

Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	<p>12.10.2018</p>	<p align="center"><b><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></b></p> <p align="center"><b>Service Appeal No. 835/2014</b></p> <p>Date of Institution ... 11.06.2014 Date of Decision ... 12.10.2018.</p> <p>Zawar Hussain No.2203, Constable Posted at PS Mardan, District Mardan.</p> <p align="right"><b>Appellant</b></p> <p align="center"><b>Versus</b></p> <p>2. Inspector General of Police Khyber Pakhtunkhwa Peshawar. 3. Deputy Inspector General of Police Mardan Region Mardan. 4. Deputy Police Officer District Mardan.</p> <p align="right"><b>Respondents</b></p> <p><b>Mr. Muhammad Hamid Mughal</b>-----<b>Member</b> <b>Mr. Muhammad Amin Kundi</b> -----<b>Member</b></p> <p align="center"><u>JUDGMENT</u> <u>MUHAMMAD HAMID MUGHAL, MEMBER: -..</u></p> <p>1. Learned counsel for the appellant and Mr. Riaz Paindakheil learned Assistant Advocate General alongwith Mr. Atta Ur Rehman S.I legal for the respondents present.</p> <p>2. The appellant (Ex-Constable Police Department Mardan) has filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 05.03.2013 whereby major punishment of dismissal from service was awarded to the appellant on the ground of absence from duty for a period of</p>

one hundred ninety three (193) days at different intervals. The appellant has also challenged the order dated 14.10.2013 through which his departmental appeal was filed by respondent No.2.

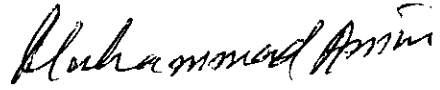
3. Learned counsel for the appellant argued that the house of the appellant was destroyed due to floods of 2011 and as such he was forced to reconstruct his house moreover the mother of the appellant was also seriously ill and there was no one to take care of her except appellant and therefore was absent from duty. Further argued that the absence of appellant was never intentional and the reason was brought into the notice of the respondents. Further argued that the appellant had five (05) years length of service at his credit when the impugned order was passed. Further argued that the appellant is sole bread earner of his family and there is also no allegation that he travelled abroad for the purpose of job. Learned counsel for the appellant vehemently stressed that the impugned punishment of dismissal from service awarded to the appellant is extremely harsh and excessive.

4. As against that learned Assistant Advocate General argued that the appellant remained absent from duty without any application and permission and series of Show Cause Notices were issued to him. Learned Assistant Advocate General admitted that the appellant has no history of travelling abroad however argued that the appellant deliberately remained absent for almost two hundred (200) days and as such the impugned punishment order was rightly issued.

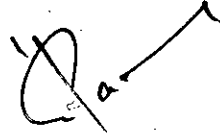
5. Arguments heard. File perused.

6. There is no dispute that the appellant remained absent from duty at different intervals between the year 2011 to 2013, as mentioned in his dismissal order (original impugned order). Documents available with the written reply of the respondents reflect that Show Cause Notices were also issued to the appellant due to his absence from duty, hence in the circumstances of the case learned counsel for the appellant could not demonstrate that the appellant was wrongly punished. However the appellant is a low paid employee and there is also no dispute that the appellant had already served for five (05) years in the respondent department when the impugned punishment order was issued and that there is no allegation of corruption against him moreover the stance of the appellant is that due to the floods in the year 2011, his house was destroyed and his mother was also seriously ill and for that reason he could not attend to his duties. In the stated circumstances, the argument of learned counsel for appellant that the major penalty of dismissal from service is extremely harsh and excessive, seems genuine. Consequently, for the purpose of safe administration of justice, the impugned major penalty of dismissal from service is modified and converted into major penalty of reduction to lower stage in time scale for a period of five (05) years. Resultantly the appellant is reinstated in service. All the absence period and the intervening period shall be treated as leave without pay. The present service appeal is accepted in the above terms. Parties are

left to bear their own costs. File be consigned to the record room.



(Muhammad Amin Kundi)  
Member



(Muhammad Hamid Mughal)  
Member

**ANNOUNCED**  
**12.10.2018**

09.10.2018


Appellant in person and Mr. Riaz Paindakheil learned Assistant Advocate General alongwith Mr. Atta Ur Rehman S.I legal for the respondent present. Representative of the respondents again requested for time to furnish IBMS Travel History of the appellant. Adjourned. To come up for further proceedings/order on 12.10.2018 before D.B.


  
Member

  
Member

12.10.2018

*Mr. Atta Ur Rehman S.I legal*  
Learned counsel for appellant and Mr. Riaz Paindakheil learned Assistant Advocate General present. Vide separate judgment of today of this Tribunal placed on file, the impugned major penalty of dismissal from service is modified and converted into major penalty of reduction to lower stage in time scale for a period of five (05) years. Resultantly the appellant is reinstated in service. All the absence period and the intervening period shall be treated as leave without pay. The present service appeal is accepted in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

  
(Muhammad Amin Kundi)  
Member


  
(Muhammad Hamid Mughal)  
Member

**ANNOUNCED**  
**12.10.2018**

16.07.2018

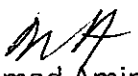
Clerk to counsel for the appellant present. Mr. Atta ur Rehman, SI alongwith Mr. Muhammad Jan, DDA for respondents present. Arguments could not be heard due to general strike of the Bar. Adjourned. To come up for arguments on 06.09.2018 before D.B.

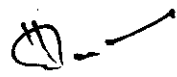
  
(Ahmad Hassan)  
Member

  
(Muhammad Hamid Mughal)  
Member

06.09.2018

Learned counsel for the appellant and Mr. Riaz Khan Paindakheil learned Assistant Advocate General alongwith Mr. Atta Ur Rehman S.I legal for the respondents present. Arguments heard. To come up for order on 24.09.2018 before D.B. Representative of the respondents is directed to furnish IBM Travel History of the appellant on the next date already fixed.

  
(Muhammad Amin Kundi)  
Member

  
(Muhammad Hamid Mughal)  
Member

24.09.2018


Appellant in person and Mr. Muhammad Jan learned Deputy District Attorney alongwith Mr. Attaur Rehman S.I legal for the respondent present. Representative of the respondents seeks time to furnish IBMS Travel History of the appellant. Adjourned. To come up for ~~order~~ further proceedings/order on 09.10.2018 before D.B


  
(Hussain Shah)  
Member

  
(Muhammad Hamid Mughal)  
Member

15.01.2018


Appellant absent. Mr. Kabir Ullah Khattak, Addl: AG for the respondents present. Lawyer community on strike on the call of Khyber Pakhtunkhwa Bar Council. Adjourned. To come up for arguments on 12.03.2018 before D.B.

  
(Gul Zeb Khan)  
Member

  
(M. Hamid Mughal)  
Member

12.03.2018

Counsel for the appellant and Mr. Usman Ghani, District Attorney alongwith Mr. Muhammad Shafique, Inspector (legal) for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 03.05.2018 before D.B.

  
(Muhammad Amin Khan Kundi)  
Member

  
(Muhammad Hamid Mughal)  
Member

03.05.2018

Due to retirement of the worthy Chairman, the Tribunal is incomplete, therefore the case is adjourned. To come up for same on 16.07.2018 before D.B

  
Reader

05.04.2017

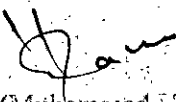
Counsel for the appellant and Mr. Khalid Mehmood, HC alongwith Kabir Ullah Khattak, Assistant AG for the respondents present. Argument could not be heard due to incomplete bench. To come up for final hearing on 25.07.2017 before D.B.

  
Chairman

13. 25.07.2017

Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney and Mr. Atta-ur-Rahman, ASI for the respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 06.11.2017 before D.B.

  
(Ahmad Hassan)  
Member

  
(Muhammad Farid Mughal)  
Member

06.11.2017

Appellant in person present. Mr. Ziaullah, Deputy District Attorney alongwith Mr. Atta-ur-Rehman, S.I (legal) for the respondents also present. Appellant requested for adjournment on the ground that his counsel is not available today. Adjourned. To come up for arguments on 15.01.2018 before D.B.

  
(Gul Zeb Khan)  
Member

  
(Muhammad Amin Khan Kundi)  
Member



11.04.2016

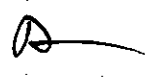
Counsel for the appellant present and submitted Wakalat Nama. Mr. Muhammad Ghani, S.I alongwith Mr. Muhammad Jan, GP for respondents present. Rejoinder not submitted. Learned counsel for the appellant requested for further time. To come up for rejoinder and arguments on 5-8-16.

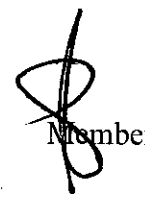
  
Member

  
Member

05.08.2016

None for the appellant present. Mr. Muhammad Jan, GP alongwith Mr. Muhammad Ghani, SI for the respondents present. Notices be issued to the appellant/counsel for the appellant. To come up for rejoinder and arguments on 25.11.2016.

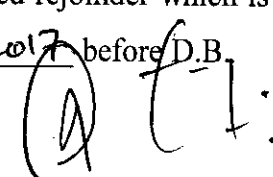
  
Member

  
Member

25.11.2016

Counsel for the appellant and Mr. Muhammad Ghani, S.I alongwith Assistant AG for respondents present. Learned counsel for the appellant submitted rejoinder which is placed on file. To come up for arguments on

5.4.2017 before D.B.

  
(ABDUL LATIF)  
MEMBER

  
(MUHAMMAD AAMIR NAZIR)  
MEMBER

06

28.01.2015

Clerk of counsel for the appellant and Addl: AG for respondents present. Written reply not submitted. Requested for adjournment. Adjourned to 17.04.2015 for written reply.

  
Member

7


17.04.2015

Appellant in person and Mr. Muhammad Ghani, S.I (legal) alongwith Additional Advocate General for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 12.10.2015.

  
Chairman

12.10.2015

Appellant in person and Mr. Muhaminadi Jan, GP, for respondents present. Appellant requested for adjournment due to non-availability of his counsel. To come up for arguments on 11-4-6.

  
Member

  
Member

Receipt is Attached  
Rs.....  
Bank.....  
Security & Process Fee  
Appellant Deposited

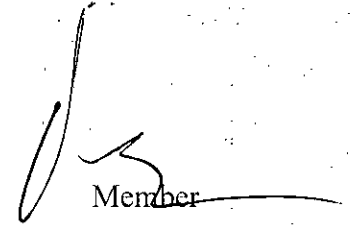
3.

26.08.2014

Appeal No. 835/2014  
Mr. Zaheer Hussain

Appellant in person present, and requested for adjournment

due to non-availability of his counsel. Request accepted. To come up for preliminary hearing on 30.10.2014.

  
Member

4.

30.10.2014

Counsel for the appellant 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 05.03.2013, 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 which was rejected vide order dated 14.10.2013, hence the instant appeal on 11.06.2014. Counsel for the appellant has also filed an application alongwith the appeal for condonation of delay. Notice of application should also be issued to the respondents for reply/arguments.

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 main appeal as well as reply/arguments on application on 22.01.2015.

Appellant Deposited  
Security & Process Fee  
Rs. 300/- Bank  
Receipt is Attached with File.

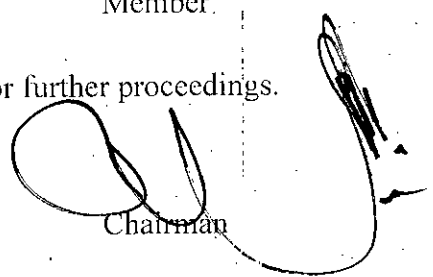


  
Member

5.

30.10.2014



This case be put before the Final Bench I for further proceedings.

  
Chairman

Form - A  
Form of Order Sheet

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

Case No. 835/2014


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	12/06/2014	<p>The appeal of Mr. Zawar Hussain resubmitted today by Mr. Saifullah Khalil 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	17-6-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <del>26-8-2014</del></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Zawar Hussain Constable No. 2203 Distt. Police Mardan received today i.e. on 11.06.2014 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.
- 2- Copy of departmental appeal is not attached with the appeal which may be placed on it.
- 3- Annexure-A of the appeal is illegible which may be replaced by legible/better one.

No. 909 /S.T,

Dt. 11/6 /2014.

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Saifullah Khalil Adv. Pesh.

Respected Sir,

1. Copies of Charge Sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached because the dismissal order is passed ex parte and therefore, not available.
2. Copy of departmental appeal is not attached because the dismissal order is passed ex parte and therefore, not available.
3. Better copy Annexure A is attached.

The same is corrected and may kindly be considered.

  
Counsel for appellant.

**Saif Ullah Khalil,**

Advocate, Peshawar.

(1)

**BEFORE THE HONOURABLE SERVICES TRIBUNAL KHYBER**  
**PAKHTUNKHWA, PESHAWAR**

Services Appeal No. 835 /2014

Zawar Hussain

**VERSUS**

Inspector General of Police, KPK, Peshawar etc

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6.	Copy of the impugned order No. 3886, dated 14/10/2013	B	13
7.	Wakalat Nama		14

Appellant

Through

  
SAIF ULLAH KHALIL (SENIOR)

Advocate, High court Peshawar

Cell #

Office Address: -

**BEFORE THE HONOURABLE SERVICES TRIBUNAL KHYBER**  
**PAKHTUNKHWA, PESHAWAR**

Services Appeal No. 835 /2014

863  
011-6-9016

Zawar Hussain No. 2203, Constable, Posted at PS Mardan,  
 District Mardan. .. APPELLANT

**VERSUS**

1. Inspector General of Police, KPK, Peshawar.
2. Deputy Inspector general of Police Mardan Region Mardan.
3. Deputy Police officer District Mardan.

... RESPONDENTS

**APPEAL UNDER SECTION 4 OF THE SERVICES**  
**TRIBUNAL ACT AGAISNT THE ORDER NO.**  
**1519-23/PA, DATED 05/03/2013 OF**  
**RESPONDENT NO.3, VIDE WHICH MAJOR**  
**PUNISHMENT OF DISMISSAL WAS AWARDED**  
**TO THE APPELLANT AND AGAINST THE**  
**ORDER NO. 3886, DATED 14/10/2013, OF**  
**RESPONDENT NO.2 VIDE WHICH THE**  
**DEPARTMENTAL APPEAL OF THE**  
**APPELLANT WAS DISMISSED**

Filed to the  
 11/6/14

co-submitted to  
 and filed.

12/6/14

**PRAYER IN APPEAL:**

ON ACCEPTANCE OF THIS APPEAL BOTH THE  
IMPUGNED ORDERS OF THE RESPONDENTS  
MAY KINDLY BE SET ASIDE AND THE  
RESPONDENTS AND THE MAJOR PUNISHMENT  
OF DISMISSAL AWARDED TO THE APPELLANT  
MAY KINDLY BE CANCELLED / SET ASIDE

**RESPECTFULLY SHEWETH,**

The appellant submit as under:

1. That the appellant was appointed as Constable in the year 2008.
2. That vide order No.159-23/PA, dated 05/03/2013 of respondent No.3 awarded penalty of dismissal to the appellant. (Copy of the impugned order No.1519-23/PA, dated 05/03/2013 is attached as annexure A).
3. That against the said order the appellant preferred a departmental appeal before respondent no.2, but respondent no.2, vide order No. 3886, dated 14/10/2013 rejected the appeal of the appellant. (Copy of the impugned order No. 3886, dated 14/10/2013 are attached as annexure B).
4. That the appellant feeling aggrieved files the instant appeal on the following grounds inter alia:



**GROUNDS:**

- A. *That both the impugned orders of respondents are against the law and facts, hence liable to be cancelled.*
- B. *That the appellant was not served with any show cause notice nor any personal hearing has been given to the appellant and as such the appellant has been condemned unheard.*
- C. *That according to the impugned order the appellant was allegedly absented from his service for 193 days, for which major penalty of dismissal cannot be awarded, because the appellant has unblemished continuous service for 6 years, which cannot be taken away from the appellant through a single stroke.*
- D. *That no inquiry whatsoever has been conducted against the appellant, nor any opportunity of hearing is given to the appellant, if any so called inquiry is conducted in the absence of the appellant. As such no inquiry, show cause, statement of allegations is attached herewith.*
- E. *That the house of the appellant was destroyed due to flood in year 2011 as such he was busy*

for reconstruction of his house and as such he was absented from his duty, which was not wilful but was due to the above reason and high-ups were duly informed in this respect and the same can be treated as leave without pay, but the major penalty cannot be given to the appellant, which is harsh and never allowed by the law and also against the cannon of natural justice.

F. That on the above alleged absentee, the appellant was already punished in the shape of his transfer to dangerous post where the appellant satisfactorily performed his duties.

G. That even it is the law of natural justice that circumstances should be considered while deciding a case.

H. That absence of the appellant was never wilful or intentional and it was brought in the notice of the respondents even beside the above the mother of the appellant was seriously ill and there was no one to care of her, except the appellant.

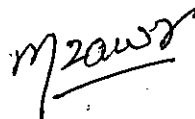
I. That appellant belongs to a very poor family and the sole bread earner for his mother and the impugned orders have made his life miserable, as he is having no other source of

income, thus his case needs sympathetic consideration.

J. That other grounds would be raised at the time of arguments with the prior permission of this Honourable Court.

It is, therefore, most humbly prayed that on acceptance of this appeal the impugned orders of the respondents may kindly be set aside and the respondents be directed to remove the dismissal and the appellant be restored to his original position / post.

Dated: 10/06/2014



Appellant

Through



SAIF ULLAH KHALIL (SENIOR)

Advocate, High court Peshawar

Certificate: -

Certified that as per instructions of my client no such like appeal has earlier been filed before this Honourable Court.



Advocate

**BEFORE THE HONOURABLE SERVICES TRIBUNAL KHYBER**  
**PAKHTUNKHWA, PESHAWAR**

Services Appeal No. \_\_\_\_\_/2014

Zawar Hussain

**VERSUS**

Inspector General of Police, KPK, Peshawar etc

**APPLICATION FOR CONDONATION OF DELAY**

**RESPECTFULLY SHEWETH,**

1. That the above titled appeal is going to be filed today before this Honourable Court, in which no date of hearing is yet been fixed.
2. That the decision on departmental appeal was conveyed / communicated to the appellant on 30/05/2014 as such the present appeal is well within time.
3. That the delay if any in filing this appeal is not wilful, therefore in the large interest of justice it may kindly be condoned.
4. That the law favours decisions on merits rather than technicalities.

5. That this honourable Court has got ample power to entertain the present application.

6. That there is absolutely no legal bar in allowing the instant application, rather the same is in the larger interests of justice.

It is, therefore, most humbly prayed that delay if any in filing of the instant appeal may kindly be condoned in the larger interest of justice.

Appellant / applicant

*[Handwritten signature]*

Through

*[Handwritten signature]*  
SAIF ULLAH KHALIL

Advocate, High Court Peshawar

**BEFORE THE HONOURABLE SERVICES TRIBUNAL KHYBER**  
**PAKHTUNKHWA, PESHAWAR**

Services Appeal No. \_\_\_\_\_ /2014

Zawar Hussain

**VERSUS**

Inspector General of Police, KPK, Peshawar etc

**AFFIDAVIT**

I, Zawar Hussain No. 2203, Constable, Posted at PS Mardan, District Mardan do hereby solemnly affirm and declare on oath that the contents of the instant application for condonation of delay are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

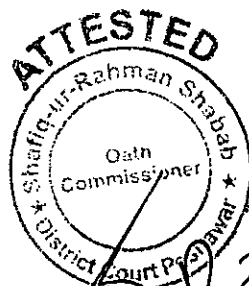
*Zawar Hussain*  
Deponent

Identified by:

*SAIF ULLAH*

**SAIF ULLAH KHALIL (SENIOR)**

Advocate, High Court Peshawar



*S. R. S.*  
*11-06-2014*

**BEFORE THE HONOURABLE SERVICES TRIBUNAL KHYBER**  
**PAKHTUNKHWA, PESHAWAR**

Services Appeal No. \_\_\_\_\_/2014

Zawar Hussain

**VERSUS**

Inspector General of Police, KPK, Peshawar etc

**ADDRESSES OF PARTIES**

**ADDRESS OF APPELLANT:**

Zawar Hussain No. 2203, Constable, Posted at PS Mardan,  
District Mardan.

**ADDRESSES OF RESPONDENTS:**

1. Inspector General of Police, KPK, Peshawar.
2. Deputy Inspector general of Police Kohat Region Kohat.
3. Deputy Police officer District Karak.

*Zawar*

Appellant

Through

*Ullah*

SAIF ULLAH KHALIL (SENIOR)

Advocate, High court Peshawar

POLICE DEPARTMENTMARDAN DISTRICTDISMISSAL ORDER

Constable Zawar Hussain No. 2203, while posted at Police Stations Rustam, Kharki & Shergarh, remained absent from duty without any leave/permission of the competent authorities for the following periods:-

DD report No. 23 dated 15.12.2010 to DD report No. 05 dated 05.01.2011 PS Rustam (21 days)  
 DD report No. 24 dated 17.01.2011 to DD report No. 46 dated 24.01.2011 PS Rustam (07 days)  
 DD report No. 31 dated 11.03.2011 to DD report No. 10 dated 14.03.2011 PS Rustam (03 days)  
 DD report No. 35 dated 20.03.2011 to DD report No. 05 dated 08.04.2011 PS Rustam (19 days)  
 DD report No. 41 dated 09.05.2011 to DD report No. 35 dated 22.05.2011 PS Rustam (13 days)  
 DD report No. 11 dated 26.05.2011 to DD report No. 06 dated 30.05.2011 PS Rustam (04 days)  
 DD report No. 30 dated 07.09.2012 to DD report No. 21 dated 03.10.2012 PS Kharki (26 days)  
 DD report No. 32 dated 17.10.2012 to DD report No. 05 dated 19.01.2013 PS Shergarh (94 days)  
 DD report No. 27 dated 23.08.2012 to DD report No. 29 dated 29.08.2012 PS Kharki (06 days)

Total absence's period one hundred ninety three (193) days.

In this connection, he was served with proper Show Cause Notices, issued vide this office Nos. 690/PA/SCN/R dated 22.07.2011, 940/PA/SCN/R dated 01.11.2012, 965/PA/SCN/R dated 27.11.2012 & 995/PA/SCN/R dated 28.11.2012 & delivered its upon his father Nisar Muhammad & him in person on 26.07.2011, 12.11.2012, 28.12.2012 & 29.12.2012 respectively.

In compliance, he was bound to submit his replies within the stipulated time of fifteen days on receipt of each notice, but he did not bother to submit his reply in compliance of a single Show Cause Notice till date, proving that he has absented himself from duty intentionally/deliberately and has nothing to present in his defense.

Keeping in view his long absence's period of two hundred & three (203) days and non presenting his replies in compliance of four delivered Show Cause Notices till date, I am of the considered opinion that Constable Zawar Hussain No. 2203 of Police Station Shergarh did not take interest in Police Service and his more retention in the Police Force will badly affect his other colleagues, therefore ex-parte action is taken against him by awarding major punishment of dismissal from Police Force with counting his absence's period, quoted above, as leave with out pay with immediate effect, in exercise of the power vested in me under NWFP Police Rules 1975 including last Paragraph of the Show Cause Notices.

Order announced

O.B No. 5

Dated 1/3/2013

(Danishwar Khan)  
 District Police Officer,  
 Mardan.

No. 1575-23/PA dated Mardan: The 5-3-2013.

Copy for inform. action + necessary action:-

1. The S.P/HQrs Mardan.
2. The SHO Shergarh.

Attested

(Signature)  
 27/11/12

Council

(Signature)



POLICE DEPARTMENTMARDAN DISTRICTDISMISSAL ORDER

Constable Zawar Hussain No. 2203, while posted at Police Stations Rustam, Kharki and Shergarh, remained absent from duty without any leave / permission of the competent authorities for the following periods:-

DD Report No. 23 dated 15-12-2010 to DD report No. 05 dated 05-01-2011 PS Rustm (21 days)  
DD Report No. 24 dated 17-01-2011 to DD report No. 46 dated 24-01-2011 PS Rustm (07 days)  
DD Report No. 31 dated 11-03-2011 to DD report No. 10 dated 14-03-2011 PS Rustm (03 days)  
DD Report No. 35 dated 20-03-2011 to DD report No. 05 dated 08-04-2011 PS Rustm (19 days)  
DD Report No. 41 dated 09-05-2010 to DD report No. 35 dated 22-05-2011 PS Rustm (13 days)  
DD Report No. 11 dated 26-05-2011 to DD report No. 06 dated 30-05-2011 PS Rustm (04 days)  
DD Report No. 30 dated 07-09-2012 to DD report No. 21 dated 03-10-2012 PS Rustm (26 days)  
DD Report No. 32 dated 17-10-2012 to DD report No. 05 dated 19-01-2013 PS Rustm (94 days)  
DD Report No. 27 dated 23-08-2012 to DD report No. 29 dated 29-08-2012 PS Rustm (06 days)  
**Total absence's period one hundred ninety three (193) days.**

In this connection, he was served with proper Show Cause notices, issued vide this office Nos. 690/PA/SCNZR dated 22/07/2011, 940/PA/SCNZR dated 01/11/2012, 965/PA/SCNZR dated 27-11-2012 & 995/A/SCNZR dated 28-11-2012 and delivered its upon his father Nisar Muhammad and him in person on 26-07-2011, 12-11-2012, 28-12-2012 and 29-12-2012 respectively.

In compliance, he was bound to submit his replied with the stipulated time of fifteen days on receipt of each notice, but he did not bother to submit his reply in compliance of a single Show Cause notice till date, proving that he has absented himself from duty intentionally / deliberately and has nothing to present in his defense.

Keeping in view his long absence's period of two hundred and three (203) days and non presenting his replied in order of four delivered Show Cause notices till date. I am of the considered opinion that the Zawar Hussain No. 2203 of Police Station Shergarh did not take interest in Police Service and his more retention in the Police Fore will badly affect his other colleagues, therefore, ex parte action is taken against hereby awarding major punishment of dismissal from Police Force with counting his absence's period, quoted above, as leave without pay with immediate effect, in exercise of the power vested in me under NWFP Police Rules, 1975, including last Paras of the show cause notices.

Order announced  
OB No. 55

-sd-  
(Danishwar Khan)  
District Police Officer,  
MARDAN

No. 1519-23 / PA date Mardan: The 5-3-2013  
Copy for information and necessary action to:-

1. The SP/ HQrs Mardan
2. The SHO Shergarh.

**Government of Khyber Pakhtunkhwa**  
**Office of the Deputy Inspector General of Police**  
**Mardan Region-I, Mardan**  
 Phone No. 0937-9230115; Fax No. 0937-9230115

**From:** The Deputy Inspector General of Police,  
Mardan Region-I, Mardan

**To:** The Provincial Police Officer,  
Khyber Pakhtunkhwa, Peshawar.

No. 1150 /ES.

14 June, 2013.

**Subject:** DETAIL OF ORDERLY ROOM HELD AT REGION OFFICE, MARDAN.

**Memo:** Details of orderly room held in this office on 14.06.2013 is submitted below please.

Sr. No.	Name & Rank	Purpose of appearance	Order of the undersigned
1.	Ex-Constable Farooq Azam No. 1790	Appeared/requested for reinstatement in Service	Reinstated in service
2.	Ex-Constable Muhammad Irshad No. 1594	Appeared/requested for reinstatement in Service	Filed
3.	Ex-Constable Zawar Hussain No. 2292	Appeared/requested for reinstatement in Service	Filed
4.	Ex-Constable Sajid No. 3000	Appeared/requested for reinstatement in Service	Filed

*Alleged*  
*Joseph*  
*Stano*  
*Council*

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

No. 1150 /ES.

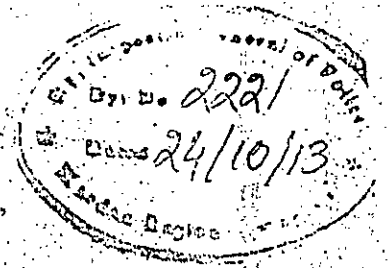
Copy to District Police Officer, Mardan for information and necessary action.

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

(13)

ANX B

1. 7/20/13  
30.5.2014



From: - The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.

To: - The Deputy Inspector General of Police, Mardan Region, Mardan.

No. 3886 /Legal, Dated Peshawar the: 14-10-2013.

Subject:- APPLICATION FOR RE-INSTATEMENT IN SERVICE

Memo:-  
Please refer to your office letter No. 3981/EC dated 12.9.2013.  
The application of ex-constable Zawar Hussain No. 2203 of Mardan Police, for re-instatement in service was examined by the competent authority and filed. The applicant may be informed accordingly.

AIG/LEGAL

For Provincial Police Officer,  
Khyber Pakhtunkhwa, Peshawar.

Attested  
Council

NO. 4843/ES,  
dt: 24-10-13  
EC / D/O Mardan  
To inform the applicant.  
S. S. / MDN

(۱۶)

بعدالت جناب سروس ٹریڈنگ سے متعلقہ



اپیلانٹ

2016ء پنجاب

مورخہ 11-06-16

بنام آئی جی پی ڈی

نوار حسین

مقدمہ

دعویٰ اپیل

جرم

### باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام لیسٹاؤ کیلئے سید اللہ ضلیل اللہ طارق اصطن اللہ دوسری مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز

وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اولیٰ بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق

زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت

مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے

اور اس کا ساختہ پر داخنتہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ سندر ہے۔

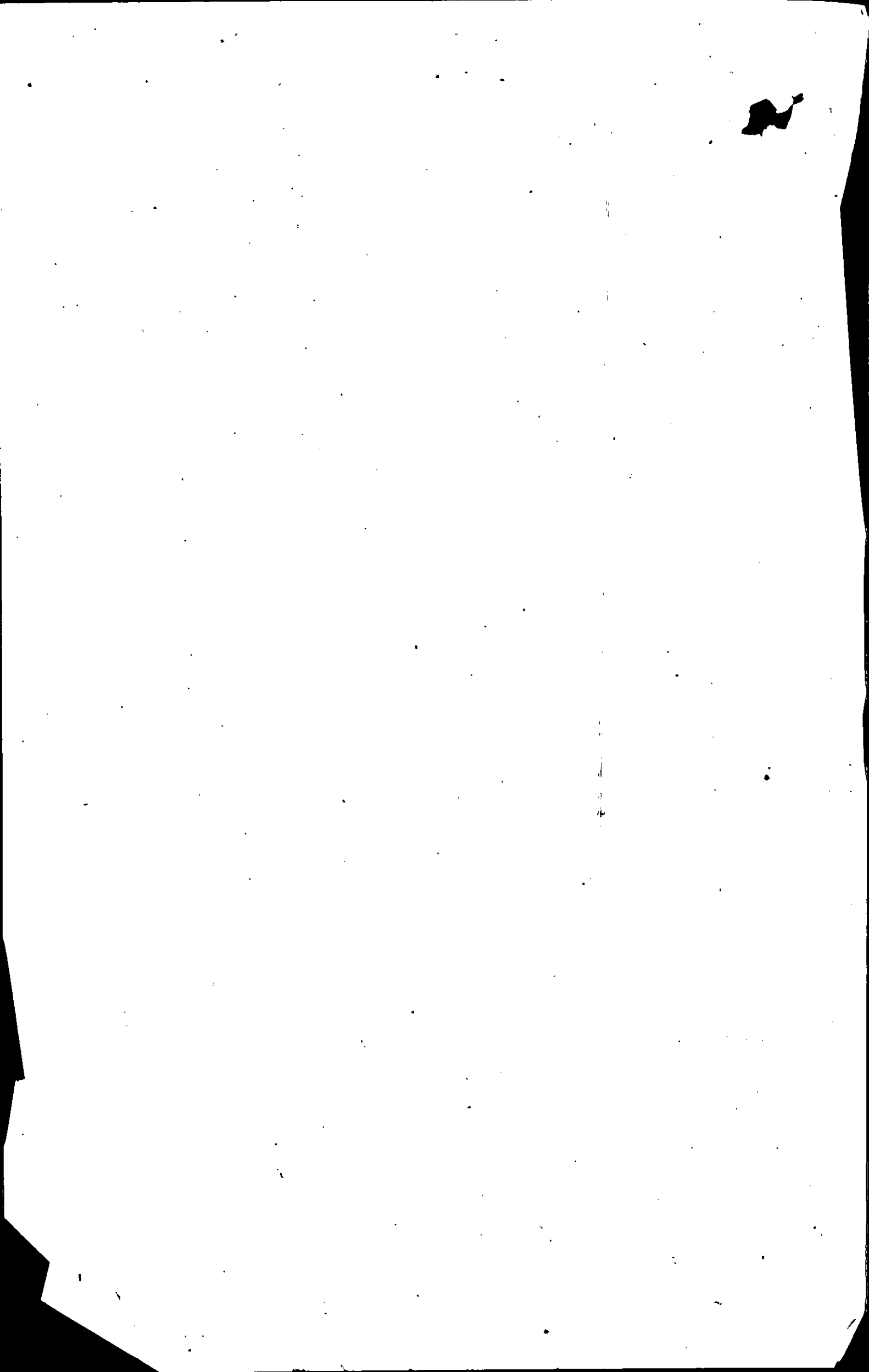
المرقوم 11 ماہ جون 2016ء

مقام نوار حسین (اپیلانٹ کے لئے منظور ہے۔)

عنوان سٹیشنری مارٹ

چوک شنگری پٹارشی فون: 2220193

Mob: 0345-9223239



قیمت  
10 روپے

46245



ایڈووکیٹ / دستخط:   
بار کونسل ابار ایسوسی ایشن پشاور  
رابطہ نمبر: 0344-9229321

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: جسٹس سر سید ابرار حسین پشاور

اسلام آباد	دعوی: Service Appeal
پشاور	عدالت نمبر: 835/14
پشاور	موضوع:
پشاور	جزم:
پشاور	تھانہ:

**بامثل تحریر آنکہ**

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ  
 ان مقام لیسٹا کے سرکار کے فیصلے کے خلاف جسٹس ابرار حسین کی طرف سے  
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا نیز وکیل صاحب کو  
 راضی نامہ کرنے و تقریر جانٹ و فیصلہ برصن دینے جواب دعوی اقبال دعوی اور درخواست اڈر قسم کی تصدیق  
 ذریعہ مدد خط کرنے کا اختیار ہوگا، نیز یہ صورت عدم پیروی بتاؤ گری کی تکلیف یا اہل کی برآمدگی اور منسوخ نیز  
 دائر کرنے اہل نگرانی و نظریاتی و پیروی کرنے کا مختار ہوگا اور یہ صورت ضرورت مقدمہ مذکورہ کے کل یا جزوی  
 کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے قرار کا اختیار ہو گا اور صاحب  
 مقدمہ شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساتھ ہی درخواست منظور قبول ہوگا دوران مقدمہ  
 میں جو خرچہ ہر جانہ التوائے مقدمہ کے نسبت سے ہوگا وہ وکیل موصوف و قبول کرنے کا مختار ہوگا کوئی خارج پیشی مقام  
 دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ مندر ہے۔

المرقوم: 11/04/06

الع واد شد الع بد  
مقام لیسٹا

*(Handwritten signature)*

Accepted  
Attested

نوٹ: اس عدالت ہائی کورٹ کا قیام قبول ہوگی

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR

Service Appeal No.83.5/2014

Zawar Hussain No.2203..... Appellant

Versus

Inspector General of Police Deptt: KPK

and others..... Respondents

REJOINDER ON BEHALF OF APPELLANT.

Rejoinder on behalf of appellant as under:

*Respectfully Sheweth;*

Preliminary objections:

- 1) Para No.1 of preliminary objections is incorrect, hence denied that applicant has come to this Hon'ble Tribunal with clean hands.
- 2) Para No.2 of the objection is incorrect. Moreover, the appellant is a civil servant and has got every cause of action.
- 3) Para No.3 is incorrect, hence denied and nothing has been concealed from this Hon'ble Tribunal.
- 4) Para No.4 is incorrect, hence denied.
- 5) Para No.5 and 6 are incorrect. Hence denied. Moreover the appeal is maintainable and is within time.

REPLY ON FACTS:

- 1) That Para No.1 of appeal are correct while the reply of respondent is incorrect, hence denied.

- 2) That para No.2 of the main petition is adopted.
- 3) That Para No.3 of the main petition is adopted.
- 4) That para No.4 of the main petition is adopted.

REPLY ON GROUNDS:

- A. That both the orders passed by the department are void, incorrect, against the law and facts.
- B. Ground is against the law because neither notice is served nor received by himself and it is against natural justice.
- C. Ground is against the law and fact. Neither the appellant involved in misconduct nor intentionally remained absent from office. Even though the plea of respondent upto absented 193 days are totally incorrect because he was remained absent upto 183 days not 193 days and nor 203 days.
- D. That this ground is against the law and facts, no notice issued, if any, the appellant has not served.
- E. That this Ground is against the law and bad in form and he has not committed any misconduct.
- F. Void, illegal against the law and fact.
- G. That ground G of the main appeal is adopted.
- H. That first part of the ground is legal but he remained absent for the reasons given in the grounds of appeal.
- I. That ground "I" of main appeal is adopted.
- J. That the respondent will agitate only those grounds which has mentioned cannot agitate any other grounds



It is, therefore, requested that on acceptance of this rejoinder the appeal filed by the appellant may kindly be accepted with and the appellant may kindly be re-instated on his post with all back benefits.

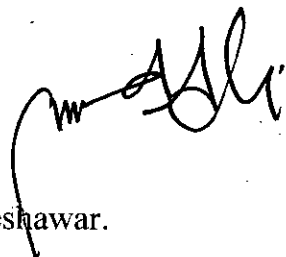
Appellant

Through



**Qaisar Hussain (Pajagi)**

&



**Murad Ali**  
Advocate, Peshawar.

Dated: 22.11.2016

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No.835/2014

Zawar Hussain No.2203.....Appellant

VERSUS

Inspector General of Police Deptt; KPK

And others .....Respondents

**AFFIDAVIT**

I, Muhammad Zawar S/o Nisar Muhammad R/o Mohallah Dagwal, Manga, Tehsil & District Mardan (Appellant No.1), do hereby affirm and declare on oath that the contents of the accompanying **REJOINDER** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

  
Deponent

16101-8980981-1

Identified by

  
**Murad Ali**  
Advocate Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR

Service Appeal No.83.5/2014

Zawar Hussain No.2203..... Appellant

Versus

Inspector General of Police Deptt: KPK

and others..... Respondents

REPLY TO THE APPLICATION FOR  
CONDONATION OF DELAY.

Rejoinder on behalf of appellant as under:

*Respectfully Sheweth;*

Preliminary objections:

- 1) Para No.1 of preliminary objections is incorrect, moreover, the appellant is a civil servant and has got every cause of action.
- 2) Para No.2 of the preliminary objection is incorrect. Hence denied.
- 3) Para No.3 of the preliminary objection is incorrect, hence denied.
- 4) Para No.4 of the preliminary objection is incorrect, hence denied and nothing material has been concealed from this Hon'ble Court.
- 5) Para No.5 of the preliminary objection is incorrect, hence denied.

REPLY ON FACTS:

- 1) That Para No.1 needs no reply.
- 2) That para No.2 of respondent's reply is incorrect, hence denied.

- 3) That para No.3 of respondent's reply is incorrect, hence denied.
- 4) That para No.4 of respondent's reply is incorrect, hence denied.
- 5) That Para No.5 of the application is adopted.
- 6) That para No.6 of respondent's reply is void, illegal and unlawful, hence denied.

It is, therefore, requested that on acceptance of this Reply the application filed by the appellant may kindly be accepted.

Appellant

Through

  
**Qaisar Hussain (Pajagi)**

&

  
**Murad Ali**  
Advocate, Peshawar.

Dated: 22.11.2016

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No.835/2014

Zawar Hussain No.2203.....Appellant

VERSUS

Inspector General of Police Deptt; KPK

And others .....Respondents

**AFFIDAVIT**

I, Muhammad Zawar S/o Nisar Muhammad R/o Mohallah Dagwal, Manga, Tehsil & District Mardan (Appellant No.1), do hereby affirm and declare on oath that the contents of the accompanying **REJOINDER** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



Deponent

16101-8980981-1

Identified by

  
**Murad Ali**  
Advocate Peshawar

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

No. 2154 /ST

Dated 25 / 10 / 2018

To

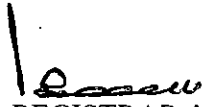
The District Police Officer,  
Government of Khyber Pakhtunkhwa,  
Mardan.

Subject: -

JUDGMENT IN APPEAL NO. 835/2017, MR. ZAWAR HUSSAIN.

I am directed to forward herewith a certified copy of Judgement dated 12.10.2018 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.

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

**Service Appeal No. 835/2014.**

Zawar Hussain No. 2203.....Appellant.

**VERSUS.**

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

**Para wise comments on behalf of 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 instant appeal is badly time-barred.

**PARAWISE REPLY ON FACTS.**

- 1. Correct.
- 2. Incorrect. The appellant was dismissed from service vide order book No. 652 dated 01.03.2013 by the respondent No. 03. **(Copy of O.B No. 652 dated 01.03.2013 is attached as annexure-A).**
- 3. Incorrect. The departmental appeal of the appellant was rejected vide order No. 1828/ES dated 19.06.2013 by the competent authority. **(Copy of order is attached as annexure-B).**
- 4. The appellant is not aggrieved and has got no cause of action to file instant appeal.

05/7  
13.04.13


**COMMENTS ON GROUNDS**


- A. Incorrect. Both the impugned orders are in accordance with law & facts; hence, liable to be maintained.
- B. Incorrect. The appellant was served with a series of Show Cause Notices (04 in number), duly received & signed by the appellant & his father as well. **(Copies of SCNs are attached as annexure- C, D, E & F).**
- C. Incorrect. Absence from duty, in particular prolonged & deliberately absence, is a misconduct on the part of a Police official & the appellant has absented deliberately for almost 200 days. His absence, for a single moment from duty may lead to a huge mishap, thereby, causing threat to the soul & property of the citizens. Further, the appellant is a habitual absentee and his service career is filled with a number of red/bad entries.
- D. Incorrect. In fact, the appellant was issued a number of Show Cause Notices (copies attached) but the appellant was not bothered even to submit his reply to the competent authority, so, was awarded major punishment in ex-parte after completing all codal formalities.

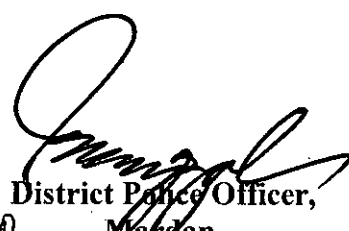
- 3
- E. Incorrect. The construction of the house is the appellant's personal matter & if he had required leave for the said purpose, he might have applied for casual/earned leave in accordance with law/rules. So, the punishment awarded is the ultimate result of misconduct, he committed.
- F. Incorrect. In Police Department the transfers & postings, wherever it may be, is a routine work & the appellant's transfer was also made as a routine matter.
- G. Incorrect. There is enough material regarding his absence in his service record and was, therefore, dismissed.
- H. Incorrect. The Police Department is a disciplined force & there is a laid procedure to avail leave (casual or otherwise) from the competent authority. The appellant, if required leave, might have adopted proper procedure.
- I. The appellant willfully remained absent from his official duty hence he was rightly proceeded under the law & punished.
- J. The respondent department may also, with the prior permission of this Honourable court, raise/present other grounds at the time of arguments.

**Prayer:-**

In view of the above facts & circumstances, it is humbly prayed that the appeal of the appellant is badly time barred and devoid of legal force, may kindly be dismissed.

  
Provincial Police Officer,  
Khyber Pakhtunkhwa, Peshawar.  
(Respondent No. 1)

  
Dy: Inspector General of Police,  
Mardan Region-I, Mardan.  
(Respondent No. 2)

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



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

**Service Appeal No. 835/2014.**


Zawar Hussain No. 2203.....Appellant.

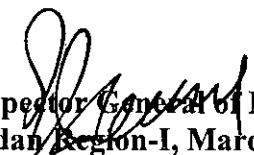
**VERSUS.**


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

  
**Provincial Police Officer,  
Khyber Pakhtunkhwa, Peshawar.  
(Respondent No. 1)**

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

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

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

**Service Appeal No. 835/2014.**

Zawar Hussain No. 2203.....Appellant.

**VERSUS.**

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

**REPLY TO APPLICATION FOR CONDONATION.**

**PRELIMINARY OBJECTIONS.**


1. That the appellant/petitioner has got no cause of action / locus standi.
2. That the application is not maintainable in its present form.
3. That the petitioner has not exhausted his remedies available to him in the proper forum.
4. That the appellant concealed material facts from the Hon'ble Tribunal.
5. That the appellant is estopped by his own conduct.

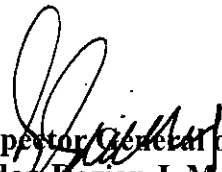
**Respectfully Sheweth,**

1. No comments.
2. Incorrect. The appellant's departmental appeal was rejected vide order No. 1828/ES dated 19.06.2013 by the competent authority and was communicated in time to him.
3. Incorrect. The appellant remained indolent & did not pay heed to his case. The delay on his part was willful & therefore, cannot be condoned under the law of limitations.
4. Incorrect. The delay is so prolonged & falls under the law of limitations.
5. The delay is willful & prolonged, therefore, appellant's request for condonation may not be entertained.
6. Incorrect. There is an absolute legal bar in allowing the instant application & may not be condoned in the larger interest of justice.

**Prayers:-**

In view of the above, it is prayed that the application of the appellant may kindly be dismissed.

  
**Provincial Police Officer,  
Khyber Pakhtunkhwa, Peshawar.  
(Respondent No. 1)**

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

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

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

**Service Appeal No. 835/2014.**


Zawar Hussain No. 2203.....Appellant.

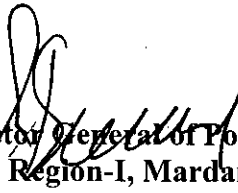
**VERSUS.**

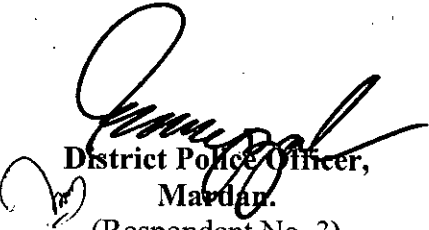
1. Inspector General of Police Department, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police, Mardan Region-I, Mardan.
3. District Police Officer, District  
Mardan.....Respondents.

**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.

  
**Provincial Police Officer,  
Khyber Pakhtunkhwa, Peshawar.  
(Respondent No. 1)**

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

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