

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 589/2015

Date of Institution ... 07.04.2015

Date of Decision ... 10.09.2021

Imran Khan Ex-Constable No.3632 District Police Peshawar.

... (Appellant)

VERSUS

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

... (Respondents)

ROEEDA KHAN,  
Advocate

... For Appellant

RIAZ AHMED PAINDAKHEIL,  
Assistant Advocate General

... For Respondents

**SALAH-UD-DIN**  
**ATIQ-UR-REHMAN WAZIR**

...  
...

**MEMBER (JUDICIAL)**  
**MEMBER (EXECUTIVE)**

**JUDGMENT**

**ATIQ-UR-REHMAN WAZIR MEMBER (E)**:- Brief facts of the case are that the appellant was appointed as Constable in police department in the year 2010. During the course of his service, he was proceeded against on the charges of absence and was ultimately dismissed from service vide order dated 05-06-2013. Feeling aggrieved, the appellant filed departmental appeal, which was rejected vide order dated 13-03-2014. The appellant filed revision petition, which was also rejected vide order dated 06-03-2015. To the surprise of the appellant, another order of dismissal from service was also issued vide order dated 29-04-2014, hence the appellant was proceeded twice and was dismissed twice in two parallel inquiries on

the charges of absence. The appellant filed the instant service appeal with prayers that the impugned orders dated 05-06-2013, 13-03-2014, 06-03-2015 and 29-04-2014 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, hence his rights secured and guaranteed under the law were badly violated; that no proper procedure has been followed before dismissal of the appellant from service, neither he has been served with charge sheet/statement of allegations nor he has been associated with the inquiry proceedings; that the whole proceedings were conducted ex-parte and the appellant was not afforded opportunity of defense, hence the whole proceedings are liable to be set aside; that the appellant was kept deprived of personal hearing and was condemned unheard; that no show cause notice was served upon the appellant before imposition of major penalty; that the period for which the appellant remained allegedly absent has been regularized by treating it leave without pay, thus the very ground on which the appellant was proceeded against has vanished and no penalty could lawfully be imposed upon him. Reliance was placed on 2012 TD (Services) 348; that the appellant was proceeded twice for the same charges; that it is needless to mention that the dismissal orders dated 29-04-2014 was issued at the time when the appellant was already dismissed from service and such order is having no legal effect; that the appellant has been awarded penalty with retrospective effect and no order of penalty can be made to operate with retrospective effect as such the impugned order is liable to be set aside on this score alone; that the penalty so imposed is harsh, which does not commensurate with guilt of the appellant.

03. Learned Assistant Advocate General appearing on behalf of respondents has contended that the appellant absented himself from lawful duty w.e.f 23-02-2012 till 14-05-2012 and 29-11-2012 till 29-04-2013 without permission/leave from the

competent authority; that the appellant was properly proceeded against under the relevant law and was rightly penalized. The learned admitted that the appellant was dismissed twice as during the course he was transferred to another station, where he again absented from lawful duty, hence he was proceeded against and in the process, he was dismissed again on the charges of absence, not knowing that he was already dismissed.

04. We have heard learned counsel for the parties and have perused the record. Record reveals that the appellant was dismissed vide order dated 05-06-2013, against which the appellant filed departmental appeal dated 23-09-2013, which was rejected vide order dated 13-03-2014. The appellant filed revision petition, copy of which is not available on record, but its rejection order dated 06-03-2015 transpires that the appellant had filed revision petition within time as the same was not dismissed on ground of limitation. The instant appeal was filed by the appellant on 07.04.2015 which is within time.

05. What is available on record is a charge sheet/statement of allegations dated 05-04-2012 containing the charges of absence w.e.f 23-02-2012 to 05-04-2012 and for the purpose, SDPO/Suburb was appointed as inquiry officer. Final show cause dated 10-08-2012 is also available on record, but nothing is available on record to suggest that charge sheet/statement of allegations/ final show cause notice was served upon the appellant, as the appellant was not available for such service. The appellant in his appeal has contended that he was seriously ill and he duly informed the office regarding his illness, but which was not considered. Placed on record is medical prescriptions suggesting that the appellant was advised bed rest for months, which can be considered as true as the respondents neither deny nor objected to such prescriptions, which reveals that his absence was not willful and the Supreme Court of Pakistan in its judgment reported in 2008 SCMR 214 have held that leave without permission on medical grounds does not constitute gross misconduct

entailing major penalty of dismissal from service. Placed on record is an inquiry report submitted by SDPO/Suburb, which reveals that ex-parte action was taken against the appellant and the appellant was not associated with the inquiry proceedings. It is also a well-settled legal proposition in light of judgments of the apex court that regular inquiry is must before imposition of major penalty of dismissal from service, which however was not done in case of the appellant. The Supreme Court of Pakistan in its judgment reported in 2008 SCMR 1369 have held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest justice. Obviously the appellant was not associated with the process of disciplinary proceedings and was condemned unheard. The appellant was ultimately awarded major punishment of dismissal form service vide order dated 05-06-2013 by Superintendent of Police Head Quarters Peshawar, and his absence period was also treated as leave without pay, the relevant portion of the impugned order is reproduced as under:-

*"In light of findings of the inquiry officer and other material available on record, the undersigned came to the conclusion that the alleged official found guilty of the charges, he is hereby dismissed from service under Police & Disciplinary Rules, 1975 with immediate effect, hence the period, he remained absent from duty for 08 months is treated without pay".*


The appellant was proceeded against on the ground of willful absence for the mentioned period, however the authority has treated the mentioned period, as such the very ground, on the basis of which the appellant was proceeded against, has vanished away. Wisdom in this respect derived from the judgment of the august

Supreme Court of Pakistan, reported as 2006 SCMR 434 and 2012 TD (Services) 348. Needless to mention that the appellant was also dismissed from service under the same charges of absence vide order dated 29-04-2014 by Superintendent of Police City and inquiry report placed on record was conducted by DSP/Sadar Circle and in this case also, the appellant was proceeded ex-parte, but such order have no legal sanctity as by the time, the appellant was already dismissed from service vide order 05-06-2013, but which definitely expose the level of coordination amongst offices of police department.

06. In light of the above discussion, the appeal in hand is accepted and the appellant is re-instated in service, however the intervening period of his absence from duty be treated as leave without pay. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED  
10.09.2021





  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

  
(ATIQ-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)

Form-A  
FORM OF ORDER SHEET

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

Appeal's Restoration Application No. 243/2019

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	14.06.2019	<p>The application for restoration of appeal No. 589/2015 submitted by Mr. Muhammad Asif Yousafzai Advocate, may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR 14/6/19</p>
2		<p>This restoration application is entrusted to D. Bench to be put up there on <u>28-8-19</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	28.08.2019	<p>Learned counsel for the applicant present. Notice of the present application be issued to the respondents for reply. Adjourn. To come up for reply/arguments on 02.10.2019 before D.B.</p> <p style="text-align: center;"> Member</p> <p style="text-align: right;"> Member</p>

02.10.2019

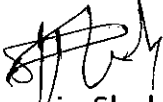
Appellant alongwith his counsel and Mr. Kabirullah Khattak, Additional AG for the respondents present. Reply on restoration application on behalf of respondents not submitted. Learned Additional AG seeks adjournment. Adjourned to 01.11.2019 for reply and arguments on restoration application before D.B.


  
(AHMAD HASSAN)  
MEMBER

  
(M. AMIN KHAN KUNDI)  
MEMBER

01.11.2019

Counsel for the applicant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Reply on restoration application on behalf of respondents not submitted. Learned Additional AG requested for further adjournment. Adjourned to 12.12.2019 for reply and arguments on restoration application before D.B.

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

12.12.2019

Appellant in person and Mr. Kabirullah Khattak, Additional AG for the respondents present.


Due to general strike of Khyber Pakhtunkhwa Bar Council learned counsel for the appellant is not available today. Adjourned to 11.02.2020 for reply and arguments on restoration application before D.B.


  
(Ahmad Hassan)  
Member

  
(M. Amin Khan Kundi)  
Member

11.02.2020

Learned counsel for the petitioner present. Mr. Kabirullah Khattak learned Additional AG for the respondents present. Reply on restoration application on behalf of respondent not submitted. Learned Additional AG for the respondents requested for further adjournment. Adjourned to 30.03.2020 for reply and argument on restoration application before D.B.

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

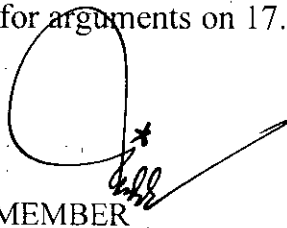
30.03.2020

Due to public holiday on account of COVID-19, the case is adjourned to 08.06.2020 for the same as before.

  
Reader

08.06.2020

Clerk to counsel for the appellant present. Addl: AG alongwith Mr. M. Raziq, H.C for respondents present. Due to general strike of the Khyber Pakhtunkhwa Bar Council, the case is adjourned. To come up for arguments on 17.08.2020 before D.B.

  
MEMBER

  
MEMBER



17.08.2020

Due to summer vacations, the case is adjourned to  
28.10.2020 for the same.

  
Reader

28.10.2020

Proper D.B is on Tour, therefore, the case is  
adjourned for the same on 29.12.2020 before D.B.

  
Reader

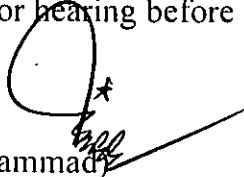
28.12.2020

Due to summer vacation, case is adjourned to 16.3.2021 for the same as before.

  
Reader

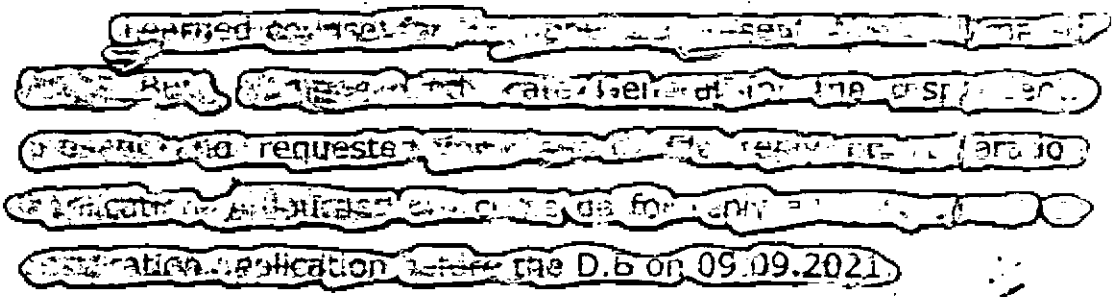
16.03.2021 Junior to counsel for the appellant and Addl. AG for the respondents present.

Former requests for adjournment as learned senior counsel for the appellant is busy in the Honourable Peshawar High Court in various cases today. Adjourned to 31.05.2021 for hearing before the D.B.

  
(Mian Muhammad)  
Member (E)

  
Chairman



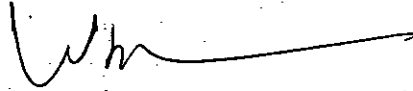


  
(ATK) R. KERMAT WAZIR  
MEMBER (EXECUTIVE)

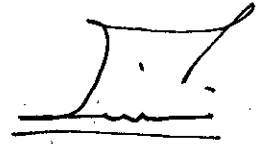
  
(S) ... (D) ...  
MEMBER (JUDGE)

31.05.2021

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present and stated at the bar that time may be granted to him for submission of reply. Adjourned. To come up for reply as well as arguments on the restoration application before the D.B on 02.08.2021.



(ATIQU-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

03.08.2021

Petitioner present through counsel.

Mr. Riaz Khan Paindakheil learned Assistant Advocate General for respondents present.

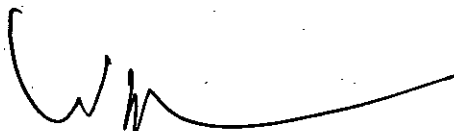
Arguments on application heard. Record perused.

Application in hand was filed for restoration of appeal which was dismissed in default on 18.02.2019.

As per record, appeal was dismissed in default on 18.02.2019, whereas, application seeking restoration was filed on 14.06.2019.

Learned counsel for the petitioner stated that case was wrongly noted by appellant/counsel and on 18.02.2019, when the case was called, no one put appearance before this Tribunal for the above-mentioned reason, whereby, case was dismissed in default.

In view of the circumstances, instant application is accepted on cost of Rs.1000/-. It be properly registered. Application stands consigned to the record room, copy whereof be placed on original file. To come up for arguments in the main appeal on 03.09.2021 before D.B.




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

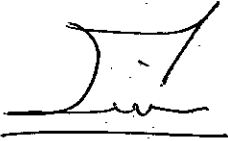
(Rozina Rehman)  
Member (J)

03.09.2021

Appellant alongwith her counsel Ms. Roeda Khan, Advocate, present. Mr. Muhammad Raziq, Reader alongwith Mr. Riaz Ahmed Paindakheil, Assistant Advocate General for the respondents present.

Arguments heard. To come up for order before the D.B on 10.09.2021.

  
(ATIQ-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

10.09.2021 Appellant alongwith her counsel Miss Roeda Khan, Advocate, for the appellant present. Mr. Muhammad Raziq, Reader alongwith Mr. Riaz Ahmed Paindakheil, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is accepted and the appellant is re-instated in service, however the intervening period of his absence from duty be treated as leave without pay. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

10.09.2021



(SALAF-UD-DIN)  
MEMBER (JUDICIAL)



(ATIQ-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)

15.10.2018

Due to retirement of Hon'able Chairman, the Tribunal is defunct. Therefore, the case is adjourned for the same on 21.12.2018 before D.B.

  
Reader

21.12.2018

Junior to counsel for the appellant and Mr. Kabirulah Khattak learned Additional Advocate General for the respondents present. Junior to counsel for the appellant requested for adjournment as senior counsel for the appellant is not available today. Adjourned. To come for arguments on 18.02.2019 before D.B.

  
(Hussain Shah)  
Member

  
(Muhammad Amin Kundi)  
Member

18.02.2019 Nemo for the appellant. Learned Deputy District Attorney for the respondents present.

It is already 4:00 PM and the case has been called more than once. Despite, no one is in attendance on behalf of appellant. Dismissed for want of prosecution. File be consigned to the record room.

  
Member

  
Chairman

ANNOUNCED.  
18.02.2019

09.02.2018

Clerk of counsel for the appellant and Addl. AG for the respondents present. Counsel for the appellant is not in attendance. Seeks adjournment. To come up for arguments on 13.04.2018 before the D.B.


  
Member

  
Chairman

13.04.2018


Counsel for the appellant and Addl. AG alongwith Muhammad Raziq, H.C for the respondents present. The court time is over. To come up for arguments on 29.06.2018 for arguments before the D.B.

  
Member

  
Chairman

29.06.2018

Appellant in person present and submitted fresh Vakalat Nama of Mr. Muhammad Asif Yusafzai, Advocate. Vakalat Nama is placed on file. Kabirullah Khattak, Additional AG for the respondents present. Appellant seeks adjournment on the ground that his counsel is busy before the Hon'ble Peshawar High Court. Being one of the oldest case, last opportunity is granted for arguments. Adjourned. To come up for arguments on 17.08.2018 before D.B.

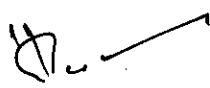
  
(Muhammad Amin Kundi)  
Member

  
(Muhammad Hamid Mughal)  
Member

17.08.2018

No one present on behalf of appellant. Mr. Muhammad Jan learned Deputy District Attorney for the respondents present. Adjourned. To come up for arguments on 15.10.2018 before D.B.

  
(Muhammad Amin Kundi)  
Member

  
(Muhammad Hamid Mughal)  
Member

11.04.2017

Counsel for the appellant present. Mr. Ziaullah, Government Pleader for respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 03.08.2017 before D.B.

  
(Ahmad Hassan)  
Member

  
(Muhammad Amin Khan Kundi)  
Member

03.08.2017


Clerk of counsel for the appellant and Asstt. AG along with Muhammad Raziq H.C. for the respondents present. Counsel for the appellant is not in attendance. Seeks adjournment. Adjourned. To come up for final hearing before the D.B on 06.12.2017.


  
Member

  
Chairman

06.12.2017

Clerk to counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney for respondent also present. Clerk to counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 09.02.2018 before the D.B.

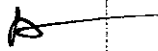
  
(Ahmad Hassan)  
Member (E)

  
(Muhammad Amin Khan Kundi)  
Member (J)



12.04.2016

Counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Counsel for the appellant stated that he does not want to file rejoinder. To come up for arguments on 1.08.2016.

  
Member

  
Member

01.08.2016

Counsel for the appellant and Mr. Hayat Muhammad, Reader alongwith Assistant AG for respondents present. Respondents are directed to produce inquiry report as well as other relevant record. To come up for such record and arguments on 5-12-16 before D.B. Rejoinder, if any, in the meanwhile.

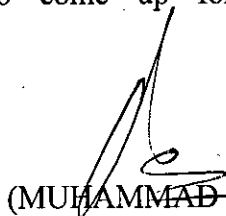
  
MEMBER

  
MEMBER

05.12.2016

Counsel for the appellant and Mr. Aziz Shah, Reader alongwith Assistant AG for respondents present. Representative of the respondent-department submitted inquiry report which is placed on file. Learned counsel for the appellant also submitted rejoinder, copy whereof handed over to learned Assistant AG. To come up for arguments on 11-4-17 before D.B.

  
(ASHAFAQUE TAJ)  
MEMBER

  
(MUHAMMAD AAMIR NAZIR)  
MEMBER

03

08.06.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Constable when vide impugned order dated 5.6.2013 he was dismissed from service on the ground of wilful absence from duty regarding he preferred departmental appeal which was rejected on 13.3.2014 followed by review petition which was also rejected vide impugned order dated 6.3.2015 and hence the instant service appeal on 2.6.2015.

That the period of absence from duty was regularized as the same was considered as leave without pay and as such the impugned order of dismissal is not sustainable in the eye of law.

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 for 27.8.2015 before S.B.

  
Chairman

4

27.08.2015

Agent of counsel for the appellant and Assistant A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 23.11.2015 before S.B.

  
Chairman

23.11.2015

Agent of counsel for the appellant and Mr. Abdur Raziq, Assistant alongwith Addl: A.G for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 12.4.2016.

  
Chairman

Appellant Deposited  
Security & Process Fee



Form- A  
FORM OF ORDER SHEET

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

Case No. 589/2015

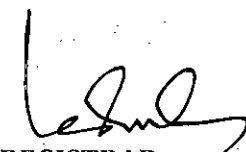
S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	02.06.2015	<p>The appeal of Mr. Imran Khan resubmitted today by Mr. Ijaz Anwar Advocate, may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p><i>[Signature]</i> REGISTRAR</p>
2	5-6-15	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>8-6-15</u></p> <p><i>[Signature]</i> CHAIRMAN</p> <p><i>[Handwritten mark]</i></p>

The appeal of Mr. Imran Khan ex-Constable No. 3632 Distt. Police Peshawar received to-day i.e. on 07.04.2015 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Affidavit may be got attested by the Oath Commissioner.
- 3- Appeal may be page marked according to the index.
- ④ Copy of enquiry report mentioned in para-3 of the memo of appeal (Annexure-B) of the memo of appeal is not attached with the appeal which may be placed on it.
- ⑤ Copies of discharged order and departmental appeal mentioned in para-4&5 of the memo of appeal are not attached with the appeal which may be placed on it.
- ⑥ Copies of letter dated 12.4.2013, 3.6.2013, decision of the Medical Board and letter dated 02.7.2013 mentioned in para-5 of the memo of appeal are not attached with the appeal which may be placed on it.
- ⑦ Copies of mercy petition. Letter dated 4.1.2014, 14.4.2014 and 7.3.2014 mentioned in para-6 of the memo of appeal are not attached with the appeal which may be placed on it.
- 8- Annexures of the appeal may be annexed serial wise as mentioned in the memo of appeal.
- 9- Annexures of the appeal may be attested.
- 10- Six more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 461 /S.T.

Dt. 07/4 /2015

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Ijaz Anwar Ady. Peshawar.

Sir,

- ① Objection has been removed.
- ② Has been attested
- ③ Page numbers have been marked.
- ④ Copy has been mentioned
- ⑤ Has been removed. Appeal did not Retain the copy his Departmental Appeal.
- ⑥ Have been removed.
- ⑦ Objection removed.
- ⑧ Has been removed.
- ⑨ Attested
- ⑩ Copies Submitted.

Ijaz Anwar  
[Signature]

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

Appeal No. 589/2015

Imran Khan Ex- Constable No.3632 District Police  
Peshawar.

(Appellant)

**VERSUS**

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

(Respondents)

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3	Charge Sheet and statement of allegations.	B	9-10
4	Show Cause Notice and order dated 05.06.2013,	C & D	11-12
5	order dated 13/03/2014	E	13
6	order dated 06.03.2014	F	14
	order dated 29.04.2015,	G	15
7	Vakalatnama.		

*Imran Khan*  
Appellant

Through

*Ijaz Anwar*  
**IJAZANWAR**  
Advocate Peshawar

*Sajid Amin*  
**SAJID AMIN**  
Advocate, Peshawar.

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

N.W.F. Province  
Service Tribunal

Diary No. 312

dated 07-4-2015

Appeal No. S89/2015

Imran Khan Ex- Constable No.3632 District Police  
Peshawar.

(Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer. Peshawar.
3. Superintendent of Police Head Quarters, Peshawar.
4. Superintendent of Police City, Peshawar.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 05.06.2013, whereby the appellant has been awarded the major punishment of dismissal from service, against which the Departmental Appeal and mercy petition of the appellant have also been rejected vide orders dated 13.03.2014 and 06.03.2015, copy of the order dated 06.03.2015 was however was however communicated to the appellant on 13.03.2015.

Filed to-day

7/4/15

Prayer in Appeal: -

On acceptance of this appeal the order dated 05.06.2013, orders dated 13.03.2014 and 06.03.2015, may please be set-aside and the appellant may be re-instated in service with full back wages and benefits of service, similarly the order dated 29.04.2014, may also be declared as illegal and be set aside.

re-submitted to-day  
and filed.

Registrar

2/2/15

Respectfully Submitted:

1. That the appellant was enlisted as Constable in the Police Department in the year 2010, ever since his enlistment the appellant performed his duties as assigned to him with zeal and devotion.
2. That while serving in the said capacity the appellant got seriously ill and was advised complete bed rest by the doctor from time to time. Since the appellant was seriously ill and therefore he could not reach to his office for seeking medical leave, however he duly informed his place of duty regarding his continued illness. *(Copies of the Medical Slips are attached as Annexure A)*
3. That a charge sheet and statement of allegations was issued but never communicated to the appellant containing the allegations of absence from duty w.e.f 23/02/2012 to 14/05/2012 and 29/11/2012 to 29/04/2013. *(Copy of the Charge Sheet and statement of allegations is attached as Annexure B)*
4. That without making any endeavour to associate the appellant with the enquiry proceedings, an ex-parte enquiry was conducted and the enquiry officer recommended the appellant for discharge from service.
5. That thereafter, a show cause notice was though issued but never communicated to the appellant, lastly the appellant was awarded the major penalty of dismissal from service and his absence period was also treated as Leave without pay vide order dated 05/06/2013. *(Copies of the Show Cause Notice and order dated 05.06.2013, are attached as Annexure C & D)*
6. That the appellant submitted his departmental appeal to the Respondent No. 02 against the order dated 05/06/2013, however the same was rejected/ filed vide order dated 13/03/2014 communicated to the appellant on 07/05/2014. Unfortunately the appellant did not retained the copy of his departmental appeal. *(Copy of order dated 13/03/2014 are attached as Annexure E)*
7. That after rejection of his appeal, the appellant also submitted his Revision/mercy petition which was also rejected vide order dated 06.03.2015, the order was communicated to the appellant on 08.03.2015. *(Copy of the of the order dated 06.03.2014, is attached as Annexure F)*

8. That though the appellant was dismissed from service vide order dated 05.06.2013, and he had also filed departmental appeal against the said order, however to the great surprise of the appellant another order dated 29.04.2014, was also issued and again major punishment of dismissal from service was awarded to the appellant vide order dated 29.04.2014 allegedly on account of absence from duty w.e.f 29.05.2013. the order dated 29.04.2014, was however never communicated to the appellant, it was only when the appellant applied for the provision of departmental proceedings against him, in the month of March, 2015, FOR filing of the instant appeal, he came to know that he has also been proceeded twice and has been dismissed from service twice in two parallel inquiries. *(Copy of the order dated 29.04.2015, is attached as Annexure G)*
9. 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 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, nor has he been provided copy of enquiry report, before the imposition of penalty upon him, which is mandatory in case of awarding major Penalty.



- E. That no endeavor has ever been made to associate the appellant with the inquiry proceedings the inquiry officer conducted an ex party inquiry and gave his findings on surmises and conjunctures.
- F. That while awarding the penalty of dismissal from service to the appellant, the period for which he remained allegedly absent has also been regularized by treating it as leave without pay, thus the vary ground on which the appellant was proceeded against had vanished and no penalty could lawfully be imposed upon him.
- G. That the charges leveled against the appellant were never proved in the enquiry, the enquiry officer gave his findings on surmises and conjunctures.
- H. 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, moreover after he gained health, he duly reported for duty and performed duty at PS Paharipura, till his dismissal from service, as is evident from the order dated 29.04.2014, however this fact has been ignored by while awarding the appellant major punishment from service.
- I. That the appellant has been proceeded twice for the same charges, needless to mention that the orders dated 29.04.2014, was issued at the time when the appellant was already dismissed from service and as such have no legal effect.
- J. That the appellant has been awarded the penalty with retrospective effect as no order of penalty can be made to operate with retrospective effect as such the order impugned is liable to be set aside on this score alone.
- K. That since the appellant is jobless since his illegal dismissal from service he has a large family dependant upon him, due to his illegal discharge from service his whole family is suffering.
- L. That the appellant has more then 3 years spotless service career, the penalty imposed upon him is too harsh and liable to be set aside.

M. 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 appeal the order dated 05.06.2013, orders dated 13.03.2014 and 06.03.2015, may please be set-aside and the appellant may be re-instated in service with full back wages and benefits of service, similarly the order dated 29.04.2014, may also be declared as illegal and be set aside.

*Imran Khan*  
Appellant

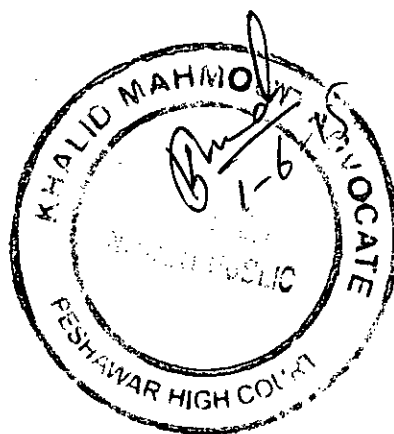
Through

*Ijaz Anwar*  
IJAZ ANWAR  
Advocate Peshawar

**AFFIDAVIT**

**I, Imran Khan Ex- Constable No.4632 District Police Peshawar,** 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.

*Imran Khan*  
Deponent



**BEFORE THE HON'BLE SERVICE TRIBUNAL**  
**PESHAWAR**

In Re S.A No. \_\_\_\_\_/2015

Imran Khan

**VERSUS**

Provincial Police Officer KPK Peshawar & Others

**APPLICATION FOR CONDONATION OF DELAY (IF ANY)**

**Respectfully Sheweth,**

1. That the above mentioned appeal is filing before this Hon'ble Tribunal in which no date is fixed for hearing so far.
2. That the appellant submitted departmental appeal within one month from the communication of the impugned order dated 05.06.2013 which has been rejected on 13.03.2014 communicated to the appellant on 05.07.2014 and the appellant filed revision petition within one month from the communication of the rejection order dated 13.03.2014 which has been rejected on 06.03.2015 and communicated to the appellant on 13.03.2015.

**Grounds:**

- A. That the impugned order is void and illegal and no limitation run against the void orders because the impugned order has been passed without fulfilling the codal formalities and the absence period is also treated as leave without pay.

B. That there are number of precedents of the Supreme Court of Pakistan which provides that the cases should be decided on merits rather than technicalities.

C. And there are also specific provision in service law as well as judgment of the superior courts that limitation has been counted from the date of communication.

**It is, therefore, requested that the limitation period (if any) may kindly be condone in the interest of justice.**

APPELLANT

Through

**Ijaz Anwa**  
Advocate, Peshawar  
&  
**Sajid Amin**  
Advocate, Peshawar.

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

In S.A # 589/2015

Imran Khan

Versus

Provincial Police Officer KPK Peshawar & Others

**REJOINDER ON BEHALF OF**  
**APPELLANT.**

**Respectfully Sheweth,**

All the Preliminary objection raised by the Respondents are incorrect and baseless and not in accordance with law and rules rather the Respondents are stopped due to their own conduct to raised any objection at the stage on the appeal.

**Facts**

All the facts of the appeal are correct while reply of the Respondent Department is incorrect wide abinitio and illegal, because the impugned order dated 05.06.2013 has been passed without fulfilling the codal formalities and such no departmental inquiry has been conducted against the appellant no charge sheet statement

allegation and show cause notice has been communicated to the appellant within time by the respondent department at has been communicated to the appellant with impugned order dated 05.06.2013. No statement of local police of PS Badhber has been recorded nor any opportunity of cross examination has been provided to the appellant. The appellant filed departmental appeal against the impugned order dated 05.06.2013 within one month from the communication of the said impugned order which has been rejected on 13.03.2014 communicated to the appellant on 05.07.2014. After that the appellant filed Revision Petition within one month from the communication of the rejection order dated 13.03.2014 which has been rejected on 06.03.2015 communicated to the appellant on 13.03.2015. But unfortunately the appellant did not retained the copy of departmental appeal as well as copy of revision petition.

**ON GROUNDS:-**

All the grounds of the appeal are correct and accordance with law and prevailing rules and that of the Respondents are incorrect baseless and not in accordance with law and rules hence denied, because the period of absence is also treated as leave without pay

which is illegal, and comes under the double jeopardy the appellant has been awarded mangle punishment of dismissal under police Rules 1975 but the appellant has not been treated according to the said rule and so concerned the absence period of the appellant is not intentionally or deliberate but due to savior illness of the appellant:

*It is, therefore, requested that the appeal may kindly be accepted as prayed for.*

**Petitioner**

Through

**Ijaz Anwar**

Advocate, Peshawar

&

**Sajid Amin**

Advocate Peshawar

9

ANNEX "B"

**CHARGE SHEET**

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge that Constable Imran No.3632 of Capital City Police Peshawar with the following irregularities.

"That you Constable Imran No.3632 while posted at DAR, Peshawar were absent from duty w.e.f. 23.02.2012 till date without taking permission or leave. This amounts to gross misconduct on your part and is against the discipline of the force."

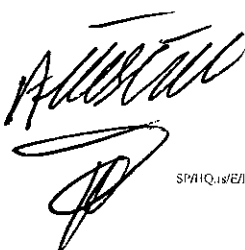
You are, therefore, required to submit your written defence within seven days of the receipt of this charge sheet to the Enquiry Officer committee, as the case may be.

Your written defence, if any, should reach the Enquiry Officer/Committee within the specified period, failing which it shall be presumed that have no defence to put in and in that case exparte action shall follow against you.

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.

  
SUPERINTENDENT OF POLICE,  
HEADQUARTERS, PESHAWAR





10

**DISCIPLINARY ACTION**

I, Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that Constable Imran No.3632 has rendered him-self liable to be proceeded against under the provision of Police Disciplinary Rules-1975

**STATEMENT OF ALLEGATION**

"That Constable Imran No.3632 while posted at DAR, Peshawar ~~absented himself from duty~~ w.e.f. 23.02.2012 till date without taking permission or leave. This amounts to gross misconduct on his part and is against the discipline of the force."

For the purpose of scrutinizing the conduct of said accused with reference to the above allegations an enquiry is ordered and Sd/PO Subrub is appointed as Enquiry Officer.

2. The Enquiry Officer shall, in accordance with the provisions of the Ordinance, provide reasonable opportunity of hearing to the accused officer, record his finding within 30 days of the receipt of this order, make recommendations as to punishment or other appropriate action against the accused.

3. The accused shall join the proceeding on the date time and place fixed by the Enquiry Officer.

*[Signature]*  
SUPERINTENDENT OF POLICE,  
HEADQUARTERS, PESHAWAR

No. 306 /E/PA, dated Peshawar the 05/04 /2012

1 Sd/PO Subrub is directed to finalize the aforementioned departmental proceeding within stipulated period under the provision of Police Rules-1975.

2. Official concerned

*[Signature]*

11/2 ANNEX C

**FINAL SHOW CAUSE NOTICE**

I Superintendent of Police, Headquarters, Capital City Police, Peshawar as competent authority, under the provision of Police Disciplinary Rules 1975 do hereby serve you Constable Imran No.4632 of Capital City Police, Peshawar as follows.

1 (i) That consequent upon the completion of enquiry conducted against you by the enquiry officer for which you were given opportunity of hearing.

(ii) On going through the findings and recommendation of the enquiry Officer, the material on record and other connected papers produced before the E.O.

I am satisfied that you have committed the following acts/omissions specified in Police Disciplinary Rules 1975 of the said Ordinance.

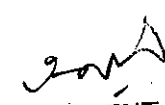
"That you Constable Imran No.4632 while posted at DAR, Peshawar was absent from 23.02.2012 till date without taking permission or leave. This act amounts to gross misconduct on your part and against the discipline of the force"

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of major punishment under Police Disciplinary Rules 1975 for absence willfully performing duty away from place of posting.

3. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

4. If no reply to this notice is received within 7 days of its delivery, in normal course of circumstances, it shall be presumed that you have no defence to put in and in that case as ex-parate action be taken against you.

5. The copy of the finding of the enquiry officer is enclosed.

  
SUPERINTENDENT OF POLICE,  
HEADQUARTERS, PESHAWAR

No. 306 /PA, SP/HQrs: dated Peshawar the 10/8/2012.  
Copy to official concerned



ORDER:

(12)

ANNEX-D

This office order relates to the disposal of formal departmental enquiry against Constable Imran No.4632 of Capital City Police Peshawar on the charges that he while posted at DAR Peshawar absented himself from lawful without taking permission or leave on the following period.

From	To	Total
23.02.2012	14.05.2012	02-months & 21-days
29.11.2012	29.04.2013	05-months & 10-days
<b>Total</b>		<b>08-months</b>

In this regard, he was issued charge sheet and summary of allegations vide No.306/E/PA/SP/H.Qrs, dated 05.04.2012. SDPO Suburb was appointed as Enquiry Officer. He conducted the enquiry proceedings and submitted his report that the defaulter official is a habitual absentee and not taking interest in his official duty. The Enquiry Officer further recommended major punishment for defaulter official vides Enquiry Report No.56/E/ST dated 08.08.2012.

Upon the finding of Enquiry Officer, he was issued final show cause notice and delivered to him on home address through local Police PS Badaber to which he received by himself but he failed to submit his reply within stipulated period of 07-days or appear in this office as yet.

In light of the finding of Enquiry Officer and other material available on record, the undersigned came to conclusion that the alleged official found guilty of the charges. Therefore, he is hereby dismissed from service under Police & Disciplinary Rules-1975 with immediate effect. Hence, the period, he remained absent for 08-months is treated without pay.

*[Signature]*  
SUPERINTENDENT OF POLICE  
HEADQUARTERS, PESHAWAR

OB. NO. 2001 / Dated 5.6 / 2013  
No. 1924-32 / PA/SP / dated Peshawar the 05/6 / 2013

Copy of above is forwarded for information & n/action to:

- ✓ Capital City Police Officer, Peshawar.
- ✓ SSP/Operation, Peshawar
- ✓ DSP/HQrs, Peshawar.
- ✓ Pay Office/OASI/CRC & FMC along-with complete departmental file.
- ✓ Officials concerned.

*[Handwritten signature]*

1900

10

**ORDER:**

(12)

ANNEX-D

This office order relates to the disposal of formal departmental enquiry against Constable Imran No.4632 of Capital City Police Peshawar on the charges that he while posted at DAR Peshawar absented himself from lawful without taking permission or leave on the following period.

44 - 4125

From	To	Total
23.02.2012	14.05.2012	02-months & 21-days
29.11.2012	29.04.2013	05-months & 10-days
<b>Total</b>		<b>08-months</b>

In this regard, he was issued charge sheet and summary of allegations vide No.306/E/PA/SP/H.Qrs, dated 05.04.2012. SDPO Suburb was appointed as Enquiry Officer. He conducted the enquiry proceedings and submitted his report that the defaulter official is a habitual absentee and not taking interest in his official duty. The Enquiry Officer further recommended major punishment for defaulter official vides Enquiry Report No.56/E/ST dated 08.08.2012.

Upon the finding of Enquiry Officer, he was issued final show cause notice and delivered to him on home address through local Police PS Badaber to which he received by himself but he failed to submit his reply within stipulated period of 07-days or appear in this office as yet.

In light of the finding of Enquiry Officer and other material available on record, the undersigned came to conclusion that the alleged official found guilty of the charges. Therefore, he is hereby dismissed from service under Police & Disciplinary Rules-1975 with immediate effect. Hence, the period, he remained absent for 08-months is treated without pay.

*[Signature]*  
**SUPERINTENDENT OF POLICE  
HEADQUARTERS, PESHAWAR**

OB. NO. 2001 / Dated 5.1.6 /2013

No. 1924-32/PA/SP/dated Peshawar the 05/6 /2013

Copy of above is forwarded for information & n/action to:

- ✓ Capital City Police Officer, Peshawar.
- ✓ SSP/Operation, Peshawar
- ✓ DSP/HQrs, Peshawar.
- ✓ Pay Office/OASI/CRC & FMC along-with complete departmental file.
- ✓ Officials concerned.

*[Signature]*

ORDER

(13)

ANNEX "E"

This order will dispose off departmental appeal of ex-constable **Imran Khan No. 4632** who was awarded the major punishment of **Dismissal** from service under PR 1975 vide OB No. 2001 dated 5.6.2013 by SSP/HQRs: Peshawar, on the charge of deliberate absence for a long time from lawful duty w.e.f. 23.2.2012 to 14.5.2012 and 29.11.2012 to 29.4.2013 (**Total 7-months and 21-days**) from DAR.

Proper departmental proceedings were initiated against him and DSP/Suburb was appointed as the E.O and after completion of all the codal formalities he was awarded the aforementioned punishment.

The relevant record was perused along with his explanation. He was also heard in person in OR on 11/3/2014. The allegations stand proved against him. He could not defend himself. His appeal is also timer barred. He remained absent for 7-months and 21-days. He deserves no leniency. The order of SSP-HQRs: is upheld and his appeal for re-instatement in service is rejected/filed.

**CAPITAL CITY POLICE OFFICER,  
PESHAWAR.**

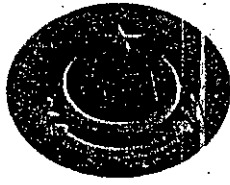
No. 419-24/PA dated Peshawar the 13 3 14

Copies for information and n/a to the :-

- 1/ SP-HQRs: Peshawar
- 2/ PO/OASI
- 3/ CRC along with S.Roll for making n/entry.
- 4/ FMG along with FM.
- 5/ Official concerned.

میں نے آرڈر ہذا  
آج مورخہ 7<sup>5</sup>/<sub>2014</sub> کو  
موصول کی  
-  
Imran Khan  
7<sup>5</sup>/<sub>2014</sub>

*Imran Khan*



ANNEX F  
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-Constable Imran Khan No. 4632 of CCP, Peshawar against the Punishment order i.e dismissal from service passed against the appellant by SP/HQrs Peshawar vide his order Book No. 2001 dated 05.06.2013

In the light of recommendations of Appeal Board meeting held on 26.02.2015, 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 also heard in person. The board rejected his appeal as he has got 19 bad entries from time to time during about 04 years service.


Order announced in the presence of appellant.

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

No. 2885-88 /E-IV dated Peshawar the 06/03 /2015

Copy of above is forwarded to the:-

1. Capital City Police Officer, Peshawar. The Service Roll, and Departmental Enquiry file of above named Ex-constable are returned herewith for record in your office.
2. PSO to IGP/Khyber Pakhtunkhwa Peshawar.
3. PA to Addl: IGP/HQrs Khyber Pakhtunkhwa, Peshawar.
4. PA to DIG/HQrs Khyber Pakhtunkhwa, Peshawar.

  
(SYED FIDA HASSAN SHAH)  
AIG/Establishment  
For Inspector General of Police,  
Khyber Pakhtunkhwa  
Peshawar.



(15) ANNEX "G"

**ORDER**

Constable Imran No. 4632 while posted at Police Station Paharipura absented himself from his lawful duty with effect from 29.05.2013 till to date without prior permission or information from his superior officer. It shows that he is not taking interest in his legitimate duty. This act amounts to gross misconduct and is against the discipline of the force."

Disciplinary proceedings were initiated against him and he was issued Charge Sheet with statement of allegations. SDPO Faqirabad was appointed as enquiry officer. The enquiry officer was summoned the defaulter constable times and again but in vain.

Findings of the enquiry officer received, relevant record perused by the undersigned. He was issued Final Show Cause Notice vide this office No.590/SP-City dated 21.01.2014 which was sent to him on his home address through DFC Anwar Shah PS Paharipura. The defaulter Constable was not present at home the final show cause has received his neighbor Muhammad Saeed s/o Haji Muhammad Gul r/o Badaber Peshawar but he not submitted his reply in the stipulated period. He wastes the opportunity of personal hearing.

The enquiry officer in his findings has recommended for major punishment. In the light of the recommendation of the enquiry officer the undersigned came to the conclusion to take stern action against him as experte and awarded the major punishment of **"dismissal from service"** under the existing rules 1975 from the date of his absence i.e 29.05.2013 with immediate effect.

Order announced.

(FAISAL MUKHTAR) PSP  
Superintendent of Police City,  
Peshawar.

OB: No. 1291

Dated 18-4 April 2014

No. 3424 /PA dated Peshawar, the 29 /April, 2014.

Copy for information and necessary action to:-

1. The Capital City Police Officer, Peshawar
2. The SSP/Operations Peshawar.
3. The SP HQrs:
4. PO, SRC.OASI, I/C Computer Cell
5. Fauji Missal Branch with enquiry papers for record.
6. Official Concerned.



POWER OF ATTORNEY

In the Court of Khyber Pakhtunkhwa Service Tribunal  
Peshawar  
Imran Khan EX-Constable

} For  
} Plaintiff  
} Appellant  
} Petitioner  
} Complainant

VERSUS

The Provincial Police Officer, Khyber } Defendant  
Pakhtunkhwa Peshawar and others } Respondent  
} Accused

Appeal/Revision/Suit/Application/Petition/Case No. \_\_\_\_\_ of \_\_\_\_\_  
Fixed for \_\_\_\_\_

I/We, the undersigned, do hereby nominate and appoint

**IJAZ ANWAR ADVOCATE, SUPREME COURT OF PAKISTAN**

and SAJID AMIN Advocate my true and lawful attorney, for me in my same and on my behalf to appear at Peshawar 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 subpoena 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 hereto signed at Peshawar  
the \_\_\_\_\_ day to \_\_\_\_\_ the year \_\_\_\_\_  
Executant/Executants Imran Khan  
Accepted subject to the terms regarding fee \_\_\_\_\_

  
**SAJID AMIN**  
ADVOCATE HIGH COURT

Legal Advisor Services & Labour Laws Consultants  
FR-3-4, Fourth Floor, Bilour Plaza Peshawar Cantt.  
Ph: 091-5272054, Mob: 0333-4584986, 03339155956

  
**Ijaz Anwar**  
Advocate High Courts & Supreme Court of Pakistan

ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT  
FR-3-4, Fourth Floor, Bilour Plaza, Saddar Road, Peshawar Cantt  
Ph.091-5272154 Mobile-0333-9107225

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

**Service Appeal No.589/2015.**

Imran Khan Constable No.3632 CCP Peshawar.....Appellant.

**VERSUS.**

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Superintendent of Police, HQrs, Peshawar.
4. Superintendent of Police, City, Peshawar. ....Respondents.

**Reply on behalf of Respondents No. 1, 2, 3&4.**

**Respectfully Sheweth:-**

**PRELIMINARY OBJECTIONS.**

1. That the appeal is badly time barred.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has not come to this Hon'able Tribunal with clean hands.
4. That the appellant has no cause of action.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from Honorable Tribunal.
7. That this Hon'ble tribunal has no jurisdiction to entertain the appeal.

**FACTS:-**

- (1) Para No 1 pertains to record, hence needs no comments.
- (2) Para No 2 is correct to the extent that the appellant while posted at DAR Peshawar absented himself from his lawful duty w.e.f 23.02.2012 till 14.05.2012 and 29.11.2012 till 29.04.2013 (total 08 months) without taking permission/leave from his high ups.
- (3) Para No 3 is correct to the extent that the appellant was issued a charge sheet and summary of allegations and was served upon him.
- (4) Para No 4 is correct to the extent that proper departmental enquiry was conducted against appellant by SDPO Subrab, Peshawar. The enquiry

officer after completing all codal formalities recommended him for major punishment. He was also issued FSCN and delivered to him on home address through local police PS Badaber which he received by himself but he failed to submit his reply within stipulated period. As the charge of willful absence were stand proved against him, hence he was awarded major punishment of dismissal from service under police disciplinary rules 1975.

- (5) Para No 5 is correct to the extent that show cause notices was issued to appellant and was properly served upon him but he failed to submit reply to defend his long absence period.
- (6) Para No 6 is correct to the extent that the appellant preferred a departmental appeal but was rejected/filed because the charges of deliberate absence were stand proved against him.
- (7) Para No 7 is correct to the extent that the appellant preferred a review petition but was rejected/filed because the appellant is a habitual absentee and he has got 19 bad entries from time to time during about 04 years service.
- (8) Para no.8 is correct to the extent that the appellant while posted at PS Phari Pura absented himself from his lawful duty w.e.f 29.05.2013 till 18.4.2012 without taking permission or leave. Proper disciplinary proceedings were initiated against him and he was issued charge sheet and summary of allegations by SDPO Faqir Abad. The appellant avoided to appear before the E.O and to defend himself, hence the E.O recommended him for major punishment, hence after fulfilling all codal formalities he was awarded major punishment of dismissal from service.
- (9) That the punishment orders are lawful, per the law and rules.

**GROUND:**

- A) Incorrect. The appellant was treated as per law and rules.
- B) Incorrect. Proper departmental proceedings were conducted against him. He was given full opportunity to defend himself. As the charges of deliberate absence were stand proved against him, hence he was rightly awarded the punishment of dismissal from service.
- C) Incorrect. The appellant was called and heard in person in OR on 11.03.2014 but he failed to defend himself.
- D) Incorrect. The appellant was called time and again to attend the enquiry proceeding but he failed to appear and defend himself.
- E) Incorrect. The appellant was given full opportunity to defend himself but he failed to defend himself.
- F) Incorrect. The appellant was rightly awarded the punishment of dismissal from service.
- G) Incorrect. The charges leveled against him were stand proved.
- H) Incorrect. The appellant absented himself willfully without taking permission/leave from his high ups.
- I) Incorrect. The appellant remained absent in two different periods i.e from DAR and PS Phari Pura at different intervals.
- J) Incorrect. Para already explained above in detail.
- K) Incorrect. The appellant was awarded punishment due to willful absence.
- L) Incorrect. The appellant is a habitual absentee. The punishment order is in accordance with law/rules.
- M) Respondents also seek permission of this Honorable Tribunal to raise additional grounds at the time of arguments.

**PRAYER.**

It is therefore most humbly prayed that in light of above facts and submissions, the appeal of the appellant being devoid of merits and legal footing, may kindly be dismissed.



**Provincial Police Officer,  
Khyber Pakhtunkhwa,  
Peshawar.**



**Capital City Police Officer  
Peshawar.**



**Superintendent of Police  
HQs, Peshawar.**



**Superintendent of Police  
City, Peshawar.**

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

**Service Appeal No.589/2015.**

Imran Khan Constable No.3632 CCP Peshawar.....Appellant.

**VERSUS.**

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Superintendent of Police, HQrs, Peshawar.
4. Superintendent of Police, City, Peshawar. ....Respondents.

**AFFIDAVIT.**

We respondents 1, 2, 3 & 4 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal.

  
**Provincial Police Officer,  
Khyber Pakhtunkhwa,  
Peshawar.**

  
**Capital City Police Officer,  
Peshawar.**

  
**Superintendent of Police  
HQrs, Peshawar.**

  
**Superintendent of Police  
City, Peshawar.**