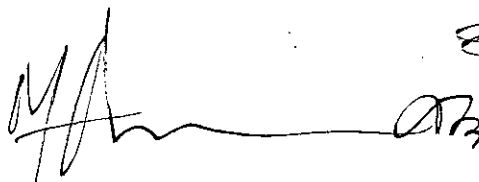


S.No	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
	17.05.2016	<p style="text-align: center;"><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,</u> <u>PESHAWAR.</u></p> <p style="text-align: center;">APPEAL NO.1436/2014</p> <p style="text-align: center;">(Asmat Ali-vs-Commandant Elite Force Kyber Pakhtunkhwa, Peshawar and others).</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>PIR BAKHSH SHAH, MEMBER:</u></p> <p>Appellant with counsel (Ms. Uzma Syed, Advocate) and Mr. Muhammad Jan, GP for respondents present.</p> <p>2. Constable Asmat Ali, charged in a criminal case vide FIR No. 369 dated 10.11.2011 Police Station Latumber, District Karak was departmentally proceeded against and dismissed from service. This Tribunal vide its judgment dated 04.07.2014 reinstated him for the purpose of <i>de-novo</i> proceedings and it was also provided that the question of his back benefits will be subject to outcome of the fresh departmental enquiry/proceedings. According to record fresh enquiry was conducted by Mr. Javid Iqbal Khan, acting DSP Elite Force Head Quarter who in his report dated 04.09.2014 recommended appellant for minor penalty and also hold that he is not entitled for any salary as back benefits as he was not on duty. Accordingly, Deputy Commandant Elite Force as competent authority vide his order dated 22.09.2014 treated his absence period as his leave without pay. On departmental appeal the impugned order dated 11.12.2014 treated the leave period as leave of the kind due. Appellant has instituted service appeal with the following prayer:-</p> <p style="text-align: center;">“That on acceptance of the instant service appeal this</p>

Honourable Tribunal may graciously be pleased to declare the impugned order of respondent No.1 dated 11.12.2014 to the extent of treating the period from 13.04.2012 to 28.04.2012 as half pay and the remaining period from 28.04.2012 till reinstatement as leave without pay as illegal, unlawful and without lawful authority and set aside the same to that extent only and also direct the respondents to treat the same as period spent on duty and grant him all back benefits accordingly”.

3. Arguments heard and record perused.

4. After a careful perusal of the record and pro & contra arguments, Since the Enquiry Officer in *de-novo* proceeding has declined any relief to the appellant for back benefits and has recommended the appellant for imposition of minor penalty, therefore, the Tribunal is of the considered view that the impugned order does not ask for any indulgence of this Tribunal. Resultantly, the appeal is dismissed. Parties are left to bear their own cost. File be consigned to the record room.



(MUHAMMAD AAMIR NAZIR)  
MEMBER



(PIR BAKHSH SHAH)  
MEMBER

ANNOUNCED  
17.05.2016

18.03.2016

Appellant in person and Mr. Muhammad Iqbal

respondents present. Enquire report not produced. R.M.

Department is once again directed to produce enquiry report.

Range Officer Shaukat Fayaz. To come up for arguments

on 18.03.2016.

18.03.2016

Appellant with counsel and Mr. Javid Iqbal, Inspector (Legal) alongwith Asstt. AG for respondents present. During the course of arguments it transpired that relevant record like copy of FIR, Bail Petition, court decision of the criminal court etc etc are not available. The same be produce on the next date. To come up for arguments on 17.5.16



Member



Member

5.

25.03.2015

Counsel for the appellant present. Learned counsel for the appellant argued that leave without pay affects the salary and ancillary benefits which come under the domain of terms and conditions of service of the appellant. That vide impugned order dated 22.9.2014 a total 963 days period was considered as leave without pay which was assailed in departmental appeal dated 25.9.2014 and which was partially allowed as 120 days leave was considered with full pay and the remaining period was treated as leave without pay.

That the appellant has never remained absent from duty and as such the orders impugned are against facts and law.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply for 27.5.2015 before S.B.

Appellant Deposited  
Security & Process Fee



  
Chairman

6

27.05.2015

Counsel for the appellant and Mr. Javed Iqbal, Inspector (legal) alongwith Addl: A.G for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 10.11.2015.

  
Chairman

10.11.2015


Ms. Uzma Syed, Advocate present on behalf of the appellant and submitted Wakalat Nama as well as Rejoinder copy of which placed on file. Mr. Ziaullah, GP for respondents present. To come up for arguments on 18-3-2016

  
Member

  
Member

2.  
21.01.2015

Appellant alongwith clerk of counsel for the appellant present, and requested for adjournment. Request accepted. To come up for preliminary hearing on 11.02.2015.

  
Member

3 11.02.2015

Appellant with counsel present. During the course of arguments it came to surface that after departmental inquiry the appellant was not punished and the period of absence was treated as leave without pay. According to the learned counsel for the appellant, the said order is appealable before this Tribunal. Requested for adjournment for further arguments. Adjourned to 25.02.2015 before S.B.

  
Chairman

4. 25.02.2015

Agent of counsel for the appellant present. Requested for adjournment for preliminary hearing to 25.03.2015 before S.B.

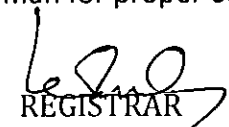
  
Chairman.

Form- A

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 1436/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	31.12.2014	<p>The appeal of Mr. Asmat Ali presented today by Mr. Ashraf Ali Khattak Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p> <p style="text-align: center;"><del>THIS CASE IS FOR USE OF Bench for preliminary</del></p> <p style="text-align: center;"><del>REGISTRAR</del></p> <p style="text-align: right;"><del>REGISTRAR</del></p>
2		

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1436/2014

Asmat Ali Elite Force,  
Khyber Pakhtunkhwa.  
.....Appellant

Versus

The Commandant Elite  
Force Khyber  
Pakhtunkhwa, Peshawar  
and others....Respondents

**INDEX**

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal with Affidavit.			1-5
2.	Copy of judgment of the this Honourable Tribunal.		A	6-9
3.	Copy of re-instatement order		B	10-11
4.	Copy of charge sheet and statement of allegation.		C	12-13
5.	Copy of reply.		D	14-15
6.	Copy of final show cause Notice		E	16
7.	Copy of reply to final show cause Notice.		F	17-18
8.	Copy of re-instatement order.		G	19
9.	Copy of departmental Appeal		H	20-23
10.	Copy of impugned order	11-12-2014	I	24
11.	Wakalat Nama			25

*Asmat Ali*

Appellant

Through

*Ashraf Ali Khattak*

Ashraf Ali Khattak

Advocates, Peshawar

Dated: 12 / 14 / 02/2014

BEFORE THE HONOURABLE **KPK SERVICE TRIBUNAL**  
**PSHAWAR**

Service Appeal No. 1436 /2014

Asmat Ali Constable No.54 Elite Force, District Karak  
 .....Petitioner.

Versus

**1484**  
**31-12-14**

1. The Commandant Elite Force Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Commandant Elite Force Khyber Pakhtunkhwa,  
 Peshawar.....Respondents

Service Appeal under section 4 of the Khyber Pakhtunkhwa service Tribunal Act, 1974 read with Rule 19 of the Khyber Pakhtunkhwa Govt: Servant (Efficiency and Discipline) Rules 2011 against the impugned final order of respondent No.2 dated 11-12-2014 wherein he partially accepted/allowed the departmental appeal of the appellant.

Prayer:-

On acceptance of the instant service appeal this Honourable Tribunal may graciously be pleased to declare the impugned order of respondent No.1 dated 11-12-2014 to the extent of treating the period from 13-04-2012 to 28-04-2012 as half pay and the remaining period from 28-04-2012 till re instatement as leave without pay is illegal, unlawful and without lawful authority and set aside the same to that extent only and also direct the respondents to treat the same as period spent on duty and grant him all back benefits accordingly.

Respectfully Sheweth,

Facts giving rise to the present Service Appeal are as under:-

1. That appellant is the employee of respondent Organisation. He has considerable service at his credit.
2. That appellant was falsely charged in case FIR No.369 dated 10-11-2011 P/S Latumber, Karak under section 319 PPC.

**10/12/14**  
**31/12/14**



3. That during the pendency of criminal trial, departmental disciplinary action was initiated against the appellant, which culminated into his dismissal from service.
4. That appellant assailed the dismissal order before this Honourable Tribunal in Service Appeal No.296 of 2012.
5. That this Honourable Tribunal was pleased to allow/accept the appeal partially by set asiding the impugned orders and re-instate the appellant with further directions to the respondents to conduct De novo inquiry against the appellant with opportunity to associate him with inquiry proceedings so that he can defend himself (Annexure-A).
6. That in persuance of the judgment of this Honourable Tribunal; appellant was re-instated (Annexure-B).
7. That De novo inquiry initiated against the appellant and he was served with charge sheet and statement of allegation (Annexure-C), to which appellant submitted detail reply (Annexure-D).
8. That fresh inquiry was conducted, but charges could not be proved. Appellant was served with final show cause (Annexure-E) without serving copy of the inquiry report. Appellant submitted his reply (Annexure-F).
9. That appellant was exonerated from the charges leveled against him and inquiry was filed, but the intervening period between dismissal and re-instatement was declared as leave without pay (Annexure-G).
10. That being aggrieved from the order to the extent of treating the intervening period between dismissal and re instatement; appellant again submitted departmental appeal (Annexure-H), wherein he requested that since the appellant was dismissed from service with no fault on his part and he has been remained jobless during the intervening period and is highly burden with

financial debth, therefore, he is entitle for back benefits.

11. That the appeal was partially accepted vide order dated 11-12-2014 (Annexure-I), wherein 120 days were allowed with full pay w.e.f 15-12-2011 to 12-04-2012 and whereas 16 days have been treated with half pay w.e.f 13-04-2012 to 28-04-2012 and the remaining period i.e from 28-04-2012 till re-instatement was treated as leave without pay.
12. That appellant now being aggrieved from the impugned final order to the extent of treating the intervening period as leave without pay; prefers the instant service appeal inter alias on the following grounds:

**Grounds:**

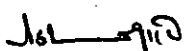
- A. That Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973. Grant of service benefits to an employee, who had been illegally kept away from his employment, was the rule and denial of service benefits to such a re-instated employee was an exception on the proof of such person having remained gainfully employed during such period. Appellant had illegally been kept away from his employment and he had remained jobless during the entire course of dismissal till re-instatement and more so has been burden with financial debts. On this score the impugned order to the extent of treating the intervening period as leave without pay is illegal, unlawful and without lawful authority and is liable to be set aside to that extent only.
- B. That all public powers are in the nature of trust and public functionaries must act as repository to such trust. In the instant case appellant have proved as innocent of the charges leveled

against him therefore, the departmental authorities were legally bound to re instate the appellant with all back benefits.

- C. That departmental appeal of the appellant has not been decided in accordance with provision and spirit of Rule 5 of the Khyber Pakhtunkhwa Appeal Rules 1986. The departmental appeal was address to respondent No.1, who was appellate authority in case of appellant, but respondent No.2 himself sit over his own order, which is against the spirit and provision of Appeal Rules and more over he failed to scrutinize the fact as to whether appellant has remained jobless during the intervening period i.e between dismissal and re-instatement or other wise.
- D. That the well-known principle of law “ Audi altram Partem” has been violated. This principle of law was always deemed to have embedded in every statute even though there was no express specific or express provision in this regard.  
 ....An adverse order passed against a person without affording him an opportunity of personal hearing was to be treated as void order. Reliance is placed on 2006 PLC(CS) 1140. As no proper personal hearing has been afforded to the appellant before the issuing of the impugned order, therefore, on this ground as well the impugned order is liable to be set aside.
- E. That appellant would like to seek the permission of this Honourable Tribunal to advance some more grounds at the time of arguments.

  
 Appellant

Through

  
 Ashraf Ali Khattak,  
 Advocate, Peshawar.

Dated:

**BEFORE THE HONOURABLE PESHAWAR HIGH COURT,  
PSHAWAR**

**Service Appeal No. \_\_\_\_\_/2014**

Asmat Ali Constable No.54 Elite Force, Distret Karak  
.....Petitioner.

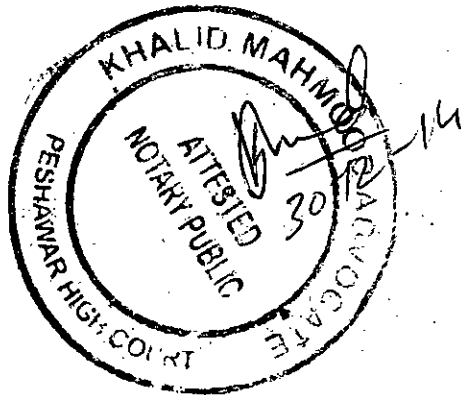
**Versus**

The Commandant Elite Force Khyber Pakhtunkhwa, Peshawar and  
others.....Respondents

**Affidavit.**

I, Asmat Ali No.90/FC, Platoon No.46 Elite Force Khyber  
Pakhtunkhwa Karak, do hereby solemnly affirms on Oath  
that the contents of the instant Service Appeal are true to the  
best of my Knowledge and belief and nothing has been  
concealed from this Honourable Tribunal.

*Asmat Ali*  
Deponent.



P-6

Anx: A

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR.



Appeal No. 296/2012

Date of Institution. ... 28.02.2012  
Date of Decision. ... 04.07.2014

Asmat Ali No. 980/FC, Platoon No. 46, Elite Force,  
Khyber Pakhtunkhwa, Karak. ... (Appellant)

VERSUS

1. The Deputy Commandant Elite Force, Khyber Pakhtunkhwa, Peshawar.
2. The Commandant Elite Force, Khyber Pakhtunkhwa, Peshawar..... (Respondents)

**ATTESTED**

*[Signature]*  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

SERVICE APPEAL UNDER SECTION 10 OF THE KHYBER PAKHTUNKHWA REMOVAL FROM SERVICE (SPECIAL POWERS) ORDINANCE, 2000 READ WITH SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974.

MR. ASHRAF ALI KHATTAK,  
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.- The appellant Asmat Ali, through the instant appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 has impugned order dated 27.12.2011 vide which the appellant was awarded major penalty of dismissal from service with immediate effect. The appellant has also impugned order dated 15.02.2012 vide which his departmental appeal was filed without any cogent reason.

*[Signature]*  
04-07-14

Attested  
*[Signature]*  
True Copy

2. Briefly stated facts giving rise to the appeal in hand are that the appellant was serving as Foot Constable in the Police Department since, 2007. That vide FIR No. 369 dated 10.11.2011 at Police Station Latumber, Karak, the appellant was charged under Section 319 PPC. That despite the fact that the appellant was granted bail by the court of Judicial Magistrate, yet disciplinary proceedings were initiated against him and he was served with charge sheet and statement of allegations to which the appellant submitted reply. That an irregular and illegal enquiry was conducted without associating the appellant with the enquiry proceedings and thus the appellant was awarded major penalty of dismissal from service vide impugned order dated 27.12.2011. That the appellant preferred departmental appeal against the above referred impugned order but the same was rejected without assigning any reason whatsoever vide impugned order dated 15.2.2012, hence the instant appeal.

EXAMINED  
 KHUSHBU KHANNA  
 JUDGE (MAGISTRATE)  
 KARAK

ATTESTED

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 written reply. We have heard the arguments of the learned counsel for the parties and have gone through the record available on the file.

4. The learned counsel for the appellant argued before the court that the criminal case on the basis of which the appellant was proceeded departmentally and finally dismissed from service, has been decided and the appellant has been acquitted from the charges levelled against him by the competent court of law; that despite the fact that the appellant was innocent, he was illegally proceeded departmentally and without associating him with the enquiry proceedings, he was awarded major penalty of dismissal from service; that the departmental appeal filed by the appellant was also rejected without assigning any reason

Attested  
 True Copy

11-07-2012

whatsoever; that since the charge on the basis of which the appellant was dismissed from service has already been set aside by the competent court of law and the appellant has been acquitted, therefore, the impugned order be set aside and the appellant be restored in service with all back benefits.

5. The learned Government Pleader while rebutting the arguments of the learned counsel for the appellant submitted before the court that the appellant was involved in offence of Qatl-e-Khata and thus charged under Section 319 PPC vide FIR No. 369, dated 10.11.2011 P.S Latumber, Karak; that since the appellant was involved in Qatl-e-Khata, therefore, he was rightly proceeded departmentally and was awarded major penalty of dismissal from service; that enquiry proceedings were conducted in accordance with law, therefore, the instant appeal be dismissed.

EXAMINED  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

ATTESTED

04.07.14

6. Perusal of the case file reveals that the appellant who was serving as Foot Constable in the Police Department was charged under Section 319 PPC Vide FIR No. 369 dated 10.11.2011 of Police Station, Latumber, Karak for committing murder/Qatl-e-Khata of one Baghdad Sherin by making indiscriminate aerial firing during musical programme in a marriage ceremony. On the basis of FIR registered against the appellant, he was issued charge sheet and statement of allegations to which the appellant submitted reply. A departmental enquiry was conducted against the appellant and the enquiry officer without associating the appellant in enquiry proceedings and without providing him chance of cross examining the witnesses, recorded statements of one Mohsin Ali and Hameedullah Jan and thereafter recommended major punishment for the appellant. As a consequence of the enquiry report, the appellant was served with a final show cause notice and eventually, the appellant was awarded major penalty of dismissal from service with immediate

Attested  
True Copy

effect. Interestingly, during the trial conducted before the court of Sessions Judge Karak, the said witnesses i.e. Mohsin Ali and Hameedullah Jan who were examined by the enquiry officer, were also examined by the competent court of law alongwith nine other witnesses. The learned trial court after conclusion of the trial held, "that no connection of the accused with the commission of alleged offence has been fully established through the evidence available on the record as such the conviction of accused on the basis of the charge framed against him is not legally proved and justified." Upon these observations, appellant was thus acquitted by the learned Sessions Judge, Karak vide judgment dated 07.06.2012.

7. Hence, in the above stated circumstances, when the accused/appellant has already been acquitted by the competent court of law and the witnesses who were examined by the enquiry officer in the absence of the appellant were also examined by the competent court of law and did not rely upon testimony of these witnesses, therefore, we by partially accepting the present appeal set aside the impugned orders, reinstate the appellant in service and remand the case back to the respondent department to conduct denovo departmental enquiry/proceedings against the appellant taking into consideration all the aspects discussed above and to provide the appellant opportunity to associate with enquiry proceedings so that he can defend himself. 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.

Certified to be true copy

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

ANNOUNCED  
04.07.2014

Sdf-Muhammad Amir Nazir, Member.  
Sdf-Sultan Mahmood Khattak, Member.

Date of Presentation (SULTANMA) 8.7.2014  
Number of Vols 1600  
Copying Fee 10-00  
Urgent \_\_\_\_\_  
Total 10-00  
Name of Copyist SN  
Date of Completion of Copy 10.7.2014  
Date of Delivery of Copy 10.7.2014

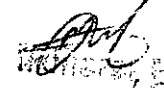
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True Copy



د ۱۰ روز نامی 8/14

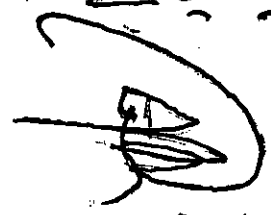
۱۰ آمدہ برائے خالی! عبدالعزیز خان سے وقت ۹:۴۰ بجے مورخہ 8/14 اس وقت دفتر ORSI  
 سے تیسری فریڈی سرورہ مول ٹوکنر دہلی ضلع کیٹن عملت علی ۱۹۵۰ کی فریڈی  
 کو کوالہ OB نمبر 367 مورخہ 7/14 کو دوبارہ فریڈی پر بحال  
 کر دیا گیا ہے، یہ فریڈی ڈیپارٹمنٹس / اعلیٰ نہ انکو اٹری دوبارہ کی جانے  
 مذکورہ کی جانے درج اور فریڈی کرنے میں ترمیم اور کارڈ دفتر ORSI کے لبراری  
 نہ بھیج دیا جاتا ہے بعد علیہ مرتب کر کے اس کے ساتھ کارڈوں اور ان کے  
 خدمت میں ارسال ہوگی

ص ۱۰۰  
 نقل مطابق اصل ہے

  
 8-8-14

Attested  
 True Copy

مذکورہ کو دوبارہ بحال  
 کرنے پر 54 بنا کر  
 لارڈ کیا گیا ہے



ORSI / E  
 8-8-14

Better Copy

ضلع پشاور

از دفتر محرران لائن ایڈیٹس HQ

مد 10 روز نامچہ 8/8/14

10 آمدہ پروانہ بحال/حاضری

عبدالصیر خان CO وقت 9:40 بجے مورخہ 8/8/14 اس وقت دفتر OASI سے کہا تحریری پروانہ موصول ہو کر درجہ معملہ کنشیل عصمت علی 190 ایڈ فورس کو بحوالہ OB نمبر 367 مورخہ 7/8/14 کو دوبارہ نوکری پر بحال کر دیا گیا ہے جبکہ مذکورہ کی ڈیپارٹمنٹل/محکمانہ انکوائری دوبارہ کی چلائی گی مذکورہ کی حاضری درج روز نامچہ کر کے مزید تکمیل ریکارڈ دفتر ORSc برانچ بھجوا یا جاتا ہے تقلمد علیحدہ مرتب کر کے معہ..... کارروائی افسران بالا کی خدمت میں ارسال ہوگی۔

جناب عالی!

نقل بمطابق اصل ہے

دستخط.....

8-8-14

مذکورہ کو دوبارہ بحال کرنے پر 54 نیا نمبر الاٹ کیا گیا ہے۔

دستخط.....

8-8-014.....

P- (11)



Office of the Deputy Commandant  
Elite Force Khyber Pakhtunkhwa Peshawar



No. 11305-11 /EF

Dated 07.08.2014

ORDER

Consequent upon the judgement of the Khyber Pakhtunkhwa Services Tribunal Peshawar dated 04.07.2014, Constable Asmat Ali No. 90 of Elite Force Tank in which reinstated in service.

He have departmental equipment/records etc. for him to be given. He is a named Constable.

(SAJID KHAN MOHAMMAD)  
Deputy Commandant  
Elite force Khyber Pakhtunkhwa Peshawar

Copy of above is forwarded to the:-

1. Superintendent of Police Headquarters Elite Force Peshawar.
2. Acting Deputy Superintendent of Police Elite Force Kohat.
3. Office Superintendent Elite Force Khyber Pakhtunkhwa Peshawar.
4. [unclear]
5. [unclear]
6. Assistant Elite Force Khyber Pakhtunkhwa Peshawar
7. OAS/SPC Elite Force Khyber Pakhtunkhwa Peshawar

*Handwritten notes:*  
[unclear]  
[unclear]  
[unclear]

Attested  
[unclear]  
True Copy

**Office of the Deputy Commandant  
Elite Force Khyber Pakhtunkhwa Peshawar**

No.11305-11/EF

Dated 07/08/2014

**ORDER**

Consequent upon the judgment of Khyber Pakhtunkhwa Services Tribunal Peshawar dated 04.07.2014, Constable Asmat Ali No.90 of Elite Force Karak is hereby reinstated in service.

De-novo departmental enquiry/proceedings will be initiated against the above named Constable.

Sd/-

**(SAJID KHAN MOHMAND)**

Deputy Commandant

Elite Force Khyber Pakhtunkhwa, Peshawar

Copy of above is forwarded to the:-

1. Superintendent of Police Headquarters Elite Force Peshawar.
2. Acting Deputy Superintendent of Police Elite Force Kohat.
3. Office Superintendent Elite Force Khyber Pakhtunkhwa, Peshawar.
4. \_\_\_\_\_
5. Accountant Elite Force Khyber Pakhtunkhwa, Peshawar.
6. OASI/SRC Elite Force, Khyber Pakhtunkhwa, Peshawar.

P-12

Anx: C

**SUMMARY OF ALLEGATIONS**

I, Sajid Khan Momand, Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar as competent authority, am of the opinion that Constable Asmat Ali No. 90/54 now posted in Elite Headquarters, has rendered himself liable to be proceeded against as he has committed the following misconduct within the meaning of Police Rules (amended vide NWFP gazette, 27<sup>th</sup> January 1976).

**SUMMARY OF ALLEGATIONS**

He was allegedly involved in case FIR No. 369, dated 10.11.2011 u/s 319, PPC Police Station Latambar district Karak.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations dinove enquiry is ordered, reinstated by the Khyber Pakhtunkhwa service Tribunal Peshawar Mr. Javed Iqbal Khan Acting Deputy Superintendent of Police, Elite Force Headquarters is appointed as Enquiry Officer.

3. The Enquiry Officer shall provide reasonable opportunity of hearing to the accused, record statements etc and findings within (25 days) after the receipt of this order.

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

  
(SAJID KHAN MOMAND)

Deputy Commandant

Elite Force Khyber Pakhtunkhwa Peshawar.

No. 11680 85 /EF, dated Peshawar the 13/08/2014.

Copy of the above is forwarded to the:-

1. Acting Deputy Superintendent of Police, Elite Force Headquarters.
2. RI, Elite Force Khyber Pakhtunkhwa Peshawar.
3. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
4. SRC/FMC, Elite Force Khyber Pakhtunkhwa Peshawar.
5. FC Asmat Ali No. 90/54, of Elite through reader DSP Elite Force HQrs.

Attested  
True Copy

  
(SAJID KHAN MOMAND)

Deputy Commandant

Elite Force Khyber Pakhtunkhwa Peshawar.

P-

(13)

## CHARGE SHEET

I, Sajid Khan Momand, Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar as competent authority, hereby charge you Constable Asmat Ali No. 90/54 of Elite Force as follows;

You were allegedly involved in case FIR No. 369, dated 10.11.2011 u/s 319 PPC, Police Station Latambar district Karak.

2. By reason of the above, you appear to be guilty of misconduct under the Police Rules (amended vide NWFP gazette, 27<sup>th</sup> January 1976) and have rendered yourself liable to all or any of the penalties specified in the said rules.

3. You are therefore, directed to submit your defense within seven days of the receipt of this Charge Sheet to the Enquiry Officer.

4. Your written defense, if any, should reach 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 ex-parte action shall be taken against you.

5. You are directed to intimate whether you desire to be heard in person.

6. A statement of allegation is enclosed.

(SAJID KHAN MOMAND)

Deputy Commandant

Elite Force Khyber Pakhtunkhwa Peshawar.

Attested  
True Copy

P- (14) (14) Anx: D

To

The Honourable Mr. Javid Iqbal Khan Acting Deputy  
Superintendent of Police, Elite Force Headquarters.

**Subject: Reply to the Charge Sheet and Summary of allegation  
No.11680 85/EF, dated Peshawar the 13/08-2014.**

Respected Sir,

With due respect I have the honour to submit the instant reply in response to the Charge Sheet and Summary of allegation for your kind consideration and favourable action.

That i have never been involved in any sort of criminal activity. The question FIR No.369, dated 10-11-2011 under section 319 PPC was lodged against me under misconception of actual facts. The allegations leveled against me in the FIR were totally false and flimsy in nature. The controversial fact of my involvement in the case was totally false and therefore, the complainant and his family were satisfied of my non involvement through the intervention of the Local Elders; and that was the only reason that the complainant of the FIR appeared before the Court and exonerated me of the charges leveled against me. The Honourable Session Judge has also acquitted me from the criminal liability vide her Judgment dated 07-06-2012 not only on the basis of the statement of the complainant but on merit also.

It is humbly submitted that Police Rules 16-3 explains that when a Police Officer has been tried and acquitted by a criminal court, he shall not be punished departmentally on the same charges.

It is also humbly submitted that the Honourble Supreme Court of Pakistan has held in numbers of reported judgments that an employee who has been acquitted by a criminal court is entitled for re-instatement. Reliance is placed on the following.

Attested  
True Copy



1. When facts and circumstances of the criminal case and disciplinary proceeding are the same..... Civil Servant entitle for re-instatement... (2011 TD 164).
2. Civil Servant Charged with Criminal Offence...exonerated by the complainant ...Acquitted... Department constituted fact finding inquiry... Civil Servant not participated ... Major Penalty (Dismissal) ... set aside.(2003 SCMR 207(b), 2003 PLC (CS) 7(b).
3. Dismissal... Registration of FIR... Acquitted... Such dismissal could not be insisted to be retained in field (2009 PLC (CS) 471, 1986 PLC (CS) 130.
4. 2001 SCMR 269, 2003 PLC (CS) 814, 2002 SCMR 57.
5. Criminal Charge... Dismissed...Acquittal by competent court of law....Civil servant shall be deemed not to have committed the charge offence....Authority would be bound to re-instate the civil servant. (2013 PLC (CS) 1398(a) (b).
6. Civil Servant was proceeded against on the statement of compliant before Police. Complainant resoled from his statement during the course of Criminal Proceedings and Civil Servant was acquitted of the charge level against him, but in departmental proceeding he was dismissed from service on the basis of complainant statement before the police. Statement of complaint has been recorded before the police and the same could not be used in departmental proceeding and more so the same has not scrutinized through the scrutiny of cross examination, therefore has no evidently value. Civil Servant was re instated, 2013 FLC (CS) 1059, 2013 SCMR 714.

In view of the above, it is humbly submitted that departmental proceeding may kindly be filed against me and I may kindly be re-instated with all back benefits.

It is also requested that I may kindly be provided an Opportunity of being heard in person.

Yours faithfully

Constable Asmat Ali No.90/54 Elite Force, Police Line,Peshawar.

Dated: 10/05/2014

Attested  
True Copy



P- (16) Anx: E

FINAL SHOW CAUSE NOTICE

I, Sajid Khan Mohmand, Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar as competent authority under Police Rules (amended vide NWFP gazette, 27<sup>th</sup> January 1976), do hereby serve you Constable Asmat Ali No. 90/54 of Elite Force as follows:

You were allegedly involved in case FIR No. 369, dated 10.11.2011 U/S 319, PPC Police Station Latambar, district Karak.

i. That consequent upon the completion of enquiry conducted against you by Acting DSP/Elite Force Headquarters, you were given full opportunity of hearing but failed to satisfy the Enquiry Officer.

ii. On going through the finding and recommendation of the enquiry officer. the material available on record, I am satisfied that you have committed the omission/commission specified in Police Rules (amended vide NWFP gazette, 27<sup>th</sup> January 1976) and charges leveled against you have been established beyond any doubt.

2. As a result therefore, I, Sajid Khan Mohmand, Deputy Commandant Elite Force, Khyber Pakhtunkhwa Peshawar as competent authority have tentatively decided to impose major penalty upon you including dismissal from service, under Police Rules (amended vide NWFP gazette, 27<sup>th</sup> January 1976) of the said ordinance.

3. You are therefore, directed to show cause as to why the aforesaid penalty should not be imposed upon you.

4. If no reply to this show cause notice is received within seven days of its delivery, in the normal course of circumstances, it shall be presumed that you have no defense to put and in that case an ex-parte action shall be taken against you.

5. A copy of the finding of the Enquiry Officer is enclosed.

(SAJID KHAN MOHMAND)PSP  
Deputy Commandant  
Elite Force Khyber Pakhtunkhwa Peshawar

No. 13452 /EF, dated Peshawar the 11/09/2014.

Constable Asmat Ali No. 91/54 of Elite through reader A/DSP Elite HQrs.

Attested  
True Copy

P- (17)

Anx: F



To

The Honourable Mr. Sajad Khan Mohmand Deputy  
Commandant, Elite Force Khyber Pakhtunkhwa,  
Peshawar.

**Subject: Reply to the Final Show Cause Notice No.13452/EF, dated  
Peshawar the 11/09/2014.**

Respected Sir,

With due respect I have the honour to submit the instant reply in response to the Final Show Cause Notice for your kind consideration and favourable action.

That I have never been involved in any sort of criminal activity. The question FIR No.369, dated 10-11-2011 under section 319 PPC was lodged against me under misconception of actual facts. The allegations leveled against me in the FIR were totally false and flimsy in nature. The controversial fact of my involvement in the case was totally false and therefore, the complainant and his family were satisfied of my non involvement through the intervention of the Local Elders; and that was the only reason that the complainant of the FIR appeared before the Court and exonerated me of the charges leveled against me. The Honourable Session Judge has also acquitted me from the criminal liability vide her Judgment dated 07-06-2012 not only on the basis of the statement of the complainant but on merit also.

It is humbly submitted that the charges leveled against me has not been proved against me in the departmental inquiry. No evidence is available on the case file to attach me with the alleged allegations.

It is humbly submitted that I have already submitted my detail reply in response to the charge sheet and statement of allegation. I do rely on my stance as explained my reply to the charge sheet and statement of allegation.

Attested  
True Copy

It is further submitted that I have not been provided with copy inquiry report with the instant final show cause notice, which is the violation of right of fair defense.


It is humbly submitted that Police Rules 16-3 explains that when a Police Officer has been tried and acquitted by a criminal court, he shall not be punished departmentally on the same charges.

It is also humbly submitted that the Honourble Supreme Court of Pakistan has held in numbers of reported judgments that an employee who has been acquitted by a criminal court is entitled for re-instatement.

In view of the above, it is humbly submitted that departmental proceeding may kindly be filed against me and I may kindly be re-instated with all back benefits.


It is also requested that I may kindly be provided an Opportunity of being heard in person.

Yours faithfully



Constable Asmat Ali No.90/54 Elite Force, Police Line, Peshawar.

Dated: 12/09/2014

Attested  
  
True Copy

P- (19)

Anx: G

KHYBER PAKHTUNKHWA POLICE

Office of the Deputy Commandant  
Elite Force Khyber Pakhtunkhwa Peshawar



No. 14002 - 07 / EF

Dated 22/08/2014.

ORDER

Constable Asmat Ali No. 90/54, of Elite Force Khyber Pakhtunkhwa were found guilty of gross misconduct on the following ground.

He was allegedly involved in case FIR No. 369, dated 10.11.2011 U/S 319, PPC Police Station Latambar district Karak. A de-novo enquiry was conducted against him on service Tribunal Khyber Pakhtunkhwa order and Mr. Javed Iqbal Khan Acting Deputy Superintendent of Police, Elite Force Headquarters was appointed as Enquiry Officer. Enquiry Officer exonerated him from the charges and recommended him for minor punishment.

Therefore, I, Sajid Khan Mohmand, Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar as competent authority, treat the period he remained out of duty as absence, without pay, i.e 15.12.2011 to 07.08.2014 (Total 963 days)

(SAJID KHAN MOHMAND)

Deputy Commandant  
Elite Force Khyber Pakhtunkhwa Peshawar.

Copy of the above is forwarded to the:-

1. Acting Deputy Superintendent of Police, Elite Force HQrs Peshawar.
2. RI, Elite Force Khyber Pakhtunkhwa Peshawar.
3. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
4. OASI, Elite Force Khyber Pakhtunkhwa Peshawar.
5. SRC/FMC, Elite Force Khyber Pakhtunkhwa Peshawar.

Attested

True Copy

P-2000 Ann: H

To

Honourable Commandant Elite Force Khyber Pakhtunkhwa,  
Peshawar.

**Subject: Departmental Appeal against the Order No.14002-07/EF  
dated 22-09-2014.**

Respected Sir,

With due respect I have the honour to submit the instant reply in response to the final Notice cited above for your kind consideration and favourable action, please.

1. That I was falsely involved in case FIR No. 369, dated 10-11-2011 under section 319, PPC P/S Latambar District Karak.
2. That I have been honourably acquitted by Court of Session Judge, Karak vide order dated 07-06-2012.
3. That during the Course of Criminal Trial, I was departmentally proceeded on account of my alleged involvement in above cited criminal case and was dismissed from service vide order dated 27-12-2012.

That being aggrieved from the penal order, I lodged departmental appeal and then submitted Service Appeal No.296/2012 before the Khyber Pakhtunkhwa Service Tribunal, Peshawar.

The Honorable Service Tribunal vide order dated 04-07-2014 was directed to set aside the impugned penal order and re-instate the appellant with further direction to the department to initiate De novo inquiry against me strictly in accordance with law.

The appellant was re-instated vide order dated 07-08-2014 and de novo inquiry proceeding were initiated against me.

~~SECRET~~

7. That charge sheet and statement of allegation were served upon me on 13-08-2014, to which I submitted my reply.
8. That inquiry was conducted, wherein I was provided opportunity of cross examination. The prosecution failed to establish any sort of misconduct on my part. As the criminal case was concocted and fabricated, therefore, no evidence was available which could contact me with leveled charges and therefore, Inquiry Officer exonerated me of the criminal charges.
9. That I have never been involved in any sort of criminal activity. The question FIR No.369, dated 10-11-2011 under section 319 PPC was lodged against me under misconception of actual facts. The allegations leveled against me in the FIR were totally false and flimsy in nature. The controversial fact of my involvement in the case was totally false and therefore, the complainant and his family were satisfied of my non involvement through the intervention of the Local Elders; and that was the only reason that the complainant of the FIR appeared before the Court and exonerated me of the charges leveled against me. The Honourable Session Judge has also acquitted me from the criminal liability vide her Judgment dated 07-06-2012 not only on the basis of the statement of the complainant but on merit also.
10. That the inquiry officer exonerated me of the leveled charges.
11. That lastly I was served with final show cause, to which I submitted detailed reply and explained my non involvement in the alleged concocted criminal case.
12. That the Honourable Deputy Commanded vide impugned order dated 22-09-2014 awarded me major penalty by treating the period of my 1<sup>st</sup> dismissal (15-12-2011) till the order of re-instatement i.e 07-08-2014

as absence without pay.

13. That now I being aggrieved of the harsh penal order dated 22-09-2014, I prefer the instant departmental appeal inter alias on the following grounds:-

Grounds:-

- A. That I have not been treated in accordance with law, rules and policy and thus the authorities acted in violation of Article 4 of the Constitution of Pakistan. It is humbly submitted that Police Rule 16-3 provides that when a police officer has been tried and acquitted a criminal court, he shall not be punished departmentally on the same charges. It is also humbly submitted that the Honorable Supreme Court of Pakistan has held in numbers of judgments that an employee, who has been acquitted by a criminal court is entitled for re instatement.
- B. Re-instated employee would be entitled to back benefits as a matter of course unless employer is able to establish by cogent evidence that concerned employee had been gainfully employed elsewhere. In this respect, initial burden would lie upon the employer and not upon the employee to prove that such employee was gainfully employed during period of termination from his service. 2010 TD (Labour) 41.
- C. That I have been exonerated by the inquiry officer of the leveled charges, therefore, I am entitled to be re instated with back benefits.
- D. That I have been remained jobless since my dismissal order and is under heavy burden of debts etc.

Attested

Signature

True Copy



P-

93

E. That there is no evidence which could involve me with alleged offence.

In view of the above, it humbly requested that Your Honor may graciously be pleased to set aside the impugned order dated 22-09-2014 of Honorable Deputy Commandant to the extent that my period from the date of dismissal till the date of my re instatement be treated as period spent on duty and I may be allowed back benefits.

Yours faithfully

*Asmat Ali*

Constable Asmat Ali No.90/54 Elite Force, Police Line, Peshawar.

**Dated: 25/09/2014**

**Arrested**  
**True Copy**

Anx: I

R



24



Office of the Addl: Inspector General of Police  
Elite Force Khyber Pakhtunkhwa Peshawar

No. /EF

Dated 11/12/2014

ORDER

Reference to this office order No. 14002-07/EF, dated 22.09.2014.

As approved by the competent authority i.e. Addl: IGP/Commandant Elite Force Khyber Pakhtunkhwa 120 days are hereby allowed with full pay w.e.f. 15.12.2011 to 12.04.2012, 16 days half pay w.e.f. 13.04.2012 to 28.04.2012 and the remaining period is to be treated as leave without pay in respect of Constable Asmat Ali No. 90/54.

(SAJID KHAN MOHMAND)

Deputy Commandant

Elite Force Khyber Pakhtunkhwa Peshawar

No. 18440-43/EF

Copy of above is forwarded for information and necessary action to the:-

1. Office Superintendent, Elite Force Khyber Pakhtunkhwa Peshawar
2. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar
3. SRC, Elite Force Khyber Pakhtunkhwa Peshawar
4. OASI, Elite Force Khyber Pakhtunkhwa Peshawar

Attested  
True Copy

Popay

12/12/014

BEFORE THE HONOURABLE K.P.K SERVICE TRIBUNAL  
PSHAWAR

Service Appeal No. 1436 /2014

Asmat Ali Constable No.54 Elite Force, District Karak

.....Petitioner.

Versus

1484  
31-12-14

1. The Commandant Elite Force Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Commandant Elite Force Khyber Pakhtunkhwa, Peshawar..... Respondents

Service Appeal under section 4 of the Khyber Pakhtunkhwa service Tribunal Act, 1974 read with Rule 19 of the Khyber Pakhtunkhwa Govt: Servant (Efficiency and Discipline) Rules 2011 against the impugned final order of respondent No.2 dated 11-12-2014 wherein he partially accepted/allowed the departmental appeal of the appellant.

Prayer:-

On acceptance of the instant service appeal this Honourable Tribunal may graciously be pleased to declare the impugned order of respondent No.1 dated 11-12-2014 to the extent of treating the period from 13-04-2012 to 28-04-2012 as half pay and the remaining period from 28-04-2012 till re instatement as leave without pay is illegal, unlawful and without lawful authority and set aside the same to that extent only and also direct the respondents to treat the same as period spent on duty and grant him all back benefits accordingly.

Respectfully Sheweth,

Facts giving rise to the present Service Appeal are as under:-

1. That appellant is the employee of respondent Organisation. He has considerable service at his credit.
2. That appellant was falsely charged in case FIR No.369 dated 10-11-2011 P/S Latumber, Karak under section 319 PPC.

31/12/14

S.No	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
	17.05.2016	<p style="text-align: center;"><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,</u> <u>PESHAWAR.</u></p> <p style="text-align: center;">APPEAL NO.1436/2014</p> <p style="text-align: center;">(Asmat Ali-vs-Commandant Elite Force Kyber Pakhtunkhwa. Peshawar and others).</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>PIR BAKHSH SHAH, MEMBER:</u></p> <p>Appellant with counsel (Ms. Uzma Syed, Advocate) and Mr. Muhammad Jan, GP for respondents present.</p> <p>2. Constable Asmat Ali, charged in a criminal case vide FIR No. 369 dated 10.11.2011 Police Station Latumber, District Karak was departmentally proceeded against and dismissed from service. This Tribunal vide its judgment dated 04.07.2014 reinstated him for the purpose of <i>de-novo</i> proceedings and it was also provided that the question of his back benefits will be subject to outcome of the fresh departmental enquiry/proceedings. According to record fresh enquiry was conducted by Mr. Javid Iqbal Khan, acting DSP Elite Force Head Quarter who in his report dated 04.09.2014 recommended appellant for minor penalty and also hold that he is not entitled for any salary as back benefits as he was not on duty. Accordingly, Deputy Commandant Elite Force as competent authority vide his order dated 22.09.2014 treated his absence period as his leave without pay. On departmental appeal the impugned order dated 11.12.2014 treated the leave period as leave of the kind due. Appellant has instituted service appeal with the following prayer:-</p> <p style="text-align: center;">“That on acceptance of the instant service appeal this</p>

Honourable Tribunal may graciously be pleased to declare the impugned order of respondent No.1 dated 11.12.2014 to the extent of treating the period from 13.04.2012 to 28.04.2012 as half pay and the remaining period from 28.04.2012 till reinstatement as leave without pay as illegal, unlawful and without lawful authority and set aside the same to that extent only and also direct the respondents to treat the same as period spent on duty and grant him all back benefits accordingly”.

3. Arguments heard and record perused.

4. After a careful perusal of the record and pro & contra arguments, Since the Enquiry Officer in *de-novo* proceeding has declined any relief to the appellant for back benefits and has recommended the appellant for imposition of minor penalty, therefore, the Tribunal is of the considered view that the impugned order does not ask for any indulgence of this Tribunal. Resultantly, the appeal is dismissed. Parties are left to bear their own cost. File be consigned to the record room.

sd/-  
(PIR BAKHSH SHAH)  
MEMBER

sd/-  
(MUHAMMAD AAMIR NAZIR)  
MEMBER

ANNOUNCED  
17.05.2016