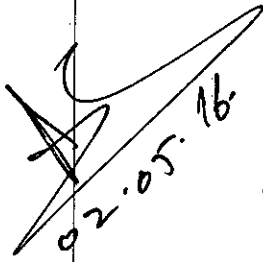


S.No. of proceedings	Date of Order or proceedings.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	02.05.2016	<p style="text-align: center;"><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, CAMP COURT SWAT.</u></p> <p style="text-align: center;"><u>APPEAL NO.900/2014</u></p> <p><u>(Attaur Rehman-vs-Additional I.G.P/Commandant, Frontier Reserve Police, KP, Peshawar.)</u></p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p><u>MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:</u> Counsel for the appellant and Mr. Mushtaq Ahmad, S.I alongwith Mr. Muhammad Zubair, Senior Govt. Pleader for respondents present.</p> <p>Attaur Rehman S/O Amir Zada, hereinafter referred to as the appellant, has preferred the instant appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against order dated 21.02.2009 vide which he was removed from service on the allegations of absence from duty for a period of 3 months and 7 days and where-against the department appeal of the appellant was rejected on 22.6.2011.</p> <p>Learned counsel for the appellant argued that the appellant was given charge sheet on 18.02.2009 wherein he was directed to submit written defense within 7 days of the receipt of the same to the inquiry officer/committee. That the said charge sheet was never served on the appellant as after lapse of period of 2 days from the date of issuance of the same he was removed from service vide impugned order dated 21.02.2009. That neither any inquiry was conducted through any inquiry officer or inquiry committee nor any opportunity of hearing was afforded to the appellant and as such the impugned order is void ab-initio. He further argued that though the appellant has preferred service appeal on</p>


02.05.16

27.06.2014 after lapse of about three years after rejection of his departmental appeal but said delay was due to wave of militancy and illegal confinement of appellant by the militants. Reliance also placed on case law reported as 2002 PLC (CS) 268 wherein the august Supreme Court of Pakistan has allowed delay of period of about 10 years in the interest of justice.

Learned Senior Govt. Pleader argued that the appellant was afforded opportunity of hearing and was found guilty and therefore removed from service vide impugned order dated 21.2.2009 where against his departmental appeal was also rejected. That the service appeal of the appellant was hopelessly barred by the time limitation.

We have heard arguments of the learned counsel for the parties and perused the record.

It is regretted to say that the impugned order was passed by the SP FRP Malakand Range Swat on 21.2.2009 just after 3 days of signing charge sheet dated 18.2.2009 meaning thereby that the mandatory period of 7 days of submitting written defense was yet to elapse. It is also observed with regret that 2 committee Members i.e DSP FRP Swat and Reserve Inspector FRP Swat have signed a facts finding report dated nil stating therein that the appellant was neither giving reply to the charge sheet nor appearing before the inquiry committee. It can be safely inferred from the date of charge sheet and impugned order of removal from service dated 21.2.2009 that the inquiry committee has either conducted the proceedings, if any, on the very next date of charge sheet i.e 19.2.2009 or 20.2.2009 though they were obliged to have waited for 7 days from the date of receipt of charge sheet by the appellant. We are also constrained to take note of observations of the SP FRP Malakand Range Swat wherein he has untruly stated that ample amount of opportunity of personal hearing was provided to the appellant who never availed the said chance. In such a state of affairs we are left with no option but to hold that the entire

AC
02.05.16

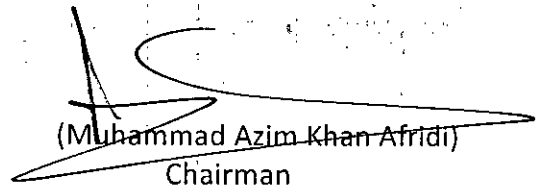
proceedings including the impugned orders of the competent authority as well as appellate authority are in fact misuse and abuse of authority by the respondents and, therefore, the same are declared void.

In the aforesaid circumstances as well as case law referred to by learned counsel for the appellant reported in 2002 PLC (CS) 268 Supreme Court of Pakistan we hold that time limitation was not a hurdle in the way of justice extendable to the appellant in the circumstances of the instant case.

For the above mentioned reasons we accept the instant appeal and reinstate the appellant into service. The respondents are placed at liberty to conduct de-novo inquiry against the appellant but strictly in accordance with law and, if conducted, shall be concluded within a period of 2 months from the receipt of this judgment. In case of inquiry the period of absence from service shall be subject to outcome of inquiry which, in the absence of inquiry, is treated as leave of the kind due. Parties are, however, left to bear their own costs. File be consigned to the record room.



(Abdul Latif)
Member




(Muhammad Azim Khan Afridi)
Chairman
Camp Court Swat

02.05.16

ANNOUNCED
02.05.2016


1.6.2015

Appellant absent. Mr. Mushtaq Ahmad, S.I (legal) along with Mr. Anwar-ul-Haq, G.P for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 8.9.2015 at camp court Swat.


Chairman
Camp Court Swat

8.9.2015

Appellant in person and Mr. Mushtaq Khan, S.I (legal) along with Mr. Muhammad Zubair, Sr. G.P for respondents present. Rejoinder submitted. Arguments could not be heard, due to non-availability of D.B. To come up for final hearing before D.B on 10.12.2015 at Camp Court Swat.


Chairman
Camp Court Swat

10.12.2015

Mr. Fazal Tawab on behalf of the appellant and Mr. Muhammad Zubair, Sr. GP for respondents present. Due to non-availability of D.B arguments could not be heard. To come up for final hearing before D.B on 2.5.2016 at Camp Court Swat.


Chairman
Camp Court Swat.

10.03.2015

Miss. Uzma Sayed, Advocate for counsel for the appellant and Asst: AG for the respondents present. Senior Counsel is stated busy before the august Peshawar High Court, Peshawar. Requested for adjournment. To come up for preliminary hearing on 28.04.2015 before S.B. The respondents shall produce the original departmental appeal of the appellant on the said date.


Chairman

28.04.2015

Counsel for the appellant and Mr. Mushtaq Ahmad, SI (legal) alongwith Assistant A.G for respondents present. Original departmental appeal produced before the Tribunal for perusal according to which the appeal has been received by the officer of Commandant on 12.5.2011. Original returned to representative after perusal.

In view of the order of this Court dated 13.2.2015 and the fact that identical appeals are admitted to regular hearing and so fixed at Camp Court Swat, this appeal is also admitted to regular hearing subject all just legal exceptions. Process fee and security be deposited within 10 days, where-after notices be issued to the respondents for written reply for 1.6.2015 at Camp Court Swat.

Appellant Deposited
Security & Process Fee




Chairman

25.09.2014

Counsel for the appellant present, and requested for adjournment. Request accepted. To come up for preliminary hearing on 04.12.2014.



Member

Reader Note:

04.12.2014

Assistant to counsel for the appellant present. Since the Tribunal is incomplete, therefore, case is adjourned to 13.02.2015 for the same.


Reader

13.02.2015

Learned counsel for the appellant argued that the appellant was appointed as Constable vide order dated 25.10.2004. That during the course of service, he was charge sheeted on the charge of wilful absence and removed from service on 21.2.2009 against which departmental appeal was preferred which was rejected on 22.6.2011 against which the present appeal was preferred on 27.6.2014.


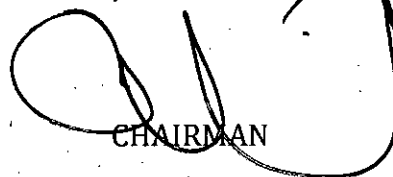
Copy of departmental appeal is not available on record. Let pre-admission notice be issued to the respondents with the direction to produce the entire record including original departmental appeal of the appellant for preliminary hearing before S.B for 10.3.2015.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 900/2014


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	01/07/2014	<p>The appeal of Mr. Atta-Ur-Rehman resubmitted today by Mr. Saadullah Khan Marwat 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>25-8-2014</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Attaur Rehman son of Amir Zada ex-constable no. 4647 received today i.e. on 27.06.2014 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of departmental appeal is not attached with the appeal which may be placed on it.
- 2- Annexures of the appeal may be attested.
- 3- Wakalat nama in favour of appellant is not attached with the appeal which may be placed on it.

No. 1012 /S.T,

Dt. 30/6 /2014.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Saadullah Khan Marwat Adv. Pesh.

Sir,

Resubmitted pt. As far as obj. No. 1, regarding deptd appeal is concerned, the same, at present, is not available with appellant. As & when the same becomes available - shall be placed on board - submitted for further action

By

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

S.A. No. 900 / 2014

Attaur Rehman

Versus

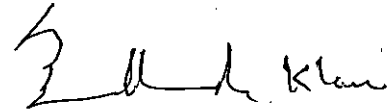
Commandant & others

INDEX

S.No	Documents	Annex	P. No.
1.	Memo of Appeal		1-2
2.	Appointment Order, 25.10.2004	"A"	3
3.	Recruit Course, 28.07.2006	"B"	4-5
4.	Charge Sheet, 18.02.2009	"C"	6
5.	Removal Order, 21.02.2009	"D"	7
6.	Representation,	"E"	8
7.	Rejection Order, 22.06.2011	"F"	9
8	Misc Application	-	10

Appellant

Through



Dated. 25.06.2014

Saad Ullah Khan Marwat
Advocate.

21-A Nasir Mension,
Shoba Bazar, Peshawar.

Ph: 0300-5872676

BEFORE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. 900 /2014

Attaur Rehman S/o Amir Zada, R/O Kityari,
District Dir Lower, Ex - Constable No. 4647,
Special Branch, Saidu Sharif, Swat Appellant

Versus

923
27-6-2014

1. Additional I.G.P / Commandant,
Frontier Reserve Police, KP, Peshawar.
2. Superintendent of Police, FRP, Malaknad
Range, Swat Respondents

⇔<=>⇔<=>⇔<=>⇔<=>⇔

**APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT,
AGAINST OFFICE ORDER NO. 4110-11 / EC,
DATED 22.06.2011 OF RESPONDENT NO. 1,
WHEREBY APPEAL AGAINST OFFICE ORDER NO.
265, DATED 21.02.2009, REMOVING APPELLANT
FROM SERVICE, WAS REJECTED FOR NO LEGAL
REASON.**

⇔<=>⇔<=>⇔<=>⇔<=>⇔

Respectfully Sheweth:

1. That appellant was enlisted as constable in Frontier Reserve Police vide order dated 25.10.2004 with effect from 18.10.2004. (Copy as annex "A")
2. That on 28.07.2006, appellant passed recruit course from P.T.C, Hangu. (Copy as annex "B")
3. That on 18.02.2009, appellant was issued Charge Sheet containing allegation of absence from duty with effect from 14.11.2008 till date. The same was not replied as it was not served upon him. (Copy as annex "C")
4. That perhaps self made enquiry was made in the case in hand wherein appellant was shown absent from duty with effect from 14.11.2008 till date. In the said enquiry report, it was held that appellant

27/6/14

submitted to and filed.

1/7/14

demonstrated cowardice in the line of duty and deserted from the force during emergency situation, so he was then removed from service on 21.02.2009 from the 1st date of his absence from official duty, i.e. 14.11.2008. (Copy as annex "D")

5. That appellant filed representation before the authority which was rejected on 22.06.2011 for no legal reason. (Copies as annex "E" & "F")

Hence this appeal, inter alia, on the following grounds:-

GROUND S:

- a. That neither any Charge Sheet nor final Show Cause Notice was dispatched for service upon appellant as evident from the same, so the same could not be replied due to the abnormal situation of the area.
- b. That no regular enquiry, as mandated by the law, was ever conducted what to speak of providing opportunity of cross examination, self defence and personal hearing.
- c. That the impugned orders are not supported by any reason, nor are speaking, so are against the law.
- d. That the orders were given retrospective effect, so are illegal and based on malafide.

It is, therefore, most humbly prayed that on acceptance of the appeal, order dated 22.06.2011 and 21.02.2009 of the respondents be set aside and appellant be reinstated in his service with all back benefits, with such other relief as may be deemed proper and just in circumstances of the case.

27
Dated. 06.2014

Through

عبد الرحمن
Appellant


Saad Ullah Khan Marwat


Arbab Saiful Kamal


Miss Rubina Naz
Advocates.

A

3

25-10-04

(Continued)

POLICE DEPARTMENT.

DISTRICT DIR LOWER.

ORDER

Mr. Attar Rehman S/O Amir Zada
 Village Ketiari Police Station Such District Dir L. is hereby enlisted as
 a Constable in Frontier Reserve Police N.W.F.P on three year probation in Basic Pay Scale
 No. 5 (2100-100-5100) with effect from 18.10.2004 and allotted constabulary
 No. _____ Height 5 feet 9 3/4 Inch, Chest 33x36 Education F.A.
 Age 19.85 36 years. 4

OB No. 1006
 Dated 25.10.2004

[Signature]
 District Police Officer,
 Dir Lower at Timergara.

I do hereby certify that I have examined Mr. Attar Rehman candidate for
 employment in the Office of the Police Deptt.
 and can not discover that he had any disease communicable or other constitutional affection
 bodily infirmity except nil

I do not consider this as disqualification for employment in the office of the
Police. His age according to his own statement (19) years and by
 appearance about Nine teen years.

Blood Group = A+
9/11/1985

Attar
[Signature]

B

A

28-7-06

CHARACTER ROLL OF

(Continued.)

12. MISCELLANEOUS PARTICULARS

12. Miscellaneous Particulars

War Medals and Descriptions—

(NOTE—Enter designations of award and date only—Gazette Notification in case of Quaid-i-Azam Police Medal and the Pakistan Police Medal. Other special decoration to be entered full under commendatory entries.)

پاس ونگر ونگر کورس د محوالہ انگریزی لٹری / 33 - 7/10 - 33 عرصہ 13 7/26 بجاریہ گاندرنگ عرصہ
 پی ٹی سی پٹنلو کے مطابق ٹرم اینڈنگ 30 3.06 30 دیگر ونگر کورس میں پاس ہوئے ہیں
 محوالہ 08 نمبر 186 مورخہ 7.06 1933
 (سٹیٹ سٹل لفا ہے)

Supdt: of Police FBP,
Mkd: Range Swat.

Attested
by

13. Miscellaneous particulars including award other than those accompanied by commendation certificate, admission to removal from promotion lists.

5

28-7-06

POLICE TRAINING COLLEGE HANGU



Estb 1935

History Sheet

College Course	: Recruit	Name	: Atta ur Rehman
Rank	: Constable	Belt No.	: 3954
Comp#	: A94	District	: FRP Swat
Starting Date	: 01.07. 2005	Ending Date	: 20.03-2006
Qualification	: FA	Merit	: 74 /889

LAW			DRILL			REMARKS
PPC	75	/100	SD	44	/70	
PPW/GPD	70	/100	RF	47	/80	
LSL, QS	72	/100	SF	22	/35	
Sec, WT, FP	78	/100	MD	19.66	/30	
CrPC	67	/100	TFC	12.33	/20	
IST/HR	75	/100	PT	13.33	/20	
PR	63	/100	UC	13	/20	
			BNT	7	/10	
			AC	112.33	/150	

500.0 / 700
 G-Total: 790.65 /1135
 290.65 / 435
 Overall %age is: 69.66
 Declared as PASSED

Leave Obtained: Nil days Medical Rest : Nil days Absence: Nil days
 Punishment : Nil

Atta ur Rehman
 my

OS 126
 Date: 23/7/06

[Signature]
 Commandant,
 Police Training College Hangu.

C 6
CHARGE SHEET.

18-2-09

1 MR. HAZRAT ALI KHAN Supt: of Police FRP Malakand Range, Swat as

competent authority here by charge You Mr. Attur Rehman 4647

That you while posted at Platoon No. 72

- a) where as you Constable Attur Rehman 4647
b) absented your self from your lawful duty vide D.D. Report No. 4 dated 14-11-2008
c) with effect from 14-11-2008 upto now without leave/permission of the competent authority. Thus issued charge sheet.

2.) By reasons of the above. You appear to be guilty of misconduct under section - 3 of the NWFP (removal from service) specials powers, 2000, and have rendered your self liable to all or any of the penalties specified in section - 3 of the ordinance bid.

3.) You are, there for required to submit your written defiance with in 07 days of the receipt of this charge sheet to the inquiry officer / committee, as the case may be.

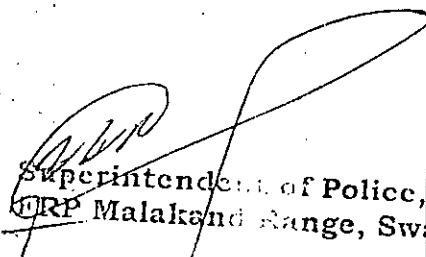
4.) Your write defiance if any should reach the Inquiry Officer committee within the specified period, failing which it shall be prestumed that you have no defence to put in and in the case expert action shall follow against you.

5.) Intimate whether you desire to be heard in persons.

6.) A statement of allegation is enclosed.

No. 916 /EC

Dated: 18/2/2009


Superintendent of Police,
FRP Malakand Range, Swat.

Attur
by

D

ORDER

7

21-2-09

F.C Ataur Rehman No. 4647 PL: No. 78 FRP Swat Malakand Range has remained absent from lawful duty from 14.11.2008 to date.

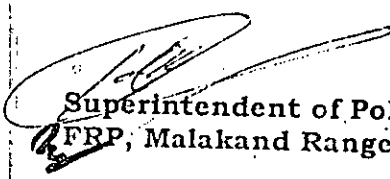
He was proceeded against departmentally under the NWFP Removal from Service (Special Powers) Ordinance, 2000, with duly constituted Inquiry Committee comprising the following police officers:

- 1 Hazrat Ali Khan, DSP FRP Swat.
- 2 S.I Rehmat Ali Khan, R.I FRP Lines, Swat.
- 3 S.I Bacha Khan Khan, L.O FRP Lines, Swat.

The Inquiry Committee had completed all the requisite codal formalities and submitted the enquiry report, wherein it has been observed that the defaulter F.C Ataur Rehman No. 4647 was enlisted in FRP on 18.10.2004 The defaulter F.C Ataur Rehman No. 4647 deserted the force during an emergency situation and thus demonstrated cowardice in the line of duty. Later on, he was given the opportunity to join his duty but he failed to do so. In the light of the above inquiry report, the Inquiry Committee has found the defaulter constable guilty of charges and recommended his removal from service.

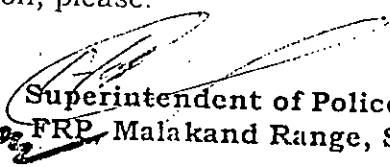
I, the undersigned, have thoroughly perused the enquiry report and the inquiry papers of the Inquiry Committee. The defaulter constable has been provided an ample amount of opportunity for personal hearing but he never availed this chance. I fully agree with the findings and recommendations of the Inquiry Committee. Therefore, the defaulter F.C Ataur Rehman No. 4647, Platoon No. 78, FRP Swat, Malakand Range, is hereby removed from service from the first date of his absence of official duty.

Order announced.


Superintendent of Police,
FRP, Malakand Range, Swat

No. 265
Dated 21/2/2009

Copy to the worthy Commandant, Frontier Reserve Police, N.W.F.P. Peshawar, for favour of kind information, please.


Superintendent of Police,
FRP, Malakand Range, Swat

OP NO 23

Dated: 21/2/09





F 9 22-6-11
677
28.06.11
ORDER.

This order shall dispose off on the appeal of Ex. Constable Atta-ur- Rahman No. 4647 of FRP Swat against the order of SP FRP Malakand Range Swat wherein he was dismissed from service.

Brief facts of the case are that he absented himself from duty in emergency situation w-e-f 14.11.2008 till the date of removal without any leave permission of the competent authority for a total period 03 Months and 07 days. He was issued Charge sheet/Statement of Allegation and DSP/RI/LO/ of FRP Malakand Range was appointed Enquiry Officers. After Enquiry, the enquiry officers submitting findings wherein they recommend the said constable for major punishment. Therefore he was removed from service by the SP FRP Malakand Range Swat vide his OB No.265 dated 21.02.2009.

However, from the perusal of record and findings of Enquiry Officer, there are no cogent reasons to interfere in the order of SP FRP Malakand Range Swat. **Therefore his appeal is rejected.**

My
Add: IGP/Commandant
Frontier Reserve Police
Khyber Pakhtunkhwa, Peshawar.

No. 4110-11 /EC dated Peshawar the 22/6/11.

21-6-2011

Copy of above is sent for information and n/a to:

1. SP FRP Malakand Range Swat w/r to his M/No.514/EC dated 16.05.2011. His service records are returned herewith.
2. Ex. Constable Atta-ur- Rahman No. 4647 S/o Amir Zada r/o village kityari PS Ouch District Dir Lower.

OB/EC/OBI

For n/a action

SP FRP mied Range Swat
28/6/2011

CB No - 255

Date 30.06.2011

Atta-ur-Rahman

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

S.A No. _____/2014

Attaur Rehman

Versus

Commandant & others

**APPLICATION FOR CONDONATION OF DELAY,
IF ANY.**

Respectfully Sheweth:

1. That the subject appeal is filed in this hon'able Tribunal.
2. That the delay was made in filing of the appeal not intentionally but was kidnapped by the miscreants and was taken to Afghanistan and as a result of negotiation of the Governments release was made.
3. That the apex Supreme Court held time and again in its judgments that vested rights shall not be killed on the score of limitation and cases be decided on merit.

It is, therefore, most humbly requested that delay, if any, be condoned in the best interest of justice.

Dated: 25.06.2014

عطاء الرحمن
Appellant
Through
Saadullah Khan Marwat

Arbab Saif-ul-Kamal

&
Miss Robina Naz,
Advocates,

AFFIDAVIT

I, Attaur Rehman D/o Amir Zada, Ex-Constable No. 4647, Special Branch, Saidu Sharif, Swat Appellant, do hereby solemnly affirm and declare that contents of the Application are true and correct to the best of my knowledge and belief.

DEPONENT

سروس سٹریٹل کے لئے

2014ء پنجاب اسمارٹ
عطاء الرحمن بنام سمنڈنگ و سروس

مورخہ

مقدمہ

دعویٰ سروس سٹریٹل

تعمیر

باعث تحریر آنکے

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

آن مقام کے در کیلئے سعد الرحمن اور اذنا سٹریٹل اور سروس سٹریٹل 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 اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں 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 داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے وہ ہوگا۔ 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 لکھ دیا کہ سند ہے۔

2014

ماہ

الرقوم

عطاء الرحمن

کے لئے منظور

11

مقام

سمنڈنگ و سروس سٹریٹل

اذنا سٹریٹل

Admission

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR.

Service Appeal No. 900/2014

Ex- Constable Atta-ur- Rehman S/o Amir Zada No. 4647 R/o Kityari

District Dir Lower Saidu Sharif Swat(Appellant)

VERSUS

- 1. Addl: IGP/Commandant FRP/Khyber Pakhtunkhwa Peshawar.**
- 2. Superintendent of Police FRP/MKD Range Swat...(Respondents)**

Subject:- COMMENTS ON BEHALF OF RESPONDENTS.

Respectfully Sheweth!

Preliminary Objections:-

1. The appeal is not based on facts and
2. The appellant is not maintainable in the present form.
3. The appeal is bad for non- joinder of necessary and mis-joinder of the necessary parties.
4. The appellant has been e-stopped by his own conduct to file the appeal.
5. The appeal is barred by law and limitation.
6. The appellant has not come to the Honorable Tribunal with clean hands.

FACTS:-

- 1) Pertains to the record needs no comments.
- 2) As explained above.
- 3) Incorrect, on the allegations of absence, the appellant was issued charge sheet which served upon him by the enquiry committee, but he failed to submitted his reply or appeared before the said committee.
- 4) Incorrect, that the appellant while posted in Platoon No. 78 of FRP/Swat, deserted / absented himself from lawful duties vide daily diary report No. 04 dated 14.11.2008, without leave or prior permission of the superiors and after fulfilled the codal formalities required as per law/rules, the appellant was removed from service.
- 5) Correct to the extent that departmental appeal submitted by the appellant was thoroughly examined and rejected on sound grounds and it was time barred too.

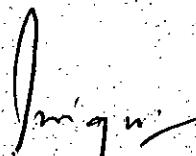
01/06/11

GROUNDS:-


- (a) Incorrect, the allegations are false and baseless, the charge sheet and show cause notice were already issued and served upon the appellant for explanation his position, but he failed deliberately to submit his reply or appeared before the Competent Authority. Moreover the appellant deserted himself from lawful duties, while on the other hand his colleagues continued with the tense situation by performing their official duties with man trap.
- (b) Incorrect, a proper departmental enquiry conducted by the enquiry committee as such all codal formalities fulfilled including the opportunity of personal hearing which was not availed by the appellant deliberately.
- (c) Incorrect, that the appellant being a member of discipline force deserted from lawful duties by showing extreme cover dice act and during the enquiry proceedings he failed to produced any cogent reason so the competent authority compelled to pass the removal order of the appellant which is in accordance with law.
- (d) Incorrect, that the order is legally justified and in accordance with law/rules.

PRAYERS.

It is therefore, prayed that the appeal of appellant may be dismissed with cost.



**Addl:IGP/Commandant
Frontier Reserve Police
Khyber Pakhtunkhwa Peshawar.
(Respondent No. 1)**



**Superintendent of Police FRP,
Malakand Range, Swat.
(Respondent No. 2)**

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A No. 900/2014

Atta-ur-Rehman Versus Commandant & Others

REJOINDER**Respectfully Sheweth,****PRELIMINARY OBJECTION.**

All the 06 preliminary objections are illegal and incorrect. No reason in support of the same is ever given as to why appeal is not based on facts, not maintainable in the present form, bad for mis & non joinder of necessary parties, estopped by his own conduct, barred by law and limitation and appellant has not come to the Hon'ble Tribunal with clean hands.

ON FACTS

- 1-2. Needs no comments.
3. Not correct. Due to non receipt of the charge sheet etc. no reply was submitted to the same.
4. Not correct. Neither any cowardice was shown nor he was deserted from the place of duty. In the prevailing circumstances at that time, the miscreants were over ruling the area. Even the Officers of the rank of SP, DSP, Inspector, Sub Inspector, ASIs etc. were also dealt with similarly but later on they were reinstated in to their services.
5. Not correct. The para of the appeal is correct.


GROUNDS:

- a. Not correct. No copy of receipt of the charge sheet and show cause notice served upon appellant, was ever attached with the reply. Charge sheet, show cause notice and impugned order shall be effected/treated from the date of receipt of the same, and not from the date born therein.
- b. Not correct. The ground of the appeal is correct.
- c. As above.
- d. Not correct. No order could be passed retrospectively.

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

Through

Dated: .09.2015

Appellant

 Saadullah Khan Marwat


 Arbab Saif Ul Kamal

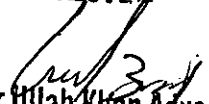

 Miss Rubina Naz
 Advocates,

AFFIDAVIT

I, Atta-ur-Rehman, Appellant, do hereby solemnly affirm and declare that contents of the **Appeal & rejoinder** are true and correct to the best of my knowledge and belief and that of the reply is illegal and incorrect.

I reaffirm the same on oath once again to be true and correct as per the available record.

ATTESTED


 Gulzar Ullah Khan Advocate
 OATH COMMISSIONER
 Distt: Courts Swat.
 upto. 18-11-2017


DEPONENT

No. 298 Date 28/09/2015

فائینڈنگ رپورٹ مدد کے نام سے ان کے وائری برخلاف

کنٹریبیوٹن عطا دلالتی

نمبر 78 متعینہ

تاریخ بھرتی	تعلیم	سابقہ غیر حاضری	دارنگ	موجودہ غیر حاضری
18/10/07	F.A	3 یوم	NIL	14/11/08 سے 10 ستمبر

جناب عالی!

مذکورہ بالا ملازم نمبر 6 روز نامہ 11/11/08 کے مطابق غیر حاضر ہو کر مسلسل غیر حاضری کے بناء بحوالہ آرڈر بک نمبر 166 مورخہ 29/11/08 کو اس کی تنخواہ بند ہو کر چارج شیٹ نمبر 916/EC مورخہ 18/2/08 کو جاری کی گئی جبکہ یہی کاغذات بغرض مزید انکوائری، انکوائری کمیٹی کو مارک ہوئی۔

انکوائری کمیٹی کے جانب سے پروانہ نمبری _____ مورخہ _____ کو غیر حاضر شدہ ملازم کے گھر کے پتہ پر جاری ہو کر مذکورہ ملازم کو تاکید کی گئی کہ اپنے ڈیوٹی پر حاضر ہو کر اپنے غیر حاضری کے وجوہات قلمبند کرنے کے واسطے انکوائری کمیٹی کے روبرو پیش ہو جائے مگر تا حال نہ اپنے ڈیوٹی پر حاضری کی اور نہ انکوائری کمیٹی کی روبرو پیش ہوا۔ جس سے معلوم ہوتا ہے کہ یہ ملازم دیدہ دانستہ اپنی ڈیوٹی سے بلا جواز غیر حاضر ہوا ہے۔

جناب والا!

مورخہ 14/11/08 سے بدستور اپنے ڈیوٹی سے بلا جواز غیر حاضر ہونا چارج شیٹ کا جواب نہ دینا اور دیدہ دانستہ اپنے غیر حاضری کے وجوہات قلمبند کرنے کے واسطے انکوائری کمیٹی کے روبرو پیش نہ ہونا ڈسپلین رولز کی خلاف ورزی ہے لہذا اس طویل اور مسلسل غیر حاضری کے بناء پولیس آرڈر 2002ء کے آرٹیکل 113 کے تحت تاریخ غیر حاضری از مورخہ 14/11/08 سے ڈسچارج کرنے اور فائنل شو کا نوٹس جاری کرنے کی سفارش کی جاتی ہے۔ فائینڈنگ رپورٹ مرتب ہو کر بغرض مزید کارروائی پیش خدمت ہے۔

کمیٹی ممبران

ڈی ایچ پی

ایف۔ آر۔ پی سوات

صن 3مہر
لائن آفیسر ایف۔ آر۔ پی سوات

ایف۔ آر۔ پی سوات

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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 802 /ST

Dated 16 / 5 / 2016

To


The Additional I.G.P,
Commandant F.R,
Peshawar.

Subject: -

JUDGMENT

I am directed to forward herewith a certified copy of Judgement dated 2 .5.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.