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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

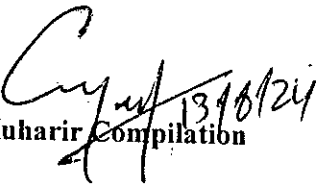
EXECUTION NO

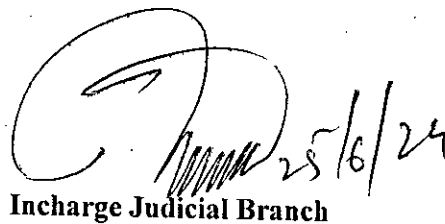
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Zahid u Rehman vs Police

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Total Pages in Part-A	859
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Muharir compilation


Incharge Judicial Branch

(21) (50)

34. Engineer Fazl-e-Rabi Assistant Commissioner Mines (BPS-17)
All the Engineers are employees of the Minerals Development
Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

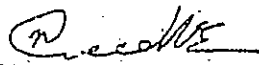
Respondents:

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Secretary Establishment Department, Government of Khyber Pakhtunkhwa Peshawar.
3. Secretary Finance Department, Government of Khyber Pakhtunkhwa Peshawar.
4. Secretary Government of Khyber Pakhtunkhwa Mines and Minerals Development Department, Civil Secretariat Peshawar.

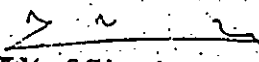
Petitioners

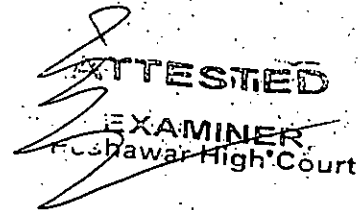
Through

Date: __/01/2019


Naveed Akhtar
Advocate Supreme Court

&


Altaf Siraj
Advocate High Court


ATTESTED
EXAMINER
Peshawar High Court

ATTESTED

Service Appeal No. 1496/2022 titled "Zahid Ur Rehman Versus Inspector General of Police, Khyber Pakhtunkhwa, Central Police Office, Peshawar and others" and Connected Appeal No. 1497/2022 titled "Muhammad Attique Khan Versus Inspector General of Police, Khyber Pakhtunkhwa, Central Police Office, Peshawar and others" decided on 17.05.2024 by Division Bench comprising Kalim Arshad Khan, Chairman and Muhammad Akbar Khan, Member (Executive), Khyber Pakhtunkhwa Service Tribunal, Peshawar.

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
MUHAMMAD AKBAR KHAN ... MEMBER (Executive)

Service Appeal No. 1496/2022

SCANNED
BY
Peshawar

Date of presentation of appeal30.09.2022
Dates of Hearing.....17.05.2024
Date of Decision.....17.05.2024

**Zahid Ur Rehman, Ex-Constable No. 668693, R/o Mandori Tehsil
Alizai District Kurram.(Appellant)**

Versus

1. Inspector General of Police, Khyber Pakhtunkhwa, Central Police Office, Peshawar.
2. Regional Police Officer, Kohat Region, Kohat.
3. District Police Officer, District Kurram.

.....(Respondents)

Present:

Mr. Muhammad Furqan Yousafzai,
Advocate.....For appellant.

Mr. Muhammad Jan,
District Attorney.....For respondents.

.....
**APPEAL UNDER SECTION 4 OF KP SERVICES TRIBUNAL
ACT 1974 AGAINST THE IMPUGNED ORDER DATED
02/08/2022 WHEREBY THE RESPONDENT NO. 2 DISMISSED
THE DEPARTMENTAL APPEAL OF THE APPELLANT FILED
AGAINST THE IMPUGNED ORDER DATED 08/04/2022 PASSED
BY THE RESPONDENT NO. 3 WHEREIN THE APPELLANT
WAS DISMISSED FROM HIS SERVICE.**
.....

Service Appeal No. 1497/2022

Date of presentation of appeal30.09.2022
Dates of Hearing.....17.05.2024
Date of Decision.....17.05.2024

**Muhammad Attique Khan, Ex-Constable No. 9108, R/o Mandori
Tehsil Alizai District Kurram.(Appellant)**

Versus

1. Inspector General of Police, Khyber Pakhtunkhwa, Central Police Office, Peshawar.
2. Regional Police Officer, Kohat Region, Kohat.
3. District Police Officer, District Kurram.

.....(Respondents)

Page 2

Service Appeal No. 1496/2022 titled "Zahid Ur Rehman Versus Inspector General of Police, Khyber Pakhtunkhwa, Central Police Office, Peshawar and others" and connected Appeal No.1497/2022 titled "Muhammad Attique Khan Versus Inspector General of Police, Khyber Pakhtunkhwa, Central Police Office, Peshawar and others" decided on 17.05.2024 by Division Bench comprising Kalim Arshad Khan, Chairman and Muhammad Akbar Khan, Member (Executive), Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Present:

Mr. Muhammad Furqan Yousafzai,
Advocate.....For appellant.

Mr. Muhammad Jan,
District Attorney.....For respondents.

.....
APPEAL UNDER SECTION 4 OF KP SERVICES TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 26/07/2022 WHEREBY THE RESPONDENT NO. 2 DISMISSED THE DEPARTMENTAL APPEAL OF THE APPELLANT FILED AGAINST THE IMPUGNED ORDER DATED 08/04/2022 PASSED BY THE RESPONDENT NO. 3 WHEREIN THE APPELLANT WAS DISMISSED FROM HIS SERVICE.
.....

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Through this single judgment, this appeal and the connected Service Appeal No. 1497/2022 titled "*Muhammad Attique Khan Versus Inspector General of Police, Khyber Pakhtunkhwa, Central Police Office, Peshawar and others*" are decided as both are regarding the same subject matter and can conveniently be decided together.

2. According to the facts gathered from the available record, the appellants were serving as Constables in the Police Department. Disciplinary proceedings were initiated against the appellants on the allegations of absence from duty without prior permission of the competent Authority. On conclusion of the inquiry, the appellants were awarded major penalty of dismissal from service vide separate impugned orders dated 08.04.2022. Feeling aggrieved, the appellants preferred separate departmental appeals on 31.05.2022, which were dismissed vide orders dated 02.08.2022 and 26.07.2022 respectively. The appellants have now approached this Tribunal

SCANNED
KALIM
PESHAWAR

through filing of the instant service appeals on 30.09.2022 for redressal of their grievances.

3. On receipt of the appeals and their admission to full hearing, the respondents were summoned. Respondents put appearance through the representatives and contested the appeals by filing their respective para-wise replies raising therein numerous legal and factual objections.

4. Learned counsel for the appellants has argued that the appellants had never remained absent from duty rather they were performing their duty as Security Guards with MNA Munir Khan Orakzai and remained with him till his martyrdom in the year 2020 and then Dr. Abdul Qadeer Khan, who was the brother of the martyred MNA Munir Khan Orakzai. He next argued that the Dr. Abdul Qadeer Khan with whom the appellants were performing their duties as Security Guards, has also given an Affidavit regarding performing of duties by the appellants with him. He further argued that the appellants were awarded major punishment of dismissal from service on the allegation of absence from duty, however neither specification of dates of absence has been mentioned in the impugned orders nor the procedure as provided in Khyber Pakhtunkhwa Police Rules, 1975 was adopted. He next contended that no charge sheet as well as statement of allegations and show-cause notice were served upon the appellants and they were awarded major penalty without holding any regular inquiry in the matter. He further contended that whole of the proceedings were conducted at the back of the appellants without affording them any opportunity of personal hearing or self defense. He also contended that rights of the appellants as enshrined in Article 10-A of the constitution of Islamic Republic of Pakistan were badly violated, therefore, the impugned orders are against the law, facts, evidence on record, rules and

principles of justice, hence liable to be set-aside. In the last, he contended that the impugned orders might be set-aside and the appellants might be reinstated in service with all back benefits.

5. Conversely, learned District Attorney for the respondents has contended that the appellants were neither deputed as Security Guards with the then MNA Munir Khan Orakzai and his brother Dr. Abdul Qadeer Khan nor the appellants have annexed any order in this respect. He further contended that the appellants were willfully remained absent from duty without any permission of the competent authority, therefore, proper inquiry was conducted in the matter by complying all the legal and codal formalities. He further contended that charge sheet alongwith statement of allegations was issued to the appellants and they were time and again contacted for appearance before the inquiry officer but they deliberately did not appear before the inquiry officer. In the last, he contended that absence notice was also published in the newspaper but even then the appellants failed to join the duty, therefore, both the appeals might be dismissed with costs.

6. We have heard learned counsel for the appellants and learned District Attorney for the respondents and have perused the record.

7. Stance of the appellants is that they were deputed as Security Guards with Dr: Abdul Qadeer Khan, who is brother of the then MNA Munir Khan Orakzai, whereas the department contends that they were never deputed with anybody else as Security Guards. Besides the ex-parte inquiry appear to have been conducted in a slipshod manner, wherein although it is alleged that the appellants were repeatedly summoned for appearance before the inquiry officer but they did not appear. We don't find any document of summoning

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the appellants to face the inquiry. Inquiry also seems to be bereft of any details nor any statement of anybody appears to have been recorded by the inquiry officer rendering it of no avail and compelling the Tribunal to allow both the appeals, set-aside the impugned orders, remit the matter back to the department for conducting proper de-novo inquiry with the associating the appellants with the proceedings and providing also opportunity of defence as well as cross-examination. The exercise shall be completed within 60 days of receipt of copy of this judgment. The appellants are reinstated for the purpose of inquiry. The issue of back benefits is subject to the outcome of inquiry. Disposed of. Costs shall follow the event. Copy of this judgment be placed in the connected appeal file. Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 17th day of May, 2024.*



KALIM ARSHAD KHAN
Chairman



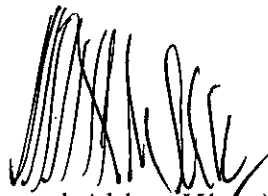
MUHAMMAD AKBAR KHAN
Member (Executive)

Naeem Amin

ORDER

17th May, 2024

1. Appellant alongwith his counsel present. Mr. Muhammad Usman, DSP (Legal) alongwith Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, we don't find any document of summoning the appellant to face the inquiry. Inquiry also seems to be bereft of any details nor any statement of anybody appears to have been recorded by the inquiry officer rendering it of no avail and compelling the Tribunal to allow the appeal, set-aside the impugned orders; remit the matter back to the department for conducting proper de-novo inquiry with the associating the appellant with the proceedings and providing also opportunity of defence as well as cross-examination. The exercise shall be completed within 60 days of receipt of copy of this judgment. The appellant is reinstated for the purpose of inquiry. The issue of back benefits is subject to the outcome of inquiry. Disposed of. Costs shall follow the event. Consign.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 17th day of May, 2024.*



(Muhammad Akbar Khan)
Member (Executive)



(Kalim Arshad Khan)
Chairman

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12.01.2024

Appellant alongwith clerk of his counsel present.
Mr. Javed Shah, Head Clerk alongwith Mr. Asif Masood Ali
Shah, Deputy District Attorney for the respondents present.

Clerk of learned counsel for the appellant requested for
adjournment on the ground that learned counsel for the
appellant is busy in Supreme Court of Pakistan. Adjourned.
To come up for arguments on 21.03.2024 before the D.B.
Parcha Peshi given the parties.

SCANNED
KFST
Peshawar



(Fareeha Paul)
Member (E)



(Salah-ud-Din)
Member (J)

*Naem Anwar

21.03.2024

Junior to counsel for the appellant present. Mr. Asif
Masood Ali Shah, Deputy District Attorney alongwith Javed
Shah, Head Clerk for the respondents present.

Respondents are directed to produce posting and
training order of the appellant after the death of Ex-MNA Munir
Hussain in the year 2020. To come up for arguments on
17.05.2024 before the D.B. P.P given to the parties.

SCANNED
KFST
Peshawar



(Fareeha Paul)
Member(E)



(Rashida Bano)
Member (J)


Fazle Subhan, P.S

8

08.2023

Appellant in person present. Mr. Fazal Shah Mohmand,
Additional Advocate General for the respondents present.


Reply/comments on behalf of the respondents submitted have
already been submitted through office on 23.06.2023 which is
placed on file. Copy of the same handed over to the appellant. To
come up for arguments on 22.11.2023 before D.B. P.P. given to the
parties.



(Muhammad Akbar Khan)
Member (I)

22.11.2023

Clerk of learned counsel for the appellant present.
Mr. Muhammad Jan, District Attorney for the respondents
present.

Clerk of learned counsel for the appellant requested for
adjournment on the ground that learned counsel for the
appellant is not available today due to strike of lawyers.
Adjourned. To come up for arguments on 12.01.2024 before
the D.B. Parcha Peshi given to the parties.


(Fareeha Paul)
Member (E)


(Salah-ud-Din)
Member (J)

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Peshawar

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KFST
Peshawar

Naeem Amin

24th May, 2023

1. Learned counsel for the appellant present. Mr. Fazal Shah Mohmand, Additional Advocate General alongwith Javid Shah, Focal Person for the respondents present.

2. Written reply on behalf of respondents not submitted. Learned Additional Advocate General seeks time for submission of written reply. Last opportunity granted. Adjourned. To come up for written reply/comments on 26.06.2023 before S.B. P.P given to the parties.

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Peshawar

(Kalim Arshad Khan)
Chairman

Kaleem Ullah

26.06.2023

Learned Member (Executive) Mr. Muhammad Akbar Khan is on leave, therefore, to come up for the same on 01.08.2023.

(READER)

SCANNED
KP3T
Peshawar

28.02.2023

Appellant alongwith his counsel present and submitted an application for extension of time to deposit security and process fee which have not been deposited within the stipulated period. The appellant is directed to deposited security fee within three days. Respondents be summoned through TCS, the expenses of which be deposited by the appellant within three days. To come up for reply/comments on 10.04.2023 before S.B. P.P given to the appellant and his counsel.

SCANNED
11-03-23
PESHAWAR

RS-100
Appellant Deposited
Security & Process Fee
10/3/23



(Muhammad Akbar Khan)
Member (E)

10.04.2023

Clerk of learned counsel for the appellant present.
Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.

Notice be issued to the respondents and to come up for of reply/comments on 24.05.2023 before the S.B. Parcha Peshi given to the parties.

SCANNED
11-03-23
PESHAWAR



(Salah-Ud-Din)
Member (J)

06th Dec. 2022

Junior to counsel for the appellant present and seeks adjournment due to engagement of learned senior counsel for the appellant in Honourable Peshawar High Court. Adjourned. To come up for preliminary hearing on 16.01.2023 before the S.B.

SCANNED
KPST
Peshawar

(Kalim Arshad Khan)
Chairman

16.01.2023

Learned counsel for the appellant present.
Preliminary arguments heard.

Points raised need consideration, hence the appeal in hand is admitted to regular hearing subject to all legal and valid objections including the question of limitation. The appellant is directed to deposit security fee within 10 days. Respondents be summoned through TCS, the expenses of which be deposited by the appellant within three days. To come up for submission of written reply/comments on 28.02.2023 before the S.B.

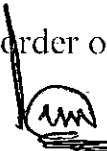
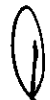
SCANNED
KPST
Peshawar

(Salah-Ud-Din)
Member (J)

FORM OF ORDER SHEET

Court of _____

Case No.- _____ 1496/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	17/10/2022	<p>The appeal of Mr. Zahid-ur-Rehmann resubmitted today by Mr. Muhammad Furqan Yousafzai Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on <u>28/10/22</u>. Notices be issued to appellant and his counsel for the date fixed.</p> <p style="text-align: right;">By the order of Chairman</p> <p style="text-align: right;"> REGISTRAR <i>we</i></p>
	28 th Oct., 2022	<p>Counsel for the appellant present and requested for adjournment in order to complete the documents including enquiry report etc. To come up for preliminary hearing on 06.12.2022 before S.B.</p> <p style="text-align: right;"> (Fareeha Paul) Member(E)</p>

*Counsel was
informed
telephonically
for the date
fixed.*


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Peshawar

The appeal of Mr. Zahir-ur-Rehman Ex-Constable of Police Department District Kurram received today i.e. on 30.09.2022 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Copy of affidavit mentioned in para-4 of the memo of appeal (Annexure-A) is not attached with the appeal which may be placed on it.
- 3- Annexure-B of the appeal is illegible which may be replaced by legible/better one.

No. 2742 /S.T.

Dt. 5/10 /2022


 REGISTRAR,
 SERVICE TRIBUNAL
 KHYBER PAKHTUNKHWA
 PESHAWAR.

Mr. Muhammad Furqan Yousafzai Adv. Pesh.

Re-submitted After Compliance

MS

14-10-22

Further it is submitted that "A" is mentioned as affidavit in memo of Petition which is on plain paper & infact it is an affidavit regarding duty of appeal.

Su
17/10/22

HYDER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR
CHECK LIST

Zahid ur-Renman **Versus** IGP & others
..... Appellant Respondents

	CONTENTS	YES	NO
0	This petition has been presented by: <u>Advocate</u> <u>Court</u>	√	
	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	√	
	Whether appeal is within time?	√	
	Whether the enactment under which the appeal is filed mentioned?	√	
	Whether the enactment under which the appeal is filed is correct?	√	
	Whether affidavit is appended?	√	
	Whether affidavit is duly attested by competent Oath Commissioner?	√	
	Whether appeal/annexures are properly paged?	√	
	Whether certificate regarding filing any earlier appeal on the subject, furnished?	√	
0.	Whether annexures are legible?	√	
1.	Whether annexures are attested?		
2.	Whether copies of annexures are readable/clear?	√	
3.	Whether copy of appeal is delivered to AG/DAG?	√	
4.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	√	
5.	Whether numbers of referred cases given are correct?	√	
6.	Whether appeal contains cutting/overwriting?	x	
7.	Whether list of books has been provided at the end of the appeal?	√	
8.	Whether case relate to this court?	√	
9.	Whether requisite number of spare copies attached?	√	
0.	Whether complete spare copy is filed in separate file cover?	√	
1.	Whether addresses of parties given are complete?	√	
2.	Whether index filed?	√	
3.	Whether index is correct?	√	
4.	Whether Security and Process Fee deposited? On _____		
5.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On _____	√	
6.	Whether copies of comments/reply/rejoinder submitted? On _____		
7.	Whether copies of comments/reply/rejoinder provided to opposite party? On _____		

is certified that formalities/documentation as required in the above table have been fulfilled.

Name:- MUHAMMAD FURWAN YOUSAFARI

Signature:- [Signature]

Dated:- 30-9-20

PKS Pet Comp., United, Peshawar High Court, Peshawar
Specialist of legal drafting & computing
Cell No:- +923028838600/+923129142544/+923119777111
E-mail:- pks.petcomping@gmail.com

BEFORE THE COURT OF WORTHY CHAIRMAN
SERVICES TRIBUNAL, PESHAWAR

Appeal No. 1496 /2022

SCANNED
KPST
Peshawar

Zahid Ur Rehman **Appellant**

V E R S U S

IGP and others..... **Respondents**

I N D E X

S.No.	Description of Documents	Annex	Pages
1.	Memo of appeal	*	1-12
2.	Affidavit	*	13
3.	Application for condonation of delay along with affidavit	*	14-15
4.	Copy of the affidavit	A	16
5.	Copy of the order	B	17
6.	Copies of departmental appeal and impugned order dated 22/07/2022	C & D	18-26
7.	Wakalatnama	*	27

Appellant

Through

Date: 29/09/2022

Muhammad Furqan Yousafzai
Advocate, Supreme Court of
Pakistan

&

Khalid Hameed
Advocate, High Court,
Peshawar
Cell# 0333-9266225

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BEFORE THE COURT OF WORTHY CHAIRMAN
SERVICES TRIBUNAL, PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Appeal No. 1496 /2022

Case No. 1479

Dated 30/9/2022

Zahid Ur Rehman, Ex-Constable No. 668693, R/o
Mandori Tehsil Alizai District Kurram.....**Appellant**

V E R S U S

1. Inspector General of Police, Khyber Pakhtunkhwa,
Central Police Office, Peshawar.
2. Regional Police Officer, Kohat Region, Kohat.
3. District Police Officer, District Kurram.

.....**Respondents**

APPEAL UNDER SECTION 4 OF KP
SERVICES TRIBUNAL ACT 1974
AGAINST THE IMPUGNED ORDER
DATED 02/08/2022 WHEREBY THE
RESPONDENT NO.2 DISMISSED THE
DEPARTMENTAL APPEAL OF THE
APPELLANT FILED AGAINST THE
IMPUGNED ORDER DATED
08/04/2022 PASSED BY THE
RESPONDENT NO.3 WHEREIN THE
APPELLANT WAS DISMISSED FROM
HIS SERVICE

Filed to-day
Registrar
30/9/2022

Re-submitted to-day
and filed.
Registrar
17/10/22

Prayer in Appeal:

On acceptance of this service appeal, both the
impugned orders dated 02/08/2022 and

08/04/2022 passed by the respondents No.2 and 3 may kindly be set aside and the appellant may kindly be reinstated in service with all back benefits.

Respectfully Sheweth:

1. That the appellant was appointed as Sepoy Khasadar Force Kurram Agency in the year 1997.
2. That in the year 2019 when the Khasadar Force was absorbed in the Police Department, the appellant also absorbed in Police Department and become the member of Police Force of KPK as Constable.
3. That the appellant was deputed as Security Guard with the then MNA namely Munir Khan Orakzai and remained at the same position till his martyrdom in the year 2020.
4. That subsequently, the appellant was deputed as security guard with Dr. Abdul Qadeer Khan who is brother of the martyred MNA Munir Khan Orakzai, in this regard Dr. Abdul Qadeer Khan has sworn an Affidavit in shape of request to

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respondent No.2 that appellant be reinstated in police service because he was deployed for his security and performed duty with Dr. Abdul Qadeer Khan. **(Copy of the affidavit is attached as Annexure-A)**

5. That on 04/05/2022, when the appellant went to the police office Kurram for enquiring about his salary and other financial issues, office of the DPO Kurram informed the appellant that he has been dismissed from service by the respondent No.3, the appellant caught by surprise when he heard about his dismissal because he was already performing his services as security guard with Dr. Abdul Qadeer Khan.
6. That on the same day i.e. 04/05/2022, the appellant collected copy of the impugned dismissal order dated 08/04/2022 and upon perusal it was found that the appellant was dismissed from service on account absence from duty. **(Copy of the order is attached as Annexure-B).**
7. That the appellant aggrieved from the impugned dismissed order dated 08/04/2022, filed departmental appeal before the respondent No.2 which was also dismissed vide impugned order

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dated 02/08/2022 and upheld the impugned order of the respondent No.3. It is worthy to mention here that once the statutory period of the appeal was completed, the appellant visited the office of respondent No.3 to know about his departmental appeal wherein it was revealed to him that his appeal has been disposed of but the copy was not provided to him and few days back one of the relatives of the appellant sent him the copy of impugned order via whatsapp and till date the officials did not inform the appellant about the impugned orders. **(Copies of departmental appeal and impugned order dated 02/08/2022 are attached as Annexure-C & D respectively)**

8. That feeling aggrieved from the above mentioned orders dated 02/08/2022 and 04/05/2022 of the respondents, the appellant approached this Hon'ble Tribunal inter alia on the following grounds:

GROUND S:

- A. That the impugned order of the dismissal from service of the appellant is not in accordance with

law, facts, evidence on record, rules and principles of justice, hence liable to be set aside.

- B. That it is a well established principle of law and justice, that whenever a charge is to be framed against an accused or defaulter, it shall be specific so that to enable the defaulter to prepare his defence properly. However, in the case of the appellant it will indicate that the charge is vague and ambiguous because the worthy competent authority has not mentioned that from which date to which date the appellant allegedly remained absent. Hence the basic and fundamental right of preparing defence by the appellant was infringed and in this scenario the impugned order has become legally defective and no punishment can be awarded on such a vague and ambiguous charge against the appellant.
- C. That as per policy, in case of absence there shall be proper inquiry before passing an order and the appellant belongs to District Kurram and no notice has been received by the appellant from the respondents nor the statement of any of the inhabitant/relative of the appellant has been recorded nor the alleged inquiry officer visited the village and home of the appellant nor recorded the statement of Malik/Elders of the

locality, on this score alone the impugned orders are liable to be set aside.

D. That the alleged enquiry against the appellant was conducted unilaterally, one sidedly and at the back of the appellant which in the eyes of law has got no legal value and hence the impugned enquiry and the impugned orders are not sustainable in the eyes of law. Thus no punishment can be awarded on such a one sided enquiry.

E. That under Art. 10-A of the constitution of Pakistan, transparent, impartial and independent enquiry/ trial against accused/ defaulter has been declared as his fundamental and inalienable right but here, in the instant enquiry fundamental right of the appellant has not been adhered. Thus enquiry and the impugned orders are violation of the fundamental right of the appellant. Hence, the impugned orders are not operative on the rights of the appellant.

F. That the impugner orders have though mentioned framing charge sheet and the statement of allegation against the appellant but has forgotten to mention about his service on the appellant. If charge sheet and statement of

allegations were framed against the appellant, then they should have been served upon the appellant. However, nothing has been said about their service upon the appellant in the impugned order. Under the law/rules service of the charge sheet and statement of allegations upon the defaulter are mandatory. Without their service upon a defaulter, enquiry cannot proceed against him. If a defaulter is not physically present before the authority then, it is required that they should be sent at the home address of the defaulter but it appears that the established/prescribed procedure was not followed. It appears that the worthy competent authority was bent upon to punish the appellant at any cost, hence, the prescribed procedure and as well as legal/codal formalities were not followed in letter and spirit which has rendered the impugned orders as legally defective orders which has got no impact on the service rights of the appellant and thus he is presumed to be on duty since his dismissal from service.

- G. That in case if appellant was not traceable then ex-parte proceedings were to be initiated against the delinquent official but in the impugned order it does not appear that ex-parte proceedings against the appellant were directed at any stage

of the enquiry. Hence the enquiry and the impugned orders suffer from material legal irregularity.

- H. That although in the impugned order, it has been mentioned by the worthy competent authority that in the news paper "Aaj Subah" dt:23-1-2022 proclamation regarding absence of the appellant was published, the above procedure adopted by the competent authority is not in accordance with the prescribed procedure. Ordinarily, when it is established that presence of the defaulter official cannot be procured then at the beginning of the enquiry, ex-parte proceedings are directed and absence of the defaulter is published in the that two national dailies but in the case of appellant one can surprisingly observe that, no order regarding initiation of ex-parte enquiry against the appellant was issued. Secondly the proclamation of absence of the appellant was not published in the two national dailies like Mashriq Jang etc. but published in only one daily local newspaper namely Aaj Subah, whose circulation cannot be confirmed, hence this cannot be said as a satisfactory proclamation. Thirdly, the enquiry proceeding against the appellant came to an end on 21/01/2022 while the alleged proclamation in a local newspaper was published on 23/02/2022 i.e. after conclusion of the

instant enquiry against the appellant while according to the well established procedure, it should have been published at the commencement of the enquiry instead of conclusion of enquiry. Hence, the above realities have established beyond any reasonable doubt that in absence of the order for commencement of ex-parte proceedings against the appellant, nor publishing of the alleged absence in the two national daily newspapers and publishing the alleged absence of the appellant in a local newspaper after conclusion of enquiry have made the impugned order as legally not sustainable and deserve to be brushed aside.

- I. That it appears from the impugned order that no efforts were made to enquire whereabouts of the appellant from his residence located in Kurram Headquarter or from the residence of the martyred MNA with whom he was attached as security guard and Dr. Abdul Qadeer with whom he was performing duty as security guard and the time of inquiry / order. If, due enquiry would have been made it would ascertain by the concerned officers of the department that the appellant was physically present on duty and performing as security guard with the Dr. Qadeer Khan.

J. That during the alleged enquiry if the enquiry officer has recorded evidence of any witness, such an evidence has got no legal value because the appellant was not provided opportunity to cross examine such witness. Hence no punishment whatsoever can be awarded on such one sided and unilateral evidence.

K. That more or less 24/25 years service of the appellant was ended with one stroke of pen without any lawful justification.

L. That under the law maximum punishment like dismissal from service is to be awarded after following all legal and codal formalities in letter and spirit. Moreover, respondents will not treat the matter as an ordinary one and while awarding such a maximum / harsh punishment he should give serious and repeated considerations but from the impugned orders, it appears that legal and codal formalities were not followed in letter and spirit and no serious consideration was paid while depriving the appellant from his only source of income.

M. That the appellant is absolutely innocent. The appellant remained present on duty with the brother of the martyred Munir Khan Orakzai MNA. The appellant after approval by the

respondents was performing security duty with Dr. Abdul Qadeer Khan.

- N. That inspite of having sources and resources, the respondents did not touch this aspect nor any enquiry was conducted at this angle in order to ascertain, where about of the appellant and performing his duty with Dr. Abdul Qadir Khan. By conducting one sided inquiry the appellant was prejudiced and thus in the shape of the impugned orders miscarriage of justice occasioned to the appellant.
- O. That the appellant is a law abiding person and he has always kept his departmental interests above his personal interests. Appellant being member of the law enforcing agency cannot imagine to remain absent without leave or permission.
- P. That the charge of remaining absent from duty is totally baseless, misleading and without any foundations. Hence upon such a flimsy, vague and baseless charge no punishment to the appellant is justified.
- Q. That the appellant supports a large family. Except the present service, the appellant has got no other source of income. If the impugned order is upheld, the appellant will be deprived of his

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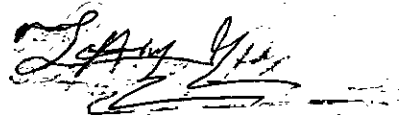
only source of income and his family will land in starvation. Resultantly the appellant may face irreparable loss.

R. That any other grounds will be raised at the time of arguments with prior permission of this Hon'ble Tribunal.

It is, therefore, most humbly prayed that on acceptance of this service appeal, both the impugned orders dated 02/08/2022 and 08/04/2022 passed by the respondents No.2 and 3 may kindly be set aside and the appellant may kindly be reinstated in service with all back benefits.


OR

Any other relief may deemed fit in the circumstances of the law may also be granted in favour of the appellant against respondent.



Appellant

Through



Date: 29/09/2022

Muhammad Furqan Yousafzai
Advocate, Supreme Court of
Pakistan

&

Khalid Hameed
Advocate, High Court,
Peshawar

28

13

**BEFORE THE COURT OF WORTHY CHAIRMAN
SERVICES TRIBUNAL, PESHAWAR**

Appeal No. _____/2022


Zahid Ur Rehman **Appellant**

V E R S U S

IGP and others..... **Respondents**

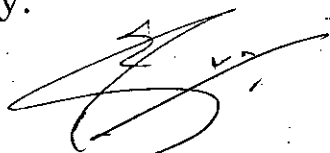
AFFIDAVIT

I, **Zahid Ur Rehman, Ex-Constable No. 668693, R/o Mandori Tehsil Alizai District Kurram**, do hereby solemnly affirm and declare on oath that the contents of accompanying **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable court.



DEPONENT

Identified by:



Muhammad Furqan Yousafzai
Advocate, Supreme Court of
Pakistan.



(29)
13

BEFORE THE COURT OF WORTHY CHAIRMAN
SERVICES TRIBUNAL, PESHAWAR

CM No. _____/2022

IN

Appeal No. _____/2022

Zahid Ur Rehman**Appellant**

V E R S U S

IGP and others.....**Respondents**

APPLICATION FOR CONDONATION OF DELAY

Respectfully Sheweth:

1. That the above Service Appeal has been filed by the petitioner and no date of hearing has yet been fixed.
2. That due to no knowledge of impugned order nor the impugned order has been sent to the petitioner nor served on the petitioner and was kept secret after completion of statutory period of appeal, the petitioner visited the office of respondent No.3 where it was revealed to the petitioner that his departmental appeal has been dispose of and impugned order passed by the respondent No.3 was sent to the petitioner few days back through whatsapp by his relative.

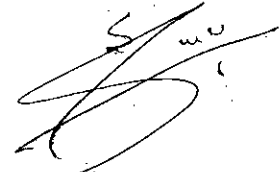
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3. That delay in filing the titled service appeal is neither willful nor deliberate but due to reason mentioned above.

It is, therefore, most humbly prayed that on acceptance of this application, the delay, if any, in filing the above titled service appeal may kindly be condoned in the interest of justice.

Petitioner

Through

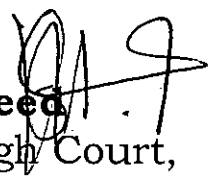


Muhammad Furqan Yousafzai
Advocate, Supreme Court of
Pakistan

Date: 29/09/2022

&

Khalid Hameed
Advocate, High Court,
Peshawar



AFFIDAVIT

I, **Zahid Ur Rehman, Ex-Constable No. 668693, R/o Mandori Tehsil Alizai District Kurram**, do hereby solemnly affirm and declare on oath that the contents of accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable court.



DEPONENT

ATTESTED
Gul Daraz Khan
Advocate High Court Peshawar



(3)

April 16

The Regional Police Officer
Rohat - Khyber Pakhtunkhwa.

Subject: Request for re-instatement of
Sepoy (Constable) Zahid-ur-Rehman
P.N. 668693

Respected Sir,

Reference to the subject above, it is stated that Zahid-ur-Rehman s/o Mir Hassan Jan was deployed for my security and he performed his duty honestly. Now I came to know that DPO office Kurram has dismissed him from service. Therefore you are requested to intervene and re-instate him. In past my family was targeted by a suicide bomber & we suffered huge loss.

Yours Sincerely,
Dr Abdul Qadir
s/o Haji Mumtaz
Khan Orakzai
En-MVA
Kurram.

ATTESTED

to be true copy
Advocate

30/5/2022
Mob# 03009003366



32

OFFICE OF THE
DISTRICT POLICE OFFICER
KURRAM, KHYBER PAKHTUNKHWA17
April '22

Tel/Fax: 0926-311354*Email:policekurram1@gmail.com

ORDER

This order is passed on the Charge Sheet against Constable Zahid Rehman No. 008093 under the Khyber Pakhtunkhwa, Police Rules, 1975 (Amendment 2014).

Brief of the fact is that constable Zahid Rehman has been charged wilfully absent till the date without prior permission of the competent authority which is tantamount to misconduct and inefficiency.

That consequent upon the completion of inquiry conducted against constable Zahid Rehman by the inquiry officer for which constable Zahid Rehman was given opportunity vide charge Sheet No. 3209/PA dated Parachinar the 04.10.2021 and No. 3208/PA dated Parachinar the 04.10.2021, but did not appear before the inquiry officer.

Upon the findings and recommendations of the inquiry officer vide No. 12/DSP Inv./Kurram dated 21.01.2022, the material on record and other connected evidence including defense the inquiry officer concluded that constable Zahid Rehman has to defend himself. Hence, the inquiry officer recommended major punishment for the delinquent Police personnel.

Further, notice regarding absence has already been published in daily Aaj Subah news paper dated 23rd January 2022.

Final show cause issued to the office of the undersigned vide No. 401/PA dated Parachinar the 23.02.2022 but did not reply and also not appeared before the undersigned for defense.

In view of the above I, Arbab Shafullah Jan District Police Officer Kurram in exercise of the powers conferred upon me, hereby award him a major punishment of "Dismissal from Service" under the Khyber Pakhtunkhwa, Police Rules, 1975 (Amendment 2014) with immediate effect.

District Police Officer
Kurram

OB. No. 119

Dated 08.04.2022

Copy forwarded to the:

1. Regional Police Officer Kohat Region Kohat
2. District Account officer Kurram
3. All DSPs/SHOs in Kurram
4. Pay Officer Kurram
5. SRC Kurram Police
6. RI Kurram Police to collect equipments
7. OASI Kurram Police
8. Concerned

District Police Officer
KurramATTESTED
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Adverse

BETTER COPY OF THE PAGE NO. 17

OFFICE OF THE
DISTRICT POLICE OFFICER
KURRAM, KHYBER PAKHTUNKHWA
Tel/Fax: 0926-311354, Email: policekurram1@gmail.com

ORDER

This order is passed on the Charge Sheet against Constable Zahid Rehman under the Khyber Pakhtunkhwa, Police Rules, 1975 (Amendment 2014).

Brief of the fact that constable Zahid Rehman has been charged with only absent till the date without prior permission of the competent authority which is tantamount to misconduct and inefficiency.

That consequent upon the completion of inquiry conducted against constable Muhammad Attiq by the inquiry officer for which constable Muhammad Attiq was given opportunity vide charge sheet No. 3201/PA dated Parachinar the 04/10/2021 and No. 3200/PA dated Parachinar the 04/10/2021, but did not appear before the inquiry officer.

Upon the findings and recommendations of the inquiry officer vide No. 12/DSP Inv;/Kurram dated 21/01/2021, the material on record and other connected evidence including defense the inquiry officer concluded that constable Zahid Rehman has to defend himself. Hence, the inquiry Officer recommended major punishment for the delinquent police personal.

Further, notice regarding Absence has already been published in daily Aaj Subah news paper dated 23rd January 2022.

Final show cause issued to the office of the undersigned vide No. 401/DPO/PA dated Parachinar the 23/02/2022 but did not reply and also not appeared before the undersigned for defense.

In view of the above I, Arbab Shafiullah Jan District Police Officer Kurram in exercise of the powers conferred upon me, hereby award him a major punishment of "Dismissal from Service" under the Khyber Pakhtunkhwa, Police Rules, 1975 (Amendment 2014) with immediate effect.

District Police Officer
Kurram

OB No. 119

Dated 08/04/2022

Copy forwarded to the:

1. Regional Police Officer Kohat Regional Kohat,
2. District Account Officer Kurram.
3. All DSPs/SHOs in Kurram
4. Pay Officer Kurram
5. SRC Kurram Police.
6. RI Kurram Police to collect equipments.
7. OASI Kurram Police
8. Concerned.


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District Police Officer
Kurram

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THE HONOURABLE DEPUTY INSPECTOR GENERAL OF POLICE
KOHAT REGION KOHAT

Annex "C"

APPEAL UNDER RULE 11 OF THE POLICE RULES 1975
(AMENDED 2014) AGAINST ORDER OF THE WORTHY
DISTRICT POLICE OFFICER KURRAM DATED 08-5-2022
RECEIVED ON 04-5-2022 VIDE WHICH THE APPELLANT
WAS DISMISSED FROM SERVICE WITHOUT ANY LAWFUL
JUSTIFICATION.

Respected Sir,

With great respect and veneration, the appellant may graciously be allowed to submit the following for your kind and sympathetic consideration;

Facts of the Case:

1. That the appellant was enrolled as Sepoy Khasadar Force Kurram Agency in the year 1997.
2. That the appellant since his induction / enrolment in the Kurram Agency Khasadar Force discharge his official function with great efficiency and dedication.
3. That the Worthy Officers of the Khasadar Force reposed trust in the appellant and they used to assign risky and sensitive tasks which the appellant successfully fulfilled in accordance with their satisfaction.
4. That in the year 2019 when the Khasadar Force was absorbed in the Police Department, the appellant also became member of the esteem Police Deptt.

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Advocate

5. That in the Police Deptt: too the appellant continued his meritorious services and earned support of his worthy senior officers.
6. That when the Khasadar Force was merged in the Police Deptt: most of the orders were made verbally because it was new arrangement and the period was transitory in nature.
7. That the appellant was deputed as Security Guard with the then MNA namely Munir Khan Orakzai and remained at the same position till his martyrdom in the year 2020.
8. That subsequently, the appellant was deputed as security guard with Dr. Abdul Qadeer Khan who is brother of the martyred MNA Munir Khan Orakzal.
9. That on 04-5-2022, when the appellant went to the police office Kurram for enquiring about his salary and other financial issues, office of the DPO Kurram informed that the appellant was dismissed from service by the Worthy DPO Kurram.
10. That the appellant caught by surprise when he heard the he was because he learned the news because he was already performing his services as security guard with Dr. Abdul Qadeer Khan. In this respect he may be contacted and due verification can be made about contention of the appellant. (his recommendations is enclosed as annexure-A)
11. That on the same day i.e. 04-5-2022, the appellant collected copy of the impugned dismissal order and upon perusal it was found that the appellant was dismissed from service on account absence from duty. (Copy of the order is enclosed as Annexure-B).
12. That the appellant was further caught by Shock when he came to know that he has been dismissed from service on the ground of absence from duty because the appellant has not remain absent from duty even for a single day and was physically present round the clock with Dr. Qadeer Khan as security guard.

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 ADVOCATE

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13. That on the order of dismissal from service the appellant has strong legal and factual reservations which are submitted in the following lines for your kind and sympathetic consideration:-

Grounds of Appeal:

- A. That the impugned order of the dismissal from service of the appellant is not in accordance with law, facts, evidence on record, rules and principles of justice, hence it is liable to be set aside.
- B. That it is a well established principle of law and justice, that whenever a charge is to be framed against an accused or defaulter, it shall be specific so that to enable the defaulter to prepare his defence properly. However, in the case of the appellant it will indicate that the charge is vague and ambiguous because the worthy competent authority has not mentioned that from which date to which date the appellant allegedly remained absent. Hence the basic and fundamental right of preparing defence by the appellant was infringed and in this scenario the impugned order has become legally defective and no punishment can be awarded on such a vague and ambiguous charge against the appellant.
- C. That the alleged enquiry against the appellant was conducted unilaterally, one sidedly and at the back of the appellant which in the eyes of law has got no legal value and hence the impugned enquiry and the impugned order are not sustainable in the eyes of law. Thus no punishment can be awarded on such a one sided enquiry.
- D. That under Art. 10-A of the constitution of Pakistan, transparent, impartial and independent enquiry/ trial against accused/ defaulter has been declared as his fundamental and inalienable right but here, in the instant enquiry fundamental right of the appellant has not been adhered. Thus enquiry and the impugned order are violation of

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the fundamental right of the appellant. Hence, the impugned order is not operative on the rights of the appellant.

- E. That the impugner order has though mentioned framing charge sheet and the statement of allegation against the appellant but has forgotten to mention about their service on the appellant. If charge sheet and statement of allegations were framed against the appellant, then they should have been served upon the appellant. However, nothing has been said about their service upon the appellant in the impugned order.

Under the law/rules service of the charge sheet and statement of allegations upon the defaulter are mandatory. Without their service upon a defaulter, enquiry cannot proceed against him. If a defaulter is not physically present before the authority then, it is required that they should be sent at the home address of the defaulter but it appears that the established/prescribed procedure was not followed. It appears that the worthy competent authority was bent upon to punish the appellant at any cost, hence, the prescribed procedure and as well as legal/codal formalities were not followed in letter and spirit which has rendered the impugned order as legally defective order which has got no impact on the service rights of the appellant and thus he is presumed to be on duty since his dismissal from service. (In support of copies of the judgment of Service Tribunal KPK are enclosed as Annexure-C & D)

- F. That in case if appellant was not traceable then ex-parte proceedings were to be initiated against the delinquent official but in the impugned order it does not appear that ex-parte proceedings against the appellant were directed at any stage of the enquiry. Hence the enquiry and the impugned order suffer from material legal irregularity.

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Advocate

G. That although in the impugned order, it has been mentioned by the worthy competent authority that in the news paper "Aaj Subah" dt:23-1-2022 proclamation regarding absence of the appellant was published.

Sir, very respectfully, the above procedure adopted by the w/competent authority is not in accordance with the prescribed procedure.

Ordinarily, when it is established that presence of the defaulter official cannot be procured then at the beginning of the enquiry, ex-parte proceedings are directed and absence of the defaulter is published in the that two national dailies but in the case of appellant one can surprisingly observe that, no order regarding initiation of ex-parte enquiry against the appellant was issued. Secondly the proclamation of absence of the appellant was not published in the two national dailies like Mashriq Jang etc. but published in only one daily local newspaper namely Aaj Subah, whose circulation cannot be confirmed, hence this cannot be said as a satisfactory proclamation. Thirdly, the enquiry proceeding against the appellant came to an end on 21-01-2022 while the alleged proclamation in a local newspaper was published on 23-2-2022 i.e. after conclusion of the instant enquiry against the appellant while according to the well established procedure, it should have been published at the commencement of the enquiry instead of conclusion of enquiry.

Hence, the above realities have established beyond any reasonable doubt that in absence of the order for commencement of ex-parte proceedings against the appellant, nor publishing of the alleged absence in the two national daily newspapers and publishing the alleged absence of the appellant in a local newspaper after conclusion of enquiry have made the impugned order as legally not sustainable and deserve to be brushed aside.

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Advocate

- H. That it appears from the impugned order that no efforts were made to enquire whereabouts of the appellant from his residence located in Kurram Headquarter or from the residence of the martyred MNA with whom he was attached as security guard and Dr. Abdul Qadeer with whom he was performing duty as security guard and the time of inquiry / order. If, due enquiry would have been made it would ascertain by the concerned officers of the deptt: that the appellant was physically present on duty and performing as security guard with the Dr. Qadeer Khan.
- I. That during the alleged enquiry if the enquiry officer has recorded evidence of any witness, such an evidence has got no legal value because the appellant was not provided opportunity to cross examine such witness. Hence no punishment whatsoever can be awarded on such one sided and unilateral evidence.
- J. That more or less 24 years service of the appellant was ended with one stroke of pen without any lawful justification.
- K. That under the law maximum punishment like dismissal from service is to be awarded after following al legal and codal formalities in letter and spirit. Moreover, competent authority will not treat the matter as an ordinary one and while awarding such a maximum / harsh punishment he should give serious and repeated considerations but from the impugned order, it appears that legal and codal formalities were not followed in letter and spirit and no serious consideration was paid while depriving the appellant from his only source of income.
- L. That the appellant is absolutely innocent. The appellant remained present on duty with the brother of the martyred Munir Khan Orakzai MNA. The appellant after approval by the competent authority was performing security duty with Dr. Abdul Qadeer Khan and in this regard his request is already submitted as annexure-A.


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Advocate

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- M. That inspite of having sources and resources, the relevant quarters did not touch this aspect nor any enquiry was conducted at this angle in order to ascertain, where about of the appellant and performing his duty with Dr. Abdul Qadir Khan. By conducting one sided inquiry the appellant was prejudiced and thus in the shape of the impugned order miscarriage of justice occasioned to the appellant.
- N. That the appellant is a law abiding person and he has always kept his departmental interests above his personal interests. Appellant being member of the law enforcing agency cannot imagine to remain absent without leave or permission.
- O. That the appellant during his 24 years service has always remained present on his service and whenever needed he applied for leave from the competent authority.
- P. That the charge of remaining absent from duty is totally baseless, misleading and without any foundations. Hence upon such a flimsy, vague and baseless charge no punishment to the appellant is justified.
- Q. That the appellant supports a large family. Except the present service, the appellant has got no other source of income.
If the impugned order is upheld, the appellant will be deprived of his only source of income and his family will land in starvation. Resultantly the appellant may face irreparable loss.
- R. That the impugned order requires that it may be revisited and legal and factual defects may be removed by applying judicial mind.
- S. That if deemed proper the appellant may kindly be heard in person.

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Advocate

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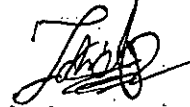
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Prayer:

It is, therefore, humbly prayed that the order of dismissal of the appellant contains a number inconsistencies, contradictions, the charge is flimsy, vague and uncertain, the order is not based on evidence, the appellant has been denied his legal defence, due process of law was not followed while the enquiry is one sided and unilateral being conducted without association of the appellant, therefore, the impugned order being not sustainable in the eyes of law may pleased be set aside in the larger interest of law and justice and the appellant may kindly be reinstated in service with all back benefits. The appellant and his family will pray for your long life and prosperity.

Thanking you in anticipation.

Yours Obediently,



Zahid ur Rehman (Appellant)

Ex-constable No.668693

Resident of Mandori Tehsil Alizai
District Kurram..

Cell No. 0302-0077000.

Dated:31-05-2022.

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Advocate

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Annex "D"

POLICE DEPTT:

KOHAT REGION

ORDER.

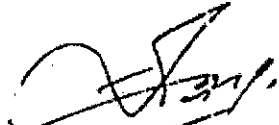
This order will dispose of a departmental appeal, moved by the Ex-Constable Zahid-ur-Rehman of district Kurram against the punishment order, passed by DPO Kurram vide OB No. 119, dated 08.04.2022; whereby he was awarded major punishment of dismissal from service on the allegations of willful absence from lawful duties for a long time of 06 months without any leave or prior permission from his seniors.

He preferred appeal to the undersigned, upon which comments were obtained from DPO Kurram and his service record was perused. He was also heard in person in Orderly Room held in this office on 02.08.2022. During hearing the appellant did not give any plausible reason in his defense.

I have gone through the available record which indicates that the allegations leveled against the appellant are proved beyond any shadow of doubt and the same has been established by the enquiry officer in his findings. The appellant remained absent for a long time of 06 months for which publication was issued in leading newspaper to resume his duty but he did not bother to do so and till the date of dismissal his whereabouts were not known. Therefore, in exercise of the powers conferred upon the undersigned, his appeal being devoid of merits is hereby rejected.


Order Announced

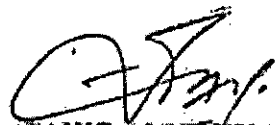
02.08.2022


(TAHIR AYUB KHAN) PSP
Region Police Officer,
Kohat Region.

No. 11603 /EC, dated Kohat the 02.08.2022

Copy to District Police Officer, Kurram for information and necessary action w/r to his office Letter No. 888/SRC, dated 17.07.2022. His Service Record is returned herewith.

SRC

18/08/2022


(TAHIR AYUB KHAN) PSP
Region Police Officer,
Kohat Region.
3/8/22

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Advocate

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

Service Appeal No. 1496/2022

Zahid Ur Rehaman..... (Appellant)

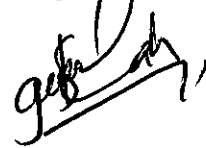
VERSUS

Inspector General of Police KPK & other.....(Respondents)

Index

S. No	Description of Documents	Annexure	Page
1.	Para-Wise Reply		1-3
2.	Affidavit		4
3.	Authority Letter		5
4.	Copy of Naqal Mad dated 30-09-2021	A	6
5.	Copy Charge Sheet & Statement of Allegation	B	7-8
6.	Copy of Enquiry Report and public notice published in News Paper	C	9-10
7.	Copy of final Sow Cause	D	11
8.	Copy of Dismissal Order	E	12

Respondents



Javed Shah

(Focal Person DPO Kurram)

① 44

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL No. 1496/2022

Zahid Ur Rehman..... (Appellant)

VERSUS

Inspector General of Police KPK& others.....(Respondents)

PARAWISE REPLY BY RESPONDENTS NO 1,2& 3

RESPECTFULLY SHEWETH:

Preliminary Objections:-

- That the instant service appeal is not maintainable under the law.
- That the appeal is not based on facts.
- That the appellant has got no cause of action and locus standi.
- That the appellant has concealed the real facts from the honorable Tribunal.
- That the appellant is estopped to file the service appeal by his own conduct.
- That the appeal is barred by law & limitation.

REPLY ON FACTS:-

1. Pertains to record of Ex-Political Agent Kurram, need no comments.
2. Pertains to record, need no comments.
3. Incorrect. The answer respondents did not issue any orders to the appellant regarding his duty as security guard with MNA Munir Khan Orkzai, nor did the appellant annex any order regarding his duty as security guard with MNA Munir Khan Orkzai.
4. Incorrect, the answer respondents did not issue any orders to the appellant regarding his duty as security guard with Dr. Abdul Qadeer Khan, nor did the appellant annex any order regarding his duty as security guard with Dr. Abdul Qadeer Khan.
5. Incorrect. The appellant remained absent from duty after completion of his training dated 07-09-2021 till his dismissal from service dated 08-04-2022, (Absence period i.e. 06 months & 2 days). The appellant was absent from duty since 07-09-2021. **(Copy of Naqal Mad dated 30-09-2021 Annexure "A")**. The chargesheet along with statement of allegation was issued to the appellant on dated 04-10-2021. **(Copy Charge Sheet & Statement of Allegation Annexure "B")**. Hence Proper departmental enquiry proceedings were initiated against him. **(Copy of Enquiry Report and public notice published in News Paper are annexed as Annexure "C")**. The Enquiry Officer after fulfilling codal formalities submitted his findings, wherein he reported that the appellant was contacted time and again to appear before the enquiry officer, but he failed and remained absent, which showed that he was no more interested in Police Service. Therefor final Show cause dated 23-02-2022 was issued to him with an opportunity to defend himself, but the appellant failed to do so. **(Copy of final Sow Cause Annexure "D")**. Upon the findings and recommendation of the inquiry officer, the appellant was

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 6178

Dated 23-01-23

2 45

dismissed from service dated 08-04-2022 in accordance with rule/policy. (Copy of Dismissal Order Annexure "E").

6. Incorrect, already explained in preceding paras.
7. Correct to the extent that the appellant approached the office concern, but the appellant failed to provide any cogent justification regarding absence from official duty, hence his appeal was rejected on solid grounds.
8. Incorrect, both the orders were convincing, based on cogent reasons and in accordance with rules/Policy of Government and the Departmental Appeal being unsatisfactory, hence rejected. Appellant has got no cause of action, therefore, the instant appeal may kindly be dismissed on the following grounds.

GROUNDS

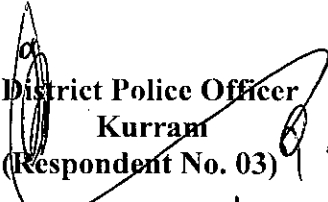
- A. Incorrect, both the orders were convincing, based on cogent reasons and in accordance with rules/Policy of Government and the Departmental Appeal being unsatisfactory, hence rejected.
- B. Incorrect, already explained in preceding paras.
- C. Incorrect, already explained in preceding paras.
- D. Incorrect, already explained in preceding paras.
- E. Incorrect, already explained in preceding paras and Answering Respondents never violated Art. 10-A of the constitution of Pakistan nor deprived the appellant from his fundamental rights.
- F. Incorrect, already explained in preceding paras.
- G. Incorrect, in final show cause notice the appellant was provided an opportunity of 07 days for his defense but no progress to the notice was received from the appellant, hence ex-parte action was taken against the appellant, in accordance to the rule/policy.
- H. Incorrect, on dated 04-10-2021 proper enquiry was initiated against the appellant, on dated 21-01-2022 the Enquiry Officer after fulfilling codal formalities submitted his findings, wherein he reported that the appellant was contacted time and again to appear before the enquiry officer, but he failed and remained absent, which showed that he was no more interested in Police Service, on dated 23-01-2022 notice regarding absence published in News Paper, on dated 23-02-2022 final show cause notice was issued and on dated 08-04-2022 dismissal orders was issued.
- I. Incorrect, already explained in preceding paras.
- J. Incorrect, already explained in preceding paras.
- K. Incorrect, appellant was dismissed from service in accordance to rule/law/policy of the government.
- L. Incorrect, already explained in preceding paras.
- M. Incorrect, already explained in preceding paras.
- N. Incorrect, already explained in preceding paras.
- O. Incorrect, already explained in preceding paras.
- P. Incorrect, already explained in preceding paras.
- Q. Personal views of appellant need no comments.

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R. Respondents may kindly be allowed to add any other grounds/ documents at the time of hearing.

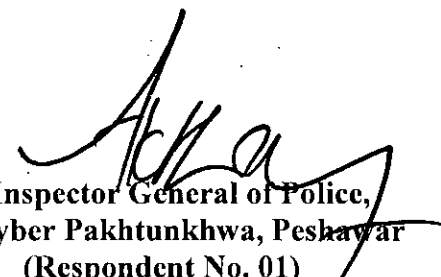
PRAYERS:

Keeping in view the above stated facts it is humbly prayed that the appeal being not maintainable, barred by law/ limitation may kindly be dismissed with costs, please.


District Police Officer
Kurram
(Respondent No. 03)

08/06/023


Regional Police Officer
Kohat Region, Kohat
(Respondent No. 02)


Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 01)

(4) 47

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA,
SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.1496/2022

Mr. Zahid Ur Rehman..... **Petitioner.**

VERSUS.

1. Inspector General of Police, Government of Khyber PakhtunKhawa Peshawar.
2. Regional Police Officer, Kohat Region, District Kohat.
3. District Police Officer, Kurram.

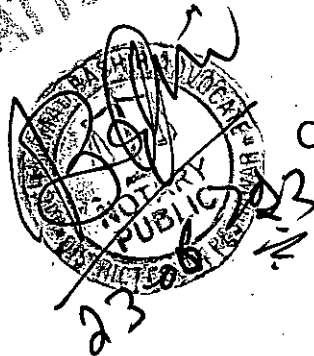
.....**Respondents.**

AFFIDAVIT.

I, Mr. Javed Shah Focal Person Kurram Police Force (The Authorized representative of respondent No.3) do hereby solemnly affirm and declared on oath that the contents of this accompanying Para-Wise Comments/Reply on behalf of respondent No.3 are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense has been struck off /Cost.

ATTESTED



Javed Shah

DEPONENT

CNIC No.21303-9273132-9

Cell No. 03018019342

Identified by

Advocate General KP

5 4B

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.

Service Appeal No. 1496/2022

Zahid ur Rehman

..... Appellant

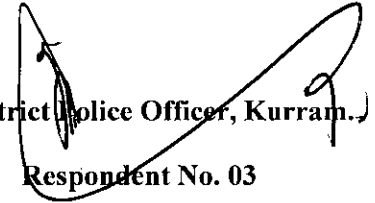
VERSUS

1. Inspector General of Police KPK, Peshawar
2. Regional Police Officer , Kohat Region Kohat
3. District Police Officer, District Kurram

..... Respondents

AUTHORITY LETTER.

Mr. Javed Shah s/o Said Wazir Focal Person bearing CNIC No. 21303-92733132-9 is hereby authorized to institute para-wise comments duly signed by respondents in the Honorable Court on behalf of the respondents.


District Police Officer, Kurram.
Respondent No. 03

تقدیر 3 روز تا 30/09/2021

D

ہد

بولڈ لائن حصہ

صرف 3 آفیسر آفیسر عبد الرحمن ASI مورف 30/09 وقت 40
 ہے۔ کمر آج OHC منڈل کمر آگر بیان کرتا ہے۔ کمر کمر
 جو تقری 10 منٹ سے فارغ ہوئی تھی۔ اس میں سے کنسٹبل محمد
 کنسٹبل شہاب الدین ولد لعل دین، کنسٹبل محمد رفیق ولد ضیاء گل
 محمد واجد ولد آدم سار، کنسٹبل زاہد الرحمن ولد میر حسن جان
 اپنے جائے تعیناتی پر حاضر نہیں ہوئے۔ مذکورہ کنسٹبلان کے بچے
 پروان سربار بار اطلاع کی کہ اپنے اپنے جائے تعیناتی پر حاضر
 مگر مذکورہ بالا کنسٹبلان کی حاضرگی کوئی افسر نہیں فز
 کنسٹبلان کے خلاف رپورٹ غیر حاضر درج روز تا 30/09/2021
 کر کے وزیر کاروائی کئی افسران بالا کی طرف سے ارسال ہوگی

حنان عالی

Change-sheet

Period of absence

(7.9.2021)

نقل و حرکت اہل ہے

لائسنس افسر منڈل لولہ کرم

30-09-2021

- 1 ضالیو
- 2 ندو
- 3 Tindi CA
- 4 Sabu
- 5 Post

Attest

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Ammeeras - B

**OFFICE OF THE
DISTRICT POLICE OFFICER
KURRAM, KHYBER PAKHTUNKHWA**

Tel/Fax: 0926-311354*Email: policekurrum@gmail.com

No. 3209...../PA Dated Parachinar 4-10-2021.

CHARGE SHEET

MR. TAHIR IQBAL DISTRICT POLICE OFFICER KURRAM

as competent authority under Khyber Pakhtunkhwa Police Rule 1975 (amended 2014), am the opinion that Con Zahid Rehman s/o Mir Hassan Jan had rendered yourself liable to be proceeded against as you have committed the following act within the meaning of the Police Rules 1975 amended 2014.

1. That you Con Zahid Rehman have been assigned duties after completion of training dated 7.9.2021 whereby, you was supposed to assumed your charge and you were time and again inform to assume the charge, but you failed to do so.
2. That you deliberately neither assume the charge at mentioned post nor obeyed the orders.
3. Your this act is gross misconduct on your part as police personnel.

By reason of the above, you appear to be guilty of misconduct under the Police Rule 1975 (amended 2014) and have rendered yourself liable to all or any of the penalties specified in the Police Rules.

You are, therefore, required to submit your written statement within (03) days of the receipt of this charge sheet to the inquiry officer.

Your written defense if any should reached the inquiry officer within the specified period, failing which it shall be presumed that you have no defense to put in and ex-parte action shall be taken against you.

A statement of allegation is enclosed.

District Police Officer
Kurram

Ahmed
Khan

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NFO

**OFFICE OF THE
DISTRICT POLICE OFFICER
KURRAM, KHYBER PAKHTUNKHWA**

Tel/Fax: 0926-311354*Email:policekurram@gmail.com

No. 3208...../PA Dated Parachinar...4-10-2021

DISCIPLINARY ACTION.

MR. TAHIR IQBAL DISTRICT POLICE OFFICER KURRAM

as competent authority, am the opinion that you Con Zahid Rehman s/o Mir Hassan Jan have rendered yourself liable to be proceeded under Khyber Pakhtunkhwa Police Rule 1975 (amended 2014) as you have committed the following act.

STATEMENT OF ALLEGATIONS

1. That you Con Zahid Rehman have been assigned duties after completion of training dated 7.9.2021 whereby, you was supposed to assumed your charge and you were time and again inform to assume the charge, but you failed to do so.
2. That you deliberately neither assume the charge at mentioned post nor obeyed the orders.
3. Your this act is gross misconduct on your part as police personnel.

For the purpose of conduct inquiry with reference to the above allegations DSP Investigation is appointed as Inquiry officer. The inquiry officer shall in accordance with the provision of the Police Rule 1975 (amended 2014), provide reasonable opportunity of hearing to the above official within (07) days of the receipt of this order, recommendations as to punishment or other appropriate action against the official.

The official shall join the proceeding on the date, time and place fixed by the inquiry officer.

District Police Officer
Kurram

Copy to the:

1. Inquiry Officer for initiating proceedings against the official under the provision of Police Rule 1975.
2. The official with the direction to appear before the Inquiry Officer on the date, time and place fixed by him for the purpose of inquiry proceedings.

District Police Officer
Kurram

Ahmed Iqbal

آرمی

جلد نمبر 10 | 17 اور 18 عادی اجل 1443 = 23 مئی 2022ء | قیمت 10 روپے | اجل نمبر 103

اشتہار نوٹس بابت غیر حاضری کرم پولیس فورس ضلع کرم

آپ کی طرف سے منسلک کرم پولیس فورس کے ذریعے منسلک شدہ اطلاع کیا گیا ہے کہ آپ کے نام پر کرم پولیس فورس کے اجل سے 10 روپے کی رقم جمع ہوئی ہے۔ یہ رقم کرم پولیس فورس کے اجل سے جمع ہوئی ہے۔ اگر آپ اس رقم کو وصول کرنے کے لیے حاضری نہیں دیتے تو اس رقم کو کرم پولیس فورس کے اجل سے جمع کر دیا جائے گا۔ اگر آپ اس رقم کو وصول کرنے کے لیے حاضری دیتے ہیں تو اس رقم کو کرم پولیس فورس کے اجل سے جمع کر دیا جائے گا۔

نمبر	پولیس	ریک	نام	مذہب	کرم	ضلع
1	072248	Con	نارن	مذہب	کرم	کرم
2	009281	Con	نارن	مذہب	کرم	کرم
3	30410002	Con	نارن	مذہب	کرم	کرم
4	072203	Con	نارن	مذہب	کرم	کرم
5	072134	Con	نارن	مذہب	کرم	کرم
6	072038	Con	نارن	مذہب	کرم	کرم
7	009170	Con	نارن	مذہب	کرم	کرم
8	2370	Con	نارن	مذہب	کرم	کرم
9	072583	Con	نارن	مذہب	کرم	کرم
10		Con	نارن	مذہب	کرم	کرم
11	009423	Con	نارن	مذہب	کرم	کرم
12		Con	نارن	مذہب	کرم	کرم
13	50100441	Con	نارن	مذہب	کرم	کرم
14	000005	Con	نارن	مذہب	کرم	کرم
15	000003	Con	نارن	مذہب	کرم	کرم
16	50147461	Con	نارن	مذہب	کرم	کرم
17		Con	نارن	مذہب	کرم	کرم
18	50200354	Con	نارن	مذہب	کرم	کرم
19	50312777	Con	نارن	مذہب	کرم	کرم
20	000005	Con	نارن	مذہب	کرم	کرم
21	072483	Con	نارن	مذہب	کرم	کرم
22	009171	Con	نارن	مذہب	کرم	کرم
23	009100	Con	نارن	مذہب	کرم	کرم
24	50295549	Con	نارن	مذہب	کرم	کرم
25	007034	Con	نارن	مذہب	کرم	کرم

المشہر: ارباب شفیق اللہ جان ٹسٹرکٹ پولیس آفیسر ضلع کرم

Attested
[Signature]

OFFICE OF THE DSP INVESTIGATION

(15)

(53)
DISTRICT KURRAM

NO: 12. Date: 21/01/2022

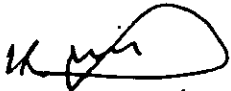
فائل رپورٹ

محکمانہ انکوائری بر خلاف ذہد رحمان ولد میر حسن جان


جناب عالی!

بحوالہ چارج شیٹ نمبر: 3209/PA مورخہ 04-10-2021 بجاریہ جناب D.P.O صاحب ڈسٹرکٹ گرم معروض خدمت ہوں۔ کہ کانٹیشیل ذہد رحمان ولد میر حسن جان کو بوجہ غیر حاضری کی بناء پر جناب D.P.O صاحب نے چارج شیٹ کیا ہے۔ مذکورہ کانٹیشیل بالا کو بغرض انکوائری طلب کر کے دفتر ہذا کو بار بار بذریعہ فون اطلاعاتی کے باوجود اپنے صفائی کے بارے میں حاضر نہیں ہو رہا ہے۔ جسکے بارے OHC سنٹرل گرم سے تحریری بیان بھی قلمبند کیا۔ جو کہ لف فائل رپورٹ انکوائری ہذا ہے۔
عالیجاہ:-


مذکورہ کانٹیشیل بالا بغرض انکوائری بار بار اطلاعاتی کے باوجود حاضر نہیں ہو رہا ہے۔ اور نہ ہی اپنے صفائی کے بارے میں بیان وغیرہ جمع کر رہا ہے۔ چونکہ مذکورہ بالا کانٹیشیل جائے تعیناتی ڈیوٹی کے لئے حاضر نہیں ہو رہا ہے۔ اور آفسران بالا کی حکم کی عدولی کر رہا ہے۔ جسکا یہ فعل محکمہ پولیس میں غیر ذمہ درانہ ہے۔ اس ضمن میں انکوائری مکمل کر کے پولیس رول 1975 (Amended 2014) کے تحت (Major punishment) کی سفارش کی جاتی ہے۔ رپورٹ عرض ہے۔


DSP (INV) Kurram

Dismissed


DSP Kurram

PA.
Issue final show cause.


DSP Kurram
21.02.2022

Attended


(54) 668693 (11)

Annexure D

**OFFICE OF THE
DISTRICT POLICE OFFICER
KURRAM, KHYBER PAKHTUNKHWA**

Tel/Fax:0926-311354*Email:policekurram1@gmail.com

No. 401Dated Parachinar. 23/02/2022.

FINAL SHOW CAUSE NOTICE:

I Arbab Shafiullah Jan District Police Officer, Kurram as competent authority under Khyber Pakhtunkhwa Police Rules 1975 (amended 2014) is hereby serve you, constable Zahid Rehman s/o Mir Hassan Jan posted at Police Line Sadda Lower Kurram.

Charged as:

Reference Disciplinary Action No. 3208/PA dated Parachinar the 04.10.2021 and charge sheet No. 3209/PA dated 04.10.2021, that you have been nominated for the basic training vide this office letter No. 5223/Trg dated 25.05.2021 but you did not attend the said training and still absent from the legitimate duty without prior permission of the competent authority which is tantamount to misconduct, disinterest and inefficiency in your official duty.

That consequent upon the completion of inquiry conducted against you by the inquiry officer for which you were given opportunity vide this office Disciplinary Action and charge Sheet vide number cited above to appear before the inquiry officer but you did not appear. The inquiry officer recommended major punishment vide his inquiry No. 12 dated 21.01.2022.

On going through the findings of the inquiry officer, the material on record and other connected papers including your defense to the inquiry officer, I am satisfied that you have found guilty as charged against you. Further, notice regarding absence has already been published in daily Aaj Subah news paper dated 23rd January 2022.

As a result thereof I as competent authority have tentatively decided to impose upon you major penalty provided under rules ibid.

You are therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you also intimate whether you desire to heard in person if no progress to this notice is received within (07) days of its delivery in the normal course of circumstances, it shall be presumed that you have no defense to put in and in that case ex-parte action shall be taken against you.

The copy of the finding inquiry officer is enclosed.

In this regard, you are directed to submit your reply of this notice within (03) days, positively. If failed or the undersigned was not satisfied from your reply a stern action shall be initiated against you as per Police Rules.


District Police Officer
Kurram

*Attested
[Signature]*



ORDER

This order is passed on the Charge Sheet against Constable Zahid Rehman P.No. 668693 under the Khyber Pakhtunkhwa, Police Rules, 1975 (Amendment 2014).

Brief of the fact is that constable Zahid Rehman has been charged willingly absent till the date without prior permission of the competent authority which is tantamount to misconduct and inefficiency.

That consequent upon the completion of inquiry conducted against constable Zahid Rehman by the inquiry officer for which constable Zahid Rehman was given opportunity vide charge Sheet No. 3209/PA dated Parachinar the 04.10.2021 and No. 3208/PA dated Parachinar the 04.10.2021, but did not appear before the inquiry officer.

Upon the findings and recommendations of the inquiry officer vide No. 12/DSP Inv./Kurram dated 21.01.2022, the material on record and other connected evidence including defense the inquiry officer concluded that constable Zahid Rehman has to defend himself. Hence, the inquiry officer recommended major punishment for the delinquent Police personnel.

Further, notice regarding absence has already been published in daily Aaj Subah news paper dated 23rd January 2022.

Final show cause issued to the office of the undersigned vide No. 401/PA dated Parachinar the 23.02.2022 but did not reply and also not appeared before the undersigned for defense.

In view of the above I, Arbab Shafullah Jan District Police Officer Kurram in exercise of the powers conferred upon me, hereby award him a major punishment of "Dismissal from Service" under the Khyber Pakhtunkhwa, Police Rules, 1975 (Amendment 2014) with immediate effect.


District Police Officer
Kurram

OB. No. 119

Dated 08.04.2022

Copy forwarded to the:

1. Regional Police Officer Kohat Region Kohat.
2. District Account officer Kurram.
3. All DSPs/SHOs in Kurram
4. Pay Officer Kurram.
5. SRC Kurram Police
6. RI Kurram Police to collect equipments.
7. OASI Kurram Police..
8. Concerned.


District Police Officer
Kurram


Arbab Shafullah Jan

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ایڈویکٹ:	بار کونسل ایسوسی ایشن نمبر: 09-1391-09-PL	
رابطہ نمبر:	9333-9766875	پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: جسٹس مسعود علی پشاور

منجانب: <i>Appellant</i>	دعویٰ: 17301-8609999-1
	علت نمبر: 0333-9766875
	مورثہ:
	جرم:
	تھانہ:

بابت تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب وہی کارروائی متعلقہ
 آن مقام پشاور ایڈووکیٹ محمد خرم خان لیسٹریٹری آف ایڈووکیٹس کو وکیل مقرر
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کمال اختیار ہوگا، نیز وکیل صاحب کو
 راضی نامہ کرنے و تقریر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت 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 اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
 کارروائی کے واسطے اور وکیل یا مختار قانونی پر کو اپنے ہمراہ لیا جائے تقرر کا اختیار ہوگا اور صاحب
 مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخستہ منظور و قبول ہوگا
 دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ 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 سند رہے
 المرقوم: 99-9-200

Accepted

Attest

Muhammad Furqan Yousafzai
 Advocate Supreme Court of Pakistan
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پشاور

ذاتہ المرجحان