

592/2016

07.12.2016

Counsel for appellant and Mr. Khalid Mehmood, H.C alongwith Assistant AG for the respondents present. Learned counsel for the appellant submitted rejoinder which is placed on file. To come up for arguments on 11.4.17 before D.B.


(ASHFAQUE TAJ)
MEMBER


11.04.2017

Counsel for the appellant present. Mr. Muhammad Jan, Government Pleader for the respondents also present. Learned counsel for the appellant submitted order dated 16.03.2017 vide which the appellant has been reinstated into service and requested for withdrawal of the instant appeal. In this respect signature of learned counsel for the appellant is taken on the side of order sheet as a token of proof. The appeal in hand stands dismissed as withdrawn. File be consigned to the record room.

ANNOUNCED

11.04.2017


(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member

*will draw as per instruction
of appellant being reinstated
on 16.3.17.
Amir S. Jan
adv.*

Shafiullah

DFA

11.04.2017

Counsel for the appellant present. Mr. Muhammad Jan, Government Pleader for the respondents also present. Learned counsel for the appellant submitted order dated 16.03.2017 vide which the appellant has been reinstated into service and requested for withdrawal of the instant appeal. In this respect signature of learned counsel for the appellant is taken on the side of order sheet as a token of proof. The appeal in hand stands dismissed as withdrawn. File be consigned to the record room.

ANNOUNCED

11.04.2017

(Ahmad Hassan)
Member

(Muhammad Amin Khan Kundi)
Member

(2)

Before The Khyber Pakhtunkhwa Service Tribunal Peshawar.

In ref: to Execution Petition No. _____/2016

In

Service Appeal No. 547/2013.

Asad Mehmood, Inspector Police, presently working as DSP (Police) and posted at Directorate of Counter Terrorism (DCT) Special Branch (SB) Khyber Pakhtunkhwa Peshawar.....**APPELLANT/PETITIONER.**

VERSUS

- 1). Nasir Khan Durrani, the Provincial Police Officer Khyber Pakhtunkhwa, Central Police Office (CPO) Peshawar.
- 2). Mian Muhammad Asif, the Additional Inspector General of Police/HQrs: Khyber Pakhtunkhwa, Police Line Peshawar.
- 3). Salah-Ud-Din Khan, the Deputy Inspector General of Police Directorate of Counter Terrorism (DCT) Special Branch (SB) Khyber Pakhtunkhwa Peshawar.**RESPONDENTS.**

Execution petition for the implementation of the judgment/ orders passed by this august Tribunal in Service Appeal No. 547/2013 decided on 15-05-2015, titled above and to initiate contempt proceedings against the delinquent respondents who, deliberately and intentionally have not yet complied with the orders sura and they be asked accordingly to ensure the early implementation thereof.

RESPECTFULLY SHEWETH:-

- 1) That the appellant/petitioner had preferred service appeal No. 547/2013 before this august Tribunal praying therein his due seniority from the date of his transfer from the province of Baluchistan to this province with all allied benefits. The service appeal was, however finally allowed in favour of the appellant/petitioner dated 15-05-2015 with the following directions/orders.



OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
PESHAWAR.

No. S/ 1707 /17, dated Peshawar the 16 /03/2017.

ORDER


This order is hereby passed to dispose of departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 submitted by Ex-Constable Shafi Ullah No. 2247. The appellant was dismissed from service by DPO, Mardan vide OB No. 188, dated 19.01.2016 on the charge of absence from duty for 03 months and 07 days.

His appeal was filed by Regional Police Officer, Mardan vide order Endst: No. 3622/ES, dated 09.05.2016.

Meeting of Appellate Board was held on 10.03.2017 wherein appellant was heard in person. During hearing petitioner contended that his absence was not deliberate but due to family issues / crises. Petitioner also contended that he will withdraw his service appeal No. 592/2016 from Service Tribunal.

Keeping in view 07 years long service at the credit of the petitioner, the Board decided that the petitioner is hereby re-instated in service and the punishment of dismissal from service is converted into minor punishment of stoppage of one annual increment without cumulative effect. The intervening period including period of absence from duty is considered in service but not on duty. He will not be entitled for salary of the said period. He will be under special watch for one year.

This order is issued with the approval of the Competent Authority.


(NAJEEB-UR-REHMAN BUGVI)
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

No. S/ 1708-15 /17,

Copy of the above is forwarded to the:

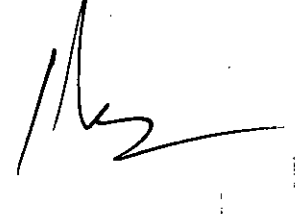
1. Regional Police Officer, Mardan.
2. District Police Officer, Mardan.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. PA to AIG/Legal, Khyber Pakhtunkhwa, Peshawar.
7. Office Supdt: E-IV CPO, Peshawar.
8. Central Registry Cell, CPO.

Appellant Deposited
Security & Process Fee

16.

Counsel for the appellant present. Preliminary arguments heard and case file perused. Through the instant appeal, the appellant has impugned order dated 21.1.2016 vide which the appellant was awarded major punishment dismissal from service. Against the impugned order, the appellant file departmental appeal which was also rejected on 9.5.2016, hence the instant service appeal.

Since points argued at the Bar required further consideration and the appeal is within time, therefore, admit for regular hearing, 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. Muhammad Ghani, SI alongwith Addl. AG for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing on 7.12.2016.


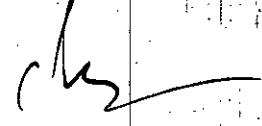



Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 592/2016

S.No.	Date of order . Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	06/06/2016	<p>The appeal of Mr. Shafi Ullah presented today by Mr. Muhammad Asif Yousafzai 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	6-6-16	<p>This case is entrusted to learned Member/S. Bench for preliminary hearing to be put up there on <u>8-6-2016</u></p> <p style="text-align: right;"> MEMBER</p>
3	6/2016	<p>No one is present on behalf of the appellant. Notices be issued to the appellant and his counsel. To come up for preliminary hearing on 20.6.2016.</p> <p style="text-align: right;"> Member</p>

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 592/2016

Shafi Ullah

V/S


Police Deptt:

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APPELLANT

THROUGH:


(M.ASIF YOUSAFZAI),


(TAIMUR ALI KHAN),

 &
(Syed Noman Ali Bukhari)
(ADVOCATES, PESHAWAR)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 592 /2016

**Khyber Pakhtukhwa
Service Tribunal**

Shafi Ullah, Ex-Consable NO.2247
District Police Mardan.

Diary No. 570

Dated 6-6-2016

.....(Appellant)

VERSUS

1. The Provincial Police Officer, KPK Peshawar.
2. Deputy Inspector General Of Police Mardan Region-1.
3. District Police Officer Mardan.

.....(Respondents)

APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 21.1.2016 WHEREBY, THE APPELLANT HAS BEEN DISMISSED FROM THE SERVICE AND AGAINST THE ORDER DATED 9.5.2016 WHEREBY, THE DEPARMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED FOR NO GOOD GROUNDS.

PRAYER:

THAT THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 21.1.2016 AND 9.5.2016 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

Filed to-day

Registrar

6/6/16

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant joined the police force in 2008 and completed his due training etc and total service of appellant was 8 years and also has good service record throughout.
2. That the charge sheet and statement of allegation was served upon appellant wherein the allegation against the appellant was absentia of 11 days. The appellant properly replied to the Charge sheet and denied all the allegations with justifications. As the appellant is not in possession of charge sheet and reply, therefore he is unable to annex the same. However the august Tribunal is requested to requisition the same from Deptt:
3. That the inquiry was conducted against the appellant and gave his recommendation that the period of absentia of 11 days was to be counted as leave without pay and suggested for minor punishment. **(Copy of departmental Inquiry was attached as Annexure-A).**
4. That final show cause notice was neither served upon the appellant nor the appellant submitted reply to the show case notice.
5. That on dated 21.1.2016, the impugned order was issued wherein the major penalty of dismissal from service was imposed on the appellant under Police Rules 1975.. **(Copy of order is attached as Annexure-B).**
6. That the appellant preferred departmental appeal against the order dated 21.1.2016 but the same was rejected on 9.5.2016 for no good grounds. **(Copy of Departmental appeal and rejection order are attached as annexure-C&D).**
7. That now the appellant come to this august Tribunal on the following grounds amongst others.

GROUND:

- A) That the impugned order dated 21.1.2016 AND 9.5.2016 are against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.

- B) That the Absence Period mentioned in the charge sheet fully explained in reply to charge sheet as well as before inquiry officer. But despite that harsh view was taken and major penalty was imposed.
- C) That inquiry officer in his inquiry report recommended minor punishment, but despite that the appellant was given major punishment of dismissal from the service and not taken the recommendation of the inquiry officers in to consideration and passed the impugned order. Which is against the recommendations made in the inquiry report, therefore, the impugned order is liable to be set aside.
- D) That the absence period is already condoned by the authority and treated that period as leave without pay. Then there is no ground remained for punishing the appellant so impugned order is not maintainable and liable to be set aside.
- E) That even no reasons have been recorded by the authority for not agreeing with the recommendations of the inquiry officer. This aspect shows the arbitrariness on the part of authority.
- F) That the penalty of dismissal from service is very harsh and not commensurate with the guilt and the appellant is well qualified and trained and belongs to poor family being the young police officer deserves lenient view.
- G) That the penalty of dismissal from service is very harsh which is passed in violation of law and, therefore, the same is not sustainable in the eyes of law
- H) The appellant was not given final show cause notice which is necessary requirement as per relevant rules and thus the illegal order was passed.
- I) That the appellant has not been treated in accordance with law, fair play, justice, despite he was a civil servant of the province, therefore, the impugned order is liable to be set aside on this score alone.
- 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

Shafi Ullah

THROUGH:


(M.ASIF YOUSAFZAI),


(TAIMUR ALI KHAN),

 &
Syed Noman Ali Bukhari
(ADVOCATES, PESHAWAR)

A
B5

ENQUIRY REPORTS AGAINST CONSTABLE SHAFI ULLAH NO 2247.

ALLEGATION:-

Constable Shafi Ullah No. 2247, while posted at Police Station Shergarh, deliberately absented himself from the lawful duty vide DD No. 41 dated 21/10/2015 to-date without any leave/permission of the competent authority.

PROCEEDINGS:-

Inquiry proceeding were initiated, the defaulter constable was summoned. Beside copies of relevant daily diaries were requisitioned from Police Station Shergarh, and placed on enquiry file.

The defaulter constable on his reply stated that he was living in a joint family. Now due to some-domestic problems he has been separated from his joint family. Therefore he remained absent from his official duties. He stated that he remained 11 days absent vide DD No.41 dated 21.10.2015. The defaulter constable Shafi Ullah No.2247 asked for kindness of the high ups.

FINDINGS:-

The defaulter Constable has remained absent from the lawful duty from 21-10-2015 till 31.10.2015 (total 11 days). The defaulter Constable did not inform any Officer as regards his absence; neither did he seek any Official leave from senior Officer. Service Record of the defaulter Constable revealed that he has earned (24) bad entries with no good entry while remain 150 days absence.

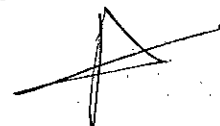
Keeping in view of the above facts and circumstance, the undersigned came to the conclusion that his absent days may be counted as leave without pay and he is suggested for minor punishment.

Submitted please.

Dy: Superintendent of Police
Katlang Circle

No _____ /SI/KTG, dated _____ / _____ /2015

ATTESTED



2247

B 6

ORDER

My this order will dispose of the departmental inquiry, which is conducted against Constable Shafiullah No. 2247, on the allegations that he, while posted at Police Station Sher Garh Mardan, deliberately absented himself from the lawful duty vide DD No. 41 dated 21.10.2015 to-date without any leave / permission of the competent authority. He is recommended for departmental action by DSP/TBI vide his office letter No. 317/R dated 11.11.2015. His this attitude adversely reflected on his performance, while discharge his official duty which is an indiscipline act and gross misconduct on his part as defined in rule 2(H) of Police Rules 1975.

In this connection, Constable Shafiullah No. 2247, was issued charge sheet vide this office No. 995/R, dated 13.07.2015 and also proceeded against departmentally through the Abid ur Rehman DSP/Katlang Mardan, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsement No. 06/ST dated 09.12.2015. His previous record was checked in which no good entry and 24 bad entries were found as the allegations have been established against him and recommended him for minor punishment.

After going through inquiry file and also heard personally the undersigned reached to the conclusion that the alleged Constable Shafiullah No. 2247, is hereby dismissed from service with immediate effect, while his absence period treated as leave without pay in exercise of the power vested in me under the above quoted rules.

Order announced

O.B No. 133

Dated 24 / 1 / 2016.

(Faisal Shahzad) PSP
District Police Officer,
Mardan.

No. 133 / GB dated Mardan the 21-01/2016

Copy for information and necessary action to:-

1. The Deputy Inspector General of Police Mardan Region-1, Mardan.
2. The S.P Operations, Mardan.
3. The DSP/HQrs. Mardan.
4. The Pay Officer (DPO) Mardan.
5. The E.C (DPO) Mardan.
6. The OHC (DPO) Mardan.

ATTESTED

A

⑦

BEFORE THE DEPUTY INSPECTOR GENERAL OF POLICE MARDAN REGION -1
MARDAN

Subject: APPEAL AGAINST THE ORDER O.B NO. 188 DATED 19-01-016 OF DISTRICT POLICE OFFICER MARDAN, WHERE BY THE APPELLANT WAS AWARDED THE PUNISHMENT "DISMISSEL FROM SERVICE".

R/Sir,

It is submitted that :

The DPO Mardan had issued charge sheet No.995/R dated 13-07-2015 against the Appellant with the following allegations.

" That you constable Shafiullah No.2247, while posted at police station Sher Ghar, deliberately absented himself from the lawful duty vide DD No.41 dated 21-10-2015 till 09-12-2015 without any leave / permission of the competent authority ".

1. That the appellant is married with 01 kid. The parents of the appellant are died. The appellant has been enlisted as constable in police department on 02-01-2008. During the month of October, 2015, the appellant remain posted at police station sher ghar. During this period, the issue of family partition of agricultural / residential property was developed amongst our brothers/sisters.
2. That on 22-10-2015, a Jirga of the elder of the family was scheduled to be held for the settlement of the issue mentioned at Para-1 above. On 21-10-2015, the appellant requested for leave to be MHC/SHO but his request was not accepted. The same day, the appellant left the police station and went to his village. The elders of the Jirga solved the issue but unfortunately the appellant was deprived from his residential rooms and the appellant family was left on open ground with no shelter.
3. That the appellant was marked absent vide DD No.41 dated 21-10-2015 police station Sher Ghar. The appellant remained busy in construction of 02 separate rooms in his house and meanwhile, the appellant was charge sheeted and a departmental inquiry was initiated against him.
4. That in response to the charge sheet, the appellant produced a detailed and comprehensive before the inquiry officer mentioning therein all the facts regarding his absence but was not considered. The appellant was dismissed from service vide O.B No.188 dated 19-01-2016 by DPO Mardan. (Copy of O.B No.188 dated 19-01-2016 is enclosed)
5. That from the date of dismissal from service till date the appellant remained in mental agony and did not make an appeal within due period. The absence of the appellant was not deliberately but was due to family crises / issue after the death of appellant parents.
6. That there is no denying that the appeal is time bared but I would like to state that it is well settled principle of law that procedural technicalities should not be allowed on dispensation of substantial justice. procedural laws are meant to advance the cause of justice and not thwart it. The supreme court of Pakistan in criminal original petition No. 90/2009 has further emphasized that while deciding a case principles of natural justice "audi alteram partem" and other fundamental rights should be observed which guarantee the right of appellant.

ATTESTED



8

PRAYER:

It is requested that the Appeal of the Appellant may kindly be accepted and Order of the punishment be set aside on the following grounds:-

- A) The allegations i.e the alleged absence is not intentional but was due the family issue/ crises .
- B) The Appellant was not given any opportunity of "PERSONAL HEARING" by the competent authority at the time of passing of impugned punishment Order, which is contrary to the Police rules 1975, hence great injustice was extended.
- C) The Appellant was not given "FINAL SHOW CAUSE NOTICE" by the competent authority, which was the necessary requirement as per relevant rules and thus the illegal Order was passed.
- D) In addition to the above facts, the E.O has also made certain irregularities and has dashed the rules and regulations to the ground. The present inquiry, so far conducted is just an eye wash and amounts to fill in the blanks.
- E) The Appellant performed his duties efficiently, honestly, with great zeal and never showed any in efficiency and negligence during his service. Except the mere charge of absence.

Keeping in view of the facts and circumstances mentioned above, it is humbly requested that the Appeal of the Appellant may kindly be accepted and the impugned Order passed by DPO Mardan may kindly be set aside.

Yours Obediently,

Shafiq 5/04/2016

Constable SHAFI ULLAH No.2247

District Police Mardan

(Now Dismissed from service)

7.

ATTESTED

A

1/09


ORDER

This order will dispose off the appeal preferred by Ex-Constable Shafi Ullah No. 2247 of Mardan District Police against the order of District Police Officer, Mardan wherein he was awarded Major punishment of Dismissal from service vide OB No. 188 dated 19.01.2016.

Brief facts of the case are that, he while posted at Police Station Shergarh, deliberately absented himself from the lawful duty vide daily diary No. 41 dated 21.10.2015 to the date of dismissal without any leave/permission of the competent authority. His this attitude adversely reflected on his performance, while discharging of his official duty which is an indiscipline act and gross misconduct on his part. In this connection he was charge sheeted and also proceeded against departmentally through Deputy Superintendent of Police Katlang, Mardan, who after fulfilling necessary process submitted his findings to District Police Officer, Mardan. His previous record was checked in which no good entry and 26 bad entries were found as the allegations have been established against him and recommended him for minor punishment. After going through inquiry file and also heard personally by District Police Officer, Mardan who reached to the conclusion and the alleged Constable was dismissed from service.

I have perused the record and also heard the appellant in Orderly Room held in this office on 04.05.2016, but he failed to justify his absence and could not produce any cogent reason about his absence. Therefore, I Muhammad Tahir Deputy Inspector General of Police, Mardan Region-I, Mardan in exercise of the powers conferred upon me reject the appeal and do not interfere in the order passed by the competent authority, thus the appeal is filed forthwith.

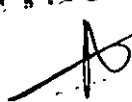
ORDER ANNOUNCED


(Muhammad Tahir) PSP
Deputy Inspector General of Police,
Mardan Region-I, Mardan

No. 3622 /ES, Dated Mardan the 09/05 /2016

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 245/LB dated 18.04.2016. His service roll is returned herewith for record in your office.

(*****)

ATTESTED


VAKALAT NAMA

NO. _____/20

IN THE COURT OF Service Tribunal Peshawar

Shafi Ullah

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Police Deptt:

(Respondent)
(Defendant)

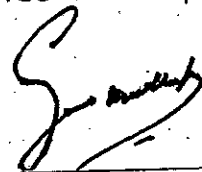
I/We

Shafi Ullah

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

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

Dated _____/20

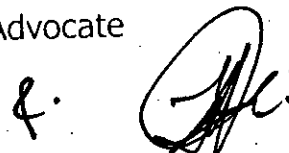


(CLIENT)

ACCEPTED



M. ASIF YOUSAFZAI
Advocate



TAIMUR ALI KHAN
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

C

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.

Service Appeal No. 592/2016

Shafiullah Ex-Constable No. 2247 District

Mardan.....Appellant.

VERSUS.

District Police Officer, Mardan

& others.....Respondents.

Parawise comments on behalf of respondents are submitted as under:-.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS:-

1. That the appellant has not come to this Honourable Tribunal with clean hands.
2. That the appellant has got no cause of action.
3. That the appellant has concealed material facts from this Honourable Tribunal.
4. That the appellant is estopped by his own conduct, by law to bring the instant appeal.
5. That the present appeal is bad in its present form hence not maintainable and liable to be dismissed.
6. That the appeal is bad due to non-joinder of necessary parties and mis-joinder of unnecessary parties.
7. That the instant appeal is barred by law & limitation.

REPLY ON FACTS.

1. First part of Para-1 is correct, however, his service carrier is filled with a series of red/bad entries (almost 24 in Nos.). He has also been imposed upon several major penalties, including twice dismissals. **(Copies of red/bad entries are attached as Annexure-A).**
2. Correct to the extent of serving of charge sheet & statement of allegations, but the reply submitted thereto was not satisfactory. **Besides**, had the appellant been not provided charge-sheet etc. then how could he provide enough information for filing the instant service appeal before the Honorable Tribunal.
3. Correct, the appellant was recommended for minor punishment by the enquiry officer. However, the respondent No. 03 as competent authority did not agree with the recommendation of the enquiry officer and proceeded against appellant, while keeping his bad service carrier in view, and thereby dismissed him from service. **(Copies of previous major penalties are attached as Annexure-B & C).**
4. There is no provision of final Show Cause Notice, hence, denied.
5. Pertains to record.
6. Correct to the extent of rejection of departmental appeal but on valid grounds. **Besides**, the appellant was also heard in person in orderly room but he could not present any cogent reasons in defence, hence, dismissed from service.
7. Incorrect. The appellant holds no legal grounds to stand on.

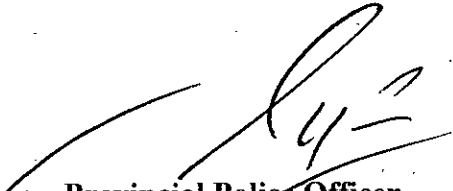
REPLY ON GROUNDS:-

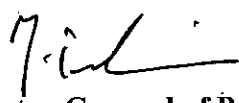
- A. Incorrect. The impugned orders dated 21.01.2016 & 09.05.2016 are in accordance with law, facts, norms of justice & material on record, hence, tenable in the eyes of laws.
- B. Incorrect. The punishment awarded was in accordance with the rules/law.

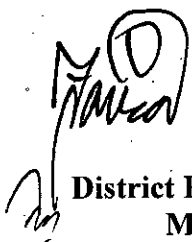
- C. Incorrect. The competent authority did not agree with the recommendation of the enquiry officer and punished the appellant as he deserved under rules/law.
- D. Incorrect. The enquiry officer just recommend but it is the respondent No. 3 as competent authority to award major penalty on the appellant by keeping his previous record in view. **Besides**, his penalty of “**leave without pay**” is based on the principle of “**No work no pay**”.
- E. Incorrect & baseless, hence, denied. As replied above.
- F. Incorrect. The appellant has been awarded punishment as he deserved penalty under rules/law.
- G. Replied in the preceding Para-“F” above.
- H. Incorrect. There is no provision of final Show Cause Notice in the rules/law.
- I. Incorrect. The appellant has been treated as per rules/law, hence, the penalty of dismissal is liable to be maintained.
- J. The respondents also seek permission of this Honourable Tribunal to present further/additional, if any, grounds etc. at the time of arguments.

PRAYER:-

It is therefore, prayed that the appellant's plea holds no legal grounds and he does not deserve to be retained more in service as prayed for. His appeal may please be dismissed with costs.


Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 01)


Dy: Inspector General of Police,
Mardan Region-I, Mardan.
(Respondent No. 02)


District Police Officer,
Mardan.
(Respondent No. 03)

قلم سید احمد علی ۲۱ / ۱۰ / ۱۵

اداری
عبدالغفور

اعتبار شاہ خاں کی وقت ۲: ۱۷ بجے ۱۵ / ۲۱ اس وقت الٹی
حد دریں کئی تاریخ از ڈپٹی ڈائری میں سے شفع اللہ 2247
جو جو رہا گیا مذکورہ کو مقرر کیا گیا اور تمام کے اندر
تلاشی کرتے ہوئے کئی کئی کتبے ملے جو مذکورہ گورنر صاحب
مذکورہ کتبے کا خلاف ادویں شہر قاری درج اور نامہ ہو کر نقل
ملکہ مدینہ ہو کر بعضی صاحب کاروائی افسران مال کی طرف
جس افسران کی جان ہے

صاحب عالی
نقل طاق اعلیٰ ہے
نقل عیسیٰ خاں (۱۱) دن

Handwritten signature and date
21-10-15

Sr. Forwarded
S.H.O, PS. SG.
21-10-15

NO 317 R TBI
44-2-11-15

کھانڈ شہزادہ

تقاریر اور خطبات ۱۱/۱۵

شہزادہ

پورے قاضی صاحب کی تقریریں ۱۸۰ وقت ۱۹۱۲ء میں جمع ۱۱/۱۵ اس وقت
کے لئے جمع اندر ۲۲۴۷ تقریریں شامل ہیں اور اس کا حجم ۱۱/۱۵ اور
قاضی صاحب کی تقریریں اور خطبات کے لئے جمع کر کے تقریریں
میں جو کہ مناسب کاموں کے لئے استعمال کی جاسکتی ہیں اور
کی جائے گی۔

صاحب علی
تقریریں اور خطبات

تقریریں اور خطبات (۱۱)

۱۱/۱۵

16. LEAVE, ABSENCE AND IN SERVICE

All periods not counting "approved service" to entered in red ink.

1		2			3	4
DATE		EXTENT			No. of District Order	Description of leave i.e. Privilege, hospital, sick leave, or furlough, or of absence, or forfeiture of approved service. All entries to be initialed, by Superintendent of Police.
	To	Years	Months	Days		
				①	168 12-1-2010	Leave
				⑭	616 25-2-10	do
				⑰	1814 27-3-10	do
				①	445 5-4-10	do
				③	1477 3-5-10	do
				④	2225 21-6-10	do
				③	2231 21-6-10	do
				⑤②	3422 2-9-10	do
				④	305 19-1-11	do
				⑩	974 19-4-13	do
				②⑤	995 27-4-13	do
				⑧	1771 21-6-11	do

~~2/1/2000~~ 90

~~2/1/2000~~ 10

~~2/1/2000~~ 70

~~2/1/2000~~ 70

~~2/1/2000~~ 70

~~2/1/2000~~ 70


CHARGE SHEET UNDER KPK POLICE RULES 1975

I, **Faisal Shahzad** District Police Officer, Mardan as competent authority hereby charge you **Constable Shafiullah No. 2247**, as follows..

That you constable, while posted at Police Station Shergarh, deliberately absented yourself from the lawful duty vide DD No. 41 dated 21.10.2015 to-date without any leave / permission of the competent authority. You are recommended for departmental action by DSP/TBI Mardan vide his office letter No. 317/R dated 02.11.2015.

This amounts to grave misconduct on your part, warranting departmental action against you, as defined in section - 6 (1) (a) of the KPK Police Rules 1975.

1. By reason of the above, you appear to be guilty of misconduct under section – 02 (iii) of the KPK Police Rules 1975 and has rendered yourself liable to all or any of the penalties as specified in section - 04 (i) a & b of the said Rules.
2. You are therefore, directed to submit your written defense **within seven days** of the receipt of this charge sheet to the enquiry officer.
3. Your written defence if any, should reach to the enquiry officer within the specified period, failing which, it shall be presumed that you have no defense to put-in and in that case, an ex-parte action shall follow against you.
4. Intimate whether you desired to be heard in persons.


(Faisal Shahzad) PSP
District Police Officer,
Mardan.

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

No. 1156 /R/D.A-P.R-1975.

Dated 11-11- /2015

DISCIPLINARY ACTION UNDER KPK POLICE RULES – 1975

I, **Faisal Shahzad** District Police Officer, Mardan as competent authority am of the opinion that **Constable Shafiullah No. 2247**, rendered himself liable to be proceeded against as he committed the following acts/omission within the meaning of section-02 (iii) of KPK Police Rules 1975.

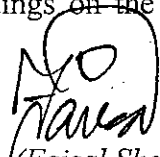
STATEMENT OF ALLEGATIONS

That **Constable Shafiullah No. 2247**, while posted at Police Station Shergarh, deliberately absented himself from the lawful duty vide DD No. 41 dated 21.10.2015 to-date without any leave / permission of the competent authority. He is recommended for departmental action by DSP/TBI Mardan vide his office letter No. 317/R dated 02.11.2015.

2. For the purpose of scrutinizing the conduct of the said official with reference to the above allegations **Abid Ur Rehman DSP/KTG Mardan** is appointed as Enquiry Officer.

3. The enquiry officer shall conduct proceedings in accordance with provisions of Police Rules 1975 and shall provide reasonable opportunity of defense and hearing to the accused official, record its findings and make within twenty five (25) days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused officer.

4. The accused officer shall join the proceedings on the date, time and place fixed by the Enquiry Officer.


(Faisal Shahzad) PSP
District Police Officer,
Mardan

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

No. 1156 /R, dated Mardan the 11-11- /2015.

Copy of above is forwarded to the:

1. DSP/KTG Mardan for initiating proceedings against the accused official / Officer namely **Constable Shafiullah No. 2247**, under Police Rules, 1975.
2. **Constable Shafiullah No. 2247**, with the directions to appear before the Enquiry Officer on the date, time and place fixed by the enquiry officer for the purpose of enquiry proceedings.

***** !!! *****

سان آران کنٹری سوسائٹی 2247

۷۷۷ بلیک روڈ، ایبٹ آباد، پاکستان
قبل پندرہ سالوں میں وفات ہوئی تھی۔ اس کا انتقال
ایبٹ آباد میں ہوا۔ ان کی قبر گورنمنٹ ماسٹر کی پارک
پر ہے۔ اسے مراد آباد سے حدود آ کر کے مسجید کے لئے عمارت
کے ساتھ لگوانے کا ارادہ ہے۔ اس پر مسجید کے چھوٹے حصے میں
قبر دفن ہے۔ اس کے لئے محتاط رہنا۔

مصدقہ

پبلک سوسائٹی 2247
0343-9573 454
NIC-16101-5403424-5

ENQUIRY REPORTS AGAINST CONSTABLE SHAFI ULLAH NO 2247.

ALLEGATION:-

Constable **Shafi Ullah No. 2247**, while posted at Police Station Shergarh, deliberately absented himself from the lawful duty vide DD No. 41 dated 21/10/2015 to-date without any leave/permission of the competent authority.

PROCEEDINGS:-

Inquiry proceeding were initiated, the defaulter constable was summoned. Beside copies of relevant daily diaries were requisitioned from Police Station Shergarh, and placed on enquiry file.

The defaulter constable on his reply stated that he was living in a joint family. Now due to some domestic problems he has been separated from his joint family. Therefore he remained absent from his official duties. He stated that he remained 11 days absent vide DD No.41 dated 21.10.2015. The defaulter constable Shafi Ullah No.2247 asked for kindness of the high ups.

FINDINGS:-

The defaulter Constable has remained absent from the lawful duty from 21-10-2015 till 31.10.2015 (total 11 days). The defaulter Constable did not inform any Officer as regards his absence; neither did he seek any Official leave from senior Officer. Service Record of the defaulter Constable revealed that he has earned (24) bad entries with no good entry while remain 150 days absence.

Keeping in view of the above facts and circumstance, the undersigned came to the conclusion that his absent days may be counted as leave **without pay** and he is suggested for **minor** punishment.

Submitted please.

Shafiq
Dy: Superintendent of Police
Katlang Circle

No 06 /S/KTG, dated 9/12/2015

Discontinued

ORDER

My this order will dispose of the departmental inquiry, which is conducted against Constable Shafiullah No. 2247, on the allegations that he, while posted at Police Station Sher Garh Mardan, deliberately absented himself from the lawful duty vide DD No. 41 dated 21.10.2015 to-date without any leave / permission of the competent authority. He is recommended for departmental action by DSP/TBI vide his office letter No. 317/R dated 11.11.2015. His this attitude adversely reflected on his performance, while discharge his official duty which is an indiscipline act and grass misconduct on his part as defined in rule 2(iii) of Police Rules 1975.


In this connection, Constable Shafiullah No. 2247, was issued charge sheet vide this office No. 995/R, dated 13.07.2015 and also proceeded against departmentally through the Abid ur Rehman DSP/Katlang Mardan, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsement No. 06/ST dated 09.12.2015. His previous record was checked in which no good entry and 24 bad entries were found as the allegations have been established against him and recommended him for minor punishment.

After going through inquiry file and also heard personally the undersigned reached to the conclusion that the alleged Constable Shafiullah No. 2247, is hereby dismissed from service with immediate effect, while his absence period treated as leave without pay in exercise of the power vested in me under the above quoted rules.

Order announced

O.B No. 183

Dated 21 / 01 / 2016.


(Faisal Shahzad)PSP
District Police Officer,
Mardan.

No. 183 /GB dated Mardan the 21-01/2016

Copy for information and necessary action to:-

1. The Deputy Inspector General of Police Mardan Region-1, Mardan.
2. The S.P Operations, Mardan.
3. The DSP/HQrs: Mardan.
4. The Pay Officer (DPO) Mardan.
5. The E.C (DPO) Mardan.
6. The OHC (DPO) Mardan.

①


ORDER.

This order will dispose-off the appeal preferred by Ex-Constable Shafi Ullah No. 2247 of Mardan District Police against the order of District Police Officer, Mardan wherein he was awarded Major punishment of Dismissal from service vide OB: No. 188 dated 19.01.2016.

Brief facts of the case are that, he while posted at Police Station Shergarh, deliberately absented himself from the lawful duty vide daily diary No. 41 dated 21.10.2015 to the date of dismissal without any leave/permission of the competent authority.. His this attitude adversely reflected on his performance, while discharging of his official duty which is an indiscipline act and gross misconduct on his part. In this connection he was charge sheeted and also proceeded against departmentally through Deputy Superintendent of Police Katlang, Mardan, who after fulfilling necessary process submitted his findings to District Police Officer, Mardan. His previous record was checked in which no good entry and 26 bad entries were found as the allegations have been established against him and recommended him for minor punishment. After going through inquiry file and also heard personally by District Police Officer, Mardan who reached to the conclusion and the alleged Constable was dismissed from service.

I have perused the record and also heard the appellant in Orderly Room held in this office on 04.05.2016, but he failed to justify his absence and could not produce any cogent reason about his absence. Therefore, I Muhammad Tahir Deputy Inspector General of Police, Mardan Region-I, Mardan in exercise of the powers conferred upon me reject the appeal and do not interfere in the order, passed by the competent authority, thus the appeal is filed forthwith.

ORDER ANNOUNCED.


(Muhammad Tahir) PSP.
Deputy Inspector General of Police,
Mardan Region-I, Mardan

No. 3622 /ES, Dated Mardan the 09/05 /2016.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 245/LB dated 18.04.2016. His service roll is returned herewith for record in your office.

(*****)

3137
10-5-16

UP/Imp. Leg
2-1-0-1-1
M, rd

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.

Service Appeal No. 592/2016

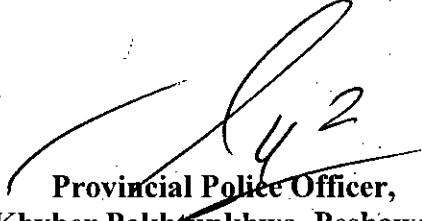
Shafiullah Ex-Constable No. 2247 District
Mardan.....Appellant.

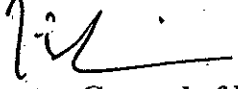
VERSUS.


District Police Officer, Mardan
& others.....Respondents.

COUNTER AFFIDAVIT.

We, the respondents do hereby declare and solemnly affirm on oath that the contents of the Para-wise comments in the service appeal cited as subject are true and correct to the best of our knowledge and belief and nothing has been concealed from this Honourable Tribunal.


Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 01)


Dy: Inspector General of Police,
Mardan Region-I, Mardan.
(Respondent No. 02)


District Police Officer,
Mardan.
(Respondent No. 03)

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

Service Appeal No. 592/2016

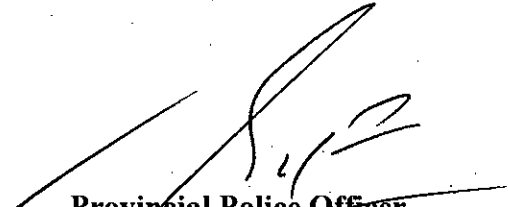
Shafiullah Ex-Constable No. 2247 District
Mardan.....Appellant.


VERSUS.


District Police Officer, Mardan
& others.....Respondents.

AUTHORITY LETTER.

Mr. Muhammad Shafiq Inspector Legal, (Police) Mardan is hereby authorized to appear before the Honourable Service Tribunal, Khyber Pakhtunkhwa, Peshawar in the above captioned service appeal on behalf of the respondents. He is also authorized to submit all required documents and replies etc. as representative of the respondents through the Addl: Advocate General/Govt. Pleader, Khyber Pakhtunkhwa Service Tribunal, Peshawar.


**Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 01)**


**Dy: Inspector General of Police,
Mardan Region-I, Mardan.
(Respondent No. 02)**


**District Police Officer,
Mardan.
(Respondent No. 03)**

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 592/2016

Shafiullah

VS

Police Deptt:

.....

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

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

FACTS:

1. First portion of para 1 is admitted correct hence no comments. While the rest of para is incorrect hence denied.
2. First portion of para 2 is admitted correct hence no comments. While the rest of para is incorrect as in reply to charge he submitted his genuine reason for his absence but the department did not consider his genuine reason and dismissed him on 11 days absence. Moreover the appellant submitted reply to charge sheet but he did not keep a copy of that with himself.
3. First portion of para 3 is admitted correct hence no comments. While the rest of para is incorrect as per superiors courts judgment the authority should give reason for not agreeing with the recommendation of inquiry officer, but in the instant case the authority did not agree with recommendation of minor penalty of the inquiry officer and imposed major punishment of dismissal from service without giving any reason which shows the arbitrariness of the authority.

4. Incorrect. For sake of proper administration of justice and proper chance of defence, the respondents were required to issue final show cause notice to the appellant.
5. No comments.
6. Incorrect. While para 6 of the appeal is correct.
7. Incorrect. The appellant has good cause of action therefore come to this august Tribunal for the redressal of his grievance.

GROUNDS:

- A. Incorrect. The impugned orders dated 21.01.2016 and 9.5.2016 are against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.
- B. Incorrect. The punishment awarded was not in accordance with the rules/law and punishment awarded to the appellant did not commensurate with the guilt of the appellant.
- C. Incorrect. as per superiors courts judgment the authority should give reason for not agreeing with the recommendation of inquiry officer, but in the instant case the authority did not agree with recommendation of minor penalty of the inquiry officer and imposed major punishment of dismissal from service without giving any reason which shows the arbitrariness of the authority.
- D. Incorrect. When the absence has already condoned by treating his absence period as leave without pay then there remain no ground to penalize the appellant on absence.
- E. Incorrect. As replied above in para D.
- F. Incorrect. While para F of the appeal is correct.
- G. Incorrect. As replied in para F.
- H. Incorrect. For sake of proper administration of justice and proper chance of defence, the respondents were required to issue final show cause notice to the appellant.


I. Incorrect. The appellant has not been treated as per rules/law hence the penalty of dismissal is liable to be set aside.

J. Legal

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.


DEPOENT

ATTESTED
Oath Commissioner
Zahoor Khan Advocate
Distt: Court Peshawar

2/2
2016