

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 1362/2015

Date of institution ... 04.12.2015

Date of judgment ... 04.10.2018

Waqar Ahmad, Ex-Constable No. 1275/20196,
City Capital Police, Peshawar.

... (Appellant)

VERSUS

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

APPEAL UNDER SECTION-4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974,
AGAINST THE ORDER DATED 12.11.2015 WHEREBY THE
MAJOR PUNISHMENT OF DISMISSAL FROM SERVICE HAS
BEEN AWARDED TO THE APPELLANT WHICH IS
AGAINST THE LAW, RULES AND AGAINST THE
JUDGMENT DATED 31.08.2015 PASSED BY THIS
HONOURABLE TRIBUNAL IN APPEAL NO. 173/2012.

Mr. Taimur Ali Khan, Advocate.

.. For appellant.

Mr. Kabirullah Khattak, Additional Advocate General

.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (JUDICIAL)

MR. HUSSAIN SHAH

.. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Appellant alongwith his counsel present. Mr. Kabirullah Khattak, Additional AG for the respondents present. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant was serving in Police Department as Constable. During service he was imposed major punishment of reduction to lower stage of time scale for a specific period of two years with immediate effect and the period he remained absent was

treated as leave without pay while remaining pay was ordered to be released vide order dated 06.10.2011 by the competent authority on the allegation of absence from duty. The appellant filed departmental appeal on 19.10.2011 and the departmental authority modified the order of the competent authority and awarded major penalty of dismissal from service with immediate effect while the absence period of the appellant was treated as leave without pay vide order dated 16.01.2012. The appellant filed service appeal before this Tribunal which was partially accepted and the service appeal was remitted back to the appellate authority with the direction to issue show-cause notice to the appellant under Rule-5 of the said rules and re-decide the appeal vide detailed judgment dated 31.08.2015. On receipt of the judgment of this Tribunal, the departmental authority issued show-cause notice to the appellant and after replying to the said show-cause notice, the departmental authority again imposed major penalty of dismissal from service of the appellant vide order dated 12.11.2015 hence, the present service appeal on 04.12.2015.

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

4. Learned counsel for the appellant contended that the appellant met an accident resulting injuries and then pain in back body and the pain could not be controlled therefore, the appellant was unable to perform the duty and remained under treatment from Police and Services Hospital Peshawar. It was further

M. Amin
4.10.2018

treated as leave without pay while remaining pay was ordered to be released vide order dated 06.10.2011 by the competent authority on the allegation of absence from duty. The appellant filed departmental appeal on 19.10.2011 and the departmental authority modified the order of the competent authority and awarded major penalty of dismissal from service with immediate effect while the absence period of the appellant was treated as leave without pay vide order dated 16.01.2012. The appellant filed service appeal before this Tribunal which was partially accepted and the service appeal was remitted back to the appellate authority with the direction to issue show-cause notice to the appellant under Rule-5 of the said rules and re-decide the appeal vide detailed judgment dated 31.08.2015. On receipt of the judgment of this Tribunal, the departmental authority issued show-cause notice to the appellant and after replying to the said show-cause notice, the departmental authority again imposed major penalty of dismissal from service of the appellant vide order dated 12.11.2015 hence, the present service appeal on 04.12.2015.

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

4. Learned counsel for the appellant contended that the appellant met an accident resulting injuries and then pain in back body and the pain could not be controlled therefore, the appellant was unable to perform the duty and remained under treatment from Police and Services Hospital Peshawar. It was further contended that the medical officer of Police and Services Hospital Peshawar after examination and some test repeatedly advised the appellant medicine and complete bed rest till 24.06.2011 and when after some recovery, the appellant went for duty than the appellant was told that departmental proceedings has been initiated against him and he was charge sheeted on the allegation of absence from duty and after departmental proceedings he was imposed the

*M. Asim
4.10.2018*

aforesaid penalty. It was further contended that the appellant met an accident and there was sever pain in his back body and it was beyond his control to attend the duty and the medical officer also advised the appellant medicine and complete bed rest. It was further contended that the medical prescriptions for the absence period of the appellant is also available on record and the same has also been verified by the medical officer of Police and Services Hospital Peshawar as genuine. It was further contended that according to the judgment of the superior court the availing of medical leave without permission could not be considered an act of gross misconduct entailing major penalty of dismissal from service therefore, it was contended that the appeal may be accepted and the appellant may be reinstated in service with all back benefits.

5. On the other hand, learned Additional Advocate General for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant remained absent from duty without permission of the higher authority. It was further contended that even the appellant had not submitted any application for leave and the medical prescriptions annexed by the appellant is after thought and fabricated therefore, the appellant was rightly imposed major penalty of dismissal from service and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant has claimed that he met an accident and due to that accident there was pain in back body and such pain could not be controlled therefore, medical officer of Police and Services Hospital Peshawar after examination of the some test repeatedly advised the appellant medicine and complete bed rest till 24.06.2011. In support of his claim, the appellant has also annexed medical prescription with the service appeal. The record further reveals that the medical Superintendent of Police and Services Hospital Peshawar also sent letter No. 2786/MS dated 25.07.2011 to

MC Amin
4.10.2018

the Deputy Superintendent of Police Chamkani Circle Peshawar regarding the genuineness of medical certificate in respect of Waqar Constable No. 1275 and it has been mentioned by the said Medical Superintendent in the letter that medical certificate has been checked and found correct. Meaning thereby that the Medical Superintendent has verified the medical prescriptions annexed by the appellant regarding his treatment and advised bed rest. There is nothing in rebuttal of the medical prescriptions on the record meaning thereby that the appellant met accident resulting injuries and then pain the back body. It is also well settled law that availing of medical leave without permission could not be considered an act of gross misconduct entailing major penalty of dismissal from service, therefore, the major penalty imposed by the departmental authority appear to be harsh and does not commensurate with the charge. As such, we partially accept the appeal, set-aside the order of dismissal from service and convert the same into penalty imposed by the competent authority to the extent of reduction to lower stage for time scale for a period of two years with immediate effect. The absence period and intervening period is treated as leave without pay. Parties are left to bear own costs. File be consigned to the record room.

ANNOUNCED
04.10.2018


(HUSSAIN SHAH)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

Service Appeal No. 1362/2015

04.10.2018

Appellant alongwith his counsel present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of four pages placed on file, we partially accept the appeal, set-aside the order of dismissal from service and convert the same into penalty imposed by the competent authority to the extent of reduction to lower stage for time scale for a period of two years with immediate effect. The absence period and intervening period is treated as leave without pay. Parties are left to bear own costs. File be consigned to the record room.


ANNOUNCED
04.10.2018



(HUSSAIN SHAH)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

27.07.2018

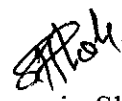
Junior to counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney alongwith present. Junior to counsel for the appellant seeks adjournment as senior counsel is not in attendance. Adjourned. To come up for arguments on 18.09.2018 before D.B.

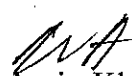

(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

18.09.2018

Appellant with counsel Mr. Taimur Ali Khan, Advocate present. Mr. Kabirullah Khattak, Additional AG for the respondents present. Arguments heard. To come up for order on 28.09.2018.



(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

28.09.2018


Appellant in person and Mr. Kabirullah Khattak, Additional AG for the respondents present. Adjourned. To come up for order on 04.10.2018.


(Hussain Shah)
Member


(Muhammad Amin Kundi)
Member

10.01.2018

Appellant in person and Mr. Usman Ghani, District Attorney for respondents present. Appellant seeks adjournment as senior counsel has gone to Supreme Court of Pakistan, Islamabad. Adjourned. To come up for arguments on 22.02.2018 before D.B.


(Ahmad Hassan)
Member(E)


(M. Hamid Mughal)
Member (J)

22.02.2018


Due to none availability of D.B the case is adjourned. To come up on 02.04.2018 before D.B


Member

02.04.2018

Clerk to counsel for the appellant and Mr. Muhammad Jan, Learned Deputy District Attorney for respondents present. Due to general strike of the bar, the case is adjourned. To come up for arguments on 06.06.2018 before D.B



(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

06.06.2018

Junior to counsel for the appellant and Mr. Muhammad Jan, Learned Deputy District Attorney present. Junior to counsel for the appellant seeks adjournment as senior counsel is busy before august Supreme Court of Pakistan. Adjourned. To come up for arguments on 27.07.2018 before D.B


(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member


20.03.2017

Counsel for the appellant and Mr. Ziaullah, GP for the respondents present. Argument could not be heard due to incomplete bench. To come up for final hearing on 17.07.2017 before D.B.


Chairman

17.07.2017

Counsel for the appellant present. Mr. Ziaullah, Deputy District Attorney for the respondents also present. The Learned Executive Member Mr. Gul Zeb Khan is away for interviews in the office of Khyber Pakhtunkhwa Public Service commission therefore, due to incomplete bench the case is adjourned for arguments to 13.11.2017 before D.B.


(Muhammad Amin Khan Kundi)
Member

13.11.2017

Counsel for the appellant and Mr. Usman Ghani, District Attorney for the respondents present. The learned counsel for the appellant requested for adjournment. Granted. To come up for arguments on 10.01.2018 before the D.B.


Member


Chairman

1362/15

27.4.2016

Agent of counsel for the appellant and Mr. Aziz Shah, H.C alongwith Addl: A.G for the respondents present. Written reply not submitted. Requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 21.07.2016 before S.B.


Chairman

21.07.2016

Counsel for the appellant and Mr. Hayat Muhammad, Reader alongwith Additional AG for the respondents present. Learned Additional AG informed that PPO is on leave due to his illness and requested for further adjournment. Last opportunity is extended. To come up for written reply/comments on 08.08.2016 before S.B.


MEMBER

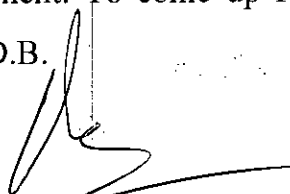
08.08.2016

Counsel for the appellant and Mr. Aziz Shah, Reader alongwith Additional AG for respondents present. Written reply on behalf of respondents submitted, copy whereof handed over to learned counsel for the appellant. To come up for rejoinder and arguments on 29.11.2016 before D.B.


Member

29.11.2016

Counsel for the appellant and Mr. Ziaullah, Government Pleader for the respondents present. Rejoinder submitted. Learned counsel for the appellant requested for adjournment. To come up for final hearing on 20.3.2017 before D.B.


Member


Chairman

11.12.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Constable when subjected to inquiry on the allegations of wilful absence and dismissed from service vide impugned order dated 6.10.2011 where-after he finally preferred service appeal No. 173/2012 which was decided on 31.8.2015 reinstating the appellant in service for the purpose of inquiry and directing the appellate authority to decide the departmental appeal. That the appellant was again dismissed from service by the appellate authority vide impugned order dated 12.11.2015 and hence the present service appeal on 4.12.2015.

That the absence of the appellant was not wilful and his plea of ailment of his mother was not taken into account and personal hearing was not afforded to appellant, and, moreover, the punishment is excessive and harsh.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 23.2.2016 before S.B.

Appellant Deposited
Security & Process Fee


Chairman

23.02.2016




Counsel for the appellant and Mr. Hayat Muhammad, Reader alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 27.4.2016 before S.B.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1362/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	04.12.2015	<p>The appeal of Mr. Waqar Ahmad 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	11-12-15	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>11-12-15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> 

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

Appeal No. 1362 /2015

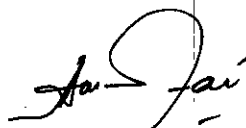
Mr. Waqar Ahmad V/S Govt. of KPK & Others.

INDEX

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	01-04
2.	Copy of Medical Record	- A -	05-11
3.	Copy of Arrival DD (14.7.2011)	- B -	12
4.	Copies of Charge-sheet & Allegations	- C -	13-214
5.	Copy of Reply to Charge-sheet	- D -	15
6.	Copy of Inquiry Report	- E -	16
7.	Copy of Final Show Cause Notice	-F-	17
8.	Copy of Reply	-G-	18
9.	Copy of Order dated 06.10.2011 (Reduction to lower stage)	-H-	19
10.	Copy of Departmental Appeal	-I-	20-23
11.	Copy of Dismissal Order (16.1.2012)	-J-	24
12.	Copy of Service Appeal	-K-	25-27
13.	Copy Tribunal's Order (31.08.2015)	-L-	28-31
14.	Copy of Reinstatement Order dated 29.10.2015	-M-	32
15.	Copy of Dismissal Order dated 12.11.2015	-N-	33-34
16.	Vakalat Nama	-----	35

APPELLANT

THROUGH:


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

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

Appeal No. 1362 /2015

**S.W.P. Province
Service Tribunal
Diary No. 1421
Date 04-12-2015**

Mr. Waqar Ahmad, Ex-Constable No.1275/1296,
City Capital Police, Peshawar.

APPELLANT

VERSUS

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

RESPONDENTS

.....

APPEAL UNDER SECTION-4 OF THE KHYBER
PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974
AGAINST THE ORDER DATED 12.11.2015 WHEREBY
THE MAJOR PUNISHMENT OF DISMISSAL FROM
SERVICE HAS BEEN AWARDED TO THE APPELLANT
WHICH IS AGAINST THE LAW, RULES AND AGAINST
THE JUDGMENT DATED 31.08.2015 PASSED BY THIS
HONOURABLE TRIBUNAL IN APPEAL NO.173/2012.

.....

PRAYER:


THAT ON ACCEPTANCE OF THIS APPEAL, THE
IMPUGNED ORDER DATED 12.11.2015 MAY BE SET
ASIDE AND THE APPELLANT MAY BE REINSTATED
INTO SERVICE WITH ALL BACK AND CONSEQUENTIAL
BENEFITS.

.....

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant was serving as Constable in Police
Department Peshawar was posted at Police Lines

Filed to file

2/12/15

Peshawar and attached with the then Justice Sardar Shaukat Hayat of Peshawar High Court.

2. That the appellant met an accident resulting injuries and then pain in back body, therefore, the Honourable Judge permitted the appellant for few days rest, but when such pain could not controlled, the appellant being unable to perform duty report at Police Line and remained under treatment from Police and Services Hospital Peshawar for about 13 months.
3. That the Medical Officer at Police & Services Hospital Peshawar after examination and some tests repeatedly advised the appellant medicines and complete rest till 24.06.2011. Copy of Orders are attached as Annexure-A.
4. That the appellant after some recovery joined the duty in DAR Peshawar vide Daily Diary No.27 dated 14.7.2011. Copy of DD is attached as Annexure-B.
5. That the appellant was, however, served with charge on allegations of absentee from duty to which the appellant replied in detail, explaining situation and mentioning real facts therein. Copies of Charge sheet and Reply are attached as Annexure-C and D.
6. That an inquiry was conducted in the matter by Respondent No.5 being appointed and thus appellant was issued Final Show Cause Notice on 9.9.2011 to which the appellant submitted his reply explaining real facts. Copies of Inquiry Report, Final Show Cause Notice and Reply are attached as Annexure-E F and G.
7. That the appellant was awarded punishment of reduction to lower stage of time in scale for specific period of two years and time of absentee was treated as leave without pay by Respondent No.4 vide Order dated 6.10.2011. Copy of Order is attached as Annexure-H.
8. That such order was assailed in Departmental Appeal to Respondent No.3 but instead of any relief the appellant was dismissed from service vide order

dated 16.01.2012. Copies of Appeal and Order thereon are as Annexure-I and J.

9. That the appellant filed Service Appeal No.173/2012 in this Honourable Tribunal against the dismissal order dated 16.01.2012, which was finally heard and partially accepted by setting aside the impugned order and the appeal is remitted back to the appellate authority with the direction to issue show cause notice to the appellant and re-decide the appeal by this Honourable Tribunal on 31.08.2015. Copy of Appeal and Order are attached as Annexure-K and L.
10. That in light of Order dated 31.08.2015 of this Honourable Tribunal, the appellant has been reinstated into service vide order dated 29.10.2015. Copy of Order is attached as Annexure-M.
11. That on 12.11.2015, the respondent department dismissed the services of the appellant vide order dated 12.11.2015 without any justification and cogent reasons. Copy of Order is attached as Annexure-N.
12. That now the appellant comes to this august Tribunal on the following grounds amongst the others:

GROUND:

- A) That the impugned order dated 12.11.2015 is against the law, fact, norms of justice and material on record, therefore, not tenable in the eyes of law.
- B) That the appellant was not treated in accordance with law and rules and has been penalized for no fault on his part.
- C) That the appellant has not been treated in accordance with law and Constitution, hence dismissal from service is illegal and unwarranted by law.
- D) That the appellate authority enhance the punishment of the appellant without showing any

cogent reason, which is the violation of Superiors Courts judgment.

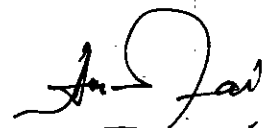
- E) That the order dated 16.1.2012, the absence period of the appellant also treated as leave without pay, therefore there remain no ground to punish the appellant for absence.
- F) That the punishment of dismissal from service is very harsh and did not commensurate with the guilt of the appellant.
- G) That the appellant was dismissed from service without giving him any opportunity of hearing, hence condemned unheard.
- H) That the appellant was reinstated by the august Tribunal, but the respondent department again imposed the same punishment without providing chance of full defence to the appellant.
- I) That the appellant did not intentionally absent from his duties but he met with an accident and became ill. As the illness is beyond the control of human, therefore the appellant was compel to remain absent from his duties.
- J) 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
Waqar Ahmad



THROUGH:


(M. ASIF YOUSAEZAI)
&
(TAIMUR ALI KHAN)
ADVOCATE, PESHAWAR.

No. _____ Rs. 5/-
OUT-PATIENTS DEPARTMENT
NAME 191199
YEARLY NO 4687
DATE 21-1-2011
DISEASE Lumbago

FACE VALUE RUPEES 5

AK7
A
5

- Tab Bonifen 1 + 1
- Tab Paracetamol - B 1 + 1
- Whitogeno Cream 1 + 1
Advised sick leave for
One month
wef 21/1/2011

Dr. _____
Senior Surgeon, Hospital
Puducherry

ATTESTED

61

No. _____ Rs. 5/-
OUT-PATIENTS DEPARTMENT
 NAME 12169 **AB**
 YEARLY NO 10858 **(13)**
 DATE 22-02-2011
 DISEASE Mumps
 FACE VALUE RUPEES 5

- Tab Voltaren 50mg
1 + 1
- Tab Neurobion
1 + 1
- D. Stereum Cream
1 + 1

Advised for leave for
 (07) one month
 w.e.f 22/2/2011

ATTESTED

[Signature]

7
/

DATE: _____

No. _____

ISS. # _____

OUT-PATIENTS DEPARTMENT

NAME _____

18/1/11

YEARLY NO _____

17909

DATE _____

23-3-2011

DISEASE _____

Lumbago

FACE VALUE RUPEES 5/-

- Tab *Orthom*
17

- Tab *Neurobion*
17

- *Whitogeno Cream*
177

Advised sick leave for
(1) one month

13/2/11 *ph*

ATTESTED

[Signature]

DATE _____

No. _____

Rs. 5/-

OUT-PATIENTS DEPARTMENT

NAME _____

P. S. S. S.

YEARLY NO _____

26671

DATE _____

23/4/2011

DISEASE _____

Arthritis

FACE VALUE RUPEES

8/1

- Tab Voltaren *1 + 100 mg*

- Tab Neurobion *1 + 7*

- Wintogeno Cream *1 + 1 + 1*

Advised for leave
for *01* month
wef *23/4/2011*

Medical Officer
Police Hospital
Muzaffargarh

ATTESTED

[Signature]

No.

Rs. 5/-

OUT-PATIENTS DEPARTMENT.

NAME..... *21/69*

YEARLY NO..... *30.7.80*

DATE..... *23/5/2011*

DISEASE..... *Cumbersome*

FACE VALUE RUPEES 5/-

9

- Cap Feldene
1 + 1

- Cap Benidox
1 + 1

- Wintogemo Cream
1 + 1

Advised sick leave for

(01) one month

wef - 23/5/2011

ATTESTED

DATE _____

(17)

No. _____

Rs. 5/-

OUT-PATIENTS DEPARTMENT

NAME _____

R. S. Rao

YEARLY NO _____

36884

DATE _____

24/6/2011

DISEASE _____

Unlabeled

FACE VALUE RUPEES 5/-

10

- Cap. Faldene 20mg
1 + 1

- Cap. Nimitobon
1 + 1

- Nimitasem Cream
1 + 1 + 1

Advised 85% leave for
3 weeks
wed 24/6/2011 *[Signature]*

ATTESTED

[Signature]

No. 2786 /MS
From:

Dated Peshawar the 25 / 7 /2011

The Medical Superintendent
Services Hospital Peshawar.

To,

Deputy Superintendent of Police
Chanikani circle Peshawar.

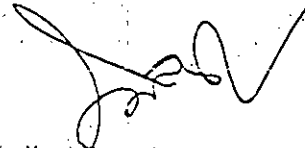
Subject:

VERIFICATION OF MEDICAL CERTIFICATE
OF CONSTABLE WAQAR NO.1275

Memo:

Reference your letter No.2220/St Dated 25.7.2011
On the subject noted.

It is to inform you that the Medical certificates in
respect of Mr. Waqar constable No.1275 has been checked and found correct. The Medical
certificates is sent herewith.



Medical Superintendent
Services Hospital Peshawar.

ATTESTED

سنگ 3 سدنا سو 14/6

(12)

B

اپلڈ
درہ 3
عنوان

12/1

D.B.M. 112-D.M.

18/07/11

کارڈس ... 146 ... 1275 ...
کارڈس ... 146 ...
کارڈس ...
کارڈس ...

سنگ 3
درہ 3
عنوان

APL

سنگ 27 سدنا سو 14/3

کارڈس ... 147 ...
کارڈس ... 146 ...
کارڈس ... 146 ...
کارڈس ... 146 ...
کارڈس ... 146 ...
کارڈس ... 146 ...
کارڈس ... 146 ...
کارڈس ... 146 ...

سنگ 3
درہ 3
عنوان

14/7/11

ATTACHED

APL

PROCEEDING AGAINST

C

13


I, Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that Constable Waqar Ahmad No.1275 rendered him-self liable to be proceeded against under Efficiency & Discipline Rules-1973

STATEMENT OF ALLEGATION

That Constable Waqar Ahmad No.1275 while posted at Police Lines Peshawar absented himself from duty with effect from 14.06.2010 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 Chamkani is appointed as Enquiry Officer.

2. The Enquiry Officer shall, in accordance with the provisions of the Rules, 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. 182 /E/PA, dated Peshawar the 05/8 /2010.

1. SDPO Chamkani is directed to finalize the aforementioned departmental proceeding within stipulated period under the Rule.
2. Official concerned.

ATTESTED

CHARGE SHEET

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge you Constable Waqar Ahmad No.1275 of Capital City Police Peshawar with the following irregularities:-


14
that you Constable Waqar Ahmad No.1275 while posted at Police Lines Peshawar absented himself from duty with effect from 14.06.2010 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

ATTACHED

(D)

15

میاں آزاد وقار احمد فرزند 1275 تحصیلات

بھولہ جہاد سٹیٹ ٹیکسٹائل کارپوریشن
EPA-182
5-8-80

میں بطور گنرل سروسز میں جوائن ہو کر گیا
کہ ساتھ ڈیوٹی کر رہا تھا اس دوران میرا اکسیڈنٹ ہو گیا
میں نے ہسپتال میں چھ ایک ہفتہ آرام کر کے
واپس آ گیا اور پھر دو ہفتہ ریکٹ ہو گیا جس کی وجہ سے
میں نے ہسپتال میں چھ ایک ہفتہ آرام کر کے
واپس آ گیا اور پھر دو ہفتہ ریکٹ ہو گیا جس کی وجہ سے
میں نے ہسپتال میں چھ ایک ہفتہ آرام کر کے
واپس آ گیا اور پھر دو ہفتہ ریکٹ ہو گیا جس کی وجہ سے

میں نے ہسپتال میں چھ ایک ہفتہ آرام کر کے
واپس آ گیا اور پھر دو ہفتہ ریکٹ ہو گیا جس کی وجہ سے

ATTESTED

[Signature]

E

16

From: The Deputy Superintendent of Police,
Shahdadi Circle Peshawar.

The Superintendent of Police,
Head Quarter Peshawar.

To: 30 / SA dated peshawar the: 3-9 /2011.

Subject:- DISCIPLINARY ACTION AGAINST CONSTABLE WAGAR NO. 1275
HABITUALLY ABSENT.

Kindly reference your office memo: No. 102-E/PA
dated 05-03-2010 on the subject cited above.

REFERENCE:- It is a departmental enquiry against constable
Wagar No. 1275 to the effect that he while posted to DAR Absen-
ted himself for a total period of 15 Months. He was marked
Absent vide D.E.No. 30 dated, 14-06-2010 & report back vide D.E.
No. 27 dated, 14-07-2011, Dar. on the basis of his prolong absence,
he was served upon with charge sheet & summary of allegation
coupled with the stoppage of his monthly salary.

His response pertaining to his absences was obtained
in written. The alleged constable managed to get medical leave
for the absence period without a dopting proper procedure for
achieving medical leave. Initially he absented himself & after
awaiting his charge sheet & summary of allegation he arranged
medical leave for protecting his skin from punishment.

The official seemed to be a habitual absentee & his
medical leave is used just to save himself from punishment.

In the above mentioned circumstances, & from the
perused of PNC Record, the accused constable Wagar No. 1275 is
habitual absentee. The undersigned, etc. etc. the conclusion the
accused constable Wagar should be recommended for major punish-
ment.

Submitted please.

Issue final

Show case
notice

(S. AHMED)
Deputy Superintendent of Police,
Shahdadi Circle Peshawar.

Superintendent of Police (Ops)
Capital City Peshawar
06/9/11

ATTESTED

P-23

I Superintendent of Police, Headquarters, Capital City Police, Peshawar as competent authority, under the North West Frontier Provincial Removal From Service (Special Power) Ordinance, 2000 do hereby serve you Constable Waqar No.1275 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 section 3 of the said Ordinance.


"That you Constable Waqar No.1275 while posted at DAR, Peshawar was absent from duty w.e.f. 14.06.2010 to 14.07.2011 (13 months) 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 section 3 of the said Ordinance of sub section 4 of section 5 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.

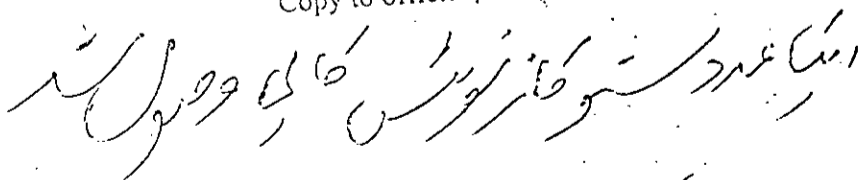
4. If no reply to this notice is received within 7 days of its delivery, in normal course of circumstances, it shall, be presumed that you have no defence to put in and in that case as ex-parate action be taken against you.

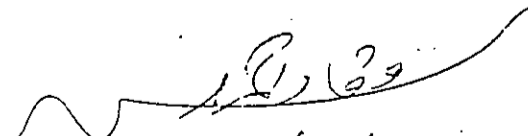
5. The copy of the finding of the enquiry officer is enclosed.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 182 /PA, SP/HQrs: dated Peshawar the 9-9-2011

Copy to official concerned




12/9/2011

ATTESTED

F

17

FINAL SHOW CAUSE NOTICE

I Superintendent of Police, Headquarters, Capital City Police, Peshawar as competent authority, under the North West Frontier Provincial Removal From Service (Special Power) Ordinance, 2000 do hereby serve you Constable Waqar No.1275 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 section 3 of the said Ordinance.


"That you Constable Waqar No.1275 while posted at DAR, Peshawar was absent from duty w.e.f. 14.06.2010 to 14.07.2011 (13 months) 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 section 3 of the said Ordinance of sub section 4 of section 5 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.

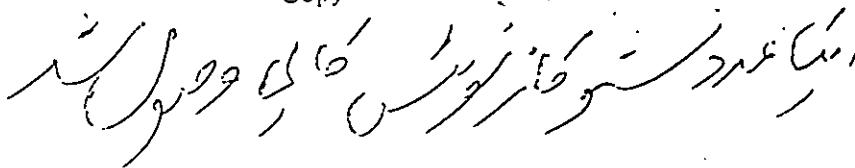
4. If no reply to this notice is received within 7 days of its delivery, in normal course of circumstances, it shall, be presumed that you have no defence to put in and in that case as ex- parate action be taken against you.

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



SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 182 /PA, SP/HQrs: dated Peshawar the 9-9-2011

Copy to official concerned



ATTESTED


12/9/2011

درخواست

یاد تہ خراب دھچی ہرے

قابل شوکارا ٹولش 192 فرم 09/9/2011

جاری شدہ از دفتر ایس پی صاحبہ کوارٹر

لشاور پولیس لیساور +

صاحبہ عالی! سائل حسب ذیل عرض کرنا ہے +

1. یہ نہ سائل ایک قحقی اور ڈیوٹی پولیس اہلکار ہے +

2. یہ نہ سائل لشاور صاحبہ کوارٹر کے جو سردار شوکت صیات تمہارے ساتھ ڈیوٹی پر تھے۔ نہ سائل بیمار ہوئے۔ اور یہ اجازت سردار شوکت صیدرور کے لئے دیا گیا ہے۔

3. چونکہ سائل کو رفاقتہ نہ ملا۔ لہذا وہ ایس آکر ڈیوٹی پر حاضر ہوا۔ چونکہ سائل بیمار تھا۔ اس لئے شوکتہ صاحبہ جو صاحبہ کوارٹر کے دوست آدھی سگوریا اور سائل کی بدلتے DAP میں لکھی۔ اور سائل نے دعماں جاکر رپورٹ کر دی +

4. چونکہ سائل بیمار تھے اور کمر میں شدید درد تھی۔ جس طرح سے سائل پولیس سرگرمی

ہیٹال علیہ شرم نہ دیا۔ اور علیہ لیساکو ساتھ سردار شوکتہ صیات سے سید لعل مقامر کے سائل کے پاس مجلہ مقیدہ رقم کارڈ موجود ہے جو کہ لفظ ہے +

5. یہ نہ سائل میں آلو انری بھی تھل ہوتی ہے +

6. یہ نہ سائل نے پوری سردوس قتالی کی ہے۔ اور کبھی بھی اپنے ذمہ داران لیساکو کا حوقم نہ دیا ہے۔ اور نہ ہی ڈیوٹی میں کوتاہی کی ہے اور آئندہ بھی اللہ والہ سالی نواری کا رہو لگا +

7. یہ نہ سائل اجازت اختیار کرنے کے غیر مقصدی کا سلوچ بھی نہیں سدا ہے +

8. یہ نہ سائل کیوں سے بالآ آفیسران / ذمہ داران کو دھچی کو قتا ہوتی ہے تو سائل اس کے خلاف قانونی کارروائی کریں۔ اور آئندہ حوقم نہ دو لگا +

الغرض

1275
پولیس لیساور

لشاور صاحبہ سائل کی سید لعل لیر حسب قاطبہ منظوری دینے اور شوکارا ٹولش مذکورہ بالا مزید کارروائی داخل دفتر لیا گیا ہے کہ حکم صادر کرنا جائز

وقاد لعل

DAR 17/9/2011

ATTESTED

(H)

19

ORDER

This office order relates to the disposal of formal departmental proceedings against Constable Waqar Ahmad No.1275 of Capital City Police Peshawar on the allegations/charges that he while posted at Police Lines absented himself from legitimate duty with effect from 16.06.2010 to 14.07.2011 (13-months) without taking permission or leave.

In this regard, he was issued Charge Sheet and Summary of allegations. SDPO Chamkani was appointed as Enquiry officer. He conducted the enquiry proceedings and submitted his report that the alleged Constable managed to get medical leave for his absence without adopting proper procedure for achieving of medical leave. The E.O further recommended major punishment for the accused official vide Enquiry report No.30/ST dated 03.09.2011.

Upon the finding of Enquiry Officer, he was issued final show cause notice to which he received & replied. He was also called and heard in person but his explanation is reasonable.

In the light of recommendations of Enquiry Officer & other material available on record, the undersigned came to the conclusion that the delinquent official was failed to adopt proper procedure for obtaining of medical leave.

Therefore, in exercise of the powers vested under the Removal from Service (Special Powers) Ordinance-2000, he is hereby awarded the punishment of reduction to lower stage of time scale for a specific period of 02-year with immediate effect. Hence, the period he remained absent from 16.06.2010 to 14.07.2011 (13-months) is treated as leave without pay. Remaining pay is released.

Order announced

30/10/11
SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR

OB. NO. 3654 / Dated 6.1.10 / 2011

No. 2863-70 PA/SP/HQrs: dated Peshawar the 26/10 / 2011.

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

- ✓ The Capital City Police Officer, Peshawar.
- ✓ DSP/HQrs: Peshawar.
- ✓ Pay Officer/RI, LO, Police Lines Peshawar.
- ✓ OASI, CRC & FMC along-with complete departmental file.
- ✓ Officials concerned.

ATTESTED
A

I

BEFORE THE CAPITAL CITY POLICE OFFICER PESHAWAR

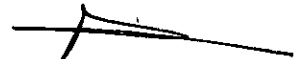
20/1

DEPARTMENTAL APPEAL AGAINST THE ORDER DATED 06/10/2011 PASSED BY THE SUPERINTENDENT OF POLICE HEADQUARTERS PESHAWAR WHEREBY I HAVE BEEN AWARDED THE PUNISHMENT OF REDUCTION TO LOWER STAGE OF TIME SCALE FOR SPECIFIC PERIOD OF TWO YEARS WITH IMMEDIATE EFFECT AND THE PERIOD OF ABSENCE HAS BEEN TREATED AS LEAVE WITHOUT PAY.

Respectfully Sheweth:


1. That I joined Police Department as constable in the year 2001 in F.R.P. KPK, was transferred to District Police Charsadda and then to District Police Peshawar in the year 2007 and remained posted to various Police Stations and was lastly posted to the Police Lines, Peshawar and was attached to Justice Sardar Showkat Hayat of the Peshawar High Court Peshawar.

ATTESTED



- ! 21 /
2. That during this period I met an accident and left for home with the permission of the learned Judge, however I developed pain in my back and was unable to had performed my duties, therefore I reported for duty in Police Line and remained under treatment from the police and Services Hospital, Peshawar.
 3. That I time and again visited the Medical Officer who repeatedly advised me medicines and sick leave till 24/06/2011. (Copies of Medical Chits are enclosed as annexure "A" to "A/12".
 4. That after recovery I arrived for duty and made my arrival in DAR, Peshawar vide Naqalmad No. 26 dated 14/07/2011.
 5. That I was issued charge sheet on the allegations mentioned therein. The charge sheet was replied in detail explaining the true and factual circumstances. (Copies of charge sheet and reply are attached as annexure "B" & "C" respectively).
 6. That thereafter inquiry was conducted and I was issued final Show Cause Notice on 09/09/2011 which too was replied. (Copy of Final Show Cause Notice and Reply therein are enclosed as annexure "D" & "E").
 7. That thereafter I was awarded the punishment of reduction to lower stage of time scale for specific period.

ATTESTED



22
/

of two has been immediate effect and the period of absence has been treated as leave without pay by the Superintendent of Police Headquarters Peshawar vide order dated 06/10/2011. (Copy of the order is enclosed is annexure "F").

8. That the impugned order dated 06/10/2011 of the S.P Headquarter, Peshawar is against the law, facts and principles of justice on grounds inter alia as follows:

GROUND:

- A. That the impugned order is illegal and void a b initio.
- B. That the impugned order is without jurisdiction and legal authority.
- C. That the absence from duty was neither willful nor deliberate rather the same was because of serious illness and even the Medical Chits were verified from the Medical Superintendent of Police and Services Hospital, Peshawar vide letter dated 25/07/2011. (Copy of the letter is enclosed as annexure "G").
- D. That even the impugned order is not maintainable because I have been subjected to double jeopardy.
- E. That even otherwise the impugned order is not maintainable because the period of absence has been condoned by treating the same as leave without pay.

ATTESTED

F. That I was not afforded the opportunity of personal hearing and the punishment is not covered by the law under which the same has been awarded.

G. That mandatory provisions of law have been violated by the respondents. The punishment awarded is harsh.

H. That I have about 10 years of service with unblemished service record and with no previous such allegations.

It is therefore, requested that on acceptance of this appeal, the impugned order dated 06/10/2011 of the Superintendent of Police Headquarters, Peshawar may kindly be set aside and I may be restored to my previous position with full back benefits.

Dated: 19/10/2011

وقار احمد

Wqar Ahmad
Constable No. 1275
D.A.R, Capital City Police
Peshawar.

ATTESTED

ORDER

(J)

This order will dispose off departmental appeal of constable **Waqar Ahmed No.1275** who was awarded the major punishment of reduction to the Lowest Stage of time scale constable for 02 years and absence period was ordered as leave without pay vide OB No.3654 dated 6/10/2011 by SP/HQ Peshawar.

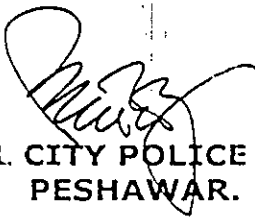
The charge levelled against him was that he while posted in Police Lines Peshawar absented himself from duty w.e.f. 16/6/2010 to 14/7/11(13 months) without proper permission.

Proper departmental proceedings were initiated against him and Mr. Shakirullah Bangash, SDPO Chamkani was appointed as the E.O. In his findings, he mentioned that the defaulter constable initially absented himself and later-on manipulated medical leave for the above period just to save his skin from punishment. He held him responsible for prolong absence without any cause. On completion of enquiry, the SP/HQ Peshawar issued him FSCN to which he replied. The same was found unsatisfactory, hence he was awarded the above punishments.

The relevant record has been perused. He was called in OR on 9/1/2012 and heard in person but he could not defend himself. The charge of absence for such a prolong time has been proved against him. I being the Appellate Authority do not agree with the punishment awarded to him being not commensurate with gravity of offence. As such I hereby modify the aforementioned order and instead award him the **major punishment of dismissal** from service with immediate effect. The absence period be treated as leave without pay.

O.S No. 7-06

Date 16-1-2012



CAPITAL CITY POLICE OFFICER,
PESHAWAR.

No. 180-85 /PA dated Peshawar the 16.1.2012.

Copies for inf and n/a to the:-

- 1/ SP HQ Peshawar
- 2/ PO
- 3/ OASI
- 4/ CRC along with S.R. for making necessary entry.
- 5/ FMC encl: (FM)
- 6/ Official concerned.

ATTESTED

K

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Service Appeal No. 173 ¹² /2011

25
/

Waqar Ahmad, ex-Constable 1275 son of Tilla Mohammad
R/O Mohallah Qilla, Village Katozai, Tehsil Shabqdar, district Charsadda

..... Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary,
Civil Secretariat Peshawar
2. Inspector General of Police Khyber Pakhtunkhwa Peshawar
3. Chief Capital Police Officer (CCPO), Peshawar
4. Superintendent of police Headquarters/ DPO Peshawar
5. DSP, Chamkani circle, Peshawar

..... Respondents

Appeal u/s 4 of Khyber Pakhtunkhwa Services Tribunal
Act 1974, RW u/s 10 Removal from Service Ordinance
2000 to the effect that removal of the appellant by the
Respondents may kindly be set aside and the appellant be
restored/ reinstated to his post with all back benefits.

Respectfully Sheweth:

1. That the appellant was serving as constable in police department Peshawar, was posted at police lines Peshawar and attached with the then Justice Sardar Shaukat Hayat of Peshawar High Court.
2. That the appellant met an accident resulting injuries and then pain in back body, therefore, the Hon'able judge permitted the appellant for few days rest, but when such pain could not controlled, the appellant being unable to perform duty reported at police Line and remained under treatment from Police and Services Hospital Peshawar for about 13 months.

ATTESTED
/

26
1

3. That the medical officer at Police and Services Hospital Peshawar after examination and some tests, repeatedly advised the appellant medicines and complete rest till 24-06-2011. Copies annexure A
4. That the appellant after some recovery join the duty in DAR, Peshawar vide Daily Diary No. 27 dated 14--7-2011. Copy of DD is annexure B
5. That the appellant was, however, served with charge on allegations of absentee from duty, to which the appellant replied in detail, explaining situation and mentioning real facts therein. Copies of charge sheet and reply are annexure C and D
6. That an inquiry was conducted in the matter by Respondent No. 5 being appointed and thus appellant was issued final show cause notice on 09-09-2011 to which the appellant submitted his reply explaining real facts. Copies of final show cause and reply are annexure E and F
7. That the appellant was awarded punishment of reduction to lower stage of time in scale for specific period of two years and time of absentee was treated as leave without pay by Respondent No. 4 vide order dated 6-10-2011. Copy of order annexure G
8. That such order was assailed in departmental appeal to Respondent No. 3 but instead of any relief, the appellant was dismissed from service vide order dated 16-01-2012. Copies of appeal and order thereon are annexure H and I
5. That the appellant seeks indulgence of this Hon' able Tribunal for the redressal of his grievance through instant appeal on the following grounds amongst others:

GROUND S:

- A. That the appellant has not been treated in accordance with law and the Constitution; hence removal from service is illegal and unwarranted by law. —
- B. That the order of removal from service of appellant is not based on sound reasons, hence, needs to be recalled. —
- C. That the appellant was removed from service without giving him any opportunity of hearing, hence condemned unheard. —

ATTESTED

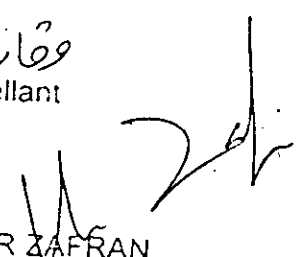
- D. That the impugned orders dated 6-10-2011 and 16-1-2012 regarding punishment and removal from service of the appellant have been passed in mechanical way without looking the record.
- E. That the impugned orders of removal from have been passed by violating rules and natural justice.
- F. That once it was brought into notice of department/ authority that appellant was sick and remained under treatment of medical officer of Police and Services Hospital, whom also confirmed the medical record, then its rejection was beyond wisdom and illegal, therefore proceedings and impugned orders are illegal and departure from practice under the rules and law.
- G. That appellate authority under the law and rules could have either accept or dismiss the appeal of appellant but had not jurisdiction to dismiss the appellant from service, when there was no such written appeal / request before him from department.
- H. That the natural justice also demands that in the given circumstances the impugned orders be recalled and appellant be reinstate to his post/ service.
- I. Other grounds, if any, will be taken at time of arguments but in light of the record of the case.

It is, therefore, requested that the appellant be reinstated to his post with all back benefits.

Any other relief, which not specifically asked for, may also be granted in the interest of justice

Through

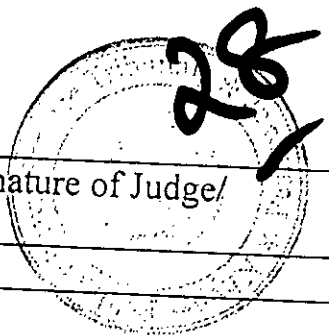

Appellant


UMER ZAFRAN
Advocate High Court

January 30, 2012

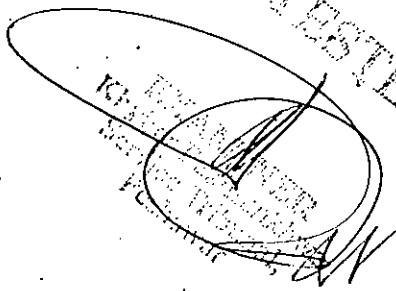
ATTESTED

2



Sr. No.	Date of order/ proceedings	Order or other proceedings with signature of Judge/ Magistrate
1	2	3
1.	31.08.2015	<p style="text-align: center;">KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.</p> <p style="text-align: center;">Service Appeal No. 173/2012</p> <p style="text-align: center;">Waqar Ahmad Versus Government of KPK through Chief Secretary, Peshawar etc.</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>PIR BAKHSH SHAH, MEMBER.-</u> Appellant with counsel (Mr. Umar Zafran, Advocate) and Mr. Muhammad Jan, GP for the respondents present.</p> <p>2. On being absent from duty, the appellant constable Waqar Ahmad was ^{departmentally} proceeded against. The competent authority vide his order dated 06.10.2011 awarded him punishment of reduction to lower stage of time scale for a specific period of 02 years, against which he filed departmental appeal. The appellate authority vide his impugned order dated 16.1.2012 enhanced the punishment and dismissed him from service. Hence this appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.</p> <p>3. Arguments heard and record perused.</p> <p>4. The learned counsel for the appellant submitted that in fact the appellant after a road accident was lying on bed who continued his treatment. (Photocopies of medical</p>

ATTESTED



ATTESTED

29

record available on record were referred). That this medical record was also verified to be correct as revealed from letter No. 8786/M.S dated 25.10.2011, copy of which is available on record. He next submitted that in view of the stated position, the competent authority justifiably took a lenient view and imposed penalty of reduction to lower stage of time scale for a specific period of 02 years on the appellant but the appellate authority vide his impugned order dated 16.1.2012 without issuing any show cause notice as required under Rule 5 of the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986, enhanced the penalty to dismissal from service. In this regard the learned counsel for the appellant while placing reliance on 2008-SCMR-2014 submitted that the penalty is too harsh, therefore, the impugned order may be set aside.

5. These arguments were resisted by the learned Government Pleader that the appellant remained willfully absent from duty for 13 months. That he was properly proceeded against as he had later-on managed medical certificates in order to maneuver justification for his absence, therefore, these medical certificates were not accepted by the enquiry officer also. He submitted that the appellate authority had summoned the appellant for personal hearing and he was given an opportunity of defence. He requested that the appeal may be dismissed.

ATTESTED

30

6. Perusal of the order dated 06.10.2011 of the competent authority shows that while accepting explanation of the appellant, he took a lenient view and awarded punishment of reduction to lower stage in time scale for a specific period of 02 years upon the appellant. That the appellant preferred departmental appeal in which the penalty was enhanced. Rule 5 of the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986 is reproduced below ^{which} shows that a show cause notice is required to be issued by the appellate authority in case of enhancement of punishment:-

"Action by the appellate authority:- (1) The appellate authority, after making such further enquiry or calling for such information or record or giving the appellant an opportunity of being heard, as it may consider necessary, shall determine-

- (a) Whether the facts on which the order appealed against was based have been established.
- (b) Whether the facts established afford sufficient ground for taking action; and
- (c) Whether the penalty is excessive, adequate or inadequate

And after such determination, shall confirm, set aside or pass such order as it thinks proper; provided that no order increasing the penalty shall be passed without giving the appellant an opportunity of showing cause as to why such penalty should not be increased."

7. In the instant case, this show cause notice was not issued to the appellant. It is thus evident that impugned order of the appellate authority cannot be maintained for the reason of non-compliance with requirement of show cause notice as prescribed in rule 5 ibid. As such the impugned order of appellate authority is set aside. The

ATTESTED

ATTESTED

31

appeal is remitted back to the appellate authority with the direction to issue show cause notice to the appellant under the rule 5 of the said rules and to re-decide the appeal. The appeal is allowed accordingly. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
31.8.2015.

*Adv. J.S. Bhatnagar, Secy
Adv. M. S. Lathi, Member*

Certified to be true copy

(Circular stamp: K... Peshwar)

7-9-2015
1600
10
2
12
7-9-2015
7-9-2015

ATTESTED
(Signature)



M

32

**OFFICE OF THE
CAPITAL CITY POLICE OFFICER,
PESHAWAR**

Phone No. 0919210989

Fax: 091-9212597

ORDER.

Ex-Constable Waqar Ahmad No.1275 was awarded major punishment of reduction to the lowest stage of time scale for a period of 2-years by the then SP-HQrs: vide OB No. 3654 dated 6.10.2011 on the allegations of absence from duty w.e.f 16.6.2010 to 14.7.2011 (13-months).

In this regard, he was filed an appeal before the then CCPO, Peshawar against the above orders which was rejected and his punishment was enhanced & converted into dismissal from service by the CCPO, Peshawar vide OB No. 206 dated 16.1.2012.

In light of Court Judgment Ex- Constable Waqar Ahmad No. 1275 is hereby re-instated in service with immediate effect & Show Cause Notice is being issued to him separately for hearing in person and final decision.


**CAPITAL CITY POLICE OFFICER,
PESHAWAR.**

OB.No. 3930 /dated 29/10 /2015

No. 5115-22 /PA, dated Peshawar the

29/10 /2015.

Copies for inf: and n/a to the:-

1. SP-HQrs:, Peshawar.
2. DSP-HQrs:, Peshawar.
3. PO,OASI,CRC & FMC along-with complete departmental file.
4. I/C Computer Cell.
5. Official concerned.

ATTESTED



OFFICE OF THE
CAPITAL CITY POLICE OFFICER,
PESHAWAR

Phone No. 091-9210989
Fax: 091-9212597

N
33
✓

ORDER

Constable Waqar Ahmad No. 1296 was proceeded against departmentally on the charge of willful absence from official duty w.e.from 16.6.2010 to 14.7.2011 (13 months).

2. Departmental proceedings were initiated against him and SDPO Rural was appointed as the E.O. The enquiry officer, in his findings mentioned that the defaulter constable Waqar Ahmad No. 1296 absented himself from lawful duty and later-on managed medical certificates for justification of his absence. The E.O. held him guilty for such a long absence without any cause.

3. On completion of departmental inquiry, the SP/HQrs: Peshawar issued him Final Show Cause Notice to which he replied. The same was perused and found unsatisfactory, as such the Competent Authority awarded him punishment of reduction to lower stage of time scale constable for a specific period of 02 years and absence period was ordered without pay vide OB. No. 365 dated 6.10.2011.

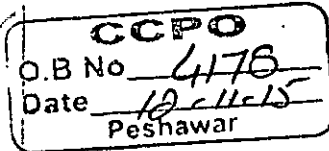
4. The delinquent constable Waqar Ahmad No. 1296, preferred departmental appeal on 16.1.2012, before the then CCPO Peshawar, Syed Imtiaz Altaf, who after perusal the relevant record/file and hearing him in person in O.R, rejected his appeal, enhanced the punishment and dismissed him from service vide order No. 180-85/PA dated 16.1.2012. The absence period was ordered as leave without pay.

5. Being aggrieved with the order passed by the Appellate Authority (CCPO), he filed service appeal No. 173/2012 in Khyber Pakhtunkhwa Service Tribunal Peshawar. The Honourable Service Tribunal vide Judgment dated 31.8.2015, after hearing the arguments accepted the plea of appellant and ordered that the impugned order of appellate authority is set-aside. The appeal was remitted back to the Appellate Authority with the direction to issue Show Cause Notice to the appellant and re-decide the appeal.

ATTESTED
/

6. In pursuance of the direction of Khyber Pakhtunkhwa Service Tribunal, Show Cause Notice was issued to the delinquent Constable Waqar Ahmad No. 1275 to which he replied. The same was found unsatisfactory. He was called in OR on 6.11.2015 and heard in person. He was provided full opportunity to defend himself but he miserably failed to do so. The inquiry file was thoroughly examined and after fulfilling all the legal formalities under Rule 5 of Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986, and after considering the reply of the delinquent Constable Waqar Ahmad No. 1276 both verbal and written, there was no reasonable justification for such a long absence from lawful duty. It was also considered whether the enhancement of punishment i.e dismissal by the Appellate Authority passed on 16.1.2012, commensurate with gravity of misconduct of the delinquent constable Waqar Ahmad No. 1276. The same was rightly enhanced.

7. Keeping in view the above explained position and facts available on file, the charge of long absence from 16.6.2010 to 14.7.2011 (13 months) without any justification stand proved against him beyond any shadow of doubt. His retention in Police force is not justifiable. Therefore, he is awarded the major punishment of dismissal from service.



[Signature]
CAPITAL CITY POLICE OFFICER,
PESHAWAR

No. 5309-16 / PA,

dated Peshawar the 12 / 11 / 2015.

Copies for information and necessary action to the:-

1. SP-Hqrs:
2. DSP-Legal
3. DSP-Hqrs:
4. Pay officer
5. CRC
6. OASI
7. FMC
8. Official concerned

ATTESTED
[Signature]

VAKALAT NAMA

35

NO. _____/20

IN THE COURT OF

Service Tribunal Peshawar

Waqar Ahmad

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Police Deptt:

(Respondent)
(Defendant)

I/We

Waqar Ahmad

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

فقدان
(CLIENT)

ACCEPTED

M. ASIF YOUSAFZAI
Advocate

& تایمر علی خان
TAIMUR ALI KHAN
Advocate

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.

OFFICE:

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

2. Capital City Police Officer, Peshawar.

3. Superintendent of Police, HQrs, Peshawar.....Respondents.

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

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 totally incorrect and concocted hence denied. In fact the appellant absented himself wilfully from his lawful duty w.e.f 16.06.2010 to 14.07.2011 (total 13 months) without taking permission/leave from his seniors.
- (3) Para No.3 is incorrect and denied. The appellant did not adopted proper procedure for taking leave/permission. The appellant somehow managed to obtain medical prescriptions from the doctor of police and services Hospital for 13 months. It is worth to mention here that the appellant did not applied for medical leave.
- (4) Para No.4 is correct to the extent that the appellant after 13 months of absence reported back for duty.
- (5) Para No.5 is correct to the extent that the appellant was proceeded departmentally on allegations of wilful absence. He was issued charge sheet and summary of allegation to which he replied but he failed to produce any cogent reason to defend his long absence period.
- (6) Para No.6 is already replied in detail above.
- (7) Para No.7 is correct to the extent that the competent authority after obtaining reply to the FSCN awarded him the punishment of reduction to lower stage of time scale for specific period of two years and time of absence was treated as leave without pay.

- (8) Para No.8 is correct to the extent that the appellate authority after hearing the appellant in person in OR on 09.01.2012 and after perusing the enquiry file, disagreed with the punishment awarded to appellant as the same did not commensurate with gravity of misconduct. As such the punishment order was modified and he was awarded him major punishment of dismissal from service.
- (9) Para No.9 pertains to court. Hence needs no comments.
- (10) Para No.10 is correct to the extent that in light of Hon,able Service Tribunal order, the appellant was re-instated into service.
- (11) Para No.11 is incorrect. In compliance of Hon,able Service Tribunal order, the appellant was re-instated in service vide OB No.3930 dated 29.10.2015 and was issued a Show Cause Notice which he received and also replied but the same was found unsatisfactory. He was called in OR on 06.11.2015 and heard in person. He was provided full opportunity to defend himself but he miserably failed to do so. The enquiry file was thoroughly examined and after fulfilling all the legal formalities under Rule 5 of Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986 and after considering his reply both verbal and written, there was found no reasonable justification for such long absence period, hence the same was rightly enhanced, therefore he was awarded major punishment of dismissal from service vide order No.5309-16/PA dated 12.11.2015.
- (12) That appeal of appellant being devoid of merits may kindly be dismissed with cost.

GROUND:-

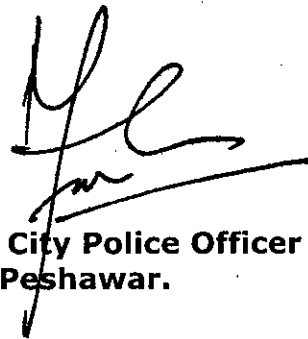
- (A) Incorrect. The impugned order is in accordance with law/rules, hence liable to be upheld.
- (B) Incorrect. The appellant was treated as per law and rules.
- (C) Incorrect. The impugned order is legal and per the law.
- (D) Incorrect. The punishment was rightly enhanced after examining of the enquiry file and fulfilling all codal formalities.
- (E) Incorrect. The punishment awarded is in accordance with law/rules.
- (F) Incorrect. As above.
- (G) Incorrect. The appellant was given full opportunity of defence. He was called and heard in person but he miserably failed to defend his long absence period.
- (H) Incorrect. The appellant was re-instated in compliance of Hon,able Service Tribunal order and was proceeded in accordance with law/rules.
- (I) Incorrect. The appellant wilfully absented himself from his lawful duty without adopting proper procedure for taking leave/permission.
- (J) That respondents also seek permission of this Honorable Service Tribunal

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
HQrs, Peshawar.**

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No.1362/2015.

Waqar Ahmad Ex- Constable No.1275/1296 CCP Peshawar..... Appellant.

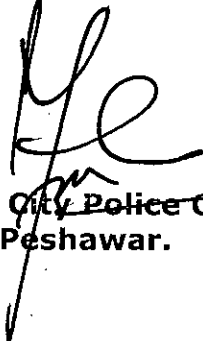
VERSUS.


1. Inspector General of Police, 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.



**OFFICE OF THE
CAPITAL CITY POLICE OFFICER,
PESHAWAR**

Phone No. 091-9210989
Fax: 091-9212597

ORDER

Constable Waqar Ahmad No. 1275 was proceeded against departmentally on the charge of willful absence from official duty w.e.from 16.6.2010 to 14.7.2011 (13 months).

2. Departmental proceedings were initiated against him and SDPO Rural was appointed as the E.O. The enquiry officer, in his findings mentioned that the defaulter constable Waqar Ahmad No. 1275 absented himself from lawful duty and later-on managed medical certificates for justification of his absence. The E.O. held him guilty for such a long absence without any cause.

3. On completion of departmental inquiry, the SP/HQrs: Peshawar issued him Final Show Cause Notice to which he replied. The same was perused and found unsatisfactory, as such the Competent Authority awarded him punishment of reduction to lower stage of time scale constable for a specific period of 02 years and absence period was ordered without pay vide OB. No. 365 dated 6.10.2011.

4. The delinquent constable Waqar Ahmad No. 1275, preferred departmental appeal on 16.1.2012, before the then CCPO Peshawar, Syed Imtiaz Altaf, who after perusal the relevant record/file and hearing him in person in O.R, rejected his appeal, enhanced the punishment and dismissed him from service vide order No. 180-85/PA dated 16.1.2012. The absence period was ordered as leave without pay.

5. Being aggrieved with the order passed by the Appellate Authority (CCPO), he filed service appeal No. 173/2012 in Khyber Pakhtunkhwa Service Tribunal Peshawar. The Honourable Service Tribunal vide Judgment dated 31.8.2015, after hearing the arguments accepted the plea of appellant and ordered that the impugned order of appellate authority is set-aside. The appeal was remitted back to the Appellate Authority with the direction to issue Show Cause Notice to the appellant and re-decide the appeal.

6. In pursuance of the direction of Khyber Pakhtunkhwa Service Tribunal, Show Cause Notice was issued to the delinquent Constable Waqar Ahmad No. 1275 to which he replied. The same was found unsatisfactory. He was called in OR on 6.11.2015 and heard in person. He was provided full opportunity to defend himself but he miserably failed to do so. The inquiry file was thoroughly examined and after fulfilling all the legal formalities under Rule 5 of Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986, and after considering the reply of the delinquent Constable Waqar Ahmad No. 1275 both verbal and written, there was no reasonable justification for such a long absence from lawful duty. It was also considered whether the enhancement of punishment i.e dismissal by the Appellate Authority passed on 16.1.2012, commensurate with gravity of misconduct of the delinquent constable Waqar Ahmad No. 1275. The same was rightly enhanced.

7. Keeping in view the above explained position and facts available on file, the charge of long absence from 16.6.2010 to 14.7.2011 (13 months) without any justification stand proved against him beyond any shadow of doubt. His retention in Police force is not justifiable. Therefore, he is awarded the major punishment of dismissal from service.


CAPITAL CITY POLICE OFFICER,
PESHAWAR

dated Peshawar the 12/11/2015.

No. 5309/16 /PA,

Copies for information and necessary action to the:-

1. SP-Hqrs:
2. DSP-Legal
3. DSP-Hqrs:
4. Pay officer
5. CRC
6. OASI
7. FMC
8. Official concerned



OFFICE OF THE
CAPITAL CITY POLICE
PESHAWAR

Phone No. 0919210989

Fax: 091-9212597

No. 5125 /PA,

Dated Peshawar the 29/10 /2015.

SHOW CAUSE NOTICE

(In light of directions of Service Tribunal
Judgment Order dt: 31.8.2015)

1. That subsequent upon the directions of Hon'able Service Tribunal Judgment dt: 31.8.2015 is hereby serve You **Ex-Constable Waqar Ahmed No.1275 of CCP, Peshawar** as follow:-

That you had submitted an Appeal against punishment of reduction to the lowest stage of time scale constable for 2 years and absence period was ordered as leave without pay vide O.B No.3654 dated 6.10.2011 by SP-HQrs: on the charges of absence from duty w.e.f. 16.6.2010 to 14.7.2011 (13 months) without proper permission, to the Appellate Authority. The Appellate Authority heard you in person in O.R but you could not defend yourself. The charge of absence for such a prolong time has been proved against you. The Appellate Authority do not agreed with the punishment awarded to you being not commensurate with gravity of misconduct. As such the Appellate Authority modified the aforementioned order and instead award you the major punishment of dismissal from service with immediate effect. Thus you submitted an appeal in Service Tribunal against order of the Appellate Authority vide No.180-85/PA dt: 16.1.2012. On 31.8.2015, the Hon'able Service Tribunal after hearing the arguments accepted your plea and ordered that **"The impugned order of Appellate Authority is set aside. The appeal is remitted back to the Appellate Authority with the directions to issue Show Cause Notice to you and re-decide the appeal"**.

2. That by reason of the above, as sufficient material is placed before the undersigned, therefore it is decided to proceed against you in general Police proceeding without aid of enquiry officer.
3. That the misconduct on your part is prejudicial to good order of discipline in the Police Force.
4. That your retention in the police force will amount to encourage in efficient and unbecoming of good Police officer.
5. You are, therefore, called upon to show cause as to why you should not be dealt strictly in accordance with the Khyber Pakhtunkhwa Police Rules, 1975 for the misconduct referred to above.
6. You should submit reply to this show cause notice within 07 days of the receipt of the notice failing which an ex parte action shall be taken against you.
7. You are further directed to inform the undersigned that you wish to be heard in person or not.

Waqar

o/c
(MUBARAK ZEB)
CAPITAL CITY POLICE OFFICER,
PESHAWAR

کستور جناب نسیمی سی پی او ماہی پشاور



بدین نمبر ادھر سے سائل و شکوہ کار کو
 رقم 29/10/15 دیا گیا ہے جس پر

* کہ سائل سے جواب طلبی لیلی ہے۔ (شکوہ کار کو اس فوراً کو مافی لکھ ہے)

جناب عالی سے جواب سائل حسب ذیل ہے *

- ۱۔ یہ سائل ایک قسمی، دیانتدار اور فرض شناس اہلکار ہے۔ اور سردار شوکت سے صاحب حجرہ کا ٹیکس کیسٹ کیسٹ کیسٹ پر تھا۔ دوران ڈیوٹی سائل بیمار ہو گیا۔ بدترہ سردار نے دوسرا اہلکار مقرر کیا۔ اور سائل کو ADP دیا گیا۔
- ۲۔ چونکہ سائل کو شدید بیماری تھی۔ بدین نمبر ادھر سے سائل نے سروسر ہسپتال سے علاج کروایا۔ علاج سے متعلق تمام ریکارڈ مقصد قہ آنکوٹری قابل پر موجود ہے *
- ۳۔ چونکہ سائل کو بلا شکوہ کار تو فری سے میرحاضر کیا گیا۔ اور سائل در بدر ہوا۔ اور رزق بند ہوا۔ چنانچہ سائل نے فیوراً عدالتی الصاف مالقا *
- ۴۔ یہ سائل عدالت سے تیار ہے سائل کو کجالی نے احکامات جاری کیے ہیں *

PA
 call him in ok
 for
 ceo
 4/11/15

دلت، سائل ایک ٹریڈ پولیس اہلکار ہے اور فرض شناس ہے۔ اور امر مجبوری و بیماری غیر حاضر ہی ہو چکا ہے۔ ورنہ عکامالات میں سائل غیر حاضر ہی ماسکو بھی لپٹیں لگتا ہے *

(ج) یہ کہ اب جیکر کجالی کیلئے عدالتی چہا پتہ آئی ہے۔ اور لیدر کجالی پنجاب سی سی پی پشاور محکمہ ناظر ہے۔ التنا اللہ لیدر کجالی سائل کیلئے ڈالنا ہے۔ کہ کئی ہی صورتوں کو کچھ بھی ہو جاوے۔ سائل غیر حاضر ہی نہ رہ گیا۔ اور یا لادہ داران کو شصت ماہ قہ نہ دو لگا۔ (ج) سائل نے بارے میں ایسی ہی جید لوگ لڑنے ڈو سائل ما انگر کٹ اور تیرہ ماہ کا تھوہ بارے فیصلہ دیا تھا۔ وہ سائل کو منتظر ہے اور جو اسل سٹی سی پی او ماہی لکھی۔ وہ دو ڈرال کرو لگا *

(د) یہ کہ سائل آئندہ پوری دیانتداری، ایمانداری، فرض شناسی اور قہ سے واقف دلتا۔ اور رزق حلال کیساتھ کیساتھ ادارہ پولیس سی پی ایف نانی کیلئے کو شان رہو لگا *

استدعا ہے کہ شکوہ کار کو اس خبر ایلا تہ نہ ماروانی داخل دفعہ کرنے اور سائل کو کجالی نہ لپٹیں حساب ضابطہ حکم صادر کیا جاوے اور وارض الحجام دہی کیلئے حکم صادر فرمایا جاوے *

الواضح
 1275
 1296
 پولیس لائن پشاور
 9595698
 0345-
 Received on
 3-11-15

رقم 03/11/2015

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1362/2015

Waqar Ahmad

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. Admitted correct by the respondents as the service record is present with the concerned department.
2. Incorrect. While para 2 of the appeal is correct.
3. Incorrect. While para 3 of the appeal is correct.
4. Admitted correct. Hence no comments.
5. First portion of para 5 is admitted correct hence no comments while the rest of para is incorrect as in reply to charge sheet he explained the situation and mentioned real facts about his absence from the duty.
6. Incorrect. While para 6 of the appeal is correct.
7. Admitted correct. Hence no comments.
8. First portion of para 8 is admitted correct hence no comments while the rest of para is incorrect as the appellate authority enhance the punishment of the appellant from reduction to

lower stage of time for specific period of two years to dismissal from service without giving any cogent reason.

9. No comments.
10. Admitted correct hence no comments.
11. Incorrect. While para 11 of the appeal is correct.
12. Incorrect. The appellant has good cause of action and his appeal is liable to be accepted.

GROUND:

- A) Incorrect. The impugned orders are against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.
- B) Incorrect. The appellant was not treated as per law and rules and has been penalized for no fault on his part.
- C) Incorrect. The impugned orders is not legal and per law.
- D) Incorrect. While para D of the appeal is correct.
- E) Incorrect. The punishment awarded is not accordance with law and rules as the absence period of the appellant also traded as leave without pay and there remain no ground to punish the appellant for absence.
- F) Not replied according to para F of the appeal. Moreover para F of the appeal is correct.
- G) Incorrect. While para G of the appeal is correct.
- H) First portion of para H is admitted correct hence no comments while the rest of para is incorrect as no chance of defence was provided to the appellant which the violation of august Tribunal judgment as well as law and rules.
- I) Incorrect. While para I of the appeal is correct.

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

APPELLANT

Through:

(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT,

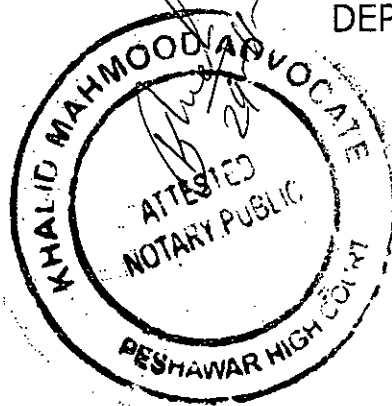
&

(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT.

AFFIDAVIT

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


DEPONENT



KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 2101/ST

Dated 15 / 10 / 2018

To


The Capital City Police Officer,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: -

JUDGMENT IN APPEAL NO. 1362/2015, MR. WAQAR AHMAD.

I am directed to forward herewith a certified copy of Judgement dated 04.10.2018 passed by this Tribunal on the above subject for strict compliance..

Encl: As above

o/c

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No.1362/2015.

Waqar Ahmad Ex- Constable No.1275/1296 CCP Peshawar..... Appellant.

VERSUS.

1. Inspector General of Police, 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 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 totally incorrect and concocted hence denied. In fact the appellant absented himself wilfully from his lawful duty w.e.f 16.06.2010 to 14.07.2011 (total 13 months) without taking permission/leave from his seniors.
- (3) Para No.3 is incorrect and denied. The appellant did not adopted proper procedure for taking leave/permission. The appellant somehow managed to obtain medical prescriptions from the doctor of police and services Hospital for 13 months. It is worth to mention here that the appellant did not applied for medical leave.
- (4) Para No.4 is correct to the extent that the appellant after 13 months of absence reported back for duty.
- (5) Para No.5 is correct to the extent that the appellant was proceeded departmentally on allegations of wilful absence. He was issued charge sheet and summary of allegation to which he replied but he failed to produce any cogent reason to defend his long absence period.
- (6) Para No.6 is already replied in detail above.
- (7) Para No.7 is correct to the extent that the competent authority after obtaining reply to the FSCN awarded him the punishment of reduction to