

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 718/2016

Date of Institution ... 13.07.2016

Date of Decision ... 30.10.2017

Adnan Gul, Ex-Constable No. 258, R/O Shahi Bala Mohallah Saidan District and Tehsil and Peshawar. ... (Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and 2 others. ... (Respondents)

MR. FARMANULLAH KHALIL,
Advocate

... For appellant

MR. MUHAMMAD JAN,
Deputy District Attorney,

... For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. MUHAMMAD AMIN KUNDI,

... CHAIRMAN
... MEMBER

JUDGMENT

NIAZ MUIHAMMAD KHAN, CHAIRMAN.- Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellant was dismissed from service due to absence from service on 10.05.2016. The departmental appeal was rejected on 13.06.2016. Thereafter, he filed the present service appeal on 13.07.2016.

ARGUMENTS.

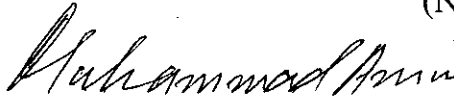
3. The learned counsel for the appellant argued that the appellant was charged only for one day absence. That the very charge sheet is illegal because the appellant was sanctioned one day leave. That the original order imposing penalty of dismissal was mainly based on habitual absence of the appellant.

4. On the other hand, the learned Deputy District Attorney argued that the appellant is a habitual absentee and the enquiry was conducted and he was rightly dismissed from service.

CONCLUSION.

5. In the original order dated 10.05.2016 the factum of one day casual leave has been mentioned. In the said order, the plea of the appellant regarding sanction of leave is also mentioned and that his departure could not be mentioned in the daily diary. But the authority had dismissed him from service not due to his one day absence but due to his habitual absence and bad entries in his service record. It is beyond understanding that how an official who was mainly charged due to absence without leave could be punished for his bad entries in record and his habitual absence when it was proved that he proceeded after sanction of leave for one day. Secondly the authority has himself converted his absence as leave without pay and in view of the judgment reported as 2006-SCMR-434, the absence has been legalized.

6. In view of the above discussion, the appeal is accepted and the appellant is reinstated in service. The intervening period shall be treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.


(MUHAMMAD AMIN KUNDI)
MEMBER

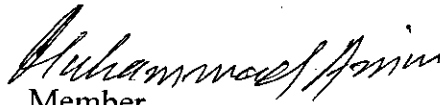

(NIAZ MUIHAMMAD KHAN)
CHAIRMAN


ANNOUNCED
30.10.2017

30.10.2017

Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Bashir Ahmad, SI (Legal) for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, this appeal is accepted. Parties are left to bear their own costs. File be consigned to the record room.


Member


Chairman

ANNOUNCED
30.10.2017

09.06.2017

Appellant alongwith his counsel present. Mr. Bashir Ahmed, S.I (legal) alongwith Mr. Muhammad Adeel Butt, Additional AG for the respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 22.08.2017 before D.B.

(GUL ZEB KHAN)
MEMBER

MA
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

22/8/2017


Clerk of counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Clerk of counsel for the appellant requested for adjournment as his counsel is not available due to strike of the bar. To come up for arguments on 30/11/2017 before DB.

Gul Zeb Khan
(GUL ZEB KHAN)
MEMBER

718/2016

19.10.2016

Appellant in person, M/S Aziz Shah, Reader and Bashir Ahmed, ASI alongwith Additional AG for respondents present. Written reply on behalf of respondents submitted, copy whereof handed over to appellant. To come for rejoinder and arguments on 03.01.2017 before D.B.


(PIR BAKHSH SHAH)
MEMBER

03.01.2017

Counsel for the appellant present and Additional AG, Mr. Adil Butt for respondent present. Rejoinder is submitted. Case to come up for such arguments on 19/05.2017.


(MUHAMMAD AAMIR NAZIR)
MEMBER


(ASHFAQUE TAJ)
MEMBER

19.05.2017

Appellant in person present Mr. Kabirullah Khattak, Assistant AG for the respondents also present. Appellant requested for adjournment. Adjourned. To come up for arguments on 09.06.2017 before D.B.


(GULZEB KHAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

15.7.2016

Appellant Deposited
Security & Process Fee

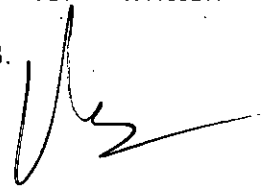
Counsel for the appellant present. Learned counsel for the appellant argued that the appellant joined Police Department in the year 2002. He submitted a leave application for leave on 6.4.2016 which was allowed by the SP Traffic on 11.4.2016. However, disciplinary proceedings were initiated against the appellant under Police Rules 1975 for one day absence from duty. On culmination of inquiry proceedings, he was dismissed from service on 10.5.2016. Departmental appeal was filed on 13.5.2016. It was rejected on 13.6.2016, hence the present service appeal on 13.7.2016. 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 17.8.2016 before S.B.



Member

17.08.2016

Appellant in person and Mr. Bashir Ahmad, ASI alongwith Addl. AG for respondents present. Written reply not submitted. Requested for adjournment. Request accepted. To come up for written reply/comments on 19.10.2016 before S.B.





Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 718/2016

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1.	13/07/2016	<p style="text-align: center;">The appeal of Mr. Adnan Gul presented today by Mr. Farmanullah Khalil Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	15-7-16	<p style="text-align: center;">This case is entrusted to S. Bench for preliminary hearing to be put up there on. <u>15-7-16</u></p> <p style="text-align: right;"> MEMBER</p>

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 718 /2016

Adnan Gul

V/S

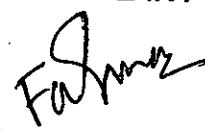
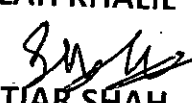
Police Deptt:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of Appeal	-----	1-4
2.	Copy of application	-A-	5
2.	Copy of charge sheet	-B-	6
3.	Copy of statement of allegation	-C-	7
4.	Copy of inquiry report	-D-	8
5.	Copy of show cause	-E-	9
	Copy of reply to show cause notice	-F-	10
6.	Copy of order dated 10.5.2016	-G-	11
7.	Copy of departmental appeal	-H-	12-13
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APPELLANT

THROUGH:


FARMAN ULLAH KHALIL
& 
SYED MUKHTIAR SHAH
(ADVOCATES, PESHAWAR)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 718 /2016

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 701

Dated 13-7-2016

ADNAN GUL, Ex- Constable No. 258,

R/O Shahi Bala Mohallah Saidan

Distt & Teh; Peshawar.

(APPELLANT)

VERSUS

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

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974 AGAINST THE ODER DATED 13.06.2016, WHEREBY THE DEPARTMENT APPEAL OF THE APPELLANT AGAINST THE ORDER DATED 10.05.2016, WHEREIN, PENALTY OF DISMISSAL FROM SERVICE HAS BEEN IMPOSED UPON APPELLANT HAS BEEN REJECTED FOR NO GROUNDS.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDER DATED 10.05.2016 AND 13.06.2016 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED IN TO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE IN CIRCUMSTANCES, MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

Filed to-day
Registrar
18/7/16

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant joined the police force in the year 2002 and completed all his due training etc and also have good service record throughout.
2. That the appellant filed an application for leave on 06-04-2016 which application was forwarded to S.P Traffic on 07-04-2016 and was allowed by the S.P Traffic on 11-04-2016 though the appellant was deceived to make leave on 10-04-2016. (Copy of the application is attached as Annex-A).
3. That the charge sheet and statement of allegations were issued to the appellant which was duly replied by the appellant and explain the reason of his absence and denied the allegation therein, however the appellant did not keep the copy of reply to the charge sheet with himself which may be requisite from the Department. (Copies of charge sheet and statement of allegations are attached as Annexure-B&C)
4. That the inquiry was conducted against the appellant in which no proper opportunity of defence was provided to the appellant and despite that the inquiry officer held responsible the appellant and recommended major punishment for the appellant on only 1 day absentia. (Copy of the inquiry report is attached as Annexure-D)
5. That show cause notice was issued to the appellant which was duly replied by the appellant and once again denied all the allegations leveled against him,,(Copy of show cause notice and reply to show cause notice are attached as annexure-E&F)
6. That the appellant was dismissed from service vide order dated 10.5.2016 on the basis of 1 day and his absence period is treated as leave without pay. (Copy of order dated 10.5.2016 is attached as annexure-G)
7. That against the order dated 10.5.2016, the appellant filed departmental appeal on 13.5.2016 which was also rejected on dated 13.6 2016 for no good grounds. (Copies of departmental appeal and rejection order are attached as Annexure-H&I).

8. That now the appellant come to this august tribunal on the following amongst other grounds .

GROUNDS:

- A) That the impugned order dated 13.06.2016 and 10.05.2016 are against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.
- B) That the appellant has been condemned unheard and has not been treated according to law and rules.
- C) That the inquiry was not according to the prescribed procedure as no proper chance of defence was provided to the appellant by the inquiry officer before recommendation of harsh punishment, which is violation of norms of justice and law and rules.
- D) That the absence period of the appellant has already been treated as leave without pay, therefore there remains no ground to penalize the appellant for same cause of action.
- E) 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.
- F) That the penalty of dismissal from service is very harsh which did not commensurate with the guilt of the appellant i.e 1 day absence and, therefore, the same is not sustainable in the eyes of law.
- G) That the appellant was not intentionally absent from his duty but he was deceived by the officials that he was granted leave for one day and that too can be verified from the application filed by the appellant.
- H) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

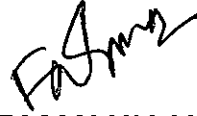
It is, therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.



APPELLANT

Adnan Gul

THROUGH:



FARMAN ULLAH KHALIL

& 

SYED MUKHTIAR SHAH

(ADVOCATES, PESHAWAR)

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ضابطہ عالی

تذکرہ اشخاص و احوال کا فوری جام

درج ذیل اشخاص کے بارے میں واپس و تہمتیں کو روک

یا کوئی بھی دیکھ کر جان کا کھٹکا صادر کرنا

عسین کو انڈیشن ملال

6/4/2016

عسین

ان کا تذکرہ کن عدالت میں 258 جی بی

TTC

Attached to be tone copy
Fajma

ضابطہ عالی
تذکرہ اشخاص و احوال کا

چھٹی پر فریڈینڈنگ اور ہینڈل

درخواست کے تحت ایک ایک نوٹ فریڈ

ذیل کے اشخاص کے بارے میں

Fajma

D.S.P TRAFFIC
Headq
7/4/2016

1/2 - G.T.K. 2
6-4-2016

Allowed


S.P TRAFFIC
Headquarters Peshawar
11/4/2016

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CHARGE SHEET

1. WHEREAS I am satisfied that a formal enquiry as contemplated by Police Rules 1975 is necessary and expedient.
2. AND whereas, I am of the view that the allegations if established would call for major/minor penalty, as defined in Rule-3 of the aforesaid Rules.
3. Now therefore, as required by Rule 6 (1) (a) & (b) of the said Rules I, **SADIQ HUSSAIN**, Senior Superintendent of Police, Traffic, Peshawar hereby charge you **HC Adnan Gul No.258** under Rules 5 (4) of the Police Rules 1975 on the basis of following allegations:-
 - i) That you were found absent from duty on 10.04.2016 (one day) without leave/permission of the competent authority. From perusal of your service record, it was found that you were earlier issued minor punishment of censure with last warning for 07 times to mend your way but you did not bother the warnings.
 - ii) This habit of regularly absenting yourself from duty amounts to gross misconduct on your part and renders you liable for punishment.
4. By doing this you have committed gross misconduct on your part.
5. AND I hereby direct you further under Rule 6 (I) (b) of the said Rules to put-in written defence within 07-days of the receipt of this Charge Sheet as to why the proposed action should not taken against you and also state whether you desire to be heard in person.
6. AND in case your reply is not received within the stipulated period to the enquiry officer, it shall be presumed that you have no defence to offer and in that case, ex-parte action will be taken against you.


(SADIQ HUSSAIN) PSP
Senior Superintendent of Police,
Traffic, Peshawar.

(Competent Authority)

طابع شد اور پوری لغو الیکٹریک
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تاریخ

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DISCIPLINARY ACTION

1. I, **SADIQ HUSSAIN**, Senior Superintendent of Police, Traffic, Peshawar as competent authority, am of the opinion that **HC Adnan Gul No.258** has rendered himself liable to be proceeded against, as he committed the following acts/omission within the meaning of section 03 of Police Rules 1975.

SUMMARY OF ALLEGATIONS

2. i) That he was found absent from duty on 10.04.2016 (one day) without leave/permission of the competent authority. From perusal of his service record, it was found that he was earlier issued minor punishment of censure with last warning for 09 times to mend his way but he did not bother the warnings.

ii) This habit of regularly absenting himself from duty amounts to gross misconduct on his part and renders him liable for punishment.

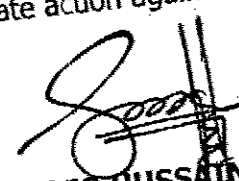
3. For the purpose of scrutinizing the conduct of the said accused official with reference to the above allegations, an Enquiry Committee comprising of the following officer(s) is constituted:-

a. Mr. Aziz Khan Afridi, SP/HQrs. Traffic, Peshawar.

b. _____

4. The enquiry committee/officer shall in accordance with the provision of the Police Rules 1975 provide reasonable opportunity of hearing to the accused officer/official and make recommendations as to punishment or any other appropriate action against the accused.

Attested to be
True copy
F. J. M. M.


(SADIQ HUSSAIN) PSP
Senior Superintendent of Police,
Traffic, Peshawar.

(Competent Authority)

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منجانب: ایفک پشاور

خدمت: جناب ایس ایس پی ٹریفک پشاور

حوالہ نمبر 218 ریڈر مورخہ 26.04.2016

عنوان: انکوائری برخلاف کنشیل عدنان گل نمبر 258

الزام:- کنشیل عدنان گل نمبر 258 پر الزام عائد ہوا کہ آپ مورخہ 10.04.2016 کو کسی مجاز افسر سے چھٹی یا اجازت کے بغیر غیر حاضر ہوئے اور سروس ریکارڈ کے مطابق پایا جاتا ہے کہ آپ متعدد بار بوجہ غیر حاضری سزایاب ہو چکے ہیں اور علاوہ ازیں 09 بار آپ کو آخری وارننگ دی جا کر آئندہ محتاط رہنے کی ہدایت کی گئی تھی لیکن اس کے باوجود پھر بھی آپ غیر حاضر ہوئے۔ جس سے ظاہر ہوتا ہے کہ آپ عادی غیر حاضر باش ہیں جو سنگین خلاف ورزی کے زمرے میں آتا ہے۔

کارروائی:-

دوران انکوائری کنشیل عدنان گل نمبر 258 کا سروس ریکارڈ چیک کیا گیا جس کے مطابق مذکورہ کنشیل 37 بار بوجہ غیر حاضری سزایاب ہو چکا ہے اور قبل ازیں 09 بار آخری وارننگ دی جا کر محتاط رہنے کی ہدایت کی گئی۔ علاوہ ازیں بحوالہ Endst: نمبر 2352-56/PA مورخہ 10.10.2013 دو سال منظور شدہ نوکری ضبط کی گئی ہے۔

کنشیل عدنان گل نمبر 258 کا باضابطہ انکوائری میں بیان قلمبند کیا جا کر عرضائی کا موقع دیا گیا۔ مذکورہ پر اسکی غیر حاضری کے حوالے سے سوالات کئے گئے۔ مگر مذکورہ اپنی غیر حاضری کے حوالے سے کوئی تسلی بخش جواب نہ دے سکا۔

سفارشات:-

پشاور ٹریفک اور وارڈن پولیس میں صرف 7 گھنٹے کی شفٹ ڈیوٹی ہے جس کے بعد 17 گھنٹے ان ملازمان پر کسی قسم کی کوئی ذمہ داری یا حاضر رہنے کی پابندی نہیں۔ ہفتہ میں ہر ملازم ایک چھٹی (شب باشی) گزارتا ہے۔ علاوہ ازیں ضرورت پڑنے پر باقاعدہ انصران بالا رخصت اتفاقیہ اور رخصت کلاں بھی منظور کرتے ہیں۔ مگر اسکے باوجود کنشیل عدنان گل نمبر 258 کی اتنی بڑی تعداد میں غیر حاضری سمجھ سے بالاتر ہے۔ جبکہ بار بار آخری وارننگ اور محتاط رہنے کی ہدایات کے باوجود مذکورہ کی غیر حاضری میں کمی واقع نہیں ہوئی۔

جس سے ظاہر ہوتا ہے کہ کنشیل عدنان گل نمبر 258 ملازمت میں دلچسپی نہیں رکھتا اور نہ ہی مستقبل میں اسکے سدھرنے کا کوئی امکان ہے۔ اسکی وجہ سے دیگر ملازمان پولیس پر بھی برا اثر پڑ رہا ہے۔ مذکورہ کے سروس ریکارڈ میں سزایابیوں کے علاوہ اچھی کارکردگی کا کوئی ایک اندراج بھی موجود نہیں۔ بدیں وجہ کنشیل عدنان گل نمبر 258 کیلئے سنگین سزا تجویز کی جاتی ہے تاکہ باقی ماتحت نفری پر اس کا اچھا اثر پڑے اور وارڈن پولیس کا ڈسپلن مزید بہتر ہو۔

DR
سینئر ایس ایس پی
Issue final
(عبدالعزیز آفریدی)
ایس پی ہیڈ کوارٹرز ٹریفک پشاور

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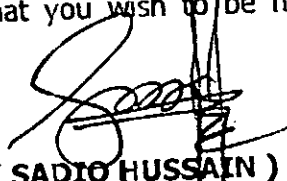
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FINAL SHOW CAUSE NOTICE

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

1. That you (FC Adnan Gul, No.258) have rendered yourself liable to be proceeded under Rules 5(3) for the following misconducts:-
 - i) He you were found absent from duty on 10.04.2016 (one day) without leave/permission of the competent authority.
 - ii) From perusal of your service record, it has also been found that you were earlier issued minor punishment of censure with last warning for 09-times to mend your way but you did not bother the written warnings.
2. That by reason of above, as sufficient materials is placed before the undersigned; therefore, it is decided to proceed against you in general police proceedings 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 inefficient 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 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.


(SADIQ HUSSAIN) PSP
Senior Superintendent of Police,
Traffic, Peshawar.


25/2016

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(10)

1e day absence

جناب عالی!

بجاء مشورہ شوکار نوٹس معروف صورت ہوئی
 کہ سائل نے مودعہ $\frac{4}{16}$ 10 کی جہتی لیکر جناب SP صاحب ٹریفک
 پبلک کوادٹر کو درخواست فرمادی تھی جو کہ SP صاحب پبلک کوادٹر نے
 مودعہ $\frac{4}{16}$ 11 کو صریح ایک یوم دست منظور کی تھی۔ چونکہ صریح
 فرودت $\frac{4}{16}$ 10 کو تھی بلکہ بدین وجہ سائل $\frac{4}{16}$ 10 کو غیر حاضر ہوا
 ہے۔ سائل نے بہ امر مجبوری فرمائی تھی۔ آئندہ کے لئے سائل
 عطا رہے گا۔ لہذا آپ صاحبان سے عا حناخ اس کے عا عظیم سائل
 کو جادی شدہ شوکار نوٹس داخل دفتر کرنے کا حکم صادر فرمایا
 منکدر رہیں

258
 258

PO/SRC/OBC
 He has been heard in person.
 He has been previously warned so
 many time but he has not mend
 his ways. Hence he is awarded
 major punishment of Dismissal from
 service.

[Signature]

10/9/16
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 F. S. M. M.

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ORDER

This is an order on the departmental enquiry initiated against Constable Adnan Gul No.258/717 for absenting himself from duty on 10.04.2016 (one day) without leave/permission of the competent authority besides issuing last warning for 09 times during last 04 months. He was issued charge sheet and statement of allegations and Mr. Abdul Aziz Afridi, SP/Hqrs. Traffic was nominated as enquiry officer to conduct proper departmental proceedings and submit his report in this regard.

During the enquiry proceedings, the accused official submitted his written reply stating therein that he was granted one day casual leave but could not make proper departure in the Daily Diary therefore, marked absent from duty. The Enquiry Officer in his findings stated that the accused constable is a habitual absentee as there are 37 bad entries found in his service record besides forfeit ring of 02 years approved service vide order/endst. No.2352-56/PA, dated 10.10.2013. Therefore, recommended him for major punishment as he failed to produce cogent reason in support of his absence.

The accused official was issued Final Show Cause Notice but his written reply was found not convincing therefore, he was called for personal hearing. He was heard in person and asked about his habitual absence but failed to produce evidence in support of his willful absence.

Keeping in view recommendation of the enquiry officer, his previous service record as well as his verbal explanation to the undersigned, I am of the opinion that he is a habitual absentee as he has been previously warned so many times but he has not mend his ways. He is therefore, awarded major punishment of dismissal from service under the Khyber Pakhtunkhwa Police Rules 1975 with immediate effect. His absence period is treated as leave without pay.

Order announced.

(SADIQ HUSSAIN) PSP
Senior Superintendent of Police,
Traffic, Peshawar.

No. 431-35/PA, Dated Peshawar the 10 / 05 / 2016.

Copies for necessary action to the:-

1. SP/Hqrs. CCP, Peshawar.
2. DSP/Hqrs. Traffic, Peshawar.
3. Accountant
4. OSI

5. SRC (along-with complete enquiry file) En A. 12

Attested to be true copy

En A. 12

Page No. 12
By: No. 318 PA-CCPO
Dt: 18-5-16
Encl: _____

To

The Deputy Inspector General of Police,
C.C.P., Peshawar.

No 201-UB
18/5/2016

**SUBJECT: DEPARTMENTAL APPEAL AGAINST THE ORDER
DATED 10.05.2016, WHEREBY THE APPELLANT
WAS DISMISSED FROM THE SERVICE.**

Respected Sir,

The Appellant very earnestly submits as under:

1. That the appellant was working as constable in Traffic Police. The appellant performed his duty up to the entire satisfaction of his superiors and no complaint has been filed against him.
2. That the charge sheet was issued to the appellant which was duly replied by the appellant and explain the reason of his absence and denied the allegation.
3. That the inquiry was conducted against the appellant in which the appellant gave the reason of his absence to the inquiry officer but despite that the inquiry held responsible the appellant and recommended the major punishment of dismissal from service.
4. That the appellant was issued Final Show Cause Notice to which he submitted written reply and once again denied all the allegations leveled against him.
5. That on the recommendations of Enquiry Officer the Appellant was awarded MAJOR PUNISHMENT OF DISMISSAL from service vide order dated 10.05.2016. Copy of the order dated 10-05-2016 is attached as Annex-A.
6. That now the appellant files the departmental appeal on the following grounds:

GROUND:

- A) That the impugned order dated 10.05.2016 is against the law, rules and material on record, therefore liable to be set

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taken copy
Encl

DSP-L
For Comments Plz

for copy
18/5/16

Handwritten signature and notes in Urdu script.

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B) That no regular inquiry was conducted against the appellant before imposing major penalty of dismissal from service which is not permissible in law.

C) That no codal formalities were followed by the department before imposing the penalty which is violation of Superior courts judgment.

D) That no opportunity of personal hearing was provided to the appellant which is violation of Law and Rules.

E) That the attitude and conduct of the Department shows that they were bent upon to remove the appellant at any cost.

F) That the appellant has been condemned unheard and has not been treated according to law and rules.

G) That for past leaves (if any) the Appellant was issued punishments and under the law of land a person cannot be punished twice for the same offence.

It is therefore, most humbly requested that impugned order dated 10.05.2016 may be set aside and the appellant may be reinstated with all back and consequential benefits.

Date: 13.05.2016

Appellant
Ex. Constable Adnan Gul, No
R/o: Shahi Bala, Moh: Said
Distt: Peshawar
Mob: 0345-9140134

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

Phone No. 091-9210989
Fax No. 091-9212597

ORDER

This order will dispose off departmental appeal preferred by ex- constable Adnan Gul No. 258/182 who was awarded the major punishment of **Dismissal** from service under Police Rules-1975 by SSP/Traffic Peshawar vide his No. 431-35/PA dated 10.5.2016.

2- Short facts of the instant appeal are that the appellant while posted to Traffic Unit Peshawar was proceeded against departmentally on the charge of absence from duty for one day on 10.4.2016.

3- Proper departmental proceedings were initiated against him and Mr. Abdul Aziz Afridi, SP-HQRs: Traffic was appointed as the E.O. The E.O mentioned in his report that the defaulter official is a habitual absentee who was awarded minor punishments on different occasions on the charge of un-authorized absence. Besides, 09 times he was warned to be careful but he did not turn up from his bad habit. The E.O found him guilty of the allegations levelled against him and recommended him for award of major punishment. On receipt of the findings of the E.O, the SSP-Traffic Peshawar issued him FSCN to which he replied. The same was perused and found unsatisfactory. He was also heard in person in O.R by SSP-Traffic but he failed to produce any cogent reason in support of his absence. As such awarded him the above major punishment.

4- He was called in O.R. on 10.6.2016, and heard in person. The enquiry file and punishment order was perused. It transpired from perusal of enquiry file and his service record that he is a habitual absentee and has more than 37 bad entries in his service record, mostly for absence. He has been awarded punishments on a number of occasions and warned to be careful but he failed to turn-up from his bad habit. He is a highly indisciplined Police official and has no interest in his job. During personal hearing he failed to produce any cogent reason in his support except of lame excuses. His retention in Police service is not justifiable. There is no need to interfere in punishment order passed by SSP-Traffic Peshawar. Therefore, his appeal for re-instatement in service is rejected/filed.

*Attached to be true copy
Fazal*

(MUBARAK ZEB)
CAPITAL CITY POLICE OFFICER,
PESHAWAR.

No. 1285-91 /PA dated Peshawar the 13/06 /2016.

Copies for Information and n/a to the:-

1. SSP-Traffic, Peshawar.
2. SP/HQRs: Peshawar.
3. PO/OASI/ CRC along with his S.Roll for making necessary entry in S.Roll.
4. FMC along with FM
- Official concerned.

10

ایڈووکیٹ اور محتویہ

بار کونسل ابادا ایسوسی ایشن

1933-80

0312-9211212

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

60070

PESHAWAR BAR ASSOCIATION

PESHAWAR BAR ASSOCIATION

بعدالت جناب: صبر من سروس ٹریڈیونل حیدر پختونخواہ لیسٹا اور

<p>مخبر: عدنان گل اسپرانٹ</p>	<p>دعویٰ: حیدر پختونخواہ</p>
<p>عدنان گل بنام لیسٹا اور سروس ٹریڈیونل حیدر پختونخواہ</p>	<p>موضوع: عطل نمبر</p>
<p>پشاور بار ایسوسی ایشن</p>	<p>جرم:</p>
<p>پشاور بار ایسوسی ایشن</p>	<p>تھانہ:</p>

بابت تحریر آئیے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ آن مقام Service Tribunal کے حیدر پختونخواہ کے بار کونسل کے رکنوں کو مکمل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا نیز وکیل صاحب کو راضی نامہ کرنے و تقریر حالت و فیصلہ برطاعت دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زرمیں مدد مستحق کرنے کا اختیار ہوگا، نیز یہ صورت پیروی بتاؤ گری کیلئے یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و پیروی کر کے کا مختار ہوگا اور یہ صورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے قرار کا اختیار ہو گا اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا سامنے چڑھاؤ منظور و قبول ہوگا دوران مقدمہ میں جو فرچہ ہر جانہ التوائے مقدمہ کے نسبت سے ہوگا وہ وکیل موصوف و متول کے لئے کا مختار ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی نہ ہوگا کہیں، لہذا داکالت نامہ لکھ دیا تاکہ مندرجہ

Accepted And Attended by Faraman Ullah Advocate

Faraman

SMA

Adnan Gul

ADNAN GUL APPELLANT

المرقوم: 13.07.2016

الع واد شد

مقام لیسٹا کے لئے منظور ہے۔

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No718/2016.

Adnan Gul Ex- Constable No.258 Police Line Peshawar.....Appellant.

VERSUS.

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Senior Superintendent of Police, Traffic, 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) Para No.1 pertains to record, hence needs no comments.
- (2) Para No.2 is incorrect. In fact the appellant absented himself wilfully from his lawful duty without taking permission/leave.
- (3) Para No.3 is correct to the extent that the appellant submitted his reply to the charge sheet but his reply was found unsatisfactory.
- (4) Para No.4 is incorrect. In fact proper departmental enquiry was conducted against appellant. He was given full opportunity of defence. He was issued charge sheet and summary of allegations. However the appellant being a habitual absentee was awarded major punishment of dismissal from service.(copy of charge sheet, statement of allegations is annex A & B and enquiry report is annexure C)
- (5) Para No.5 is already replied in detail in para No.3.
- (6) Para No.6 is correct to the extent of his dismissal from service. However he had a blemished service record and there are 37 bad entries in his service record and forfeiture of 02 years approved service vide order Endst. No.2352-56/PA dated 10.10.2013.(Record annexed)

- (7) Para No.7 is correct to the extent of filing departmental appeal, however after due deliberation his appeal was filed/rejected because the charges leveled against him were stand proved.
- (8) That appeal of the appellant being devoid of merits may kindly be dismissed with cost.


GROUND:-

- (A) Incorrect. The punishment orders are in accordance with law/rules. Hence liable to be upheld.
- (B) Incorrect. The appellant was given full opportunity of defence. He was also called and heard in person in OR on 10.06.2016 but he failed to defend himself.
- (C) Incorrect. As above.
- (D) Incorrect. The appellant was awarded major punishment in accordance with law/rules.
- (E) Incorrect. Para already explained above.
- (F) Incorrect. The punishment order is in accordance with law/rules, hence liable to be upheld.
- (G) Incorrect. The appellant wilfully absented himself from his lawful duty without taking permission or leave from his seniors.
- (H) That respondents also seek permission of this Honorable Service Tribunal to raise additional grounds at the time of arguments.

PRAYER.

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


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


**Capital City Police Officer,
Peshawar.**


**Senior Superintendent of Police,
Traffic, Peshawar.**

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No718/2016.

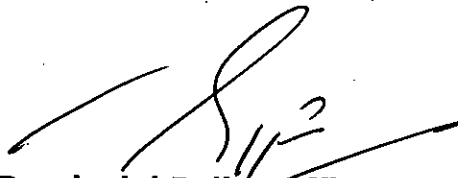
Adnan Gul Ex- Constable No.258 Police Line Peshawar.....Appellant.


VERSUS.

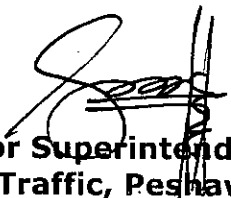
1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Senior Superintendent of Police, Traffic, Peshawar.....Respondents.

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.**


**Senior Superintendent of Police,
Traffic, Peshawar.**

CHARGE SHEET

1. WHEREAS I am satisfied that a formal enquiry as contemplated by Police Rules 1975 is necessary and expedient.

2. AND whereas, I am of the view that the allegations if established would call for major/minor penalty, as defined in Rule-3 of the aforesaid Rules.

3. Now therefore, as required by Rule 6 (1) (a) & (b) of the said Rules I, **SADIQ HUSSAIN**, Senior Superintendent of Police, Traffic, Peshawar hereby charge you **HC Adnan Gul No.258** under Rules 5 (4) of the Police Rules 1975 on the basis of following allegations:-

i) That you were found absent from duty on 10.04.2015 (one day) without leave/permission of the competent authority. From perusal of your service record, it was found that you were earlier issued minor punishment of censure with last warning for 07 times to mend your way but you did not bother the warnings.

ii) This habit of regularly absenting yourself from duty amounts to gross misconduct on your part and renders you liable for punishment.

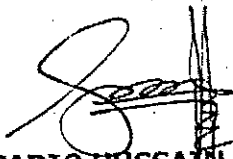
4. By doing this you have committed gross misconduct on your part.

AND I hereby direct you further under Rule 6 (I) (b) of the said Rules to put-in written defence within 07-days of the receipt of this Charge Sheet as to why the proposed action should not be taken against you and also state whether you desire to be heard in person.

6. AND in case your reply is not received within the stipulated period to the enquiry officer, it shall be presumed that you have no defence to offer and in that case, ex-parte action will be taken against you.

طرح شد اور پری لفائیڈ
۱۴/۰۴/۱۵

۱۴/۰۴/۱۵ ۴:۱۵ PM


(SADIQ HUSSAIN) PSP
Senior Superintendent of Police,
Traffic, Peshawar.
(Competent Authority)

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منجانب: ایفک پشاور

بخدمت: جناب ایس ایس پی ٹریفک پشاور

حوالہ نمبر 218 ریڈر مورخہ 26.04.2016

عنوان: انکوآری برخلاف کنشیل عدنان گل نمبر 258

الزام:- کنشیل عدنان گل نمبر 258 پر الزام عائد ہوا کہ آپ مورخہ 10.04.2016 کو کسی مجاز افسر سے چھٹی یا اجازت

کے بغیر غیر حاضر ہوئے اور سروس ریکارڈ کے مطابق پایا جاتا ہے کہ آپ متعدد بار بوجہ غیر حاضری سزایاب ہو چکے ہیں اور علاوہ

ازیں 09 بار آپ کو آخری وارننگ دی جا کر آئندہ متاثر رہنے کی ہدایت کی گئی تھی لیکن اس کے باوجود پھر بھی آپ غیر حاضر ہوئے۔ جس سے

ظاہر ہوتا ہے کہ آپ عادی غیر حاضر باش ہیں جو سنگین خلاف ورزی کے زمرے میں آتا ہے۔

کارروائی:-

دوران انکوآری کنشیل عدنان گل نمبر 253 کا سروس ریکارڈ چیک کیا گیا جس کے مطابق مذکورہ کنشیل 37 بار بوجہ غیر حاضری

سزایاب ہو چکا ہے اور قبل ازیں 09 بار آخری وارننگ دی جا کر متاثر رہنے کی ہدایت کی گئی۔ علاوہ ازیں بحوالہ E-dst نمبر

2352-56/PA مورخہ 10.10.2013 دو سال منظور شدہ نوکری ضبط کی گئی ہے۔

کنشیل عدنان گل نمبر 258 کا باضابطہ انکوآری میں بیان قلمبند کیا جا کر معافی کا موقع دیا گیا۔ مذکورہ پراسیکی غیر حاضری کے

حوالے سے سوالات کئے گئے۔ مگر مذکورہ اپنی غیر حاضری کے حوالے سے کوئی تسلی بخش جواب نہ دے سکا۔

سفارشات:-

پشاور ٹریفک اور ڈان پولیس میں صرف 7 گھنٹے کی شفٹ ڈیوٹی ہے جس کے بعد 17 گھنٹے ان ملازمان پر کسی قسم کی کوئی ذمہ داری یا

حاضر رہنے کی پابندی نہیں۔ ہفتہ میں ہر ملازم ایک چھٹی (شب باشی) گزارتا ہے۔ علاوہ ازیں ضرورت پڑنے پر باقاعدہ انصران

بالارخصت اتفاقیہ اور رخصت کلاں بھی منظور کرتے ہیں۔ مگر اسکے باوجود کنشیل عدنان گل نمبر 258 کی اتنی بڑی تعداد میں غیر حاضری سمجھ

سے بالاتر ہے۔ جبکہ بار بار آخری وارننگ اور متاثر رہنے کی ہدایات کے باوجود مذکورہ کی غیر حاضری میں کمی واقع نہیں ہوئی۔

جس سے ظاہر ہوتا ہے کہ کنشیل عدنان گل نمبر 258 ملازمت میں دلچسپی نہیں رکھتا اور نہ ہی مستقبل میں اسکے سدھرنے کا کوئی

امکان ہے۔ اسکی وجہ سے دیگر ملازمان پولیس پر بھی بڑا اثر پڑ رہا ہے۔ مذکورہ کے سروس ریکارڈ میں سزایابیوں کے علاوہ اچھی کارکردگی کا کوئی

یک اندراج بھی موجود نہیں۔ بدیں بوجہ کنشیل عدنان گل نمبر 258 کیلئے سنگین سزایابی کی جاتی ہے تاکہ باقی ماتحت نفری پر اس کا اچھا اثر

پڑے اور وارڈن پولیس کا ڈسپن مزید بہتر ہو۔

(عبدالعزیز آفریدی)
ایس پی ہیڈ کوارٹرز ٹریفک پشاور

OR
Issue final

show - cause

9

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 718/2016

Adnan Gul

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 respondent department.
2. Not replied according to para 2 of the appeal. Moreover para 2 of the appeal is correct.
3. First portion of para 3 is admitted correct hence no comments while the rest of para is incorrect as the appellant filed an application for leave which was allowed but despite that the appellant dismissed from service which shows the malafide of the respondents.
4. Incorrect. While para 4 of the appeal is correct.
5. Incorrect. As already explain in para No.3.
6. First portion of para 6 is admitted correct hence no comments while the rest of para is incorrect as the appellant has already penalized for the previous omission and according to superior courts judgment that no one can be

penalized for previous omission if the department had already taken action on that.

7. First portion of para 7 is admitted correct hence no comments while the rest of para is incorrect as the appellant filed an application for leave which was allowed but despite that the appellant was dismissed from service against which the appellant filed departmental appeal which was also rejected for no good ground.
8. Incorrect. The appellant has good cause of action and liable to be accepted with cost.

GROUNDS:

- A) Incorrect. The impugned orders are not in accordance with law, facts, norms of justice and material therefore not tenable and liable to be set aside.
- B) Incorrect. While para B of the appeal is correct.
- C) Incorrect. While para C of the appeal is correct.
- D) Incorrect. The appellant was awarded major punishment in not accordance with law and rules as the absence period has already been treated as leave without pay and there remain no ground to penalize the appellant for the same reason.
- E) Incorrect. While para E of the appeal is correct.
- F) Incorrect. The punishment order is very harsh and not in accordance with law and rules as the appellant was dismissed from service for 1 day absence for which he has filed an application for leave which was allowed but despite that the appellant was dismissed from service which shows the malafide of the respondents.
- G) Incorrect. The appellant properly applied for leave which was also allowed by competent authority i.e SSP Traffic Headquarter Peshawar which is evident from annexure-A which is annexed with the main appeal.
- H) Legal.

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

Through: APPELLANT
Farmaz
(FARMAN ULLAH KHALIL)
&
MA
(SYED MUKHTIAR SHAH)
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.

[Signature]
DEPONENT



03 JAN 2017

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 2406 /ST

Dated 2 / 11 / 2017

To


The Senior Superintendent of Police, Traffic,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: -

JUDGMENT IN APPEAL NO. 718/2016, MR. ADNAN GUL.

I am directed to forward herewith a certified copy of Judgement dated 30.10.2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.