

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 916/2014

Date of institution ... 04.07.2014
Date of judgment ... 11.01.2017

Mian Liaqat Ali, Ex-Assistant Sub-Inspector,
Platoon No. 103 of Elite Force,
Khyber Pakhtunkhwa, Peshawar.

... (Appellant)

VERSUS

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

... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA,
SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED
10.06.2014 WHEREBY THE APPEAL OF THE APPELLANT AGAINST
THE ORDER DATED 16.05.2014 HAS BEEN REJECTED FOR NO GOOD
GROUNDS.

Mr. Muhammad Asif Yousafzai, Advocate.
Mr. Muhammad Jan, Government Pleader.

.. For appellant.
.. For respondents.

MR. AHMAD HASSAN
MR. MUHAMMAD AAMIR NAZIR

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

JUDGMENT

AHMAD HASSAN, MEMBER: The appellant Mian Liaqat Ali, filed the instant appeal under section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the impugned order dated 16.05.2014 where-under the appellant was dismissed from service. Against the impugned order appellant filed a departmental appeal but the same was rejected vide order dated 10.06.2014.

2. Brief facts giving rise to the above appeal are that the appellant joined the Police Force in the year 2004. That during service the brother of the appellant fell in Dubai and in order to look-after his ailing, brother the appellant went to Dubai. That was unable to inform the department being a resident of a backward area. That when the appellant returned from Dubai

he came to know about his dismissal from service vide order dated 16.05.2014 against which the appellant filed a service appeal but the same was turned down vide order dated 10.06.2014.

3. Learned counsel for the appellant argued that neither charge sheet, statement of allegations and final show cause notice were not served on the appellant nor inquiry was conducted in the mode and manner prescribed under the rules. That appellant was not associated with the inquiry proceedings and opportunity of cross-examining the witnesses was also not provided to him. That orders dated 16.05.2014 and 10.06.2014 were not tenable in the eyes of law. That major penalty of dismissal from service was imposed on the appellant retrospectively that is w.e.f 08.02.2014 in violation of rules. Moreover, the respondent did not pass speaking order on his departmental appeal as reasons should have been given while rejecting the appeal, as such Section-24 (A) of General Clauses Act of 1898 was violated. That the department under the rules was required to publish notice in two leading news-papers, while in this case notice was published only in one news-paper. Reliance was placed on PLD 2007 52 wherein it was held that Executive/Departmental Authority has no power to pass order with retrospective effect. Similarly, 1985 SCMR, 1178 provides that order of Departmental Authority could not be made to operate retrospectively. 1991 SCMR 2330 relates to mentioning reasons before disposal of departmental appeal. In addition to above, 2007 SCMR 152 provides for holding of proper inquiry and passing speaking order. The learned counsel for the appellant prayed their acceptance of this appeal order dated 10.06.2014 and 16.05.2014 may be set-aside. The respondents may be directed to reinstate the appellant with all back benefits or any other appropriate remedy.


5. The learned Government Pleader argued that the appellant remained absent from duty w.e.f 08.02.2014. That the charge sheet and statement of allegations was served on the brother of the appellant at his home address, as per record available on the file. That the appellant presented lame excuses about the illness of his brother. That appellant proceeded Dubai without getting proper permission/leave from the department. Learned Government Pleader submitted that the appeal being devoid of any merits be dismissed.

6. Arguments heard and record perused.

7. Having gone through the record of the case, it transpired that the department has failed to conduct inquiry proceedings according to the prescribed rules. It is clear beyond doubt that the appellant had gone to Dubai, hence charge sheet/statement of allegations was not served on him and proceedings were conducted unilaterally, as such the appellant was condemned unheard, and the principle of *AUDI ALTERM PARTEM* was violated. As opportunity of fair trial was not afforded to the appellant, hence Article-10 (A) of the 1973 Constitution was also violated. Awarding punishment with retrospective effect amounts to violation of rules and judgments of the Superior Courts as discussed above. Similarly, final rejection order dated 10.06.2014 is not a speaking order and goes against the spirit of section-24 (A) of General Clauses Act, 1898. The competent authority was required to give reasons before passing final orders on departmental representation of the appellant. Reliance placed in this respect on 1991 SCMR 2330. Discriminatory treatment meted out to the appellant in violation of Article 25 of the 1973 Constitution.

8. In view of the foregoing, we are constrained to accept the appeal and reinstate the appellant in service from the date of dismissal and to direct the respondents to conduct *de-novo* inquiry in this case in which the appellant may be fully associated with the inquiry proceedings and all required formalities prescribed in the rules may be adhered to. Issue of payment of arrears of pay & allowances may be decided by the respondents in the light of the outcome of the de-novo inquiry. The inquiry proceedings should be completed within the period of three months from the date of receipt of this judgment. In case inquiry proceedings are not concluded within the stipulated period, the appellant shall be deemed to have been reinstated in service the date of dismissal. Parties are, however, left to bear their own costs. File be consigned to the record room.

ANNOUNCED
11.01.2017


(MUHAMMAD AAMIR NAZIR)
MEMBER



(AHMAD HASSAN)
MEMBER

11.01.2017

Counsel for the appellant and Mr. Muhammad Jan, GP for respondents present.

Vide our detailed judgment of today consists of ^{Three} ~~two~~ pages placed on file, In view of the foregoing, we are constrained to accept the appeal and reinstate the appellant in service from the date of dismissal and to direct the respondents to conduct de-novo inquiry in this case in which the appellant may be fully associated with the inquiry proceedings and all required formalities prescribed in the rules may be adhered to. Issue of payment of arrears of pay & allowances may be decided by the respondents in the light of the outcome of the de-novo inquiry. The inquiry proceedings should be completed within the period of three months from the date of receipt of this judgment. In case inquiry proceedings are not concluded within the stipulated period, the appellant shall be deemed to have been reinstated in service the date of dismissal. Parties are left to bear their own costs. File be consigned to the record room.

Announced
11.01.2017


(MUHAMAMD AAMIR NAZIR)
MEMBER


(AHMAD HASSAN)
MEMBER

06.06.2016

Counsel for the appellant and Mr. Javed Iqbal, Inspector (legal) alongwith Mr. Usman Ghani, Sr.GP for respondents present. Requisite record vide order sheets dated 18.11.2015 and 07.04.2016 not produced. The respondent-department is once again directed to submit the same on the next date of hearing by way of last opportunity. To come up for such record and arguments on 17.10.16 before D.B.


MEMBER


MEMBER

17.10.2016

Counsel for the appellant and Assistant AG for respondents present. Requisite record vide order sheet dated 18.11.2015 and 07.04.2016 not produced by the respondents. Last opportunity given to the respondents for production of the said record. To come up for such record and arguments on 11-1-17 before D.B.


(ABDUL LATIF)
MEMBER


(PIR BAKHSH SHAH)
MEMBER

03.09.2015

Appellant with counsel and Mr. Muhammad Jan, GP with Javed Iqbal, Inspector for the respondents present. Since court is over, therefore, case to come up for arguments on 18-11-2016


MEMBER


MEMBER

18.11.2015

Appellant with counsel and Mr. Javed Iqbal, Inspector alongwith Mr. Muhammad Jan, GP for respondents present. During the course of arguments it transpired that inquiry report has not been appended by the respondent-department. As such the same be produced alongwith record pertaining to the case of Mr. Khurram Rashid, Constable No. 164 Haripur. To come up for such record and arguments on 7-4-2016.


MEMBER


MEMBER


07.04.2016

Counsel for the appellant and Mr. Javed Iqbal, Inspector (legal) alongwith Mr. Muhammad Jan, GP for respondents present. Inquiry report not submitted. Respondent-department is once again directed to submit the inquiry report alongwith record pertaining to the case of Mr. Khurram Rashid, Constable No. 164 Haripur. The learned Member ^{P.S} (Executive) is on leave therefore, Bench is incomplete. To come up for such record and arguments on 6.6.16.


Member

6.

30.01.2015

Appellant deposited process fee & security


*Appeal No. 916/2014
Mian Liaqat Ali*

Counsel for the appellant and Mr. Ziaullah GP for the respondents present. Preliminary arguments heard and case file perused. Through the instant appeal under Section-4, of the Khyber Pakhtunkhwa Service Tribunal Act 1974, the appellant has impugned order dated 16.05.2014, vide which the major penalty of Dismissal from service has been imposed upon the appellant. Against the above referred impugned order appellant filed departmental appeal on 23.05.2013 which was rejected vide order dated 10.06.2014, hence the instant appeal on 04.07.2014.

Since the matter pertains to terms and conditions of service of the appellant, hence admit for regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply. To come up for written reply/comments on 20.03.2015 before the learned Bench-III.


Member

20.03.2015

Counsel for the appellant and Mr. Fayaz Tahir, H.C with Mr. Ziaullah, GP for the appellant respondents present. Written reply/comments submitted. The appeal is assigned to D.B for rejoinder and final hearing for 3/9/2015.


Member

3.

18.09.2014

Clerk of counsel for the appellant present, and requested for adjournment. Request accepted. To come up for preliminary hearing on 01.10.2014.



Member

4.

01.10.2014

Counsel for the appellant present. Preliminary arguments partly heard. The matter required further elucidation, therefore, pre-admission notice be issued to the learned AAG/GP with the direction to produce complete record of the appellant. To come up for preliminary hearing on 17.11.2014.



Member

5.

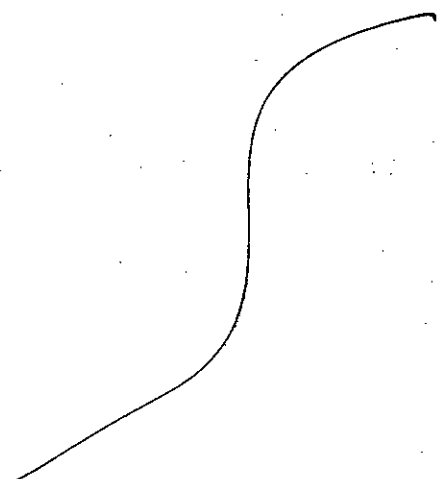
Reader Note:

17.11.2014

Counsel for the appellant present. Since the Tribunal is incomplete, therefore, case is adjourned to 30.01.2015 for the same.





Reader



Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 916/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	04/07/2014	<p>The appeal of Mian Liaqat Ali presented today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	9-7-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>18-9-2014</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

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

Appeal No. 916 /2014

Mian Liaqat Ali

V/S


Police Elite Force.

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3.	Copy of Charge Sheet	- B -	06
4.	Copy of Statement of Allegations	- C -	07
5.	Copy of Show Cause Notice	-D-	08
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APPELLANT

THROUGH:


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AND


TAIMUR ALI KHAN
ADVOCATE, PESHAWAR.

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

Appeal No. 916 /2014

Mian Liaqat Ali, Ex-Assistant Sub-Inspector,
Platoon No.103 of Elite Force,
Khyber Pakhtunkhwa, Peshawar.

~~916~~
916
~~04-7-2014~~
04-7-2014

APPELLANT

VERSUS

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

RESPONDENTS

.....

**APPEAL UNDER SECTION-4 OF THE
KHYBER PAKHTUNKHWA, SERVICE
TRIBUNAL ACT, 1974 AGAINST THE ORDER
DATED 10.06.2014 WHEREBY THE APPEAL
OF THE APPELLANT AGAINST THE ORDER
DATED 16.05.2014 HAS BEEN REJECTED
FOR NO GOOD GROUNDS.**

.....

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL, THE
ORDER DATED 10.06.2014 AND 16.05.2014 MAY
BE SET ASIDE AND THE RESPONDENT MAY BE
DIRECTED TO REINSTATE THE APPELLANT INTO
SERVICE WITH ALL BACK BENEFIT. ANY OTHER
REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS
FIT AND APPROPRIATE THAT MAY ALSO BE
AWARDED IN FAVOUR OF APPELLANT.

.....

~~916~~
L.A.Q.
4/7/14

RESPECTFULLY SHEWETH:

1. That the appellant joined the Police Force in the year 2004 and has good record of service.
2. That the appellant has completed professional and departmental courses with distinguished position and secured highest marks amongst his batch mates in his service period.
3. That the promotion of the appellant has been made on the basis of his highly qualification and achievements.
4. The appellant performed his duties in different field as well as offices assignments including Reader with DPO and his services always remained satisfactory.
5. That the efficiency and performance of the appellant has been appreciated by the authorities, therefore the appellant appointed as Incharge Police Post TIP (PS City) which is the most sensitive and burdened jurisdictional area.
6. That during the service, the appellant awarded 15/20 CC-II & III along with cash reward by the high-ups by virtue of his valuable services.
7. That the appellant remained during his service, punctual, dutiful, efficiency, professional, skilled, well trained and earn good name for the department.
8. That the appellant's brother was seriously ill in Dubai, for his look-after and medication, the appellant on emergency basis went to Dubai.
9. That the appellant was unable to inform his superiors/officers regarding illness of his brother due to backward and hilly area of his village.
10. That on 14.05.2014 when the appellant came back to Pakistan. He came to know that the appellant has been dismissed from service.

11. That the appellant approached the respondent department and requested for enquiry report and dismissal order, but the appellant received only dismissed order, therefore, the appellant failed to annex enquiry report. Copy of Dismissal Order dated 16.05.2014 is attached as Annexure-A.
12. That ^{no} charge sheet and statement of allegation and final ~~show~~ cause notice under Police Rules 1976 were served upon the appellant in which the appellant was charged major penalty "Removal from Service". (Copies of charge sheet, Statement of Allegations and Show Cause Notice are attached as Annexure B, C and D).
13. That the one sided inquiry was conducted against the appellant in which neither appellant was associated with enquiry proceedings nor any statement was recorded in the presence of appellant or to cross examine the same.
14. That the appellant filed departmental appeal on 23.05.2013 against the order dated 16.05.2014 which was rejected 10.06.2014. Copies of Departmental Appeal and Rejection Order are attached as Annexure-E and F.
15. That now the appellant comes to this Honourable Tribunal on the following grounds amongst the others.

GROUND:

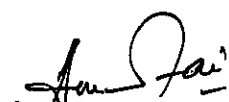
- A) That the order dated 16.5.2014 and 10.6.2014 are against the law, fact, norms of justice and material on record.
 - B) That the appellant was directly recruited as P.S.I in the year 2010 and the respondent No.2 was not competent authority to proceed against the appellant.
 - C) That the appellant has been condemned unheard throughout which is violation of principle of justice and AUDI ALTERAM PARTEM.
-

- D) That the appellant being the employee of province, was wrongly proceeded against under Police Rules, 1975 instead of E&D Rules, 2011.
- E) That the appellant has more than 10 years service at his credit and the penalty of dismissal from service is very harsh.
- F) That even the penalty order has been made effective, retrospectively which legally an executive authority can not do.
- G) That even the final rejection order dated 10.06.2014 is not a speaking order which is the violation of Section-24(A) of General Clauses Act and the Supreme Court Judgment reported as 1991 SCMR 2330.
- H) That the appellant has been treated on discriminatory basis, because previously one Ex-Constable namely Khuram Rashi, was treated so leniently for absence and such treatment was not extended towards the appellant. Copy of Order is attached as Annexure-G.
- I) That even the appellant order has been passed by an incompetent authority.
- J) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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

APPELLANT 
Mian Liaqat Ali

THROUGH:


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AND 
TAIMUR ALI KHAN
ADVOCATE, PESHAWAR.



Office of the Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar



No. 6390-98/EF

Dated 16/05/2014.

ORDER

ASI Liaqat Khan, Platoon No. 103 of Elite Force Khyber Pakhtunkhwa was found guilty of gross misconduct on the following grounds.

He remained absent from duty without any leave or prior permission w.e. from 08.02.2014 till this date. Departmental proceeding was accordingly initiated against him and Mr. Javed Iqbal Acting SP/Elite Force Hazara was appointed as enquiry officer but he did not appear before the enquiry officer. A Final Show Cause Notice was also issued to him but he failed to reply. To ensure his appearance, a notice was issued to him in daily newspaper "Aaj" dated 14.04.2014 and was directed to join the enquiry proceeding within 15 days but he neither joined the enquiry proceedings nor appeared before the Enquiry Officer which seems that he has no interest in his current job.

Therefore, I Sajid Khan Mohmand, Deputy Commandant, Elite Force Khyber Pakhtunkhwa Peshawar as competent authority, impose major penalty of dismissal from service upon him from the date of absence i.e 08.02.2014.

(SAJID KHAN MOHMAND)

Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar.

Copy of the above is forwarded to the:-

1. District Police Officer, Haripur.
2. Acting Superintendent of Police, Elite Force Hazara.
3. RI, Elite Force Khyber Pakhtunkhwa Peshawar.
4. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar for recovery of Pay.
5. In-charge Kot/ OASI, Elite Force Khyber Pakhtunkhwa Peshawar
6. SRC/FMC, Elite Force Khyber Pakhtunkhwa Peshawar.
7. ASI Liaqat Khan of Elite Force at his home address through reader A/SP Hazara.

TESTED

B 6

CHARGE SHEET

I, Sajid Khan Mohmand, Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar as competent authority, hereby charge you ASI Liaqat Khan, Platoon No. 103 of Elite Force as follows;

You remained absent from duty without any leave or prior permission w.e. from 08.02.2014 till this date.


2. By reason of the above, you appear to be guilty of misconduct under the Police Rules (amended vide NWFP gazette, 27th 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 MOHMAND)
Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar

ATTESTED


SC 7

SUMMARY OF ALLEGATIONS

I, Sajid Khan Mohmand, Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar as competent authority, am of the opinion that ASI Liaqat Khan, Platoon No. 103 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 27th January 1976).

SUMMARY OF ALLEGATIONS

He remained absent from duty without any leave or prior permission w.e. from 08.02.2014 till this date.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations Mr. Javed Iqbal SP/Elite Force Hazara 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 MOHMAND)

Deputy Commandant

Elite Force Khyber Pakhtunkhwa Peshawar.

No. 2177-81/EF, dated Peshawar the 14/02/2014.

Copy of the above is forwarded to the:-

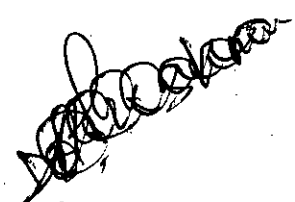
1. Superintendent of Police, Elite Force Hazara.
2. RI, Elite Force Khyber Pakhtunkhwa Peshawar.
3. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
4. SRC, Elite Force Khyber Pakhtunkhwa Peshawar.
5. ~~ASI Liaqat Khan, Platoon No. 103 of Elite Force Hazara.~~


(SAJID KHAN MOHMAND)

Deputy Commandant

Elite Force Khyber Pakhtunkhwa Peshawar.

ATTESTED

D
8

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, 27th anuary 1976); do hereby serve you ASI Liaqat Khan, Platoon No. 103 of Elite Force as follows;

You remained absent from duty without any leave or permission w.e. from 08.02.2014 till this date.

i. That consequent upon the completion of enquiry conducted against you by Mr. Javed Iqbal Khan Acting SP/Elite Force Hazara, you were given full opportunity of hearing but failed to appear before 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, 27th 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 removal from service, under Police Rules (amended vide NWFP gazette, 27th 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.

R.K.


(SAJID KHAN MOHMAND)
Deputy Commandant

Elite Force Khyber Pakhtunkhwa Peshawar

No. 3262 /EF, dated Peshawar the 18 /03/2014.

ASI Liaqat Khan of Elite Force Hazara at his home address through reader Acting SP/Elite Force Hazara.

ATTESTED


E (9)

To:

The worthy Commandant,
Elite Force, KPK Peshawar

Subject: REPRESENTATION AGAINST THE IMPUGNED ORDER NO. 6390-98/EF DATED 16.05.2014 THROUGH WHICH THE APPLICANT WAS DISMISSED FROM SERVICE BY IMPOSING MAJOR PENALTY

Respected Sir,

The petitioner submits as under:-

1. That I was enrolled in in Police Department as Constable on 16.10.2004 and completed my professional and departmental courses with distinguished position and secured highest marks amongst my batch mates and was given out of turn promotion on basis of my qualifications/ achievements which included as "Cadet" for three times, consequently I was also selected as probationer ~~ASI~~ in year 2010 through Provincial Public Service Commission.
2. Besides the professional abilities the petitioner possesses excellent academic history and qualified language courses and is graduate.
3. The petitioner was declared as successful on completion of probationer course by the PTC Hangu.
4. Since my indulgence in Police Department I was deputed in different field duties as well as offices assignments including Reader with District Police Officer Haripur and rendered satisfactory services for the department as well as to the seniors.
5. The petitioner was due to efficiency and performance appointed as incharge Police Post TIP (Ps City) which is most sensitive and burdened jurisdictional area, around which sensitive installation are located which are of national importance.
6. During my service I was granted 15/20 CC-II & III along with cash reward by high-ups by virtue of my valuable services.
7. During my service extending 10 years I had always been punctual, dutiful, efficient, professional, skilled, well trained and earned good

ATTESTED

name for the department as well as I had no red entry in my service record.

8. Unfortunately, on 05.02.2014 my brother namely Mian Asad serving in Dubai (UAE) suddenly became serious ill, due to which I had to proceed UAE for his medication/ examination and treatment form Medical Practitioner at AL-Qusais-Duabi. Copy of Travel History is attached. I being the educated, male members of my family inhabitant of remote area of Province i.e. Sarri which is backward and hilly area. Due to inevitable circumstances and critic health situation of my brother I had to leave the county for the sake of his life.
9. My brother had been under treatment from different Hospital at Dubai I had to look after him till his recovery and health.
10. For the reason above I could not inform the platoon posted at Haripur where I was attached with.
11. The severe situation of health of my brother worried the whole family including me so promptly I had to leave the country.
12. On 14.05.2014 when I came back in Pakistan and approached my posted place at Haripur I was verbally informed that I was dismissed. However, I was not handed over any dismissal order/ departmental enquiry if any held in my absence.
13. I approached the office of worthy Deputy Commandant, Elite Force KPK Peshawar and requested for copy of enquiry and dismissal order for knowing the reason of dismissal, the petitioner was not granted the enquiry proceedings but with dismissal order only.
14. On seeing the dismissal order I was astonished to observed that without following the procedural and mandatory provision of law I was awarded major punishment of dismissal from service.
15. The enquiry was conducted in contradiction to Police Rules 1975 as well as the other service laws.

ATTESTED

16. I was not given any opportunity cross examination of witnesses nor opportunity of personal hearing.
17. I was deprived with the fundamental right of personal defense and natural justice.
18. The said impugned punishment is harsh, illegal, against the law and facts hence liable to be set-aside.
19. I was on list "E" and was to be promoted officiating Sub-Inspector if the said illegal punishment was not awarded.
20. I was not served with any personal show cause notice, summary of allegation nor I was allowed to participate in the enquiry proceedings, hence the said illegal punishment is not maintainable under the law.
21. During the so call enquiry the enquiry officer failed to observed the mandatory provisions of law, so the said enquiry having no legal affect may please be set-aside.
22. The petitioner is a young, educated and well trained Police Officer whose future was endangered by imposing harsh punishment, moreover, I belong to poor family and is source of income and facilitation for my old age ailing parents and family.
23. In the above mentioned facts and circumstances it is therefore, requested that the said punishment may kindly be set-aside by your good self and I may kindly be reinstated in serviced with back benefits please.

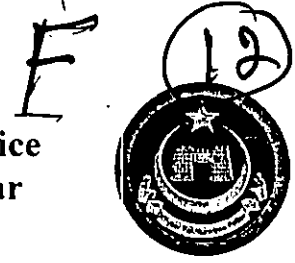
Dated 23.05.2013


Mian Liaqat Ali
Ex-Assistant Sub-Inspector

ATTESTED



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




No. 8527/EF

Dated 10 / 06 / 2014.

To : Mr. Mian Liaqat Ali S/O Riasat Khan
Address : Village /PO Sarri, Teh: & Distt: Haripur.
Contact No. : 0321-9822913

Subject : **APPEAL FOR RE-INSTATEMENT IN SERVICE**

Your appeal for re-instatement in service has not been accepted and rejected by the competent authority.


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

ATTESTED


G 13

ORDER

This is an order on the representation preferred by Ex-Constable Khurram Rashi No. 164 of Haripur District, against the order of dismissal from service vide OB No. 43 dated 16-08-2008.

Facts leading to his dismissal from service are that while posted at Police Lir Haripur absented himself from duty w.e. from 30-03-2008 to 18-04-2008 and from 13-05-2008 to 05-06-2008 (Total 40 days) without any leave or prior permission.

He was charge sheeted under removal from Service (Special Power) Ordinance 2000 and Mr. Ghulam Mubashir Maken ASP HQrs., Haripur was appointed as Enquiry Officer. The Enquiry Officer in his findings reported that allegations leveled against him have been proved and recommended him for dismissal from service. Agreeing with the Enquiry Officer District Police Officer Haripur dismissed him from service vide OB No. 437 dated 16-08-2008.

The enquiry file and service record of the appellant were perused and also heard him in person on 06-11-2009. After that I came to the conclusion that he left to Dubai to look after his brother who was alone and on the bed due to the serious accident. He is graduate, young and trained soldier. He can be useful for the department in the present prevailing law & order situation in the country.

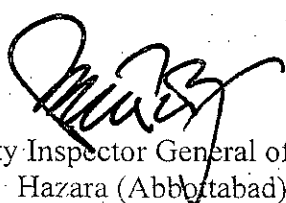
Taking into consideration the above facts, I take lenient view and set-aside the order passed by District Police Officer, Haripur. He is re-instated in service from the date of dismissal. The period of absence and he remained out of service be treated as leave of kind d

to him.

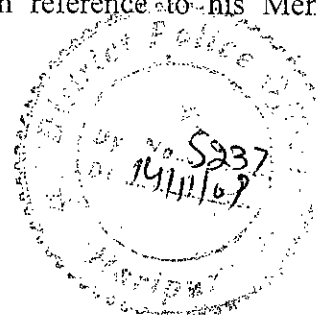
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12/11/09

Incl: S.R. (01)
F.M. (01)
752
OB No 14/11/09

No. 14301/E, dated Abbottabad the

ATTESTED

Deputy Inspector General of Police
Hazara (Abbottabad)
12/11/2009.

Copy of above alongwith Service Roll and Fauji Missal is forwarded to District Police Officer, Haripur for information and necessary action with reference to his Memo No. 5712 dated 04-08-2009.


No. 5237
14/11/09

15

VAKALAT NAMA

NO. _____/20

IN THE COURT OF Service Tribunal Peshawar.

Mian Haqai Ali (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Police Depot (Respondent)
(Defendant)

I/We Mian Haqai Ali (appellant).

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

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

Dated _____/20



(CLIENT)

ACCEPTED



M. ASIF YOUSAFZAI
Advocate

§



TAIMUR ALI KHAN
- Advocate

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.

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



BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PEASHAWAR.

Service Appeal No. 916/2015.

Mia Liaqat Ali.....(Appellant)

VERSUS

Commandant Elite Force Khyber Pakhtunkhwa and one
other.....(Respondents)

Subject:- COMMENTS ON BEHALF OF
RESPONDENTS.

Respectfully Sheweth!

Preliminary Objections:-

- a) The appeal has not been based on facts.
- b) The appeal is not maintainable in the present form.
- c) The appeal is bad for joinder of un-necessary and non-joinder of necessary parties.
- d) The appellant is estopped by his own conduct to file the appeal.
- e) The appeal is barred by law and limitation.
- f) The appellant has not come to the Honorable Tribunal with clean hands.

FACTS:-

- 1) Need no comments it pertains to service record of appellant.
- 2) Incorrect, qualifying professional courses is no defense of willful absence from duty.
- 3) Incorrect, appellant was promoted on his own turn.
- 4) Need no comments it pertain to service record of appellant.
- 5) Need no comments it pertain to service record of appellant.
- 6) Incorrect, appellant was punished for commission of misconduct and was rewarded for good work which establishes bona-fide on the part of respondents.
- 7) Incorrect, appellant remained absent from duty with effect from 08.02.2014. Charge Sheet and statement of allegations was served on the brother of appellant on his home address as

evident from report recorded in the daily diary Serial No. 11 dated 10.03.2014 Police Lines District Haripur. Copy of the extract of daily diary is enclosed as Annexure-A. Appellant remained absent and was avoiding associating departmental proceedings. Proclamation was also published in Urdu daily Aaj dated 14.04.2014 for his appearance before the competent authority but he failed to comply with the order. Copy of the proclamation is enclosed as Annexure-B.

- 8) Incorrect, appellant has made lame excuse of illness of his brother at Dubai. Actually he visited abroad without informing the department and applying for grant of permission. Furthermore, appellant has admitted the charge of absence from duty.
- 9) Incorrect, appellant has advanced lame excuses to cover his long willful absence from duty.
- 10) Incorrect, the brother of appellant was informed well in time about the charges leveled against him as evident from daily diary report dated 10.03.2014 mentioned above and proclamation was published in Urdu daily but he willfully avoided defense of charges.
- 11) Incorrect, the impugned order was delivered to appellant.
- 12) Incorrect, appellant failed to advance plausible defense in response to his deliberate absence from duty for long period.
- 13) Incorrect, appellant avoided joining departmental proceedings and proclamation was published in Urdu daily for his appearance. Furthermore, appellant did not explain his willful absence.
- 14) Incorrect, there was no force in the departmental appeal of appellant therefore, the same was filed.
- 15) Incorrect, the appeal on the ground advanced by appellant is not sustainable.

GROUNDNS:-


- A) Incorrect, the impugned orders are just, legal and have been passed in accordance with law and rules.

لوگس ایجنسی

11 مارچ 1964 (3 مارچ) 10/3/64

۱۴

سیدتی ایجنسی کے سربراہان کو اطلاع دیا گیا ہے کہ ان کے پاس
 ۱۴ مارچ ۱۹۶۴ کو ۱۰۰۰ روپے کے نوٹوں کے بارے میں
 ایک اطلاع ملی ہے۔ ان نوٹوں کے بارے میں
 مزید تحقیقات کی جا رہی ہیں۔ ان نوٹوں کے
 بارے میں مزید اطلاع ملنے پر آپ کو مطلع کیا جائے گا۔
 اگرچہ اس بارے میں کوئی ایکشن لینا ضروری نہیں ہے
 لیکن اس بارے میں احتیاطی تدابیر اختیار کرنے سے
 احتیاج ہے۔ اس بارے میں مزید تحقیقات کی جا رہی ہیں
 اور آپ کو مزید اطلاع ملنے پر مطلع کیا جائے گا۔
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 اور آپ کو مزید اطلاع ملنے پر مطلع کیا جائے گا۔


 P. LINE HR
 10-3-64
 Office Head Quarter
 Haripur

خانی ہے جس کا SP ایڈیٹ فورس ہزارہ ریجن ایبٹ آباد

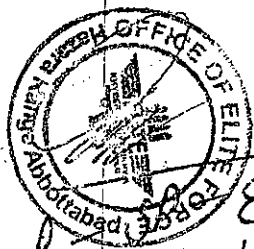
جائے ہے A/DSP ایڈیٹ فورس ضلع پھری پور

عذرت ہے اطلاع یا اپنی دفعہ جاری سٹیٹ کیس کے تحت ASI ضلع پھری پور
پلاٹ نمبر 103 ایبٹ آباد

کوارٹرز کو

مخبر کی میان بیعت ASI جو کہ
تقریباً ① ماہ سے غائب ہے جس کا ذکر ASI کو بریلو
ریڈر اطلاع کی جائے کہ وہ فوراً اپنی ڈیوٹی پر حاضر ہو اور پورا
ہذا اندر ③ ایام دستہ ہوا یا بھیجا جاوے
اور چارج سٹیٹ کی حسب ضابطہ تکمیل کی جاوے
تاکہ کمانڈ انکوائری مکمل کی جاوے سکے۔

صوبہ



EF
08-03-14

کتابت شد در روز ۱۳۰۲
مجلس عمومی در روز ۱۳۰۲
مجلس عمومی در روز ۱۳۰۲
مجلس عمومی در روز ۱۳۰۲

۱۳۰۲

۱۶ مئی ۲۰۱۴ء

آفری نوٹس

آپ A.S.I لیاقت خان ضلع ہری پور حال تعینات ایلٹ فورس خیبر پختونخوا سرکاری ڈیوٹی سے
بغیر کی اجازت مورخہ 8-2-2014 سے بدستور انجیر حاضر چلے آ رہے ہیں۔ آپ کے خلاف
محکمانہ کارروائی جاری ہے، اس لئے آپ کو بذریعہ اشتہار ہذا مطلع کیا جاتا ہے کہ آپ اس اشتہار
کے مشتمل ہونے کے 15 دن کے اندر اندر مجاز آفس کے سامنے پیش ہوں بصورت دیگر آپ کے
خلاف یکطرفہ محکمانہ کارروائی کی جائیگی۔

ساجد خان مہمند

ڈپٹی کمشنر ایلٹ فورس خیبر پختونخوا پشاور

www.hyberpakhtunkhwa.gov.pk

INF (P)1370

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

Service Appeal No. 916/2014

Mian Liaqat Ali

VS

Police Deptt:

.....

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

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

FACTS:

- 1 Admitted correct by the respondents as the service record is in the custody of department.
- 2 Incorrect. The appellant did not remain willful absence from the duty, but the appellant's brother was seriously ill in Dubai and on emergency basis, he went there for the look after and medication of his brother.
- 3 Incorrect. The appellant has made promotion on the basis of highly qualification and achievements.
- 4 Admitted correct by the respondents as the service record is in the custody of department.
- 5 Admitted correct by the respondents as the service record is in the custody of department.

- 6 Incorrect. The appellant did not do any misconduct, but his brother was seriously ill in Dubai and on emergency basis, he went there for the look after and medication of his brother.
- 7 Not replied according to para 7 of the appeal. Moreover para 7 of the appeal is correct.
- 8 Incorrect. The appellant's brother was seriously ill in Dubai and on emergency basis, he went there for the look after and medication of his brother.
- 9 Incorrect. The appellant did not advance lame excuses, but his brother was ill in Dubai and he went there for the look after and medication of his brother.
- 10 Incorrect. Hence denied.
- 11 Incorrect. The impugned order was not delivered to the appellant, but the appellant approached to the respondent Deptt: and requested for inquiry report and dismissal order, but the appellant received only dismissal order.
- 12 Not replied according to para 12 of the appeal. Moreover para 12 of the appeal is correct.
- 13 Incorrect. While para 13 of the appeal is correct.
- 14 Incorrect. The competent authority did not mention any reason for the rejection of the departmental appeal of the appellant. Hence order dated 10.6.2014 is liable to be set aside.
- 15 Incorrect. The appellant has legal right to advance other grounds and proofs at the time of arguments.

GROUND:

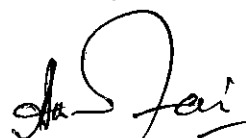
- A) Incorrect. The order dated 16.5.2014 and 10.6.2014 are against the law and rules, therefore not tenable and liable to be set aside.

- B) Incorrect. While para B of the appeal is correct.
- C) Incorrect. While para C of the appeal is correct.
- D) Incorrect. The appellant is the Civil Servant of the Province and Civil Servant are preceded by E&D Rules 2011 and not by Police Rules 1975.
- E) Incorrect. The penalty of dismissal from service is very harsh and did not commensurate with the guilt of the appellant.
- F) Incorrect. The impugned order was not passed in accordance with law as the penalty order has been made effective, retrospectively which is legally an executive authority cannot do.
- G) Incorrect. The appellant gave reason about his absentia in the departmental appeal. But it was rejected with any reason, which is violation of Section-24 of General Clause Act and Supreme Court judgment reported as 1991 SCMR 2330.
- H) Incorrect. The appellant was discriminated as one E-Constable namely Khurem Rashi, was treated so leniently for absence while such treatment was not extended towards the appellant.
- I) Incorrect. While para I of the appeal is correct.
- J) Legal.

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

APPELLANT
Mian Liaqat ALi

Through:

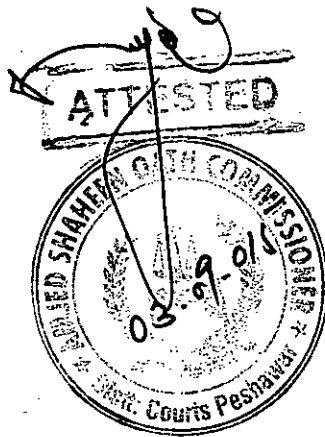

(M. ASIF YOUSAFZAI)

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.

[Signature]
DEPONENT



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

Service Appeal No. 916/2014

Mian Liaqat Ali

VS

Police Deptt:

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APPELLANT
Mian Liaqat Ali

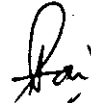
Through:


(M. ASIF YOUSAFZAI)

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 PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 242 /ST

Dated 30 / 1 / 2017

To


The Deputy Commandant Elite Force,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: -

JUDGMENT

I am directed to forward herewith a certified copy of Judgement dated 11.01.2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.