


Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	05.03.2018	<p align="center"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></p> <p align="center">Appeal No. 502/2015</p> <p>Date of Institution ...27.05.2015 Date of Decision ... 05.03.2018</p> <p align="center">Shehzad Hassan Ex-Constable no.4949,Capital Police Peshawar.</p> <p align="right">Appellant</p> <p>1. The Provincial Police Officer, Khyber Pakhtunkhwa Peshawar. 2. The Capital City Police Officer, Peshawar. 3. The Superintendent of Police, Headquarters, Peshawar.</p> <p align="right">Respondents</p> <p align="center"><u>JUDGMENT</u></p> <p align="center"><u>MUHAMMAD HAMID MUGHAL, MEMBER: -</u></p> <p>Learned counsel for the appellant and Mr. Muhammad Jan, learned Deputy District Attorney on behalf of the respondents present.</p> <p>2. Appellant has filed the present service appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act,1974 against the respondents and made impugned the order dated 27.02.2015 of the respondent No.3 whereby he was dismissed from service on the ground of absence from duty.</p>

The appellant has also challenged the order dated 29.04.2015 of respondent No.2 whereby the departmental appeal of the appellant against the order of dismissal from service was rejected/filed.

3. Learned counsel for the appellant argued that both the impugned orders are unlawful. Further argued that the impugned orders are excessive/harsh as such do not commensurate with guilt of appellant, in this respect learned counsel for the appellant relied upon the judgment of august Supreme Court reported in 2006 SCMR page 1120. Further argued that the absence of the appellant from duty was beyond his control as his mother was seriously ill and admitted at hospital.

4. As against that learned DDA resisted the present appeal and contended that the appellant was rightly dismissed from service as he remained absent from duty without any leave and permission. Further contended that the impugned orders were issued after adhering to all the legal requirements and codal formalities.

5. Arguments heard. File perused.

6. There is not dispute that the appellant remained absent from duty without any leave/permission. Learned counsel

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for the appellant remained unable to demonstrate that the impugned orders were issued without observing the legal requirements/codal formalities. However keeping in view the stance of the appellant before the departmental authorities and in the present service appeal as to his absence from duty, the punishment awarded to the appellant appears to be excessive when the appellant is not guilty of corruption. Consequently in the stated circumstances the present appeal is partially accepted and the impugned orders /punishment is modified and converted into withholding of two (02) annual increments for a period of two (02) years and consequently the appellant is reinstated in service. Absence period and intervening period shall be treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room after its completion.

ANNOUNCED

05.03.2018



(MUHAMMAD HAMID MUGHAL)
MEMBER




(GUL ZEB KHAN)
MEMBER

28.02.2018

Counsel for the appellant present. Mr. Muhammad Jan, DDA for the respondents present. Arguments heard. To come up for order on 05.03.2018 before DB.



(Gul Zeb Khan)
Member


(M. Hamid Mughal)
Member

05.03.2018

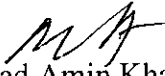
Learned counsel for the appellant present. Mr. Muhammad Jan, learned Deputy District Attorney for the respondents present. Vide separate judgment of this Tribunal of today placed on file, the present appeal is partially accepted and the impugned orders /punishment is modified and converted into withholding of two (02) annual increments for a period of two (02) years and consequently the appellant is reinstated in service. Absence period and intervening period shall be treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room after its completion.


(Gul Zeb Khan)
MEMBER


(Muhammad Hamid Mughal)
MEMBER

05.09.2017


Counsel for the appellant present. Mr. Zia Ullah, Deputy District Attorney for the respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 07.12.2017 before D.B.

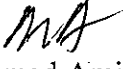

(Muhammad Amin Khan Kundi)
Member


(Muhammad Hamid Mughal)
Member

07.12.2017

Junior counsel for the appellant present. Mr. Riaz Ahmed Payanda Khel, Assistant AG for the respondents also present. Junior counsel for the appellant requested for adjournment on the ground that learned senior counsel for the appellant is not available today. Adjourned. To come up for arguments on 25.01.2018 before D.B.


(Ahmad Hassan)
Member (E)


(Muhammad Amin Khan Kundi)
Member (J)

25.01.2018

Counsel for the appellant present. Mr. Riaz Paindakhel, Assistant AG for the respondent present. The court time is over. To come up for arguments on ~~28.02~~ 28.02.2018 before D.B.

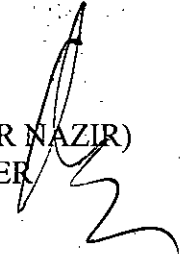

Member


Chairman

06.12.2016

Counsel for the appellant and Assistant AG for the respondents present. Learned counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on 4.4.17 before D.B.


(ASHFAQUE TAJ)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER


04.04.2017


Counsel for the appellant and Mr. Kabir Ullah Khattak, Assistant AG for the respondents present. Argument could not be heard due to incomplete bench. To come up for final hearing on 12.05.2017 before D.B.


Chairman

12.05.2017

Clerk to counsel for the appellant and Addl. AG for the respondents present. Clerk to counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on 05.09.2017 before D.B.


(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member

02.03.2016

Appellant with counsel and Mr. Hayat Muhammad, Reader alongwith Addl. A.G for respondents present. Written reply not submitted despite last opportunity. Requested for further adjournment. Last opportunity is extended subject to payment of cost of Rs. 1000/- which shall be borne by the respondents from their own pockets. To come up for written reply/comments and cost on 10.5.2016 before S.B.


Chairman

10.5.2016

Counsel for the appellant and Mr. Aziz Shah, Head Constable alongwith Addl. A.G for respondents present. Written reply by the respondents submitted. Cost of Rs. 1000/- also paid and receipt thereof obtained from learned counsel for the appellant. The appeal is assigned to D.B for rejoinder and final hearing for 29.08.2016.


Chairman

29.08.2016

Counsel for the appellant and Additional AG for respondents present. Learned counsel for the appellant submitted rejoinder and requested for adjournment. Adjourned for final hearing to 06.12.2016 before D.B.


Member


Chairman

03

08.06.2015

Counsel for the appellant present. Learned counsel for the appellant argued that vide impugned order dated 27.2.2015 the appellant was dismissed from service on the ground of wilful absence from duty regarding which he preferred departmental appeal on 6.3.2015 which was rejected on 29.4.2015 and hence the instant service appeal on 27.5.2015.

That despite availability of appellant he was not associated with the inquiry 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 for 27.8.2015 before S.B.

Appellant Deposited
Security & Process Fee




Chairman

4

27.08.2015

Appellant with counsel and Addl: 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. Aziz Shah alongwith Addl: A.G for respondents present. Written reply not submitted. Requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 2.3.2016 before S.B.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 502/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	27.05.2015	<p>The appeal of Mr. Shehzad Hussain presented today by Mr. Muhammad Asif Yousafzai Advocate, may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2	5-6-15	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>08-6-2015</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 509 /2015

Shehzad Hassan

V/S

Police Deptt:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Mamo of Appeal	-----	1-3
2.	Copy of medical prescriptions	A	4-10
3.	Copy of show cause notice	B	11
4.	Copy of order dated 27.2.2015	C	12
5.	Copy of charge sheet	D	13
6.	Copy of statement of allegations	E	14
7.	Copy of inquiry report	F	15
8.	Copy of departmental appeal	G	16
9.	Copy of rejection order	H	17
10.	Vakalat nama	-----	18

APPELLANT

THROUGH:


M.ASIF YOUSAFZAI

&


TAIMUR ALI KHAN

(ADVOCATES, PESHAWAR)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 502/2015

A.W.P. Province
Service Tribunal
Diary No. 554
Dated 27-5-2015

Shehzad Hassan Ex- constable No. 4949

Capital Police Peshawar.....Appellant

VERSUS

1. The Provincial Police Officer, KPK, Peshawar.
2. The Capital City Police, Officer, Peshawar.
3. The Superintendent of Police, Headquarters, Peshawar.

.....Respondents.

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 29.04.2015, WHEREBY THE DEPARTMENT APPEAL OF THE APPELLANT AGAINST THE ORDER DATED 27.02.2015 HAS BEEN REJECTED FOR NO GROUNDS.

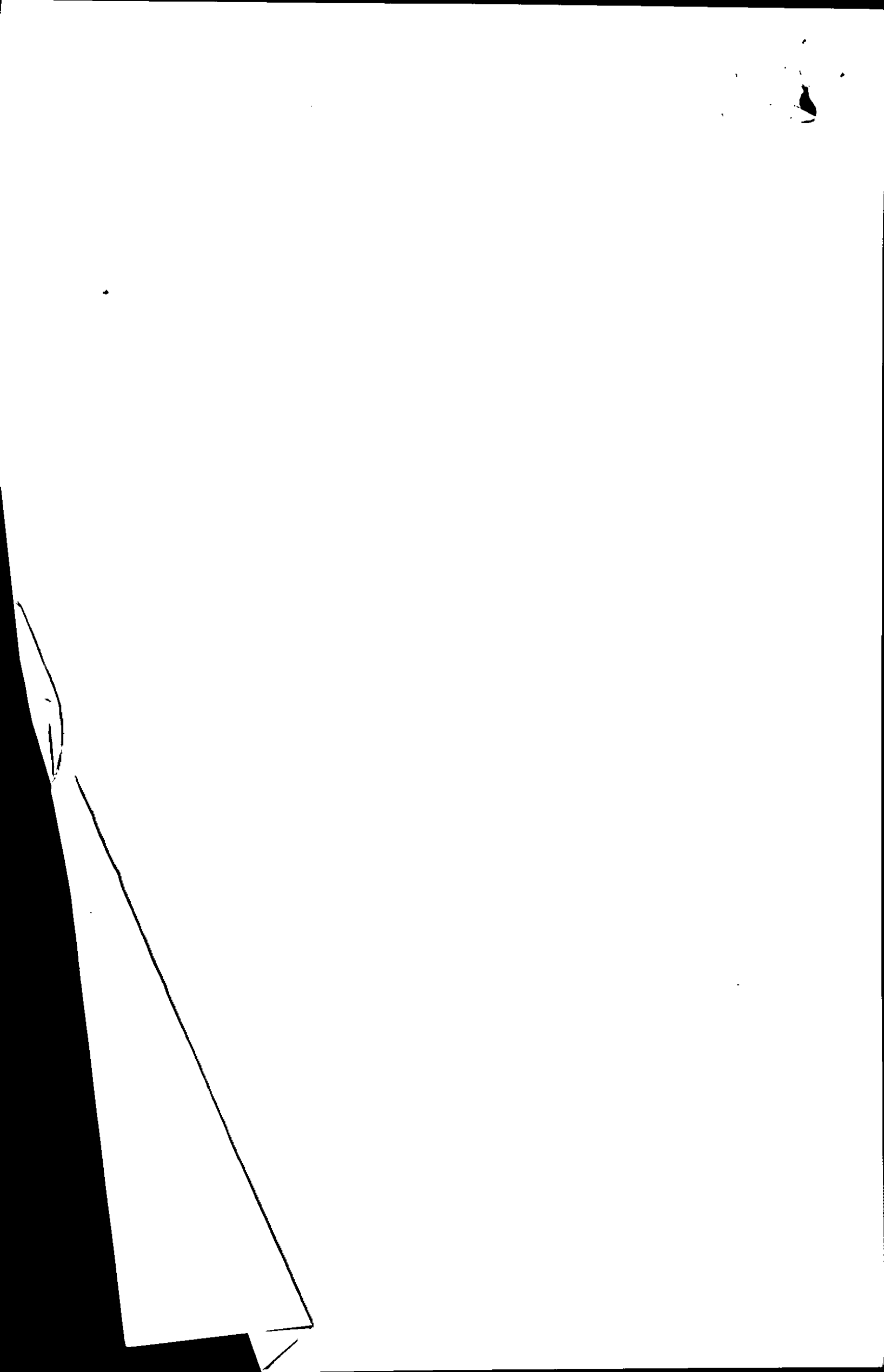
Filed to (C-1)

Registrar

27/5/15.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 29.04.2015 AND 27.02.2015 MAY BE SET ASIDE AND APPELLANT MAY BE REINSTATED WITH ALL BACK BENEFITS AND ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMED APPROPRIATE THAT, MAY ALSO BE AWARDED IN FAVOR OF APPELLANT.



R. SHEWETH:

1. That the appellant joined the police force in the year 2009 and completed all his due training etc and also have good service record throughout.
2. That the appellant' mother was ill and was admitted in hospital. As the appellant look after his mother in Hospital, therefore he could not performed his duty and remained absent from the duty.(Copy of the Medical prescriptions are attached as Annexure-A)
3. That the appellant was with mother in Hospital when show cause notice was served to him but as he was engaged in his mother treatment therefore he could not submit reply to the show cause. (Copy of show cause is attached as Annexure-B)
4. That when the mother of the appellant recovered he came to join the duty again but he was informed that he has been dismissed from the service under Police Rules 1975 vide order dated 27.02.2015 and dismissal order was handed to him along with charge sheet, statement of allegations and inquiry report. (Copy of dismissal order, charge sheet, statement of allegations and inquiry report are attached as Annexure-C,D,E&F)
5. That against the order dated 27.02.2015 appellant filed departmental appeal on dated 6.3.2015 but the same was also rejected for no good ground on 29.4.2015. (Copies of departmental appeal and rejection order are attached as Annexure G&H).
6. That now the appellant come to this august tribunal on the following grounds amongst others

GROUND:

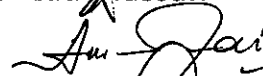

- A) That the impugned order dated 29.04.2015 and 27.02.2015 are against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.
- B) That no charge sheet and statement of allegations was served to the appellant in time which is against the law and rules.

- C) That the appellant has been condemned unheard and has not been treated according to law and rules.
- D) That the absence period has already been declared as leave without pay, therefore there remained no grounds to penalized the appellant.
- E) That neither the appellant was associated with the enquiry proceedings nor has any statement of witnesses been recorded in the presence of appellant. Even a chance of cross examination was also not provided to the appellant and the whole proceeding was initiated one sided and ex-parte action was taken against the appellant. Which is violation of norms of justice.
- F) That the appellant has not been treated under proper law despite he was a civil servant of the province, therefore, the impugned order is liable to be set aside on this score alone.
- G) That the penalty of dismissal from service is very harsh which is passed in violation of law and, therefore, the same is not sustainable in the eyes of law.
- H) That the appellant did not intentionally absent from his duties but his mother was ill and he look after his mother in Hospital. As the illness is beyond the control of human, therefore the appellant was compel to remain absent from his duties due to the treatment of his mother.
- I) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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

APPELLANT
Shehzad Hassan

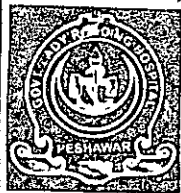
THROUGH:


M.ASIF YOUSAFZAI
& 
TAIMUR ALI KHAN

(ADVOCATES, PESHAWAR)

A

4



Lady Reading Hospital

Peshawar

Out-Patients Department

Rs 10/-

48847637

08-Sep-2014

Yearly No:

Date:
Medical

Name: Taj Bibi M/O Shahzad Hussien

OPD:

فری ایجوو لینس سروں کیلئے 137 پرکال کریں۔

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HTN

DM

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BP 150/90

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Administrative Charge

Govt. Lady Reading Hospital Peshawar

Weekend

Admission No: 7291

RBS-395

Signature: *h*

Date: 08/09/2014

Registered Medical Officer

ATTESTED

ATTESTED

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[Handwritten mark]



Lady Reading Hospital Peshawar

RS-105

Out-Patients Department

6663737

03-Oct-2014

Yearly No:

Date:

Taj Bibi M/O Shahzad Hussien

Medical

Name:

OPD:

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RBS: 283

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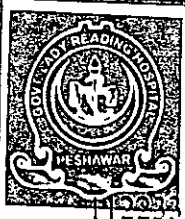
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Need a person accompany for the
case of patient in home

ATTESTED

[Signature]



Lady Reading Hospital Peshawar Out-Patients Department

Rs 70/-

Yearly No: Taj Bibi 8 M/O Shahzad Hussen
Name:

DMedical
OPD:

فری ایجوکیشن سروس کیلئے 137 پر کال کریں۔

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RBS 141

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the case of patient in hand

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Lady Reading Hospital Peshawar Out-Patients Department

RS-114

123243445

03-DEC-2014

Yearly No:
Taj Bibi8 M/O Shahzad Hussen
Name:

DMedical
OPD:

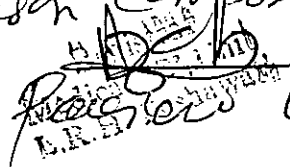
فری ایجوکیشن سروس کیلئے 137 پرکال کریں۔

H. J. Director
DM T2

Taj Bibi
Taj Bibi
Taj Bibi
Taj Bibi
Taj Bibi

Bp. 135/85
RBS-204

Need one person Compulsory
for the case of Taj Bibi
Memo.



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Lady Reading Hospital Peshawar

Out-Patients Department

Rs. 100/-

001129

03-Jan-2015

Yearly No:
Taj Bibi 8 M/O Shahzad Hussien
Name:

Medical
OPD:

فری ایجوکیشن سروس کیلئے 137 پر کال کریں۔

Dr. Taj. Co-venti @
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 Taj. Goshad
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 Taj. Sanbari

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 T2
 POP: 130/80
 QBS 107

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Registrar
 Medical Unit
 L.R.H.

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Lady Reading Hospital
Peshawar

Out-Patients Department

1123349

03-Feb-2015

Yearly No:

Date:

Name: Taj Bibi 8 M/O Shahzad Hussien

Medical

OPD:

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RBS 240

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Tab: Ivermectin M
1 + 1

Need one person accompanying for the
code of procedure home

Registrar
Medical
Signature

ATTESTED

Signature

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POSTGRADUATE MEDICAL INSTITUTE,
LADY READING HOSPITAL, PESHAWAR.

DISCHARGE SLIP

Admission No. 7891 Bed No. 69
 Name of patient Taj Bibi Father's Name MIO Shahzad Hussain
 Age 57 years Sex F
 Address Peshawar
 Date of Admission 08/09/2014 Time of Admission 10:00 am
 Date of Discharge 02/10/2014 Time of Discharge 4:00 pm
 Diagnosis Hypertensive Deubtic Brain Type 2 Condition Stable

TREATMENT IN HOSPITAL

1. 1mg Tramadol TDS
2. 800mg
- 3.
4. of Histrol B/D
5. B/D
6. of Metformin B/D

TREATMENT IN HOME

1. Tab. Valis 80mg Tab. Sulf. 2
2. 1-1 1-1
- 3.
4. Tab. Dural
5. 1-1
6. Tab. Domoreno

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 DR. [Signature]
 PESHAWAR

AMERICAN

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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 Shehzad No.4949 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.

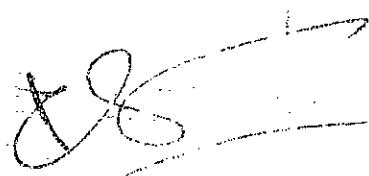
"That you Constable Shehzad No.4949 while posted at Police Lines, Peshawar were absent from duty w.e.f. 24.06.2013 till date without taking permission or leave. Your act amounts to gross misconduct and against the discipline of the force"

As a result thereof, I, as competent authority, have unactively 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. 612 /PA, SP/HQrs: dated Peshawar the 11/11 /2013.

Copy to official concerned

ATTESTED


C 12

ORDER

This office order relates to the disposal of formal departmental enquiry against Constable Shehzad No.4949 of Capital City Police Peshawar on the allegations that he while posted at Police Lines Peshawar absented himself from lawful duty w.e.f 24.06.2013 to 13.11.2013 (05-months & 04-days) without taking permission or leave.

In this regard, he was issued charge sheet and summary of allegations. SDPO Suburb was appointed as Enquiry Officer. He conducted the enquiry proceedings and submitted his report that the alleged Constable is a habitual absentee. The E.O further recommended for major punishment vide Enquiry No.46/ST dated 10.10.2013.

Upon the findings of Enquiry Officer, he was issued final show cause notice & delivered him on home address through local Police but he failed to submit his reply in stipulated period or appear before this office.

Lastly, the report of MM. PS Kotwali has been obtained. He reported that the delinquent official is again absented w.e.f 08.09.2014 till date.

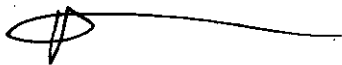
In the light of recommendations of Enquiry Officer & other material available on record, the undersigned came to conclusion that the alleged official found guilty of this misconduct. Therefore, he is hereby dismissed from service under Police & Disciplinary Rules-1975 with immediate effect. Hence, the period he remained absent from 24.06.2013 to 13.11.2013 & 08.09.2014 till date is treated without pay.


**SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR**

OB. NO. 857 / Dated 27/2 /2015

No. 687-97 PA/SP/dated Peshawar the 27/02 /2015

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

- ✓ Capital City Police Officer, Peshawar.
 - ✓ DSP/HQrs, Peshawar.
 - ✓ SDPO Gulbahar w/r No.250/E dated 2010
 - ✓ SDPO Chamkani w/r No.277/E dt: 2010 & No.05/E dt 2012 & No.131/E dt 2012
 - ✓ SDPO Saddar Circle w/rs No.10/E dt: 2012 & No.74/E dt: 2012
 - ✓ DSP Traffic, City w/r No:221/E dated 2013
 - ✓ Pay Office, OASI, CRC & FMC along-with complete departmental file.
 - ✓ Officials concerned.
- 

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CHARGE SHEET

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge that Constable Shehzad No.4949 of Capital City Police Peshawar with the following irregularities.

"That you Constable Shehzad No.4949 while posted at Police Lines, Peshawar were absent from duty w.e.f 24.06.2013 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

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REFERENCE ATTACHED.

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DISCIPLINARY ACTION

I, Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that Constable Shehzad No.4949 has rendered him-self liable to be proceeded against under the provision of Police Disciplinary Rules-1975

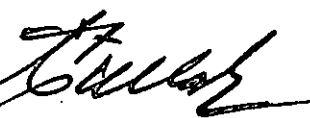
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STATEMENT OF ALLEGATION

"That Constable Shehzad No.4949 while posted at Police Lines, Peshawar absented himself from duty w.e.f. 24.06.2013 till date without taking permission or leave. This amounts to gross misconduct on his part and is against the discipline of the force."

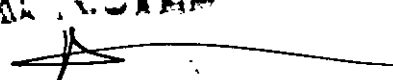
For the purpose of scrutinizing the conduct of said accused with reference to the above allegations an enquiry is ordered and SDPo Suburb is appointed as Enquiry Officer.

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.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 612 /E/PA, dated Peshawar the 11/09 /2013

1. SDPo Suburb is directed to finalize the aforementioned departmental proceeding within stipulated period under the provision of Police Rules-1975.
2. Official concerned

ATTESTED


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[Signature]

REFERENCE ATTACHED.

SUBJECT :- **DISCIPLINARY PROCEEDINGS AGAINST CONSTABLE SHEHZAD NO.4949 POSTED AT POLICE LINES.**

Memo:

Reference to your Office Endst: No.612/PA, dated 11/9/2013.

BRIEF FACTS. It is submitted that Constable Shehzad No.4949 while posted at Police lines, Peshawar has remained absent from lawful duty with effect from 24.06.2013 up till now without any leave or prior permission of his senior officers. In this connection he was issued Charge sheet with statement of Allegations by the W-SP/Hqrs, Peshawar. The undersigned was appointed as enquiry officer to conduct proper departmental enquiry against him.

FINDING. The undersigned summoned the defaulter constable Shehzad No.4949 to this office through written parawana at his place of posting, but he do not attend the Office, nor produce any cogent reason to cover his period of absence. However the Moharrer of Police lines stated in his statement that constable of above named is still absented himself from Lawful duty w.e.f, 24.6.2013 up to date (statement attached). So far there is no remedy except the ex parte decision.

During the course of enquiry the undersigned came to the conclusion that Constable Shehzad No.4949 has remained since long time w.e.f, 24.6.2013 up to date and it means that he is a habitual absentee, nor taking interest in his official duty

RECOMMENDATION. Therefore constable Shehzad No.4949 is recommended for Ex-parte decision of Major punishment D dismissal from service.

W.SP/HQRS,PESHAWAR,
NO. 46-----/ST, Dated 10-10 /2013

DEPUTY SUPERINTENDENT OF POLICE
SUBURB,PESHAWAR

issue final
show cause notice

[Signature]
Superintendent of Police
HQrs: CCF Peshawar.

ATTESTED

[Signature]

حضرت جناب کیشیل سٹی پولیس افسر ضلع پشاور

مضمون :- درخواست واسطے بحالی ملازمت بطور کیشیل و
برخلاف حکم جاریہ بحوالہ O.B نمبر 85 مورخہ 15-2-27

جناب عالی! نہایت ادب کیساتف گزارش ہے کہ سائل کا والد صاحب فوت ہو چکا ہے۔ اور سائل کی بیمار اور ضعیف والدہ کی یورو کفالت و تیمارداری از حد ضروری تھا۔ کیونکہ سائل کا 13 بجائی بھی ذہنی توازن کھو چکا ہے۔

سائل پولیس اسٹیشن میں تعینات تھا۔ کہ کچھ خود سے فون پر اطلاع ملی کی والدہ ام سنوت بیمار ہے۔ اور زندگی اور موت کی کشمکش میں ہے۔ لہذا اس الملام یر کچھ خود جار دیکھا کہ واقعی والدہ ام سنوت بیمار تھی مگر بر قسمی سے کوئی بھی تیمارداری کیلئے موجود نہ تھا لہذا والدہ صاحبہ کی سنوت بیماری اور کمزری کے پیش نظر سائل نے والدہ ام کی علاج کرنے میں بہ امر مجبوری ڈیوٹی سے غیروافہ ہونا پڑا۔

جناب عالی! گزارش حضور النور ہے کہ سائل کی ڈیوٹی سے غیروافہ ہی قصداً گھڑانہ تھی بلکہ یوم مجبوری مترازہ بالا سرزد ہو چکی۔ اسلئے درخواست ہے کہ سائل کو نواری پر بحال کر کے سائل کی حالت زار پر رحم فرما کر مشکور فرمائیں۔

خبر 3/6

معرضہ

15

ایکاتالبعداز کیشیل شہزاد حسن نمبر 4949 سکشن ماٹھ

ORDER

H (17)

This order will dispose off departmental appeal of ex-constable **Shahzad Hassan No. 4949** who was awarded the major punishment of **Dismissal** from service under PR-1975 vide OB No. 851 dated 27.2.2015 by SP/HQRs: Peshawar, on the charge of deliberate absence for a long time from lawful duty w.e.f. 24.6.2013 to 13.11.2013, 8.9.2014 to 27.2.2015 (**Total 10-months and 8-days**) from Police Lines.

Proper departmental proceedings were initiated against him and DSP/Suburb was appointed as the E.O. The Enquiry Officer summoned the appellant but he did not turn up to defend himself. On receipt of the findings of the E.O. the Competent Authority issued him SCN and delivered him at home address through local Police but he again failed to appear and produce plausible reason in support of his willful absence within stipulated period. Hence the Competent Authority awarded him the above major punishment.

The relevant record was perused along with his explanation. He was also heard in person in OR on 24/4/2015. He could not defend himself. The allegations stand proved against him. He deserves no leniency. The order of SP-HQRs: is upheld and his appeal for re-instatement in service is rejected/filed.


**CAPITAL CITY POLICE OFFICER,
PESHAWAR.**

No. 2276-81 /PA dated Peshawar the 29/4/15

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/ FMC along with FM.
- 5/ Official concerned.

ATTACHED


VAKALAT NAMA

NO. _____/20

IN THE COURT OF Service Tribunal, Peshawar

Shehzad Hassan

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Police Deptt.

(Respondent)
(Defendant)

I/We Shehzad Hassan

Do hereby appoint and constitute **M.Asif Yousafzai, Advocate, Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

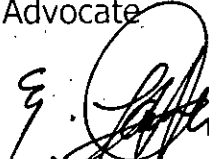
I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20


(CLIENT)

ACCEPTED


M. ASIF YOUSAFZAI
Advocate


TAIMUR ALI Khan
(Adv)

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.

OFFICE:
Room No.1, Upper Floor,
Islamia Club Building,
Khyber Bazar Peshawar.
Ph.091-2211391-
0333-9103240

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No502/2015.

Shehzad Hassan Ex- Constable No.4949 Police Line Peshawar.....Appellant.

VERSUS.

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

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

Respectfully shewth:.

PRELIMINARY OBJECTIONS:

1. That the appeal is badly time barred.
2. That the appeal is bad for mis-joinder of unnecessary 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'able Tribunal has no jurisdiction to entertain the appeal.

Facts:-

1. First part of para No.1 pertains to record while rest of para is incorrect. In fact appellant is a habitual absentee.
2. Para No.2 is totally incorrect and concocted. In fact the appellant deliberately absented himself from his lawful duty without adopting proper procedure for taking leave/permission.
3. Para No.3 is incorrect. The appellant was issued show cause notice which he also received but he did not turn up. And he failed to submit his reply to the show cause notice.
4. Para No.4 is totally incorrect, and denied. In fact the appellant was proceeded departmentally on allegations, of willful absence from duty w,e.f 24.06.2013 to 13.11.2013 & 08.09.2014 to 27.02.2015, (Total 10-Months and 08 days). In this regard he was issued a charge sheet along with statement of allegations. He was called time and again by the E.O but he did not bother to appear before the E.O and defend his long absence period. Hence after fulfilling all codal formalities, he was recommended for major punishment. Upon the findings of E.O he was issued final show cause notice and delivered him at home address

through local police but he failed to submit his reply to FSCN. He was also heard in person in OR on 24.04.2015 but he failed to defend himself. Hence after fulfilling all codal formalities, he was awarded major punishment of dismissal from services under PR 1975 vide OB No.851 dated 27.15.2015 by SP HQrs Peshawar.

5. Para No. 5 is correct to the extent of filing departmental appeal but his appeal after due consideration and fulfilling all codal formalities was rejected/failed because the charges of deliberate absence was stand proved against him.
6. That appeal of appellant being devoid of merits may kindly be dismissed with lost.

GROUND:-


- A. Incorrect. The punishment order is in accordance with law/rules, hence liable to be upheld.
- B. Incorrect. The appellant was issued charge sheet and statement of allegations and was properly served upon him.
- C. Incorrect. The appellant was awarded full opportunity of defense. He was also called and heard in person in OR on 24.04.2015.
- D. Incorrect. The punishment order is in accordance with law/rules.
- E. Incorrect. The appellant was called time and again to appear before the E.O but he deliberately avoided to appear before the E.O and defend himself and remained absent for a long time without adopting proper procedure for taking leave/permission from his seniors.
- F. Incorrect. Being a member of a disciplined force, he was rightly treated under PR 1975. Hence the punishment order is liable to be up held.
- G. Incorrect. The punishment order is as per law and rules. No law has been violated. Hence liable to be upheld.
- H. Incorrect. In fact the appellant deliberately absented himself from his lawful duty without taking permission or leave.
- I. 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 with cost.



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



**Capital City Police Officer
Peshawar.**



**Superintendent of Police,
HQrs, Peshawar.**

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No502/2015.

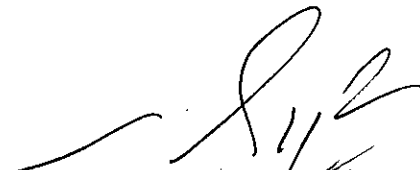
Shehzad Hassan Ex- Constable No.4949 Police Line Peshawar.....Appellant.

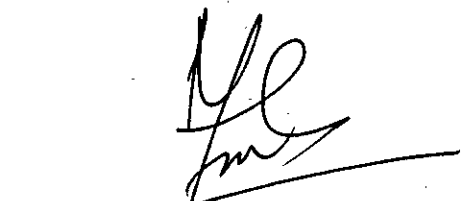
VERSUS.


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

AFFIDAVIT

We respondents No. 1 ,2 & 3 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.**

BEFORE THE KPK, SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 502/2015

Shehzad Hassan

VS

Police Deptt:

.....

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

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

FACTS:

- 1 First portion of para 1 of the appeal is admitted correct by the respondents as the service record of the appellant is in the custody of the concerned department while the rest is not replied according to para 1 of the appeal. moreover rest of para 1 of the appeal is correct.
- 2 Incorrect. While Para-2 of the appeal is correct as the appellant was not deliberately absented from his duty, but his mother was ill and admitted in the Hospital and he look after his mother in the Hospital, therefore he was compelled to remain absent from his duty due to engagement in his mother treatment.

- 3 It is correct that show cause notice was issued to the appellant, but he could not submitted reply to the show cause he was engaged in his mother treatment.
- 4 Incorrect. While Para-4 of the appeal is correct.
- 5 First portion of para 1 of the appeal is admitted correct by the respondents. Hence no comments. While the rest of para is incorrect as the departmental appeal of the appellant was rejected for no good grounds.
- 6 Incorrect. The appellant has good cause of action and may kindly be accepted with all back benefits.

GROUND:

- A. Incorrect. The orders dated 29.4.2015 and 27.02.2015 are against the law, facts, norms of justice and material on record, Therefore not tenable and liable to be set aside.
- B. Incorrect. While Para-B of the appeal is correct.
- C. Incorrect. No chance of personal hearing was provided to the appellant and as such the appellant was condemned unheard which is against the law and rule.
- D. Incorrect. The punishment order of the appellant is not accordance with law as the absence period has already been declared as leave without pay, therefore there remain no ground to penalized the appellant on same cause of action.
- E. Incorrect. While Para-E of the appeal is correct.
- F. Incorrect. While Para-F of the appeal is correct.
- G. Incorrect. The penalty of dismissal from service is very harsh which is passed in the violation of law and therefore liable to bet aside.

H. Incorrect. The appellant was not deliberately absented from his duty, but his mother was ill and admitted in the Hospital and he look after his mother in the Hospital, therefore he was compelled to remain absent from his duty due to engagement in his mother treatment.

I. legal

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

APPELLANT

Through:

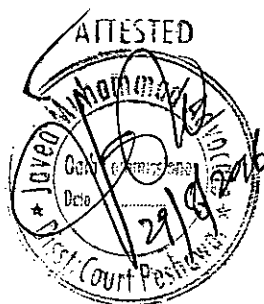

(M. ASIF YOUSAFZAI)

&

(TAMUIR ALI KHAN)
ADVOCATES, PESHAWAR

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder and appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from the Hon'able Tribunal.




DEPONENT