

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 1403/2014

Date of institution ... 15.12.2014
Date of judgment ... 06.06.2016

Fazle Haq Ex-Constable No. 927,
District Police, Mardan.

... (Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Inspector General of Police, Region-I, Mardan.
3. The District Police Officer, Mardan.

... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 04.09.2014, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT AGAINST THE ORDER DATED 15.07.2014 HAS BEEN REJECTED FOR NO GROUNDS.

Mr. Muhammad Asif Yousafzai, Advocate.

... For appellant.

Mr. Kabirullah Khan Khattak, Assistant Advocate General

... For respondents.

MR. PIR BAKHSH SHAH
MR. AHMED HASSAN

... MEMBER (JUDICIAL)
... MEMBER (EXECUTIVE)

JUDGMENT

MR. PIR BAKHSH SHAH:-

The appellant joined service in Police Department as Constable in 1989. He rendered 25 years service, but on the charge of willful absence from duty for 97 days, he was dismissed from service vide order of DPO Mardan dated 15.07.2014. His departmental appeal was also rejected vide order dated 04.09.2014, hence the instant service appeal under the section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

2. Learned counsel for the appellant submitted that the appellant has rendered 25 years unblemished service. Due to illness he was not able to perform duty, hence absence from duty also was not willful. However, without going into merits of the case, the penalty of dismissal

from service is too harsh which may be converted into his compulsory retirement. Reliance was placed on 2007 PLC (C.S) 876.

3. The appeal was resisted by learned Assistant Advocate General who stated that since appellant remained absent, hence he was rightly dismissed from service and that the instant appeal is also time barred.

4. Evidently the charge leveled against the appellant does not pertain to moral turpitude. It is also not disputed that appellant has rendered 25 years of service in the Police Department. Hence in these circumstances, the Tribunal without discussing merits of the case, is inclined to modify penalty of dismissal awarded to the appellant into compulsory retirement from service. The appeal is allowed in the above terms. Parties are, however, left to bear their own costs. File be consigned to the record room.

ANNOUNCED
06.06.2016


(AHMED HASSAN)
MEMBER


(PIR BAKHSH SHAH)
MEMBER

Appeal No. 1403/2014
Fazle Haq vs Govt

06.06.2016

Counsel for the appellant and Mr. Muhammad Ghani, S.I (Legal Branch) alongwith Mr. Kabirullah Khan Khattak, Assistant AG for respondents present.

Vide our detailed judgment of today placed on file, the Tribunal without discussing merits of the case, is inclined to modify penalty of dismissal awarded to the appellant into compulsory retirement from service. Parties are, however, left to bear their own costs. File be consigned to the record room.

ANNOUNCED
06.06.2016


MEMBER


MEMBER

4

30.04.2015

Counsel for the appellant and Mr. Muhammad Ghani, SI (legal) alongwith Addl: A.G. for respondents present. Reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 28.10.2015.


Chairman

28.10.2015

Clerk to counsel for the appellant and Mr. Muhammad Ghani, SI (legal) alongwith Asst: AG for respondents present. Rejoinder submitted on behalf of the appellant, copy whereof is handed over to the learned Asst: AG. To come up for arguments

on 14-3-16



Member

14.03.2016

Counsel for the appellant and Mr. Muhammad Ghani, S.I alongwith Mr. Ziaullah, GP for respondents present. Learned counsel for the appellant requested for adjournment. Adjourned for arguments to

6/6/16 before D.B.



MEMBER


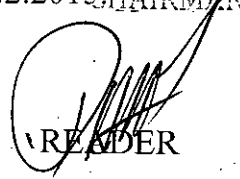



MEMBER


Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1403/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	15.12.2014	<p>The appeal of Mr.Fazal Haq presented today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2	21.1.2015	<p>This case is entrusted to Registrar for preliminary hearing to be participated by</p> <p>Since 20th January, 2015 has been declared as public holiday by the provincial government, therefore, case to come up for the same on 9.2.2015</p> <p style="text-align: right;"> CHAIRMAN</p>
3.	9.2.2015	<p>Appellant with counsel present. Counsel for the appellant submitted that major penalty of dismissal from service has been awarded to the appellant on the basis of absence from duty but the absence period was treated as leave without pay by the competent authority, therefore, no further penalty could be awarded to the appellant on this ground. Points raised need consideration. The appeal is admitted for regular hearing, subject to all legal exceptions. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 30.4.2015.</p> <p style="text-align: right;"> MEMBER</p>

Appellant deposited process fee
 & Security fee



BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1403/2014

Fazle Haq

V/S

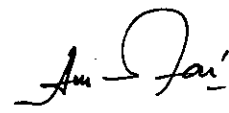
Police Deptt:

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APPELLANT

THROUGH:


M.ASIF YOUSAFZAI

TAIMUR ALI KHAN

& 
GOHER SAJJAD KHAN

(ADVOCATES, PESHAWAR)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1403/2014

Fazle Haq Ex- Constable No.927,
District Police, Mardan.

[Stamp]
1440
15-12-2014

VERSUS

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

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974 AGAINST THE ODER DATED 04.09.2014, WHEREBY THE DEPARTMENT APPEAL OF THE APPELLANT AGAINST THE ORDER DATED 15.07.2014 HAS BEEN REJECTED FOR NO GROUNDS.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 04.09.2014 AND 15.07.2014 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED WITH ALL BACK BENEFITS OR PENALTY OF THE APPELLANT OF DISMISSAL FROM SERVICE MAY BE CONVERTED INTO COMPULSORY RETIREMENT FOR HIS MORE THAN 25 YEARS RENDERED SERVICE. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

[Signature]
15/12/14

R. SHEWETH:

1. That the appellant joined the police force in 1989 and have more than 25 years of service at his credit.
2. That charge sheet was served to the appellant in which allegation of absenteeism were leveled against the appellant. The appellant was also asked to file reply after charge sheet was served on the appellant under police rules 1975. The appellant submitted his detail reply to the charge sheet and denied allegation. (Copy of charge sheet and reply the charge sheet are attached as Annexure- A&B).
3. That then one sided inquiry was conducted at the back of appellant and none of the statement was recorded or record examined in presence of the appellant. However even then the appellant was held responsible by the inquiry officer. (Copy of inquiry report is attached as Annexure-C)
4. That on 15.07.2014 the penalty of dismissal from service was imposed upon appellant under police rules 1975 with out conducting proper inquiry and without serving final show cause notice upon the appellant. (Copy of order is attached as Annexure-D)
5. That against the order dated 15.07.2014 appellant filed departmental appeal but the same was also rejected for no good ground on 04.09.2014. (Copies of departmental appeal and rejection order are attached as Annexure- E&F)
6. That now the appellant come to this august tribunal on the following grounds amongst others. The appellant has become late in filing appeal due to severe illness for which proper application for condonation has also been filed along with this application with medical proofs.

GROUND:

- A) That the impugned order dated 15.07.2014 and 04.09.2014 are against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.
- B) That the appellant has been condemned unheard and has not been treated according to law and rules.
- C) That neither any proper enquiry has been conducted nor any chance of defence been given to the appellant during inquiry. Which is the violation of norms of justice.


- D) That no final show cause notice was served to the appellant which was necessary before imposing major punishment of dismissal from the service, therefore the impugned order is liable to be set aside.
- E) That the appellant has not been treated under proper law of E&D Rules 2011, despite he was a civil servant of the province, therefore, the impugned order is liable to be set aside on this score alone.
- F) That the absence period of the appellant is treated as leave without pay and as such there remained no grounds for imposing penalty on appellant as his absence was regularized by treating that period as leave without pay.
- G) That the penalty of dismissal from service is very harsh which is passed in violation of law and, therefore, the same is not sustainable in the eyes of law.
- H) That the appellant has more than 25 years of service and penalty of dismissal from service is very harsh while he has more than 25 years service at his credit. Thus not only the appellant will suffer but his family dependants will also suffer.
- I) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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

APPELLANT
Fazle Haq

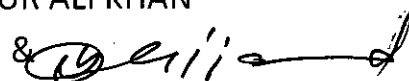


THROUGH:



M.ASIF YOUSAFZAI

TAIMUR ALI KHAN



GOHER SAJJAD KHAN

(ADVOCATES, PESHAWAR)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. _____/2014

Fazle Haq

V/S

Police Deptt:

**APPLICATION FOR CONDUCTION OF DELAY FOR CONDONING
THE DELAY CAUSED IN FILING THIS APPEAL.**

RESPECTFULLY SHEWETH:


1. That the appellant has filed an appeal along with this application in which no date is fixed so far.
2. That the appellant was dismissed from the service vide order dated 15.07.2014 against which he filed departmental appeal in time which was also rejected on 4.9.2014 but as the appellant remained under treatment due to illness therefore he could not engage a counsel in time for filing the appeal in this august Tribunal .(Copy of medical reports are attached as R1-R5)
3. That the appellant has a genuine cause and his application for condonation of delay is based on true facts which can be considered by this august Tribunal for condoning the delay.
4. That even otherwise the august Supreme Court of Pakistan has held that a lis must be decided on merits rather than knocking out the litigants on the basis of technicalities including limitation.
5. That the delay was not intentional but due to illness and keeping in vies appellant's more than 25 years service the delay is condonable.

It is therefore most humbly prayed that delay in the instant appeal may be condoned and to decide the matter on merits to meet the end of justice.

APPELLANT
Fazle Haq



THROUGH:


M.ASIF YOUSAFZAI

TAIMUR ALI KHAN

& 
GOHER SAJJAD KHAN

(ADVOCATES, PESHAWAR)

AFFIDAVIT.

It is affirmed that the contents of this application are true and correct and nothing has been concealed.

Deponent,


Fazle Haq

A (12)

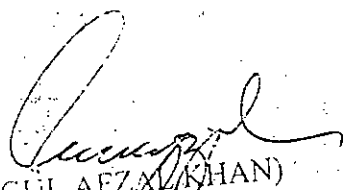
CHARGE SHEET UNDER NWFP POLICE RULES 1975

I, Gul Afzal Khan District Police Officer, Mardan as competent authority hereby charge you Constable Fazal Haq No. 927, as follows.

That you Constable, while posted at Police Station. Saddar, deliberately absented yourself from the lawful duty vide DD No.35 dated 06.12.2013 to-dated without any leave/permission of the competent authority. You are recommended for departmental proceedings by DSP/City vide his office letter No. 28, dated 13.02.2014.

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

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


(GUL AFZAL KHAN)
District Police Officer,
Mardan

ATTESTED


کوالر چارج شیٹ نمبر 484/R فورم 2 آء 21 سرورس عہدہ ہوں

چارج شیٹ میں میرے خلاف الزام لگایا گیا ہے۔ بددوران تفتیشی حکام

ملائے میں فورم 6 آء 6 سے میرا پتہ جاننے ہوا

اس سلسلہ میں سرورس عہدہ ہوں۔ کہ میں سرورس 5/5 ماہ سے

دفتر DPP صاحب دریاں میں بحیثیت DPP ڈیوٹی سر انجام دے رہا ہوں

اور وہاں پتہ چلے آئے تیار لے کے متعلق کسی نے اطلاع نہیں دی ہے۔ اور

کوئی بیرونی فوجیوں کو لے گیا ہے جس کی تصدیق DPP صاحب نے رپورٹ

لے کر بیان میں لایا ہے۔ اصل میں آپ جہا علی صاحبان میرا پتہ جاننے

میرا پتہ سرورس میں لکھا ہوا ہے اور وہاں سے بھی آئے۔ اور انکو سرورس کو لے کر

مارواں کے داخل دفتر فرما کر صلح ہمارے سرورس میں اس سلسلہ میں

میرا کوئی شعلت یا کوئی ناہمی نہیں ہے۔ یہی میرا بیان ہے جو کہ حقیقت

پہنچی ہے۔

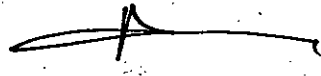
تاریخ 3/3/14

الکر سید فضل حق

ریشل فضل حق 927 مشتمل دفتر DPP صاحب دریاں

0346-9324760 -
0360-9057119

ATTESTED



-B15

19

فائل انکوائری رپورٹ کا نشیبل فضل حق نمبر 927 متعینہ شعبہ تفتیش

جناب عالی!

بحوالہ چارج شیٹ نمبری R/484 مورخہ 21/02/2014 کا نشیبل فضل حق نمبر 927 کے خلاف انکوائری کا دعویٰ موصول ہے جس میں کا نشیبل فضل حق نمبر 927 پر الزام لگایا گیا ہے کہ وہ شعبہ تفتیش میں تعینات تھا اور اس دوران اس کا تبادلہ بحوالہ آڈر بک نمبر 2632 مورخہ 02/12/2013 شعبہ تفتیش سے تھانہ صدر ذوالفقار کا نشیبل ثانی مشول سے کام لیتا رہا اور بحوالہ بد نمبر 35 مورخہ 06/12/2013 بحوالہ بد نمبر 26 مورخہ 10/03/2014 کل یوم 97 دن غیر حاضر ہوا۔ مذکورہ کا نشیبل نے بتایا کہ مجھے کوئی آڈر یا پروانہ نہیں ملا۔ جب ریڈر DPP اور شد مذکورہ نے کا نشیبل کے موبائل نمبر 8429923-0304 پر اطلاع دی تو اور زبانی اطلاع بھی دی گئی کہ آپ کا تبادلہ شعبہ تفتیش سے تھانہ صدر ذوالفقار ہو چکا ہے۔ آڈر وہاں پر اپنی حاضری کی رپورٹ کریں۔ آئیں کوئی صداقت نہیں ہے کہ مذکورہ کا نشیبل کو اپنے تبادلے کے بارے میں پتہ نہیں تھا۔ اس لئے کا نشیبل فضل حق نمبر 927 کو ایڈجسٹڈ ایمل غیر حاضری 97 یوم پر Major Punishment کی غارش کی جاتی ہے۔

(سجاد احمد)

کل مقلات (3)

ڈپٹی سپرنٹنڈنٹ آف پولیس سرکل تحت بھائی

Approved
Dismissed from Service
287
NO 1640/9
16-7-14
Ok
11-7

ATTESTED

ORDER

It has been reported that he Constable Fazle Haq No. 927, while posted at Police Station Saddar, Mardan committed the following act, which is are gross misconduct on his part as defined in Rules 02 (iii) of Police Rules 1975.

That Constable Fazle Haq No. 927, while posted at Police Station Saddar, deliberately absented himself from the lawful duty vide D.D No. 35 dated 06.12.2013 to DD No. 26 dated 10.03.2014 (Total 97 days).

In this connection, Constable Fazle Haq No. 927, was charge sheeted vide this office No. 484/R, date 21.02.2014 and also proceeded against departmentally through, inquiry officer Sajjad Ahmad DSP/Takht Bhai Mardan, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsement No. 297 /ST, dated 10.03.2014, that the allegation has been established against him.

The undersigned agreed with the findings of enquiry officer and the alleged Constable Fazle Haq No. 927, is hereby awarded major punishment of dismissed from service. The absence period may be treated as leave without pay.

Order announced

O.B No. 1594

Dated 14/7/2014

No. 7794.7/2014 R dated Mardan the 15-7 /2014

(Gul Afzal Afridi)
District Police Officer,
Mardan.

Copy for information and necessary action to:-

1. Deputy Inspector General Of Police Mardan Region-I, 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.

14

E**16**

To

The Deputy Inspector General of Police,
Region-I, Mardan.Subject: APPEAL FOR RESTORATION OF SERVICES.Respected Sir,

Most respectfully it is submitted that the undersigned, Fazle Haq Constable No. 927 has been performing his duty in the office of DPP Mardan as DFC for the last four/ five months. In the meanwhile his transfer was ordered to Police Station Saddar Mardan. It is worth mentioning that the undersigned was not formally informed through letter/ Parwana or any other source for attending new place of posting, that is why, the undersigned performed his duty on that station as usual till the dismissal of service. This fact has duly been narrated by the Reader to DPP in his written statement (placed in Inquiry File of the undersigned).

2. The Competent authorities of Police Department while considering the undersigned as absent from duty has been charge sheeted without any justification because there is no negligence on the part of the undersigned and he was usually performing his duty.

3. The undersigned has served about 25 years of service in police Department and is going to retire from service very soon while his services have been dismissed by the Police Department which has not only created an embarrassing situation for the undersigned but also deteriorated the future of innocent children of the undersigned.

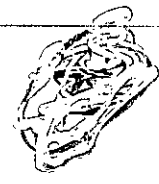
4. Keeping in view the above circumstances, the undersigned may be excused on sympathetic ground and his services may be restored so that he may earn livelihood for their innocent children and could gain benefit from his 25 long years of service rendered by him to Police Department and oblige.

ATTESTED

(FAZLE HAQ)

Constable No. 927

ORDER.

F  (17)

This order will dispose-off the appeal preferred by Ex-Constable Fazale Haq No. 927 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. 1599 dated 14.07.2014.

Brief facts of the case are that he while posted at Police Station Saddar, deliberately absented himself from the lawful duty without any leave/permission of the competent authority vide daily dairy No. 35 dated 06.12.2013 to daily dairy No. 26 dated 10.03.2014 (Total 97 days) . In this connection he was charge sheeted and also proceeded him against departmentally through Deputy Superintendent of Police Takht Bhai District, Mardan who after fulfilling necessary process, submitted his findings to District Police Officer, Mardan, in which the allegations were established against him, therefore he was dismissed from service.

I have perused the record and also heard the appellant in Orderly Room held in this office on 03.09.2014. He failed to justify his absence 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. 5935 /ES, Dated Mardan the 4-9- /2014.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 697/LB dated 07.08.2014.

His service record is returned herewith.

(*****)

4/9/14

ATTESTED

*Enlisted in 1989
25 yrs. Service*

18

VAKALAT NAMA

NO. _____/20

IN THE COURT OF Service Tribunal Peshawar.

Fazle Haq (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Police Depu: (Respondent)
(Defendant)

I/We Fazle Haq (Appellant)

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

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

Dated 15-12/2014

[Signature]
(CLIENT)

ACCEPTED

[Signature]
M. ASIF YOUSAFZAI
Advocate

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.

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

C

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

Service Appeal No. 1403/2014.

Fazal Haq Ex-Constable No. 927, District Mardan.....Appellant.

VERSUS.

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police, Mardan Region-I, Mardan
3. District Police Officer, Mardan.....Respondents.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS:-

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

REPLY ON FACTS:-

- 0-1
30.04.14
1. Correct. No comments.
 2. Correct to the extent that provision of charge-sheet is in consequence of the appellant's deliberate absence from official duty for almost 97 days. However, the appellant's negation/denial to the alleged absence is totally convoluted rather illogical.

3. Incorrect. The appellant was properly charge-sheeted. Besides, proper inquiry was conducted & all codal formalities were complied with.

(Copy of enquiry report is attached as Annexure-A)

4. Incorrect. The impugned dismissal order was issued vide OB No. 1599 on 14.07.2014 & not on 15.07.2014. However, the appellant has rightly been punished, under relevant rules, for the misconduct he committed.

(Copy of dismissal order is attached as Annexure-B)

5. Incorrect. The impugned order dated 14.07.2014 has been rejected on genuine grounds i.e non-arrival to his new posting place & then his continued deliberate absence.

(Copy of departmental appeal rejection is attached as Annexure-C)

6. The appellant's appeal is badly time-barred, therefore, holds no legal grounds to be entertained by the Honourable Service Tribunal.

REPLY ON GROUNDS:-

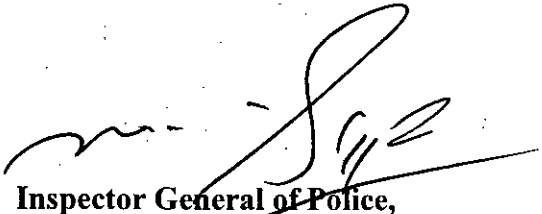
- A. Incorrect. The impugned orders 15.07.2014 & 04.09.2014 are passed in accordance with law, facts, norms of justice & material in record & is therefore, tenable & liable to be maintained.


- B. Incorrect. The appellant has been treated under rules/law & also heard personally by the competent departmental appellate authority on 03.09.2014.


- C. Incorrect. The appellant had committed misconduct & was therefore, proceeded against departmentally under rules. In this regard proper enquiry was conducted & all other codal formalities had been complied with also. There is no violation of norms of justice rather punished, as he deserved.
- D. Incorrect. All codal formalities are fulfilled.
- E. Incorrect. The appellant was member of Police force which is being run/administered under special law i.e Police Rules, so, the appellant has been dealt under Police Rules & the provisions of E & D rules 2011 does not apply to him.
- F. Infact, the appellant had been absent for extremely long period (97 days) & he neither arrived at his new place of posting nor assumed duties thereat, so, his absence period was treated as leave without pay.
- G. Incorrect. The appellant has been awarded punishment which he deserved under rules/law. There is no violation of any rules/law & the impugned orders are sustainable in the eyes of law.
- H. Correct to the extent of his long service but the appellant had committed misconduct by keeping himself absent for long period & was, therefore, punished under relevant rules.
(Copy of rule 2 (iii) of Police Rules-1975 is attached as Annexure-D)
- I. The respondents also seek permission of this Honourable court to present, if any other, grounds/rules etc at the time of arguments.

PRAYER:-

It is, therefore, most humbly prayed that the instant appeal is baseless & devoid of merit & baseless, is liable to be dismissed with costs.


**Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.**
(Respondent No. 1)


**District Inspector General of Police,
Mardan Region-I, Mardan.**
(Respondent No. 2)


**District Police Officer,
Mardan.**
(Respondent No. 3)

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

Service Appeal No. 1403/2014.

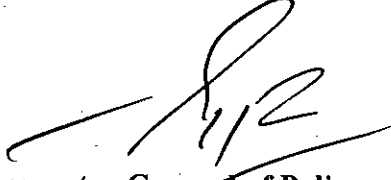
Fazal Haq Ex-Constable No. 927, District Mardan.....Appellant.


VERSUS.

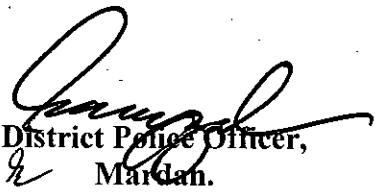
1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police, Mardan Region-I, Mardan
3. District Police Officer, Mardan.....Respondents.

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.


**Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.**
(Respondent No. 1)


**Deputy Inspector General of Police,
Mardan Region-I, Mardan.**
(Respondent No. 2)


**District Police Officer,
Mardan.**
(Respondent No. 3)

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

Service Appeal No. 1403/2014.

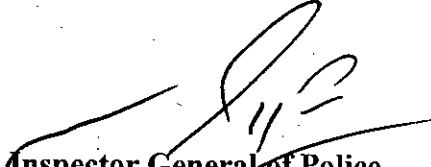
Fazal Haq Ex-Constable No. 927, District Mardan.....Appellant.


VERSUS.

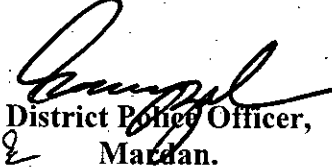
1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police, Mardan Region-I, Mardan
3. District Police Officer, Mardan.....Respondents.

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.


**Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 1)**



**Deputy Inspector General of Police,
Mardan Region-I, Mardan.
(Respondent No. 2)**


**District Police Officer,
Mardan.
(Respondent No. 3)**

فائل انکوائری رپورٹ کا نشیبل فضل حق نمبر 927 متعینہ شعبہ تفتیش

جناب عالی!

بحوالہ چارج شیٹ نمبری R/484 مورخہ 21/02/2014 کا نشیبل فضل حق نمبر 927 کے خلاف انکوائری کاغذات موصول ہو کر جس میں کا نشیبل فضل حق نمبر 927 پر الزام لگایا گیا ہے کہ وہ شعبہ تفتیش میں تعینات تھا اور اس دوران اس کا تبادلہ بحوالہ آڈر بک نمبری 2632 مورخہ 02/12/2013 شعبہ تفتیش سے تھانہ صدر ہوا۔ مذکورہ کا نشیبل ٹال مٹول سے کام لیتا رہا اور بحوالہ مد نمبر 35 مورخہ 06/12/2013 تا بحوالہ مد نمبری 26 مورخہ 10/03/2014 کل یوم 97 دن غیر حاضر ہوا۔ مذکورہ کا نشیبل نے بتایا کہ مجھے کوئی آڈر یا پروانہ نہیں ملا ہے۔ جبکہ ریڈر DPP ارشد مذکورہ نے کا نشیبل کے موبائل نمبر 0304-8429923 پر اطلاع دی۔ اور زبانی اطلاع بھی دی گئی کہ آپ کا تبادلہ شعبہ تفتیش سے تھانہ صدر ہو چکا ہے۔ اور وہاں پر اپنی حاضری کی رپورٹ کریں۔ اس میں کوئی صداقت نہیں ہے کہ مذکورہ کا نشیبل کو اپنے تبادلے کے بارے میں پتہ نہیں تھا۔ اس لئے کا نشیبل فضل حق نمبر 927 کو بوجہ طویل غیر حاضری 97 یوم پر Major Punishment کی سفارش کی جاتی ہے۔



(سجاد احمد)

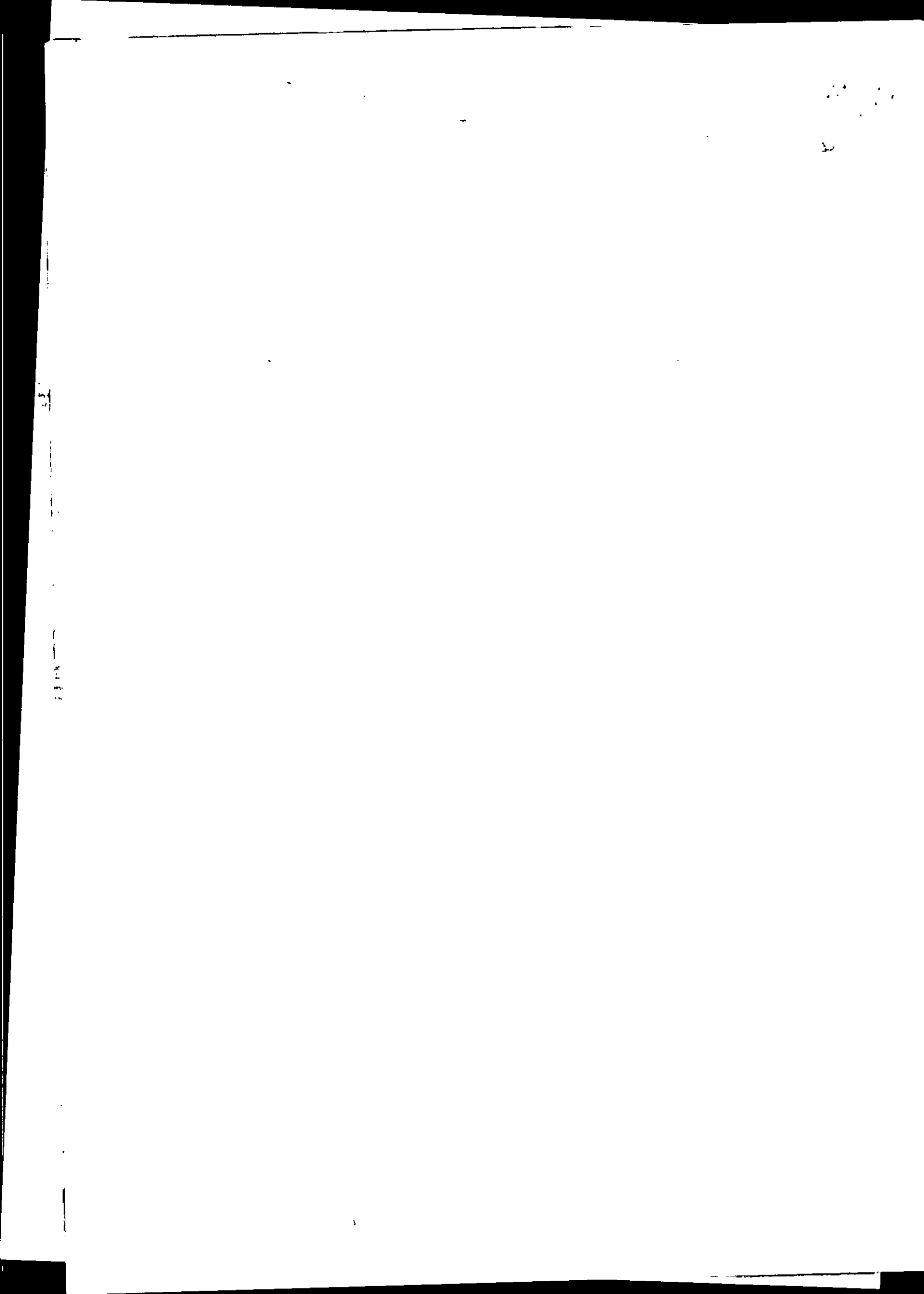
کل صفحات (23)

ڈپٹی سپرنٹنڈنٹ آف پولیس سرکل تخت بھائی

287
NO 1840/9
10-7-14

Approved
Dismissed from Service


11.7



"B"

POLICE DEPARTMENT

MARDAN DISTRICT

ORDER

It has been reported that he **Constable Fazle Haq No. 927**, while posted at Police Station Saddar, Mardan committed the following act, which is are gross misconduct on his part as defined in Rules 02 (iii) of Police Rules 1975.

That **Constable Fazle Haq No. 927**, while posted at Police Station Saddar, deliberately absented himself from the lawful duty vide D.D No. 35 dated 06.12.2013 to- DD No. 26 dated 10.03.2014 (*Total 97 days*).

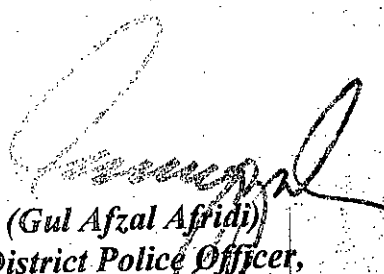
In this connection, **Constable Fazle Haq No. 927**, was charge sheeted vide this office No. 484/R, date 21.02.2014 and also proceeded against departmentally through, inquiry officer **Sajjad Ahmad DSP/Takht Bhai Mardan**, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsement No. 297 /ST, dated 10.07.2014, that the allegation has been established against him.

The undersigned agreed with the findings of enquiry officer and the alleged **Constable Fazle Haq No. 927**, is hereby awarded major punishment of **dismissed from service**. The absence period may be treated as leave without pay.

Order announced

O.B.No. 1599

Dated 14/7/2014


(Gul Afzal Afridi)
District Police Officer,
Mardan.

No. 7794-780 R dated Mardan the 15-7 /2014

Copy for information and necessary action to:-

1. Deputy Inspector General Of Police Mardan Region-I, 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.

" C "


ORDER.

This order will dispose-off the appeal preferred by Ex-Constable Fazale Haq No. 927 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. 1599 dated 14.07.2014.

Brief facts of the case are that he while posted at Police Station Saddar, deliberately absented himself from the lawful duty without any leave/permission of the competent authority vide daily dairy No. 35 dated 06.12.2013 to daily dairy No. 26 dated 10.03.2014 (Total 97 days) . In this connection he was charge sheeted and also proceeded him against departmentally through Deputy Superintendent of Police Takht Bhai District, Mardan who after fulfilling necessary process, submitted his findings to District Police Officer, Mardan, in which the allegations were established against him, therefore he was dismissed from service.

I have perused the record and also heard the appellant in Orderly Room held in this office on 03.09.2014. He failed to justify his absence 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. 5235 /ES, Dated Mardan the 4-9- /2014.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 697/LB dated 07.08.2014.

His service record is returned herewith.

(*****)

OB/EC/OA8
for n4


DPO, Mardan

"D"

The Khyber Pakhtunkhwa Police Rules, 1975

(With Amendments-2014)

Contents

1. Short title, commencement and application
2. Definitions
3. Grounds of punishment
4. Punishments
- 4.A -
5. Punishment proceedings
6. Procedure of Departmental Inquiry
7. Powers of Inquiry Officer
8. Rules 5 and 6 not to apply in certain cases
9. Procedure of Inquiry against Officers lent to other Government or authority
10. -
11. Appeal
12. Revision (11-A)
13. -
14. Repeal

Khyber Pakhtunkhwa Police Rules, 1975

In exercise of the powers conferred under section 7 of Police Act 1861, the Government of Khyber Pakhtunkhwa, is pleased to make the following Rules, namely:-

1. Short title, commencement and application:-

- (i) These rules may be called the Police Rules, 1975;
- (ii) They shall come into force at once and shall apply to all Police Officers of and below the rank of Deputy Superintendent of Police.

2. Definitions:-

In these rules, unless the context otherwise requires:-

- (i) 'Accused' means a Police Officer against whom action is taken under these rules;
- (ii) 'Authority' means authority competent to award punishment as per Schedule
- (iii) 'Misconduct' means conduct prejudicial to good order of discipline in the Police Force, or contrary to Government Servants (Conduct) Rules or unbecoming of a Police Officer and a gentleman, any commission or omission which violates any of the provisions of law and rules regulating the function and duty of Police Officer to bring or attempt to bring political or other outside influence directly or indirectly to bear on the Government or any

" D "

Government Officer in respect of any matter relating to the appointment, promotion, transfer, punishment, retirement or other conditions of service of a Police Officer.

- (iv) 'Punishment' means a punishment which may be imposed under these rules by authority as indicated in Schedule I.

3. Grounds of punishment.-

Where a Police Officer, in the opinion of the authority-

- a) Is inefficient or has ceased to be efficient: or
- b) Is guilty of misconduct; or
- c) Is corrupt or may reasonably be considered corrupt because-
 - (i) He is or any of his dependents or any other person through him or on his behalf is, in possession (for which he cannot reasonably account) of pecuniary resources of property disproportionate to his known sources of income; or
 - (ii) He has assumed a style of living beyond his ostensible means; or
 - (iii) He has a persistent reputation of being corrupt; or
- (d) Is engaged Or is reasonably suspected of being engaged in subversive activities, or is reasonably suspected of being associated with others engaged in subversive activities or is guilty of disclosure of official secrets to any unauthorized person, and his retention in service is, therefore, prejudicial to national security, the authority may impose on him one or more punishments.

4. Punishments.-

1. The following are the minor and major punishments, namely:---

(a) Minor punishments-

- (i) Confinement of Constables and Head Constables for 15 days to Quarter Guards;
- (ii) Censure;
- (iii) Forfeiture of approved service up to 2 years;
- (iv) With holding of promotion up to one year;
- (v) Stoppage of increment for a period not exceeding 3 years with or without cumulative effect;

- ❖ (iv) Fine up to Rs15000/- as per schedule-I.

(b) Major punishments-

- (i) Reduction in rank/pay;
- (ii) Compulsory retirement;
- (iii) Removal from service; and
- (iv) Dismissal from service.

2. (a) Removal from service does not but dismissal from service does, disqualify for future employment.

(b) Reversion from an officiating rank is not a punishment.

❖ Amended vide Notification No: 3859/Legal, dated 27/08/2014 issued by IGP, KPK

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

Service Appeal No. 1403/2014

Fazle Haq

VS

Police Deptt:

.....

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-8) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

- 1 No comments, endorsed by the department that para 1 of the appeal is correct.
- 2 First portion of para 2 is admitted correct hence no comment while the rest of portion of para 2 of the appeal is incorrect as the appellant the never remain absent from his duty but he was transferred and his transfer order was not communicated to the appellant due to which he performed his duty at previous station.
- 3 Incorrect. No codal formalities were fulfilled by the department which is necessary for regular inquiry and one sided inquiry was conducted by the department which is violation of law and rules.

- 4 First portion of para 4 is admitted correct hence no comments, while the rest of portion of para 4 is incorrect as the appellant never remain absent from his duty but he was transferred and his transfer order was not communicated to the appellant due to which he performed his duty at previous station.
- 5 Incorrect. The departmental appeal of the appellant has been rejected on not genuine grounds as the appellant never remain absent from his duty but he was transferred and his transfer order was not communicated to the appellant due to which he performed his duty at previous station.
- 6 Incorrect. The appeal of the appellant is in time and has good cause of action, therefore holds legal grounds to be entertained by the Honourable Service Tribunal.

GROUND:

- A) Incorrect. The impugned orders dated 15.7.2014 and 4.9.2014 are against the law and facts, norms of justice and material on record, therefore not tenable and liable to be set aside.
- B) Incorrect. While para B of the appeal is correct.
- C) Incorrect. While para C of the appeal is correct.
- D) Incorrect. No codal formalities are fulfilled before major punishment of dismissal from the service, therefore the impugned is liable to be set aside.
- E) Incorrect. While para E of the appeal is correct.
- F) Incorrect. The appellant never remain absent from his duty but he was transferred and his transfer order was not communicated to the appellant due to which he performed his duty at previous station. Moreover as his absence period after transfer of which the appellant was never informed about his transfer, was treated as leave without pay, therefore there remain no ground

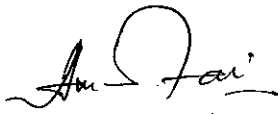
for imposing penalty on the appellant for same guilty.

- G) Incorrect. The appellant was punished for his no fault as he performed his duty regularly at his previous station as he was not informed about his transfer, therefore the penalty of dismissal from service is very harsh.
- H) Incorrect. While para H of the appeal is correct.
- I) Legal.

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

APPELLANT
Fazle Haq

Through:


(M. ASIF YOUSAFZAI)
&

(TAIMUR ALI KHAN)
ADVOCATE, PESHAWAR.

AFFIDAVIT

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




DEPONENT

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

Service Appeal No. 1403/2014

Fazle Haq

VS

Police Deptt:

.....

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

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FACTS:

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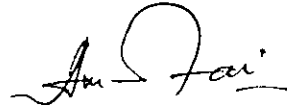
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- I) Legal.

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

APPELLANT
Fazle Haq

Through:



(M. ASIF YOUSAFZAI)
&

(TAIMUR ALI KHAN)
ADVOCATE, PESHAWAR.

AFFIDAVIT

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


DEPONENT

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 1005 /ST

Dated 10/6/2016


To

The D.P.O,
Mardan.

Subject: - JUDGMENT

I am directed to forward herewith a certified copy of Judgement dated 6.6 .2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.