. To come up for preliminary hearing before S.B. on 27.1.2016.</p> <p style="text-align: right;"> Member</p>

The appeal of Mr. Said Riaz Ex-Constable No. 1351 Distt. Police Bannu received to-day i.e. on 16.10.2015 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of departmental appeal mentioned in the memo of appeal is not attached with the appeal which may be placed on it.
- 2- Copies of charge sheet, statement of allegations, show cause notice and replies thereto are not attached with the appeal which may be placed on it.
- 3- Affidavit may be got attested by the Oath Commissioner.

No. 15799 /S.T,

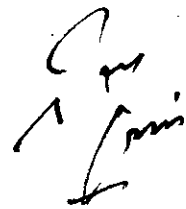
Dt. 16/10 /2015


REGISTRAR,
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Sajid Amin Adv. Pesh.

Documents referred in the objections no. 1 and 2, may be requisitioned from the Respondents, being not since the same are not in custody of the appellant.

Appeal is re-submitted for completion.



Sajid Amin
Advocate, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Appeal No. 1360 /2015

Said Riaz Ex- Constable No.1351 District Police Bannu.

(Appellant)

VERSUS

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


(Respondents)

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5	Copy of the rejection order dated 23.10.2013.	C	13
6	Revision /Mercy petition and rejection order dated 22.09.2015	D & E	14-15
7	Vakalatnama.		16


Appellant

Through


SAJID AMIN
Advocate, High Court
Peshawar.

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

G.W.P. Provincial
Service Tribunal
Diary No. 1261
dated 16-10-15

Appeal No. 1360 /2015

Said Riaz Ex- Constable No.1351 District Police Bannu.

(Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Bannu Region Bannu.
3. District Police Officer, Bannu.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 30.08.2013, whereby the appellant has been dismissed from service, against which the Departmental Appeal and mercy petition of the appellant have also been rejected vide orders dated 23.10.2013 and 22.09.2015, respectively.

17/10/15
16/10/15

Prayer in Appeal: -

On acceptance of this appeal the order dated 30.08.2013, order dated 23.10.2013 and 22.09.2015, may please be set-aside and the appellant may be re-instated in service with full back wages and benefits of service.

re-submitted to
and filed.

3/12/15

Respectfully Submitted:

1. That the appellant was enlisted as Constable in the Police Department in the year 2008, ever since his enlistment the appellant performed his duties as assigned to him with zeal and devotion.
2. That while performing his duty the appellant got seriously ill and was taken to the Hospital. Thereafter the appellant remained on medication for quite some time and was advised bed rest by the concerned MO from time to time. Since the appellant was on bed and therefore he could not join his duty, however he duly informed the concerned PS about his illness. *(Copies of the Medical Certificates are attached as annexure A)*
3. That the appellant while on bed rest, one Imran DFC PS Town Bannu visited his home and informed him to appear before DSP Sadam Gul in connection with the inquiry initiated against the appellant. It is pertinent to mention here that the appellant was never served with any charge sheet or show cause. The appellant rushed to the DSP office and waited for long time, however the DSP was not available at the relevant time therefore the reader of the concerned Police Station took the number of the appellant and asked him that he will be informed as and when to meet the DSP.
4. That the appellant waited for long time but neither he was called for inquiry nor received an order/notice. When the appellant completely recovered from illness he duly reported for duty, however he was told that he had been proceeded in absentia and has been dismissed from service vide order dated 30.08.2013. *(Copies of the dismissal order is attached as annexure B)*
5. That after obtaining copy of the dismissal order the appellant submitted his departmental appeal to the respondent No. 2 however it was rejected on 23.10.2013. *(Copy of the rejection order is attached as Annexure C)*
6. That after rejection of his appeal, the appellant also submitted his Revision/mercy petition which remained under consideration for a long time, lastly it was also rejected vide order dated 22.09.2015. *(Copy of the revision / mercy petition and rejection order is attached as Annexure D & E)*
7. That the impugned orders are illegal unlawful against the law and facts hence liable to be set aside inter alia on the following grounds:

GROUND OF SERVICE APPEAL:

- A. That the appellant has not been treated in accordance with law, hence his rights secured and guaranteed under the law are badly violated.
- B. That no proper procedure has been followed before discharging the appellant from service, neither has he been served with any charge sheet / statement of allegations or any absence notice nor has he been associated with the enquiry proceedings. Moreover no endeavor was made to associate the appellant with the inquiry, the whole proceedings were conducted ex-parte, the appellant has not been allowed opportunity to defend himself thus proceedings so conducted are liable to be set aside.
- C. That the appellant has not been allowed opportunity of personal hearing before discharge of his service, thus he has been condemned unheard.
- D. That the appellant has not been served with Show Cause Notice before the imposition of penalty upon him.
- E. That no endeavor has ever been made to associate the appellant with the inquiry proceedings the inquiry officer conducted an ex-parte inquiry and gave his findings on surmises and conjunctures.
- F. That the order of dismissal from service has been made with retrospective effect, since no penalty order can be given retrospective effect, thus on this score alone the impugned orders are not tenable in the eye of law.
- G. That the appellant never committed an act or omission which could be termed as misconduct, the absence of the appellant was not willful but was due to his illness, he was seriously ill and was advised complete bed rest, therefore he could not join his duty.
- H. That since the appellant is jobless since his illegal dismissal from service he has a large family dependant upon him, due to his illegal dismissal from service his whole family is suffering.
- I. That the appellant has at his credit a long and spotless service career, the penalty imposed upon him is too harsh and liable to be set aside.

J. That the appellant seeks permission of this Honourable Tribunal to rely on additional grounds at the hearing of the appeal.

It is, therefore, humbly prayed that on acceptance of this service appeal the orders dated 30.08.2013, 2.10.2013, and 22.09.2015, may please be set aside and the appellant may be reinstated into service with all back benefits.



Appellant

Through



SAJID AMIN

Advocate, Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Appeal No. _____/2015

Said Riaz Ex- Constable No.1351 District Police Bannu.

(Appellant)

VERSUS

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

(Respondents)


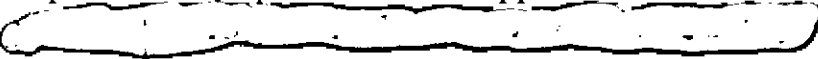


APPLICATION FOR CONDONATION OF DELAY,
IF ANY IN FILING THE TITLED APPEAL

Respectfully submitted:

1. That the appellant has today filed the accompanied appeal before this honorable tribunal in which no date of hearing is fixed so far.
2. That the applicant prays for condonation of delay if any in filing the instant appeal inter alia on the following grounds:-

GROUND OF APPLICATION


- A. That the appellant throughout agitated the matter before the departmental authority and never remained negligent in perusing his remedy. The departmental appeal of the appellant was rejection on 23.10.2013, thereafter he with bonafide belief submitted mercy petition which though remained under consideration for a long time before the review board, however lastly it was rejected vide order 22.09.2015, thus the delay if any in filing the instant appeal is not willful and deserves to be condoned.
- B. That no proper procedure has been followed before awarding the penalty of dismissal form service of the appellant, neither he has been served with any charge sheet, statement of allegations or any absence notice nor has he been associated with the enquiry proceedings. All the proceedings were conducted ex-party. Moreover the order of penalty has also been given retrospective effect thus the whole proceedings as well as the order of penalty is illegal and void and no period of limitation is applicable against a void order.

- C. That it has been consistently held by the superior courts that appeal filed within 30 days from the date of communication of the order on departmental representation / appeal would be in time. 

- D. That valuable rights of the appellant are involved in the instant case in the instant case, hence the delay if any in filing the instant case deserves to be condoned.
- E. That the delay if any in filing the instant appeal was not willful hence deserves to be condoned.
- F. That it has been the consistent view of the Superior Courts that cases should be decided on merit rather than technicalities including limitation. 


It is therefore humbly prayed that on acceptance of this application the delay if any in filing the instant appeal may please be condoned.

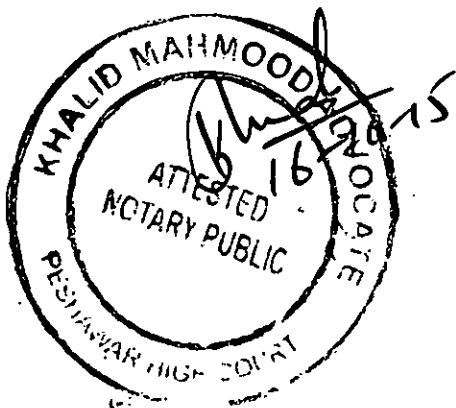

Applicant

Through


SAJID AMIN
Advocate, Peshawar

AFFIDAVIT

I, Said Riaz Ex- Constable No.1351 District Police Bannu, do hereby solemnly affirm and declare on oath that the contents of the above noted appeal as well as accompanied application for condonation of delay are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.




Deponent

12

AMMANI B

ORDER

My this order will dispose of the departmental enquiry conducted against Constable Syed Kiaz No. 1321. The allegations were that the constable while posted in Police

lines remained absent from duty since 06.04.2013 till this day.

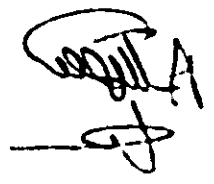
The enquiry officer, Musaniif Shah DSP Sadar, in his findings has reported that the constable did not appear before the FO and did not bother to justify his absence. From the available record, it is established that the accused constable is not interested in official duty. A final notice was served upon him on 17.08.2013 which he received but again did not report for duty. Re-creation of such a person in police department would be a burden on public exchequer.

I, Mohammad Iqbal, DPO Bannu, as competent authority, have come to the conclusion that the accused police officer is not interested in police service and he is therefore dismissed from service with effect from his date of absence i.e. 06.04.2013.


(Mohammad Iqbal)
District Police Officer,
Bannu

No. 922 dated 30/08/2013

Copy to all concerned.



ORDER

My this order will dispose off the appeal in respect of Ex: Constable Said Riaz No. 1351 of Operation Staff, Bannu against the order of Major Punishment of dismissal from service by DPO/Bannu vide OB No. 992 dated 30.8.2013 for committing of the following omissions:-

That he, while posted in police lines remained absent since 4.6.2013 to the date of dismissal from service (30.8.2013)

The said Ex: Constable was proceeded against departmentally and Mr. Musamir Shah SDPO/Saddar, Bannu was appointed as Enquiry Officer, who conducted proper enquiry and submitted his findings, wherein the delinquent Police Constable was recommended for Major punishment.

After conducting proper departmental proceedings, the said Police Official was awarded Major punishment of dismissal from service Under Police Rules, 1975.

The appellant appeared in orderly room on 22.10.2013 and personally heard. Relevant record/enquiry proceedings also perused. During personal hearing and available record, I came to the conclusion that the punishment imposed is in proportionate to his alleged act of misconduct (long duration of absence). Therefore, I Sajid Ali Khan, Regional Police Officer, Bannu Region, Bannu in exercise of the powers vested in me under Police Rules, 1975, can not interfere in the order passed by DPO/Bannu vide OB No. 992 dated 30.8.2013, being one in consonance with law. Hence appeal is rejected.

Order announced.

(Sajid Ali Khan)PSP
Regional Police Officer,
Bannu Region, Bannu.

No. 2485-30/EC, dated Bannu the 23/10/2013.

Copy to:-

- 1. The District Police Officer, Bannu for information w/r to his office Memo: No. 13202 dated 7.10.2013. His S: Roll and departmental proceedings are sent herewith for record.
- 2. Ex: Constable Said Riaz No. 1351 for information.

OA 80/SRC

(Sajid Ali Khan)PSP
Regional Police Officer,
Bannu Region, Bannu

With: 1. Record and departmental enquiry files for further inspection & compliance - directed

23/10/13

[Signature]
24/10

[Signature]

سید ریاض
پولیس انسٹیبل
اپیل

بھضور جناب والا! ریجنل پولیس آفیسر صاحب بنوں ریجن بنوں
استدعا:- بحال فرمانے مسائل بعیدہ کا کانسٹیبل جو جناب DPO صاحب بنوں نے یکطرفہ کارروائی کے ذریعے مسائل کو ملازمت سے
ڈسمس کیا، حکم نمبر OB، نمبر 992 مورخہ: 30-08-2013 لف ہمراہ ہے، اور مسائل کو دفاع کا کوئی موقع نہیں دیا گیا ہے۔

جناب عالی!

کمترین آفتاب کے حضور عاجزانہ التماس کرتے ہے، کہ مسائل پولیس لائن میں تعینات تھا، دوران ڈیوٹی کمترین سخت بیمار ہوا۔ برائے
علاج معالجہ خلیفہ گل نواز ٹیچنگ ہسپتال بنوں کے OPD جا کر ڈاکٹر نے معائنہ کیا، اور ٹیسٹ کے لیے لیبارٹری Refer کیا، لیبارٹری
ٹیسٹ کے مطابق مسائل کی یرقان کی بیماری ظاہر ہوئی، چونکہ یرقان ایک مہلک اور جان لیوا بیماری ہے، بدین وجہ ڈاکٹر صاحب نے مناسب
دوائی تحریر کر کے مکمل آرام اور ڈائنٹ کی ہدایت دی۔ چونکہ پولیس لائن میں خوراک اور آرام کی سہولت نہ تھی، بدین وجہ گھر خود پر زیر علاج
رہا۔ بار بار ڈاکٹر صاحب کے پاس جاتا، مگر بیماری طول پکڑتی گئی، کافی رقم علاج معالجہ پر خرچ ہوئی۔ گھر خود پر زیر علاج تھا، کہ مورخہ
26-08-2013 کو تھانہ ٹاؤن DFC P عمران میرے گھر آیا۔ اور مجھے مطلع کیا، کہ DSP صاحب صدام گل آپ کو بلاتا ہے ہیں
۔ میں چونکہ کچھ نہ کچھ سنبھل گیا تھا، فوری طور پر کار سہنٹل کر کے DSP صاحب کے دفتر آیا۔ مگر DSP صاحب آخری ٹائم تک وہاں نہ
تھے، مجھے ریڈرنے کہا، کہ دوبارہ بذریعہ فون تمہیں طلب کرونگا، اور مجھ سے میرا موبائل نمبر لکھ دیا، مگر کئی دن گزر گئے، پر اطلاع نہیں ملی، میں
جب خود بخود دوبارہ حاضر ہوا، تو معلوم ہوا، کہ مجھے فورس سے ڈسمس Dismiss کیا گیا ہے۔

مجھے کسی قسم کا فائل وارنگ یا شوکار نہیں ملا، نہ ہی DSP صاحب نے مجھے زبانی عرض کا موقع دیا۔

لہذا عاجزانہ استدعا کرتا ہوں، کہ میری عرصہ بیماری کو ملحوظ نظر رکھتے ہوئے مجھے دوبارہ ملازمت پر بحال فرمایا
جاوے۔ دانستہ غیر حاضر نہیں ہوا ہوں، بلکہ بیمار تھا، ماتحت پروری ہوگی۔

سید ریاض،
Ex پولیس کانسٹیبل نمبر: 1351
سکنہ لہڑی کلمہ ڈویل ڈسٹرکٹ بنوں۔

اس مسئلے میں مسائل نے دنا - RPO صاحب بنوں کو اپیل دائر کی۔ مگر صلب موصوف

نے اپیل ستر دیکھا ہے۔

Atiya



15
Annex E
OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
CENTRAL POLICE OFFICE, PESHAWAR

ORDER

This order is hereby passed to dispose off departmental appeal under Rule 11-a of Khyber Pakhtunkhwa Police Rule-1975 submitted by Ex-FC Said Riaz No. 1351 of District Police Bannu against the Punishment Order i.e dismissal from service passed against the appellant by DPO/Bannu vide OB No. 992 dated 30.08.2013.

In the light of recommendations of Appeal Board meeting held on 17.09.2015, the board examined the enquiry in detail & other relevant documents. It revealed that the appellant was served with Charge Sheet/Statement of Allegations and punishment order was announced on the basis of reply to the Charge Sheet and Statement of Allegations.

The appellant was heard in detail. Record perused. He has absented himself from lawful duty for 04 months and 24 days. His case is time barred. The board recommends his appeal to be rejected.

Order announced in the presence of appellant.

Sd/-
NASIR KHAN DURRANI
Inspector General of Police,
Khyber Pakhtunkhwa Peshawar.

No. 11697-11701/E-IV dated Peshawar the 22/9 /2015

Copy of above is forwarded to the:-

1. Deputy Inspector General of Police, Bannu Region, Bannu
2. PSO to IGP/Khyber Pakhtunkhwa Peshawar.
3. PA to Addl: IGP/HQrs Khyber Pakhtunkhwa, Peshawar.
4. PA to DIG/HQrs Khyber Pakhtunkhwa, Peshawar.
5. DPO/Bannu. The service Roll, Fauji Missal and Enquiry File of the above named official are also returned herewith.

(ASH IQBAL MOHMAND)
AIG/Establishment
For Inspector General of Police
Khyber Pakhtunkhwa Peshawar
22/9/15

G:\e\My documents DELL\document\E-II server 1\re-instatement orders.docx

[Handwritten signature]

POWER OF ATTORNEY

In the Court of High Judge Chaudhary *Chaudhary*

For Plaintiff
Defendant
Petitioner
Complainant

VERSUS

Defendant
Respondent
Accused

Application/Petition/Case No. of

Fixed for

And the undersigned, do hereby nominate and appoint

SAID AMIN ADVOCATE, HIGH COURT

in my name and on my behalf to appear at to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits, compromises or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or sub-poenas and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other legal practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court my authorized agent shall inform the Advocate and make him appear in Court if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us.

IN WITNESS whereof I/we have hereunto signed at the day to the year
Executed/Executants
Accepted subject to the terms regarding fee

SAID AMIN
Advocate High Court

BEFORE THE KHYBER PAKHTUN KHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 1360/2015.

Said Riaz Khan Ex-Constable No.1351 District Police Bannu.....:(Appellant)

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa Peshawar
and thers.....(Respondents)

PARA WISE COMMENTS BY ALL THE RESPONDENTS

Respectfully Sheweth:

PRELIMINARY OBJECTIONS.

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

OBJECTIONS ON FACTS

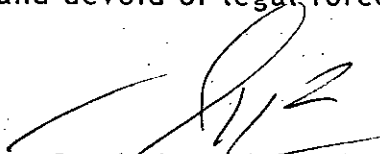
- (1) Correct to the extent that performance of appellant was not satisfactory during service as he has been habitual absentee and remained willfully absent from assigned duty on many occasions.
- (2) Incorrect. The medical plea of the appellant is totally wrong and he willfully absented from official duty for a long period without any leave or permission from the competent authority.
- (3) Incorrect. Appellant has badly failed to inform Incharge guard or other superior officer regarding his illness. His medical plea is baseless and after thoughts.
- (4) Incorrect. The appellant was called time and again to submit reply to the charge sheet but he badly failed to submit his reply within stipulated period. On 13.06.2013, he submitted written reply to the charge sheet and got recorded his statement to the inquiry officer but he could not produce any authentic medical documents regarding his plea of illness. (Photocopy of reply of appellant enclosed as annexure "A").
- (5) Pertains to record. Departmental appeal of the appellant was found to be badly time barred and thus rightly rejected by the respondent No.2.
- (6) There is no law regarding second departmental appeal under the rules. Thus the petition of appellant was barred by law and limitations.
- (7) Incorrect. The orders of the respondents are based on facts, justice and in accordance with law & rules and could not be challenged in any forum.

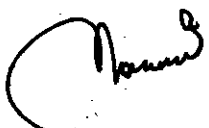
OBJECTIONS ON GROUNDS.

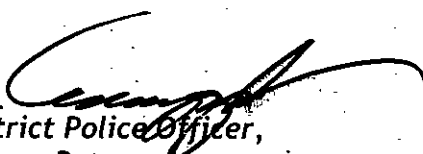
- A. Incorrect. That the order of the respondents are based on facts the appellant has been treated in accordance with law & rules.
- B. Incorrect. Charge sheet based on summary of allegations was issued to appellant and inquiry officer was appointed under the rules. The appellant has submitted reply to the charge sheet and given statement to the inquiry officer. (Photocopy of his statement enclosed as annexure "B").
- C. Incorrect. Notice was served upon appellant through SHO PS Domel but he did not response to the proceeding. (Photocopy enclosed as annexure "C").
- D. Incorrect. Charge sheet based on summary of allegations was issued to appellant under the Police Rules 1975 while final show cause notice is not mandatory under the said rules.
- E. Incorrect. A lot of notices were issued to the appellant to associate with the inquiry proceedings but he failed in time and finally he appeared before the inquiry officer on 13.06.2015 for submission of reply and recording of his statement. (Photocopies of his statement and parwanas already enclosed as annexure "A", "B" and "C").
- F. Incorrect. Keeping in view the inquiry finding report of inquiry officer, the appellant was dismissed from service in accordance with facts and rules. (Photocopy of inquiry findings report is enclosed as annexure "D").
- G. Incorrect. Willful absence from the official duty is a gross misconduct. The medical plea of appellant is wrong and after thoughts. During the absence period and inquiry proceedings, the appellant badly failed to produce any proof regarding his plea nor has moved any application for medical leave.
- H. Incorrect. The appellant has been treated in accordance with law and the order of the respondents are legal and based on facts. Due to his own willful misconduct, he has created the present situation.
- I. Incorrect. Due to willful absence from official duty and inquiry proceedings of appellant, there was no other alternative remedy with the respondents but to dismiss the appellant from service from the date of absence from official duty.
- J. The respondents seek permission of the Honorable tribunal to rely on additional grounds at the hearing of appeal.

Prayer:

Keeping in view of the above facts and circumstances, it is humbly prayed that the appeal of appellant is badly time barred and devoid of legal force, may kindly be dismissed with costs.


Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar.
(Respondent No.1)


Regional Police Officer,
Bannu Region, Bannu.
(Respondent No.2)


District Police Officer,
Bannu.
(Respondent No.3)



BEFORE THE KHYBER PAKHTUN KHWASERVICE TRIBUNAL PESHAWAR
Appeal No. 1360/2015.

Said Riaz Khan Ex-Constable No.1351 District Police Bannu.....(Appellant)

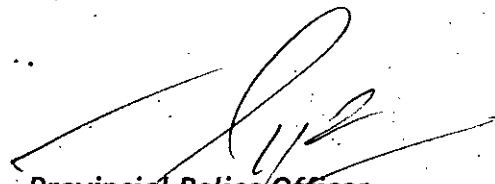
VERSUS

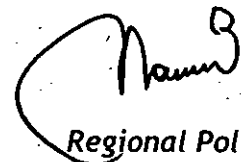
The Provincial Police Officer, Khyber Pakhtunkhwa Peshawar
and others.....(Respondents)


AUTHORITY LETTER.

Mr. Muhammad Yousuf Khan Inspector, incharge Legal Cell, Bannu is
hereby authorized to appear before The Honorable Service Tribunal Khyber Pakhtunkhwa
Peshawar on behalf of the undersigned in the above cited case.

He is authorized to submit and sign all documents pertaining to the
instant appeal.


Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar.
(Respondent No.1)


Regional Police Officer,
Bannu Region, Bannu.
(Respondent No.2)


District Police Officer,
Bannu
(Respondent No.3)

BEFORE THE KHYBER PAKHTUN KHWA SERVICE TRIBUNAL PESHAWAR
Appeal No. 1360/2015.


Said Riaz Khan Ex-Constable No.1351 District Police Bannu.....(Appellant)


VERSUS

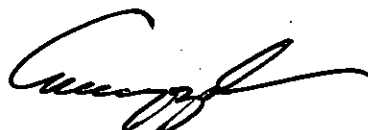
The Provincial Police Officer, Khyber Pakhtunkhwa Peshawar
and others.....(Respondents)

COUNTER AFFIDAVIT

We, the respondents 1,2 & 3 do hereby solemnly affirm and declare that the contents of the attached para wise comments are true and correct to the best of our knowledge and belief and nothing has been with held or concealed from this Honorable Tribunal.


Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar.
(Respondent No.1)


Regional Police Officer,
Bannu Region, Bannu.
(Respondent No.2)


District Police Officer,
Bannu.
(Respondent No.3)

BEFORE THE KHYBER PAKHTUN KHWA SERVICE TRIBUNAL PESHAWAR
Appeal No. 1360/2015.

Said Riaz Khan Ex-Constable No.1351 District Police Bannu.....(Appellant)


VERSUS


The Provincial Police Officer, Khyber Pakhtunkhwa Peshawar
and others.....(Respondents)


AUTHORITY LETTER.

Mr. Mir Faraz Khan Inspector, incharge Legal Cell, Bannu is hereby
authorized to appear before The Honorable Service Tribunal Khyber Pakhtunkhwa Peshawar
on behalf of the undersigned in the above cited case.

He is authorized to submit and sign all documents pertaining to the
instant appeal.


Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar.
(Respondent No.1)


Regional Police Officer,
Bannu Region, Bannu.
(Respondent No.2)


District Police Officer,
Bannu.
(Respondent No.3)

Annexure (A)

بیان ازمن کسٹیل سدریا میں 1351ء حنفیہ لوکس لائن نول

شہولہ جاریہ ٹیٹ جاریہ DP0 نول معروف ہوتے
کہ جو پیر الزام ہے۔ کہ آج لکھنؤ کسی آئینہ اجازت کے گورنمنٹ
ڈیوٹی سے غیر حاضر رہے ہو۔ غیر حاضری کے عادی ہو۔ اور گورنمنٹ
ڈیوٹی سر انجام دینے میں دلچسپی نہیں رکھتے ہو۔

صاحب عالی!

مخصوص ہوں کہ تاریخ 02/07 کو میں سٹرک چل میں گسٹ
ڈیوٹی پر تھا۔ شدید آدھی آئی۔ جس سے گسٹ شدید جھٹکا
سے ہرے ہاتھو کسا تو ٹنگ گیا۔ جس سے ہرے ہاتھو شدید
زخمی بلکہ ٹوٹ گیا۔ جس سے میں وہاں میر گریڈر بیوش سر گیا
ہرے ہاتھو موجود کسٹیلان سے فوراً مجھے طبی معالجے کے لئے قریبی
نول ہسپتال لے گیا۔ ڈاکٹروں نے مجھے ایک ماہ آرام
کا مشورہ دے دیا۔

بیس وہر میں غیر حاضر ہو گیا۔ کیونکہ اس وقت ہرے ہاتھو
اتنا ٹانگم نہیں تھا۔ کہ میں افسران بالا کی خدمت حاضر ہو

میں لے گیا۔
ان صاحبان سے گزارش ہے۔ کہ انکوٹری بلا حذر کارروائی
داخل دفتر فرمائی جاوے۔ اور غریب کے مال بچوں پر رحم فرمائی
فرمائی جاوے۔

13/6/51

کسٹیل سدریا 1351 حنفیہ لوکس لائن

0344-9825/29

Annexure B,

بیان ازالہ سید ریاض ¹³⁵¹ صفحہ 101 - کولیس لائبریری

حضرت عالی!

میرا وہی بیان ہے کہ قبل ازیں خارج شدہ

کتابوں کا ہونا اور ان میں تبدیلی

قسم کی تبدیلی یا رد و بدلہ نہیں کرنا

چاہتیاں۔

بیان ازالہ سید ریاض ¹³⁵¹ صفحہ 101 - کولیس لائبریری

سید ریاض

سید ریاض ¹³⁵¹ صفحہ 101 - کولیس لائبریری

13/06/03

Amateur C/11

● قلمی

(8)

از دفتر - 1351/5

باز - SHO - کتابخانه

① - 6 - 1351 - کتابخانه

6
17
013
کتابخانه کو اطلاع دی 1351

روز چهارشنبه 1351
1351/5

R. 1351-5
14-6-013

احسان سرور
کو اطلاع دی 1351
R. 1351-5
14-6-013

۱ - ۱/۲

● علاج نوزاد

از دفتر - R.D. 15

۱۷ - ۶

نام: - SHH صاحب خانه

① کارخانه سیمان ۱۳۵۱ - ۱۳۵۲

نام کارخانه (سیمان) - ۱۳۵۱ - ۱۳۵۲

۲۶۰۸

در دفتر - R.D. 15

تعمیرات و دستورات

کارخانه سیمان

تعمیرات و دستورات

تعمیرات و دستورات

تعمیرات و دستورات

تعمیرات و دستورات

R.D. 15

۲۳/۰۸/۰۱۳

بافتن

DPC G/E

Lat
Shepard

23-8-13

Handwritten notes in Arabic script, including the word "مجلس" (Council) and "مجلس" (Council).

Handwritten signature and date: "DPC Camp 26-8-13"

Handwritten notes: "sin" and "noted" above a signature.

sin
Forwarded

Handwritten signature and date: "DPC Camp 26-8-13"

Annexure D

انڈسٹریل ڈسٹرکٹ

فائنل رپورٹ

ضلع بنوں

-x-

جناب! جناب سید صاحب بنوں نے کانٹریکٹ سید صاحبزادہ 1351 کو چارج مینٹیننس سہمی اف ایجنٹس ڈیکریٹڈ الزامات عائد کردہ کے مطابق ڈسٹرکٹ صاحب عظمت علی خان کو انٹوائٹری افسر قرار کیا جس کے تبادلہ پر انٹوائٹری ہذا ملک متناق خان ڈسٹرکٹ صاحب کو حوالہ ہوئی تھی جس کے تبادلہ پر انٹوائٹری حقیقہ حوالہ ہوئی

03 - 02
11 07 013

الناس 10 یہ آہ دروازہ تقیاتی پولیس لائن بنوں سے دورہ والنسہ طور پر حوض 02 07 013 سے سرکاری ڈسٹرکٹ سے غیر حاضر ہوئے ہو

قبل ازین دوران انٹوائٹری کانٹریکٹ سید صاحبزادہ 1351 کو دفتر ہذا طلب کیا گیا جس پر چارج مینٹیننس سہمی اف ایجنٹس تسلیم رہے جو اب تقسیم کیا گیا جس نے چارج مینٹیننس کا جواب دفتر ہذا بنایا تھا۔ مزید پولیس لائن سے تقدمات غیر حاضری سے 5 روزہ نام 02 07 013 حاضری سے 03 روزہ نام 03 07 013 حاصل کر کے تحریر پولیس لائن بنوں نے اپنے بیان میں تقدمات مطابق روز نامہ درست تصدیق کی تھی۔ جولائی انٹوائٹری ہذا سے 03 مزید 3 پولیس لائن بنوں نے اپنے بیان میں بتلایا ہے کہ کانٹریکٹ مذکورہ سید صاحبزادہ 1351 کو چارج مینٹیننس 59 روزہ نام 04 06 013 سے بدستور غیر حاضری ہے جس کی دوبارہ تحریر پر اس کی کوئی اصلاح نہیں کی گئی۔

کانٹریکٹ مذکورہ کے لیے غیر حاضری 17 دن - 04 بنی ہے اور مزید حوض 04 06 013 سے بدستور غیر حاضری ہے جو کل مدد 17 دن - 04 بنی ہے۔ غیر حاضری بنی ہے 05 06 013

میں انٹوائٹری ہذا اور ضلع ہذا کے ذمہ داروں سے اس نتیجہ پر بنایا ہے کہ کانٹریکٹ سید صاحبزادہ 1351 کو غیر حاضری جو کل مدد 17 دن - 04 بنی ہے اور مزید حوض 04 06 013 سے بدستور غیر حاضری ہے۔ کانٹریکٹ مذکورہ کے تحریر 17 دن - 04 بنی ہے اور مزید حوض 04 06 013 سے بدستور غیر حاضری ہے جو کل مدد 17 دن - 04 بنی ہے۔

لہذا کانٹریکٹ سید صاحبزادہ 1351 کو بوساقت e Ro اجراء اختیار جاری کیا جائے۔ اگر کانٹریکٹ مذکورہ نے حاضری کی تو اسے غیر حاضری قرار دیا جائے بصورت دیگر انڈسٹریل ڈسٹرکٹ 2000 کے تحت رقم سے ہر خاستہ کرنے کے سفارش کی جائے۔ مزید حکم اخذ کیا۔

SDP/SDA
28/08/013

Sur, if approved, may call
num for O.R. Pl.
w/10/10
28/8

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 19 /ST

Dated 4-1- / 2019

To


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

Subject: -

JUDGMENT IN APPEAL NO. 1360/2015, MR. SAID RIAZ.

I am directed to forward herewith a certified copy of Judgement dated 07.12.2018 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

