

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

Service Appeal No. 1168/2014

Date of Institution... 23.09.2014

Date of decision... 09.01.2018

Ishtiaq (Ex-Constable No. 1463, District Police Mardan) R/O Village Sawal Dher,
Tehsil and District Mardan. ... (Appellant)

Versus

1. The District Police Officer, Mardan and another. ... (Respondents)

Mr. Adam Khan, ... For appellant.
Advocate.

Mr. Muhammad Jan, ... For respondents.
Deputy District Attorney

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. GUL ZEB KHAN, ... MEMBER

JUDGMENT

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

FACTS

2. The appellant was dismissed from service due to his absence against which he approached this Tribunal in first round and this Tribunal vide judgment dated 07.02.2014 reinstated the appellant with the direction to the department to hold denovo proceedings within a period of two months. The department then proceeded against the appellant denovo and again dismissed him on 19.06.2014. Against this order, the appellant filed departmental appeal (undated). This departmental appeal was rejected on 25.08.2014 and thereafter, the appellant filed the present service appeal on 23.09.2014.

ARGUMENTS

3. The learned counsel for the appellant argued that the denovo proceedings were not completed within stipulated period of two months as per the directions of this Tribunal. That even in denovo proceedings no charge sheet was issued to the appellant. That no copy of the enquiry report was given to the appellant nor final show cause notice was given to him.

4. On the other hand, the learned Deputy District Attorney argued that the appellant was served with charge sheet and statement of allegations on 29.05.2014. That there was no need of any final show cause notice or copy of the enquiry report under the Khyber Pakhtunkhwa Police Rules, 1975. That enquiry was conducted in accordance with law. That the appellant did not question the enquiry proceedings nor he raised the objection of non-issuance of charge sheet/statement of allegations in the departmental appeal.

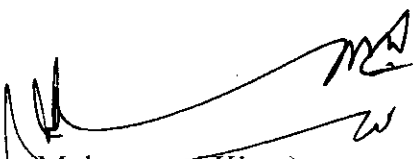
CONCLUSION

5. The appellant categorically mentioned in ground-C of his memo of appeal that no charge sheet was issued to him. In written reply the department did not mention that any charge sheet and statement of allegations were issued to the appellant. The departmental representative wanted to produce the charge sheet and statement of allegations today in the Tribunal. But this Tribunal has not taken into consideration the charge sheet because it was never annexed with the reply of the respondents nor in the reply the same was mentioned. The very impugned order also does not speak about issuance of charge sheet. The only fact mentioned by the authority was that the enquiry officer summoned the appellant and completed his enquiry. Similarly, in the appellate order, there is also mention of summoning of the appellant by the enquiry officer. There is no mention of charge sheet etc. Non-

mentioning of charge sheet or statement of allegations in the departmental appeal by the appellant would not be fatal for his present appeal and it could not be presumed that non-mentioning of the same in the departmental appeal could stop the appellant from agitating his legal right at this stage. This Tribunal in a number of cases has decided that issuance of final show cause notice alongwith copy of enquiry report is mandatory in the Khyber Pakhtunkhwa Police Rules, 1975. One such judgment is dated 23.11.2017 in service appeal No. 1074/2012 entitled "*Saqib Gul Vs. District Police Officer, Mansehra and others*"

6. As a consequence of the above discussion, the present appeal is accepted and the appellant is reinstated in service and the period of his absence till 07.02.2014 is to be treated as leave without pay and the period thereafter shall be presumed to be period spent on duty. However, the financial benefits shall be subject to the rules on the subject including gainful employment etc. to be determined by the department. Parties are left to bear their own costs. File be consigned to the record room.


(Gul Zeb Khan)
Member



(Niaz Muhammad Khan)
Chairman

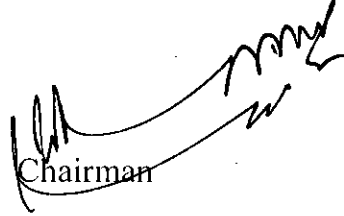
ANNOUNCED
09.1.2018

09.1.2018

Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Attaur Rahman, S.I (Legal) for the respondents present. Arguments heard and record perused.

This appeal is accepted as per our detailed judgment of today. Parties are left to bear their own costs. File be consigned to the record room.


Member


Chairman

ANNOUNCED
09.01.2018

13.06.2017

Appellant alongwith his counsel present. Mr. Khalid Mehmood, Head Constable alongwith Mr. Kabirullah Khattak, Assistant AG for the respondents also present. Learned Assistant AG requested for adjournment for production of record. Adjourned. To come up for record and arguments on 25.08.2017 before D.B.

(GUL ZEB KHAN)
MEMBER

MA
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

25.08.2017

Appellant in person and Addl: AG alongwith Mr. Attaur Rehman, SI(Legal) for respondents present. Appellant seeks adjournment. Adjourned. To come up for arguments on 26.10.2017 before D.B.

(Gul Zeb Khan)
Member

AH
(Ahmad Hassan)
Member

26.10.2017


Appellant in person and Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Counsel for the appellant is not in attendance. Seeks adjournment. Granted. To come up for arguments on 09.01.2018 before the D.B.

Jan
Member

Jan
Chairman

05.08.2016

Counsel for the appellant (Mr. Muhammad Adam Khan, Advocate) and Mr. Muhammad Ghani, SI along with Mr. Muhammad Jan, GP for respondents present. Counsel for the appellant requested for adjournment. To come up for arguments on 11.11.2016.


Member


Member

11.11.2016

Appellant in person and Mr. Muhammad Jan, GP for respondents present. Appellant requested for adjournment. Request accepted. To come up for arguments on 13-03-17.



(MUHAMMAD AMIR NAZIR)
MEMBER


(PIR BAKSHSH SHAH)
MEMBER

13.03.2017

Appellant in person and Mr. Khalid Mehmood, H.C along with Mr. Muhammad Jan, Government Pleader for respondents present. Appellant requested for adjournment as his counsel is not in attendance today. Adjournment granted. To come up for arguments on 13.06.2017 before D.B.


(M. Amir Nazir)
MEMBER


(ASHFAQUE TAJ)
MEMBER

5

12.06.2015

Appellant in person and Mr. Muhammad Shafique, Inspector (legal) alongwith Addl: A.G for respondents present. Written statement submitted. The appeal is assigned to D.B for rejoinder and final hearing for 12.11.2015.


Chairman

12.11.2015

Appellant in person and Mr. Muhammad Ghani, SI (Legal) alongwith Mr. Ziaullah, GP for respondents present. Rejoinder on behalf of the appellant submitted which is placed on file. To come up for arguments on 11-4-2016


Member


Member

11.04.2016

Appellant in person and Mr. Muhammad Ghani, S.I alongwith Mr. Muhammad Jan, GP for respondents present. Appellant requested for adjournment that his learned counsel is not present today due to illness. To come up for arguments on 5-8-16


Member


Member

3
Reader Note:

11.12.2014

Appellant in person present. Since the Tribunal is incomplete, therefore, case is adjourned to 27.02.2015 for the same.


Reader

27.02.2015

Appellant with counsel present. Learned counsel for the appellant argued that the appellant was serving as a Constable when dismissed from service and that against the said dismissal he preferred service appeal which was accepted and *de novo* enquiry was ordered against the appellant. That during the said enquiry the appellant was again dismissed from service on 19.06.2014 against which departmental appeal was preferred by the appellant which was also rejected on 25.08.2014 and hence the instant service appeal on 23.09.2014.

That the procedure prescribed for enquiry was not followed and that moreover, that appellant was proceeded against in terms of special ordinance-2000 which was a dead ~~law~~ as repealed in 2011.

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 12.06.2015 before S.B.


Chairman


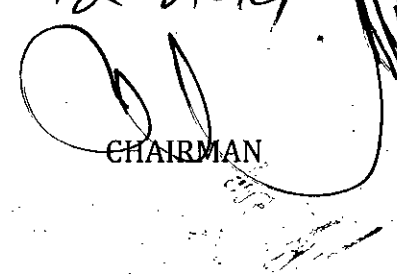
Appellant Denied
Security & Process Fee



Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1168 /2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	23/09/2014	<p>The appeal of Mr. Ishtiaq Ex- Constable presented today by Mr. Muhammad Adam Khan Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	29-9-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on 11-12-2014</p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE PROVINCIAL SERVICE TRIBUNAL,
PESHAWAR

Appeal No. 1168 / 2014.

Ishtiaq

VS

The DPO and others

INDEX


S.No.	Description of Documents	Annexure	Pages	
			From	To
1.	Memo of Appeal	----	1	3
2.	Application	----	4	
3.	Medical Certificates dated 25-09-2010 & 18-01-2011	"A" & "B"	5	8
4.	Judgment dated 07-02-2014	"C"	9	10 (a)
5.	Statement of Appellant	"D"	11	
6.	Impugned Order	"E"	12	
7.	Departmental Appeal	"F"	13	
8.	Appellate Order	"G"	14	
9.	Wakalat Nama	----	15	
Total: -			15	

Appellant
Ishtiaq



Dated: 23-09-2014

Through:


Muhammad Adam Khan
Advocate High Court
at District Courts Mardan.

Muhammad
ADAM KHAN
B.A LLB Advocate
HIGH COURT MARDAN

BEFORE THE PROVINCIAL SERVICE TRIBUNAL,
PESHAWAR

Appeal No. 1168 / 2014.

Ishtiaq, (Ex-Constable No. 1463, District Police Mardat) R/o Village Sawal Dher
Tehsil & District Mardan.

(Appellant)

VERSUS

1. The District Police Officer Mardan.
 2. The Deputy Inspector General of Police, Mardan Region-I, Mardan.
- (Respondents)

[Redacted]
[Redacted] 1204
[Redacted] 23/9/2014

APPEAL UNDER SECTION-4 OF THE SERVICE TRIBUNAL ACT, 1974
AGAINST THE ORDER OF THE DPO / RESPONDENT No. 1,
CONTAINED IN O.B No. 1430 DATED 19-06-2014 (ENDORSED ON 20-06-
2014), WHEREBY APPELLANT IS DISMISSED FROM SERVICE AND
APPEAL THEREFROM REJECTED BY THE DIG / RESPONDENT No. 2
VIDE LETTER No. 5684 / ES DATED 25-08-2014.

FACTS:

1. That Appellant was appointed as Constable in the police department at Mardan on 25-05-2007.
2. That the mother of Appellant was seriously ill and she was hospitalized in Surgical "A" Unit of the DHQ Hospital Mardan, firstly from 03-09-2010 to 25-09-2010 and again from 20-12-2010 to 18-01-2011. Since, there was no other male person in the house. The Appellant had to look after, his ailing mother in the hospital and availed leave during the aforesaid period. (Copies of discharge slips are attached as Annexure "A B")
3. That the DPO / Respondent No. 1 served the Appellant with the show cause notice on the allegation of absence from duty under section 10 of the KPK Removal from Service (Special Power) ordinance – 2000, the Appellant was compelled by the office of the DPO / Respondent No. 1 to write his reply there and then and took back the show cause notice in original with the defense reply, not allowing the Appellant to obtain the copies thereof for his record.
4. That the DPO / Respondent No. 1 awarded the Appellant with the punishment of dismissal from service vide order dated 15-04-2011, which was challenged in this

[Redacted]
[Redacted]
23/9/14

Honourable Tribunal vide Appeal No. 1742 / 2011, which was accepted on 07-02-2014, setting aside the said impugned order, re-instated the Appellant in service with the direction to Respondents for enquiry after fulfilling all the formalities, to be concluded within two months. (Copy of Judgment is attached as Annexure "C")

- 5. That the DPO / Respondent No. 1 appointed the DSP Headquarters Mardan as enquiry officer.
- 6. That the said enquiry officer summoned the Appellant and directed him to submit his defense statement in writing there and then. (Copy of statement is attached as Annexure "D")
- 7. That the DPO / Respondent No. 1 awarded the Appellant with the punishment of dismissal from service vide O.B No. 1430 dated 19-06-2014 (endorsed on 20-06-2014). (Copy is attached as Annexure "E")
- 8. That the Appellant preferred departmental Appeal there-against to the DIG / Respondent No. 2, which was rejected vide Letter No. 5684/ES dated 25-08-2014. (Copies are attached as Annexure "F & G")

The impugned order is unjustified, illegal and against the principals of natural justice. The same is liable to be set-aside on the following amongst many other grounds: -

GROUND:

- I. That the Appellant was initially proceeded-against under section - 10 of the Removal from Service (Special Power) Ordinance - 2000, which having been repelled, was no more in field.
- II. That the directions of this Honourable Tribunal vide judgment dated 07-02-2014 for providing the proper opportunity of defense under the law, was not adhered-to and even, the conclusion of the disciplinary proceedings was delayed for 4 and a half months.
- III. That no charge-sheet, statement of allegations were issued to Appellant after removed of the case by this Honourable Tribunal. Even, no show cause notice was issued a-fresh.


- IV. That no enquiry was conducted inspite of direction of this Honourable Tribunal.
- V. That material factual point was kept out of consideration throughout that the absence of Appellant was not willful, and deliberate. But, it was beyond the control of Appellant on account of look after of his ailing mother, who was hospitalized.
- VI. That the Appellant was not proceeded – against under the relevant law. The whole of the proceedings, especially the enquiry consisted of the direction of the enquiry officer to the Appellant to write-down his statement, rather the medical proof about illness of Appellant's mother was not taken into consideration.
- VII. That the allegation of good and bad reports are introduced in the impugned order at the first time.
- VIII. That the Appellant is condemned unheard throughout.
- IX. That the Appellant seeks leave of this Honourable Tribunal to claim further grounds also.

It is prayed that on acceptance of this Appeal, the impugned orders may be set-aside and the Appellant may be re-instated into service with back service benefits. The costs of this appeal may also be awarded in favour of Appellant against the Respondents.

Dated: 23-09-2014

Through:


Appellant
Ishtiaq

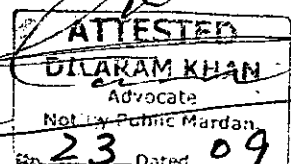

Muhammad Adam Khan
Advocate High Court
at District Courts Mardan.

Muhammad
ADAM KHAN
B.A LLB Advocate
HIGH COURT MARDAN

AFFIDAVIT

I, Ishtiaq / the Appellant, do hereby stated on solemn affirmation that the contents of the above Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal.

Deponent: 
Ishtiaq



2014

4

BEFORE THE PROVINCIAL SERVICE TRIBUNAL,
PESHAWAR

Appeal No. _____ / 2014.

Ishtiaq VS The DPO and others

APPLICATION ON BEHALF OF APPELLANT FOR REQUISITIONING
OF SHOW CAUSE NOTICE AND ITS REPLY.


1. That the officer of the DPO / Respondent No. 1 had taken back the show cause notice with the defense reply. Even, the Appellant was not allowed to obtain the copies thereof.
2. That the presence of the aforementioned documents is necessary before this Honourable Tribunal for the just and final adjudication of the above Appeal.

It is prayed that the Respondent No. 1 may be directed to provide the copies of the above captioned documents with written comments.

Dated: 23-09-2014

Through:

Appellant
Ishtiaq


Muhammad Adam Khan
Advocate High Court
at District Courts Mardan.

**Muhammad
ADAM KHAN
B.A LLB Advocate
HIGH Court MARDAN**

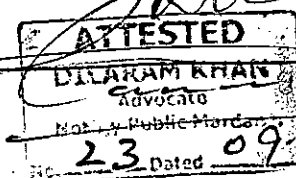
AFFIDAVIT

I, Ishtiaq / the Appellant, do hereby stated on solemn affirmation that the contents of the above Application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal.

Deponent: _____

Ishtiaq





2014

Attested
Ahmad

District Headquarter Hospital, Mardan

Discharge Card

Surgical-A Unit

Consultant Surgeon

Dr. S.M. Sareer

F.R.C.S.

Medical Officers:

Dr. Sajjad Ahmad
M.D, MSM-I

Dr. Akmal Khan
F.C.P.S.

Dr. Nadir Ali Shuja
M.B.B.S.

Pt's Name M/10. M/Shtiaq S/I/W/O

Age _____ Sex F

Ad. No. 4211-9 Bed No. 10

D.O.A. 03-9-10 D.O.O. 25-9 D.O.D. 25-9

Finding: 10 10

% for Add -

Operation:

Choleliths

Topzin 0.4 mg

Pointer Cap. 75mg

Anton 4000

Treatment in hospital

٤٧ - Avelox ١٥٠٠

٤٨ - ٥٣٢٤ ١٥٠٠
Milletol m

٤٩ - KFD ١٥٠٠

٥٠ - von ...

Treatment at Home گھر کیلئے علاج

J. Avelox

١٥٠٠

J. Avelox

١٥٠٠

J. von ...

١٥٠٠

بقعد بروز پیریا جمرات

MEDICAL OFFICER
MEDICAL HOSPITAL
MADRID

District Headquarter, Hospital Mardan

Discharge Card

Surgical-B Unit

Consultant Surgeon

Dr. Sajjad Hussan

MBBS-FCPS

General & Laproscopic Surgeon

Medical Officers

Dr. Nadir Ali Shuja
MBBS

Dr. Sibghet Ullah
MBBS-MS

Dr. Ashiq Mohammad
MD-MS

Dr. Asgher Khan
MBBS-MD

Attested

[Signature]

Pts Name M/o Ishteyaz SIDWIO

Age _____ Sex f

Ad.No. 1421-14 Bed No 12

D.O.A. 20-12-10 D.O.O 18-1-11 D.O.D _____

FINDINGS

Colitis
Cholitsis

Operation:

gastroenter. test.

Refered Oper by *[Signature]*

D.H.O. Hospital Mardan

Treatment In Hospital

ij Cipro B.D H.

inj Flampy TDS

inj Toradulin OD

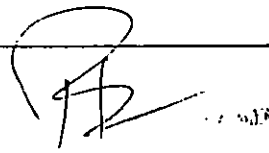
St. D. —————

Treatment at Home گھر کیلئے علاج

Tel Ciprozin
r/d

Tel Spandax
r/d

Tel Vad —
r/d



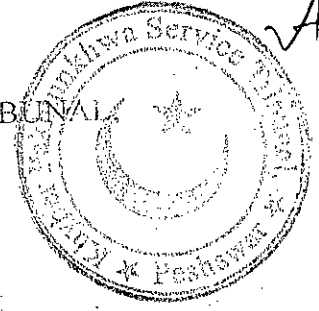
دوبارہ معائنہ _____ بعد بروز بدھ ہفتہ

Flagyl

No-Spa

Attested
Aubam

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.



Appeal No. 1742/2011
Date of Institution. ... 24.9.2011
Date of Decision ... 07.2.2014

Muhammad Ishtiaq, Belt No. 1463 District Mardan.
R/C Sawal Dher, P.S Jabar Mardan. (Appellant)

VERSUS

1. District Police Officer, Mardan.
2. DIG of Police Mardan Region-I, Mardan.
3. Inspector General of Police, KPK, Peshawar. (Respondents)

MR. AMJAD ALI,
Advocate ... For appellant.

MR. MUHAMMAD JAN,
Government Pleader ... For respondents.

MR. MUHAMMAD AAMIR NAZIR, MEMBER
MR. SULTAN MAHMOOD KHATTAK, MEMBER

JUDGMENT

MUHAMMAD AAMIR NAZIR, MEMBER. Appellant Muhammad Ishtiaq through the instant appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, has impugned order dated 15.4.2011 vide which the appellant was awarded major penalty and was dismissed from service on the ground of absence from duty. The appellant also impugned subsequent order dated 25.8.2011 vide which his departmental appeal was also dismissed.

2. Briefly stated the facts giving rise to the appeal in hand are that the appellant had joined the respondent department as Constable vide order dated 25.5.2007. That the appellant performed his duty to the best of his ability. That the appellant while performing his duty at Police Station Toru, Mardan, absented for 22 days due to the illness of his mother. That thereafter his mother got hospitalized and the appellant further remained absent for 29 days. That the appellant was served with a show cause notice to which he filed a proper reply but subsequently without any enquiry he was dismissed from service vide impugned order dated 15.4.2011. That against the impugned order, the appellant

filed departmental appeal which was also rejected vide order dated 25.8.2011, hence the instant appeal.

3. After institution of the instant appeal, it was admitted to regular hearing and the respondents were summoned by the Tribunal. The respondents contested the appeal and submitted their written reply. We have heard the arguments of the learned counsel for the parties and perused available record on the file.

4. The learned counsel for the appellant argued before the court that the appellant has not been treated in accordance with the law and rules laid down for the purpose; that no right of hearing was provided to the appellant before awarding him major penalty of dismissal from service; that the mandatory provisions of Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 have been violated, hence the impugned order be set aside and the appellant be reinstated in service with all back benefits.

5. In rebuttal, the learned Government Pleader argued before the court that the appellant was rightly dismissed from service; that he willfully remained absent for 51 days without any justification; that since sufficient evidence were available on record, therefore, the competent authority did not require any further evidence and the appellant has rightly been removed from service; that the appeal in hand is without any substance hence, liable to be dismissed.

6. Perusal of the case file reveals that the appellant while serving as Constable in Police Department remained absent firstly for 22 days and later on for 29 days and the reason put forth by the appellant for his absence from duty was ailment of his mother. The respondents furnished a show cause notice to the appellant and thereafter without giving him opportunity to justify his absence, he was awarded major penalty of dismissal from serving without affording him chance of personal hearing.

It is also evident from the record that neither charge sheet alongwith statement of allegations was served upon the appellant nor the appellant was afforded any opportunity of defence. It was mandatory for the respondent department to have properly analyzed the justification put-forward by the appellant for his absence and thereafter a proper opportunity of defence should have been given to the appellant. Similarly, before passing the impugned order

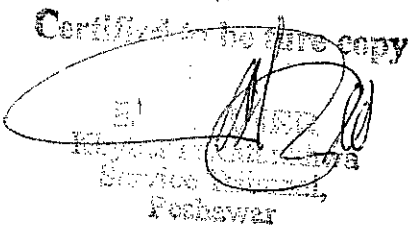
of major penalty, under Section 10 of the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000, it was mandatory upon the Competent Authority to have afforded a chance of personal hearing to the delinquent official/appellant.

8. Since proper procedure has not been adopted by the respondents before awarding major penalty to the appellant, therefore, on acceptance of the appeal, the impugned order dated 15.4.2011 is hereby set aside and the appellant is reinstated in service, with the direction to the respondents to conduct a de novo enquiry against the appellant after fulfilling all the codal formalities, which will be concluded within two months from the receipt of this judgment. The question of back benefits will be subject to the outcome of departmental enquiry/proceedings. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
7.2.2014

Ed. Muhammad Arif Nazki
Member
Ed. Sultan Mahmood Baloch
Member

Certified to be true copy



Date of Presentation of Appeal: 14.2.2014
Number of Pages: 1200
Copies Fee: 8
Voted: 2
Total: 10
Date of Judgment: 14.2.2014
Date of Execution: 14.2.2014

Amr exuse D
Attested
Auliam

گزارش قبیلہ سائیل جنرل ڈیوٹی تمام طور میں تقریبات تھا دوران ڈیوٹی گورنر لوہ فون اطلاع ملی کہ والدہ صاحبہ کی طبیعت خراب ہے۔ جلدی سے گوارا جائے۔

سہرمت سائیل گوجا کر واقعہ والہ صاحبہ کی طبیعت خراب تھا سائیل کو صبح کوئی اور نارینہ فریڈ نہیں تھا۔ والدہ صاحبہ داخل ہسپتال مردان تھا۔

اسی روز سے سائیل 22 دن غیر حاضر ہوا تھا۔ سائیل کو سٹوگا زولٹس ملا تھا۔ حوا بھی دیا تھا۔ سائیل 22 دن بلا تنخواہ ہو گیا تھا۔ سائیل نے باقاعدہ اپنے جائے تقریبی میں حاضر ہی کی تھی۔

غیر صحت تقریباً 3-4 ماہ بعد دوبارہ والدہ بیمار ہو گیا تھا اور کورس نارینہ فریڈ نہ ہونے کی وجہ سے سائیل دوبارہ غیر حاضر ہو گیا تھا۔ سائیل تقریباً 28 دن غیر حاضر رہ گیا تھا اور سائیل کو بلا تنخواہ کیا گیا تھا۔

سائیل نے باقاعدہ تمام طور میں حاضر نہ کیا تھا۔ اور سائیل نے تقریباً 4 ماہ نوکری نہ کیا تھا۔ کہ اسی دوران تھا۔ ڈسٹن مہاب ہاگ مردان نے تمام غیر حاضری اکھٹارنے سائیل کو نوکری سے ڈسمنس لایا تھا۔

ڈسمنس کے خلاف سائیل نے حوا۔ دیو صاحب کو اس پر دائر کیا۔

حوا صاحبہ والا نے اس میں غائب کیا۔ سائیل نے لبرل سروس کی سرپرستی میں لیبل دائر کر کے تقریباً 3 سال

1463

لید عدالت فی مسائل کو بحال اور ڈیو انڈیا میں کما حقہ
چھوڑ گیا

لہذا اس پر عدالت نے مسائل کا غیر حافی قصہ "مڈ" لیس دیا
نہیں ہو۔ صورتی

میں نے اس کے مسائل کا ڈیو انڈیا میں مسائل کرتے

کا حکم عام زنا کو قتل و فساد

حالیہ حالیہ کی اہمیت بلکہ اس کے عم و عا کو دیکھو

الکالیہ میں نواز میں ہیں

اس کا تعلق ہے اس میں ~~1463~~ 1445 مستند ہو گیا ہے اس میں

POLICE DEPARTMENTMARDAN DISTRICTAttested
AurangORDER


This order will dispose off denov Enquiry against Constable Ishtiaq No. 1463 as per direction of Service Tribunal, KPK appeal No. 1742/2011 received through Letter No. 236/ST dated 14.02.2014.

In this regard the denov departmental inquiry against Constable Ishtiaq No. 1463 has been initiated through Mian Naseeb Jan DSP/HQrs: Mardan. In order to the completion of denov departmental inquiry against Constable Ishtiaq No. 1463. The inquiry officer was summoned the defaulter official so the defaulter Constable appear before Inquiry officer in connection with his inquiry. His Statement was recorded about his absence period of 78 days but not satisfied. Beside this no good entry and 23 bad entries on his credit during his service. The inquiry officer has recommended the defaulter Constable for major punishment and export action may be taken against him.

The undersigned agreed with the findings of enquiry officer and the alleged Constable Ishtiaq No. 1463, is dismissed from service and his absence period counted as without pay, in exercise of the power vested in me under the quoted rules 1975.

Order announced

O.B No. 1430Dated 19/6 /2014


(Gul Afzal Afridi)
District Police Officer,
Mardan.

No. 141 dated Mardan the 20-6 /2014

Copy for information and necessary action to:-

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

دوست جناب ریجنل پولیس افسر

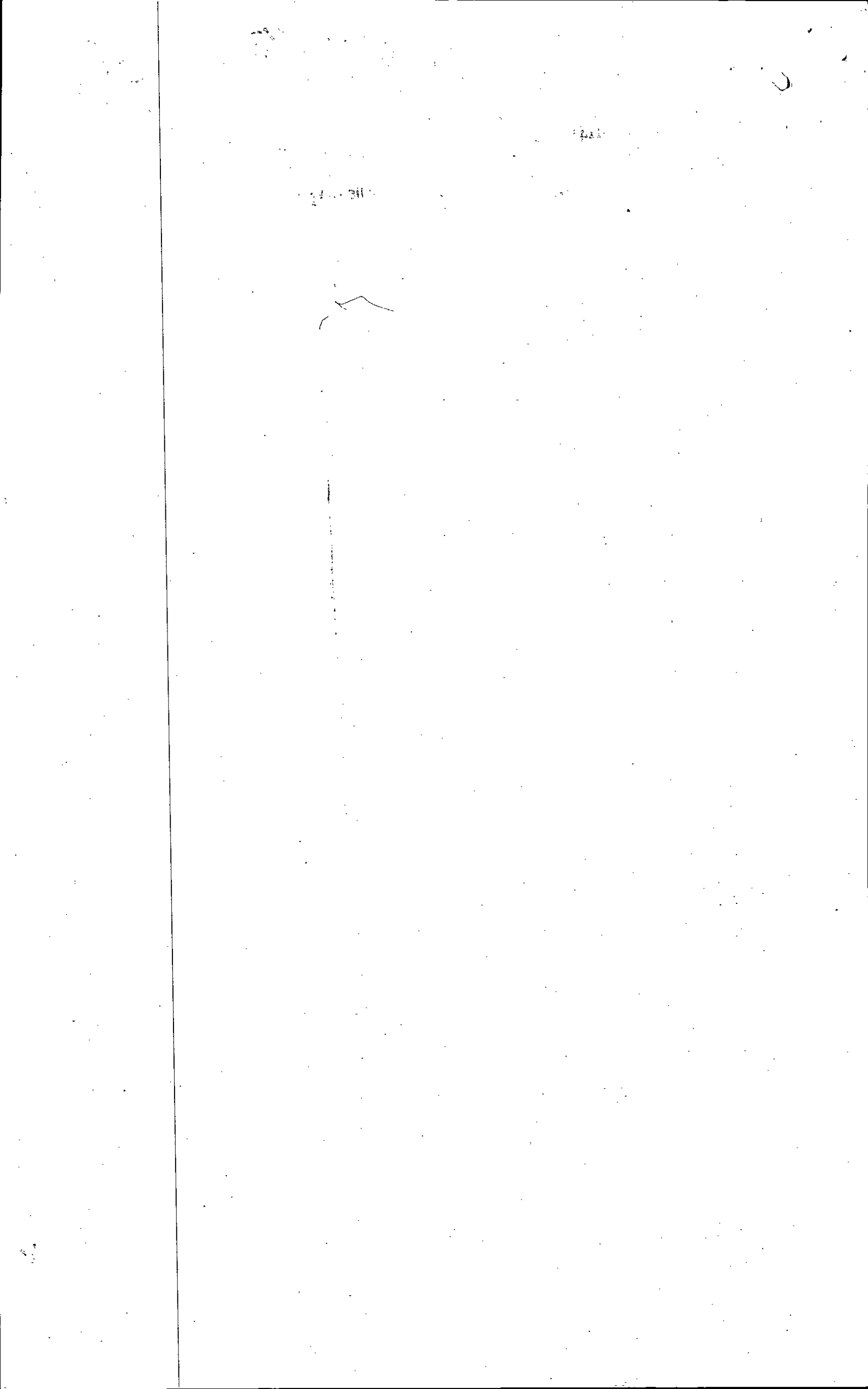
Attested
Munawar

درخواست بہراد بحالی سروس

جناب عالی!

گزارش جدید سائیل 2008 کا بورتی مشورہ ہے۔ سائیل
 جنیرل ڈیوٹی تھا طور و آہنات تھا۔ دوران ڈیوٹی گھر
 سے اطلاع ملی کہ والدہ صاحبہ بیمار ہے۔ اور طبیعت زار کا خراب ہے
 گھر آجائے۔ سائیل سروس گھر جا کر والدہ واقعہ بیمار تھا۔ DHQ
 ہسپتال مردان لائبر ڈاکٹر صاحب نے والدہ کو داخل ہسپتال کرایا۔
 والدہ صحت مند رہے۔ اور کوئی نارمن ضرر نہیں تھا۔ اس وقت سے
 سائیل نے جو غیر حاضر ہوا تھا۔ جو کہ بلا تھیو الا کا حکم بھی ہوا
 سائیل نے بداندیشی سے اپنے جائے تعیناتی سے باقاعدہ حاضر
 کی تھی۔
 چار ماہ بعد سائیل کو ڈسپنس کیا گیا تھا۔ اس وقت سائیل
 نے جناب دیوٹی کو اپیل سے دائر کیا۔ مگر جناب دیوٹی نے اپیل
 خارج کیا۔ سائیل نے لہذا سروس ڈیوٹی لیا اور وہی اپیل دائر کیا
 7²/₁₄ 1998 کو عدالت نے سائیل کے بحال کر کے ڈیوٹی لیا کر کے
 حکم کر دیا۔
 7³/₁₄ 1998 کو سائیل نے حکم افسران لا پولیس لائبر مردان سے
 فاضلہ کی۔ سائیل کا ڈیوٹی ہے جناب۔ DHQ/HSQ ملک کو مارک ہوا
 19⁶/₁₄ 1998 کو مردان سائیل نے ڈسپنس کیا گیا۔
 جناب عالی! اس وقت میں بہرہ دان اپیل کرتا ہوں کہ سائیل کی بحال
 پر رسم فرما کر سائیل کو نوکری کے بحال کر کے سائیل کو بحال
 جناب عالی! یہی اقبال بلدیہ کی تہذیبی دعا اور سائیل

الغرض
 محمد شریف صاحب نے 1445 1445 حکم جان سکے سادہ اور فقیر
 محمد شریف صاحب نے 1445 1445 حکم جان سکے سادہ اور فقیر
 محمد شریف صاحب نے 1445 1445 حکم جان سکے سادہ اور فقیر



ORDER.

This order will dispose-off the appeal preferred by Ex-Constable Muhammad Ishtiaq No. 145 of Mardan District Police against the order of District Police Officer, Mardan, wherein he was dismissed from service vide District Police Officer, Mardan OB: No. 1430 dated 19.06.2014.

Brief facts of the case are that he while posted at Police Station Toru remained absent from duty for (22 days) without any leave/permission of the competent authority vide daily dairy report No. 44 dated 03.09.2010 up to daily dairy report No. 38 dated 25.09.2010, for which he was served with Show Cause Notice which reply was received and found not satisfactory. Later on he while undergoing recruit mortar Course at Police Lines, Mardan remained absent from duty for 29 days vide daily dairy No. 35 dated 20.12.2010 up to daily dairy No. 27 dated 18.01.2011, in this regard another Show Cause Notice issued to him and delivered it upon his father Hukam Khan but he failed to submit his reply within in the stipulated period, therefore he was dismissed from service by the then District Police Officer, Mardan vide OB: No. 1487 dated 15.04.2011, later on he was submitted appeal for re-instatement in service to the then Deputy Inspector General of Police Mardan Region-I, Mardan, he was heard in person in Orderly Room his case was perused and filed vide this office order endorsement No. 3172/ES dated 25.08.2011. He was approached to the Service Tribunal Khyber Pukhtunkhwa, Peshawar for re-instatement in service. His appeal was accepted and the dismissal order of the then District Police Officer, Mardan was set-aside and denovo inquiry was initiated against him through the then Deputy Superintendent of Police Headquarter, Mardan. In order to the completion of denovo departmental inquiry against the appellant, the inquiry officer summoned the defaulter Official so the defaulter official appear before inquiry Officer in connection with his inquiry. His statement was recorded about his absence period of 78 days he could not satisfied his superiors. Besides he earned no a single good entry and recorded 23 bad entries on his credit during his service. The enquiry Officer has recommended the defaulter Official for major punishment and ex-parte action. Therefore the District Police Officer, Mardan agreed with the findings of inquiry Officer and the appellant was dismissed from service.

I have perused the record and also heard the appellant in Orderly Room held in this office on 20.08.2014. He failed to justify his absence period and could not advance any cogent reason in his defence. Therefore, I MUHAMMAD SAEED Deputy Inspector General of Police, Mardan Region-I, Mardan in exercise of the powers conferred upon me reject the appeal, not interfere in the order passed by the competent authority, thus the appeal is filed.

ORDER ANNOUNCED.

(MUHAMMAD SAEED) PSP
Deputy Inspector General of Police,
Mardan Region-I, Mardan.

No. 5604 /ES, Dated Mardan the 25/08 /2014.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 670/LB dated 16.07.2014.

His service record is returned herewith.

Page-15

VAKALAT NAMA

In the Court of Service Tribunal, Peshawar

Appeal No. _____ of 2014

Ishfaq

(Petitioner)
(Plaintiff)
(Appellant)

VERSUS

The Police Deptt etc.

(Respondent)
(Defendant)

I/We Ishfaq the
above noted Appellant do
hereby appoint and constitute **Muhammad Adam Khan, Advocate Mardan** as
Counsel in subject proceedings and authorize him to appear, plead etc., compromise, withdraw or
refer to arbitration for me/us, as my/our Advocate in the above noted matter, without any liability
for his default and with the authority to engage/appoint any other Advocate/Counsel at my/our
behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated: 22.09.2014



(Signature of Client)

MUHAMMAD ADAM KHAN,
Advocate,
District Courts, Mardan.

Accepted
Muhammad
ADAM KHAN
E.A LLB Advocate
HIGH COURT MARDAN

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

Service Appeal No. 1168/2014.

Ishtiaq, (Ex-Constable No. 1463, District Police Mardan) R/o Village Sawal Dher Tehsil & District Mardan.

.....Appellant.

VERSUS.

1. District Police Officer, Mardan.
2. Deputy Inspector General of Police, Mardan Region-I, Mardan.

Respondents

PRELIMINARY OBJECTIONS:-

- a. That the appeal is time barred.
- b. That the appellant has got no locus standii and cause of action.
- c. That the appeal is not maintainable in its present form.
- d. That the appellant has not come with clean hands to this Hon'able Tribunal.
- e. That the appeal is not maintainable due to mis-joinder and non joinder of necessary parties.
- f. That the appellant has concealed material facts from the Honorable Tribunal.
- g. That the appellant is stopped by his own conduct.

Respectfully Sheweth:


Parawise comments on behalf of respondent No. 01 and 02 are submitted below:-

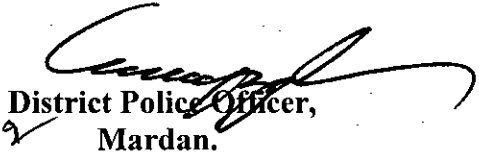
1. Incorrect. The appellant was enlisted on 12.05.2009.
2. The law accepts no reasons other than legal obligations. The appellant was, therefore, bound to have adopted proper procedure for leave to the competent authority. He remained absent for an uncondonable period, comprising (57) days, and was, therefore, punished as well.
3. Correct to the extent of issuance of show cause notice by respondent No. 01, however, there was no element of compulsion in submission of reply to the said show cause notice. The appellant was extended proper opportunity in his defence but he did not bother even to submit reply to the show cause notice No. 202/PA/SCN/R dated 08.02.2011 vide D.D No.33 (29 days absence). (Copy of show cause notice is attached as annexure-A).
4. Pertains to record hence, no comments.
5. Correct, hence, no comments.
6. Correct that the appellant was summoned by the enquiry officer and asked for recording his/former's statement.
7. Correct, hence, no comments.
8. Correct to the extent of rejection of appeal by the competent departmental authority, however, the rest of the para is totally baseless.

REPLY ON GROUNDS:-

- i. Incorrect. The departmental proceedings against the appellant had been commenced under section 10 of the Removal from Service (Special Power) Ordinance-2000 and could only be concluded only under that law/rules. So, the proceedings run and done against the appellant were under the law/rules.
- ii. Incorrect. The directions vide Honorable Service Tribunals Judgment dated 07.02.2014 were complied with the by summoning the appellant during inquiry and recorded his statement.
- iii. Already replied in Para-II.
- iv. Incorrect. Proper inquiry has been conducted through DSP/HQRs Mardan.
- v. Incorrect. The appellants absence was deliberate and too prolonged, which could not be condoned by the competent authority.
- vi. Incorrect. Proper inquiry has been conducted against the appellant.

- vii. Incorrect. Appellants bad entries has already been shown in the previous appeal in para-2.
- viii. Incorrect. The appellant has been provided opportunity of hearing in his defence. (Copy of appeal rejection in order by Deputy Inspector General of Police, Mardan Region-I, Mardan annexed as annexure -B).
- ix. The respondents also seek permission of this Honorable Court to submit further, if any, grounds etc at the time of arguments.


**Dy. Inspector General of Police,
Mardan Region-I, Mardan.**
(Respondent No. 1)


**District Police Officer,
Mardan.**
(Respondent No. 2)

u A 3

OFFICE OF THE DISTRICT POLICE OFFICER MARDAN

No. 202 /PA/SCN/R

Date 8-8- 2011

SHOW CAUSE NOTICE


Whereas; you Constable Ishtiaq No. 1463, while undergoing recruit mortar course at Police Lines, remained absent without any/leave permission of the competent authority vide DD report No. 33 dated 20.12.10 till-date.

You are, therefore, found guilty of misconduct as defined in section 2 of the K.P.K Removal from Service (Special Powers) ordinance 2000 and as such are liable to action under section 3 of the said ordinance.

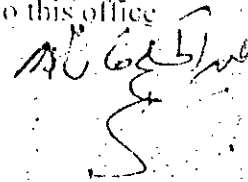
Based on the above facts, I am satisfied that no enquiry is needed in this case.

Now, therefore, you Constable Ishtiaq is called upon under section 3 of the K.P.K Removal from Service (Special Powers) ordinance 2000 to show cause within (15) days of the issuance of this notice as to why one or more penalties including major penalty of dismissal from service should not be imposed upon you.

Take note that if no reply is received within the stipulated time it will be presumed that you have nothing to say in your defense and the case shall be decided ex-parte without any further notice.


(HAJI WAQIF KHAN)
PPM, QPM, ISI
District Police Officer,
Mardan.

Copy to SHO/ Jabbar, to deliver this notice on Constable Ishtiaq s/o Hukam Khan r/o Sawal Dher or any of his closed family member and the receipt thereof should be returned to this office within three days.


SHO/PSJO
9.2.11

سیدنا ابوبکر صدیق رضی اللہ عنہ
جو کہ ہر امت کا خلیفہ ہے
اگر وہ کلمہ پڑھتا ہے

علی علیہ السلام

سیدنا ابوبکر صدیق رضی اللہ عنہ

جناب عالی
شہر کراچی میں ایک شخص نے کہا کہ
دارالافتاء کو حوالہ دے کر جو کہ
موجود ہے اس کا نام ابوبکر صدیق
شہر کراچی میں ایک شخص نے کہا کہ
اس کا نام ابوبکر صدیق ہے

AS PP SD
14-2-11

جناب عالی
فیصل آباد میں ایک شخص نے کہا کہ
دارالافتاء کو حوالہ دے کر جو کہ

SHC/PS/SB
14-2-11

Page - 14

Attested
Amir

up B's
Annexure

ORDER.

This order will dispose-off the appeal preferred by Ex-Constable Muhammad Ishtiaq No. 145 of Mardan District Police against the order of District Police Officer, Mardan, wherein he was dismissed from service vide District Police Officer, Mardan OB: No. 1430 dated 19.06.2014.

Brief facts of the case are that he while posted at Police Station Toru remained absent from duty for (22 days) without any leave/permission of the competent authority vide daily dairy report No. 44 dated 03.09.2010 up to daily dairy report No. 38 dated 25.09.2010, for which he was served with Show Cause Notice which reply was received and found not satisfactory. Later on he while undergoing recruit mortar Course at Police Lines, Mardan remained absent from duty for 29 days vide daily dairy No. 35 dated 20.12.2010 up to daily dairy No. 27 dated 18.01.2011, in this regard another Show Cause Notice issued to him and delivered it upon his father Hukam Khan but he failed to submit his reply within in the stipulated period, therefore he was dismissed from service by the then District Police Officer, Mardan vide OB: No. 1487 dated 15.04.2011, later on he was submitted appeal for re-instatement in service to the then Deputy Inspector General of Police Mardan Region-I, Mardan, he was heard in person in Orderly Room his case was perused and filed vide this office order endorsement No. 3172/ES dated 25.08.2011. He was approached to the Service Tribunal Khyber Pakhtunkhwa, Peshawar for re-instatement in service. His appeal was accepted and the dismissal order of the then District Police Officer, Mardan was set-aside and denovo inquiry was initiated against him through the then Deputy Superintendent of Police Headquarter, Mardan. In order to the completion of denovo departmental inquiry against the appellant, the inquiry officer summoned the defaulter Official so the defaulter official appear before inquiry Officer in connection with his inquiry. His statement was recorded about his absence period of 78 days he could not satisfied his superiors. Besides he earned no a single good entry and recorded 23 bad entries on his credit during his service. The enquiry Officer has recommended the defaulter Official for major punishment and ex-parte action. Therefore the District Police Officer, Mardan agreed with the findings of inquiry Officer and the appellant was dismissed from service.

I have perused the record and also heard the appellant in Orderly Room held in this office on 20.08.2014. He failed to justify his absence period and could not advance any cogent reason in his defence. Therefore, I MUHAMMAD SAEED Deputy Inspector General of Police, Mardan Region-I, Mardan in exercise of the powers conferred upon me reject the appeal, not interfere in the order passed by the competent authority, thus the appeal is filed.

ORDER ANNOUNCED.

(MUHAMMAD SAEED)PSP
Deputy Inspector General of Police,
Mardan Region-I, Mardan.

No. 5684 /ES, Dated Mardan the 25/08 /2014.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 670/LB dated 16.07.2014.

His service record is returned herewith.

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

Service Appeal No. 1168/2014.


Ishtiaq, (Ex-Constable No. 1463, District Police Mardan) R/o Village Sawal Dher Tehsil & District
Mardan.....Appellant.


VERSUS.

1. District Police Officer, Mardan.
2. Deputy Inspector General of Police, Mardan Region-I,
Mardan.....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.


Deputy Inspector General of Police,
Mardan Region-I, Mardan.
(Respondent No. 1)


District Police Officer,
Mardan.
(Respondent No. 2)

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

Service Appeal No 1168/2014.

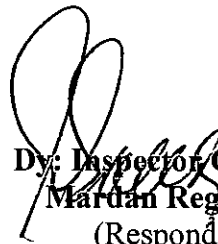
Ishtiaq, (Ex-Constable No. 1463, District Police Mardan) R/o Village Sawal Dher Tehsil & District
Mardan.....Appellant.


VERSUS.

1. District Police Officer, Mardan.
2. Deputy Inspector General of Police, Mardan Region-I,
Mardan.....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.


Dy. Inspector General of Police,
Mardan Region-I, Mardan.
(Respondent No. 1)


District Police Officer,
Mardan.
(Respondent No. 2)

2nd Copy

Before The Service Tribunal, Peshawar

Appeal No. 1168/2014

Hearing 12.11.2015

Ishtiaq

v/s

Police Department

Rejoinder:-

I N D E X

S.NO	DESCRIPTION	ANNEXURE NO.	PAGE NO.S
1	Rejoinder.	1	--
2	With Affidavit.	3	--

Total: 3

Appellant


(Ishtiaq)

Through:



MUHAMMAD ADAM KHAN
B.A LLB Advocate
High Court Mardan

Before The Service Tribunal, Peshawar.

Appeal No. 1168/2014

Hearing 12.11.2015

Ishtiaq v/s Police Department

Rejoinder:-

Preliminary Objections:-

A to G :- Incorrect and false. Denied.

Facts:-

1. The date of enlistment of Appellant is evident from the Judgment copy Annexure- "C", with the Appeal.
2. Incorrect and misleading. Denied. The leave was availed by Appellant on account of serious illness of his mother.
3. Para-3 of memo; of Appeal is correct. While, the reply there - to is false and misleading. Denied. An affidavit to the said effect is attached.
4. To 8. Stands admitted on the part of Respondents.

Grounds:-

- (I) Incorrect. Denied. The proceedings under a repelled enactment is nullity in the eyes of law.
- (II) To (VI):- Incorrect, false and misleading. Denied.
- (VII) Incorrect. The charge of alleged bad entries is introduced in the Appellate order for the first time.
- (VIII) Incorrect and false. Denied.
- (IX) Not denied by Respondents.

It is prayed that setting-aside the impugned order, the Appellant may be re-instated into service with back service benefits and with the costs of this Appeal.

Dated: 11.11.2015

Appellant
(Ishtiaq)
Through :-
Aurang
MUHAMMAD ADAM KHAN
B.A LLB Advocate
High Court Mardan

Before The Service Tribunal, Peshawar.

Appeal No. 1168/2014

Hearing 12.11.2015

Ishtiaq

v/s

Police Department

Affidavit:-

I, Muhammad Adamkhan Advocate, on behalf of The Appellant do hereby State on solemn affirmation that as per the Appellant, the contents the Appeal and rejoinder are true and correct to the best of my knowledge and belief and that the objections raised by Respondents are incorrect and false, further that the Appellant had submitted defence reply to the show cause notice. But, the office of the D.P.O / Respondent No.1, compelled the Appellant to write his defence reply there-to there and then and that the show cause notice in origin was taken from him with the defence reply, not allowing the Appellant to obtain the copies there-of, that the contents of this affidavit are true and correct as per the Appellant, to the best of my knowledge and belief.

Deponent

Adamkhan

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No 109 /ST

Dated 12/01/2018


To

The District Police Officer,
Government of Khyber Pakhtunkhwa,
Mardan.

Subject: **JUDGEMENT/ORDER IN APPEAL NO. 1168/14 MR.ISHTIAQ.**

I am directed to forward herewith a certified copy of Judgment/Order dated 09/01/2018 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

