

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.

**SERVICE APPEAL NO. 828/2012**

Date of institution ... 19.07.2012

Date of judgment ... 31.10.2016

Umar Khitab, Ex-Constable  
R/o Muskan Tehsil Takht Nasrati, District Karak.

... (Appellant)

VERSUS

1. The Provincial Police Officer, KPK, Peshawar.
2. The Additional (IGP)/Commandant, FRP, KPK, Peshawar.
3. Superintendent of Police FRP, Kohat.

... (Respondents)

APPEAL AGAINST THE IMPUGNED ORDER DATED 11.11.2010 WHEREBY  
THE APPELLANT HAS BEEN DISMISSED FROM SERVICE FROM 25.05.2010  
AND ALSO AGAINST THE FINAL IMPUGNED ORDER DATED 24.03.2011  
WHEREBY THE APPELLANT REPRESENTATION FOR REINSTATEMENT IN  
SERVICE HAS BEEN REJECTED AND ALSO AGAINST THE IMPUGNED  
ORDER DATED 11.07.2012 WHEREBY HIS REVISION HAS BEEN FILED.

Mr. Aslam Khan Khattak, Advocate.  
Mr. Ziaullah, Government Pleader

.. For appellant.  
.. For respondents.

MR. ABDUL LATIF  
MR. PIR BAKHSH SHAH

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

JUDGMENT

ABDUL LATIF, MEMBER:- Facts giving rise to the instant appeal are that the appellant has been enlisted as Constable on 27.07.2007 in Frontier Reserve Police. That the appellant was selected for SSG Course at Jaloza Training Centre Nowshera but he suffered from chronic disease and the centre authorities relieved the appellant for managing treatment. That thereafter respondent No. 3 has taken ex-parte action against the appellant and dismissed him from service vide impugned order dated 11.11.2010. That against the impugned order appellant filed departmental appeal on 08.02.2011 which was rejected vide order dated 19.03.2011, thereafter appellant filed revision petition which was also filed on

11.07.2012 and hence the instant service appeal with a prayer that on acceptance of this service appeal the impugned orders dated 11.11.2010, 24.03.2011 and 11.07.2012 may be set-aside and the appellant may be reinstated in service with all back benefits.

2. The learned counsel for the appellant argued that the impugned order dated 11.11.2010 had been given retrospective effect which illegal and void order as under the law such effect was not permissible. He further argued that proper inquiry was not conducted, no show-cause notice was served on the appellant hence the impugned order was not maintainable under the law. He further added that the appellant remained sick thus the absence was beyond his control and medical treatment was also permitted by the concerned authority therefore his dismissal from service was not justified and required interference of this Hon'ble Tribunal. He further argued that even if the appellant absented himself from duty, major penalty of dismissal from service was very harsh and not commensurate to the degree of offence of the appellant adding further that in identical case of absence Muhammad Asghar Constable was given lenient treatment and was reinstated by the respondent-department. He relied on PLD 1995 (C.S) 546 and 2008 PLC (S.C) 1055. He further argued that the appellant also deserved for similar treatment otherwise it would tantamount to discrimination against the appellant which was not permissible under the law and prayed that on acceptances of this appeal the impugned order dated 11.11.2010 may be set-aside and the appellant may be reinstated in service with all back benefits.

3. The learned Government Pleader resisted the appellant and argued that the appellant was dismissed from service on 11.11.2010 against which departmental appeal was filed on 08.02.2011 which was time barred hence the instant service appeal before the Service Tribunal was not competent. He further argued that the appellant also filed revision petition before the relevant authority which was nowhere provided in the rule and such repeated representation would not extend time limitation. He relied on 2013 SCMR 911 and 2015 SCMR 173 and prayed that the appeal being not competent and not maintainable may be dismissed.

4. Arguments of learned counsels for the parties heard and record perused.

5. From perusal of the record it transpired that charge-sheet was dispatch on the home address of the appellant but the same was not responded as according to the appellant he did not receive any such charge-sheet and hence did not participate in the disciplinary proceeding. Major penalty of dismissal was inflicted on the appellant without his association with the inquiry proceeding and without affording him full opportunity of defence. The record reveals that principles of natural justice were not met and opportunity of fair trial as guaranteed under the constitution and the law were not provided to the appellant, the order of his dismissal thus suffer from legal infirmity. The record also reveals that in another similar case of Muhammad Asghar Constable absence of around five months of the said official was leniently treated and he was reinstated in service and the law of consistency would demand that equal treatment should also be meted out to the present appellant. It is observed that unlike the above case where opportunity of personal hearing was granted to the said official, no opportunity of personal hearing was given to the present appellant. In the above scenario, we are constrained to set-aside the appellate order dated 24.03.2011 and remit the case to the appellate authority to examine the same in light of the precedential case of Muhammad Asghar Constable and decide it in accordance with law and rules by treating him equally to dispel the impression of discrimination against the appellant. The case shall be decided within a period of 60 days of the receipt of this judgment and in case it is not decided within the said period, the appeal shall be treated as accepted and the intervening period since dismissal of the appellant from service till date be treated as extra ordinary leave without pay. The appeal is disposed of in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

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PESHAWAR.

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MR. PIR BAKHSH SHAH

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

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MR. ABDUL LATIF  
MR. PIR BAKHSH SHAH

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ANNOUNCED  
31.10.2016

  
(PIR BAKHSH SHAH)  
MEMBER

  
(ABDUL LATIF)  
MEMBER

19.10.2016

Counsel for the appellant and Mr. Ihsanullah, ASI  
alongwith Mr. Ziaullah, GP for respondents present.  
Arguments heard. To come up for order on

21-10-16



(PIR BAKHSH SHAH)  
MEMBER



(ABDUL LATIF)  
MEMBER

21.10.2016

Counsel for the appellant and Mr. Ziaullah, GP for respondents  
present. The learned Member Judicial Mr. Pir Bakhsh Shah is on leave  
therefore order could not be announced. To come up for order on

31-10-16.



(ABDUL LATIF)  
MEMBER

31.10.2016

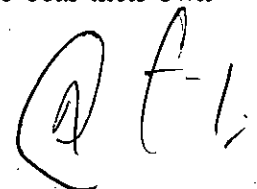
Counsel for the appellant and Mr. Ihsanullah, ASI alongwith Mr.  
Ziaullah, Government Pleader for respondents present. Arguments heard and  
record perused.

Vide our detailed judgment of today placed on file, this appeal is  
disposed of as per the said detailed judgment. Parties are left to bear their own  
costs. File be consigned to the record room.

ANNOUNCED  
31.10.2016



(PIR BAKHSH SHAH)  
MEMBER



(ABDUL LATIF)  
MEMBER

28.10.2015

Counsel for the appellant and Mr. Usman, ASI along with Mr. Ziaullah, GP for respondents present. Arguments could not be heard due to learned Member (Judicial) is on official tour to D.I Khan. Therefore, the case is adjourned to 31-3-16 for arguments.



Member

31.03.2016

Counsel for the appellant and Mr. Ihsanullah, ASI(Legal) along with Asstt: AG for respondents present. Counsel for the appellant requested for adjournment. To come up for arguments on 16.06.2016.



MEMBER



MEMBER

16.06.2016

Counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Learned counsel for the appellant requested for adjournment. Adjourned for arguments to 19-10-16 before D.B.



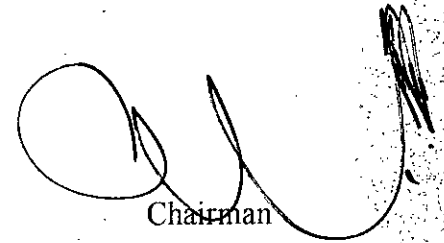
MEMBER



MEMBER

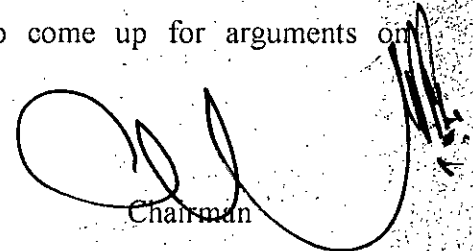
10.3.2014

Counsel for the appellant and Mr. Usman Ghani, Sr. GP for the respondents present. Rejoinder received on behalf of the appellant, copy whereof is handed over to the learned Sr. GP for arguments on 22.7.2014.

  
Chairman

22.7.2014

Appellant with counsel and Mr. Ihsanullah, ASI (Legal) on behalf of respondents with AAG present. Arguments could not be heard due to incomplete bench. To come up for arguments on 8.1.2015.

  
Chairman

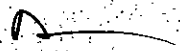
08.01.2015

Counsel for the appellant and Mr. Muhammad Adeel Butt, AAG for the respondents present. The Tribunal is incomplete. To come up for arguments on 25.05.2015.

  
Reader.

25.05.2015

Counsel for the appellant and Muhammad Jan, GP for the respondents present. Counsel for the appellant requested for adjournment due to general strike of the Bar. Adjourned to 28.10.2015 for arguments before D.B.

  
Member

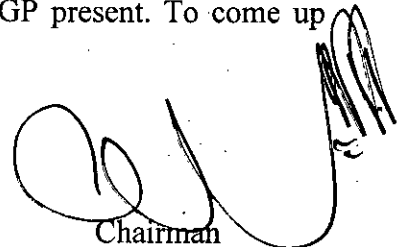
12-2-13

The Honble bench is on recess,  
therefore, case is adjourned to  
15.5.13.

  
Recd

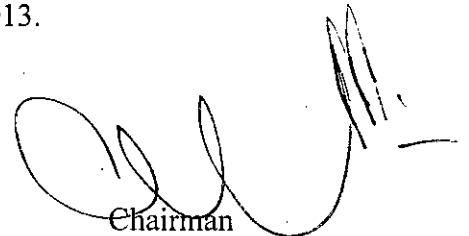
15.5.2013

Counsel for the appellant and Mr. Ihsanullah, ASI (Legal) for the respondents with Mr. Muhammad Jan, GP present. To come up for written reply/comments on 15.8.2013.

  
Chairman

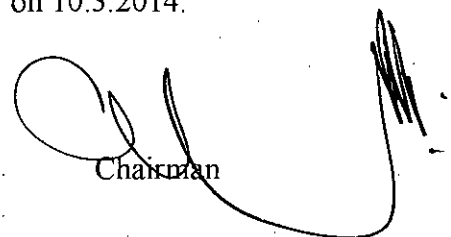
15.8.2013

Counsel for the appellant and Ihsanullah, ASI (Legal) for respondents with Mr. Usman Ghani, Sr.G.P present. Written reply has not been received on behalf of the respondents. On the request of the representative of the respondents, another chance is given for written reply/comments, positively, on 20.12.2013.

  
Chairman

20.12.2013

Counsel for the appellant and Mr. Ihsanullah, ASI (Legal) for respondents with AAG present. Joint written reply on behalf of respondents received, copy whereof is handed over to the learned counsel for the appellant for rejoinder on 10.3.2014.

  
Chairman

Appeal No. 828/2012

Umair Khitab

5. 13.11.2012.

Counsel for the appellant present and heard. Contended that the appellant being police constable was selected for SSG course at Jaloza Training Centre Nowshera but due to his chronic disease, the authorities relieved him for managing treatment. but he was dismissed from service vide order dated 11.11.2010 on the ground of absence, without fulfilling the legal requirements and that too with retrospective effect. The appellant preferred a departmental appeal for his reinstatement on 11.10.2011 but the same was rejected on 11.7.2012 being time barred. Counsel for the appellant further contended that the appellant has been discriminated as one Ashgar Iqbal ex-constable dismissed on the ground of absences was reinstated in service. The impugned order is very harsh and did not commensurate with the guilt of appellant. In support of his arguments regarding limitation, filing of revision petition and giving retrospective effect to the impugned order he produced 1985-SCMR-1178, PLD-1995-SC-546 and a copy of police rules regarding submission of revision petition which are placed on file. Points raised at the Bar need consideration. This appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, notice be issued to the respondents. Case adjourned to 12.2.2013 for submission of written reply.

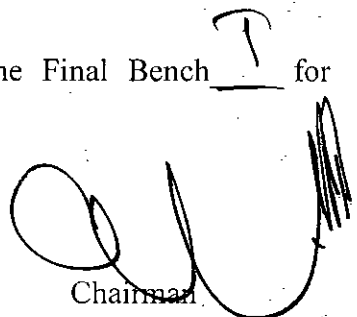
Appellant deposited  
security & process  
fee Rs 180/- bank  
receipt is attached  
with file

Mub  
2

  
Member.

6. 13.11.2012

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

  
Chairman

4.

11.10.2012

Counsel for the appellant present and requested for adjournment. Case adjourned to 13.11.2012 for preliminary hearing.


  
Member.

3.

6.9.2012

Counsel for the appellant present and heard partially. Contended that the appellant was enlisted as constable on 27.7.2007 in FRP, KPK. He remained absent from duty w.e.f. 25.5.2010 till 11.11.2010. He was proceeded against and dismissed from service from the date of his absence, vide order dated 11.11.2010. The appellant preferred a departmental appeal on 8.2.2011 but the same was rejected on 24.3.2011. He also submitted an application/revision petition for re-instatement but the same was also rejected on 11.7.2012 being time barred.

It is pointed out that the departmental appeal as well as revision petition both are time barred. Moreover, the appellant has admitted his absence from duty due to his domestic problems in his departmental appeal while in the revision petition he has stated that he was ill and unable to attend to his duty. Regarding submission of revision petition, the counsel for the appellant relied on PLD-1995-SC-546 vide which the appeal of one Abdur Rehman was remanded to the Punjab Service Tribunal by the Hon'ble Supreme Court of Pakistan, to decide it on merit. The learned counsel for the appellant is directed to produce the relevant rules regarding provision of review petition in the K.P.K Police Rules. Case adjourned to 11.10.2012 for preliminary hearing.

  
Member



FORM "A"

FORM OF ORDER SHEET

Court of.....

Case No.....828/2012.....of.....

Serial No. of Order or Proceedings 1	Date of Order or Proceedings 2	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary 3
1-	19/07/2012	<p>The appeal of Mr. Umar Khitab presented today by Mr. Aslam Khan Khattak Advocate, may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR</p>
2-	27-7-2012	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on 6-9-2012.</p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>

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

Umar Khitab

*Appeal No. 828/12*  
..... Appellant.

**VERSUS**

*The Provincial Police Officer, KPK, Peshawar & others*  
..... Respondents

**Affidavit**

<b>S.No</b>	<b>Description of documents</b>	<b>Annexure</b>	<b>Pages</b>
1.	<i>Memo of appeal</i>		<i>1-4</i>
2.	<i>Application for condonation of delay if any with affidavit</i>		<i>5-6</i>
3.	<i>Appointment order of appellant</i>	<i>"A"</i>	<i>7</i>
4.	<i>Impugned order dated 11/11/2010</i>	<i>"B"</i>	<i>8</i>
5.	<i>Representation</i>	<i>"C"</i>	<i>9</i>
6.	<i>Impugned order dated 24/03/2011</i>	<i>"D"</i>	<i>10</i>
7.	<i>Revision</i>	<i>"E"</i>	<i>11</i>
8.	<i>Impugned order dated 11/07/2012</i>	<i>"F"</i>	<i>12</i>
9.	<i>Order dated 20/08/2011</i>	<i>"G"</i>	<i>13</i>
10.	<i>Vakalat nama</i>		<i>In original</i>

Dated 18/07/2012

Through

*U. Khitab*  
Appellant  
*Aslam*  
Aslam Khan Khattak  
Advocate, Peshawar.  
Cell # 0315-9754894

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

*Appeal No. 828/12*

*Umar Khitab, Ex-Constable Resident of Muskan Tehsil Takht  
Nasrati, District Karak.*

*..... Appellant.*

**VERSUS**

**826**  
**19-7-12**

- 1) The Provincial Police Officer, KPK, Peshawar.*
- 2) The Addl: (IGP)/Commandant, FRP, KPK, Peshawar.*
- 3) Superintendent of Police FRP, Kohat.*

*..... Respondents*

**APPEAL AGAINST THE IMPUGNED ORDER  
DATED 11/11/2010 VIDE ANNEXURE "B",  
WHEREBY THE APPELLANT HAS BEEN  
DISMISSED FROM SERVICE FROM  
25/05/2010 AND ALSO AGAINST THE FINAL  
IMPUGNED ORDER DATED 24/03/2011  
VIDE ANNEXURE "D" WHEREBY THE  
APPELLANT'S REPRESENTATION FOR  
REINSTATEMENT IN SERVICE HAS BEEN  
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IMPUGNED ORDER DATED 11/07/2012  
VIDE ANNEXURE "F", WHEREBY HIS  
REVISION AT ANNEXURE "D" HAS BEEN  
FILED.**

**Prayer:**

*On acceptance of appeal, the three  
impugned orders vide Annexure "B,D&F" may  
be set aside and the appellant may be reinstated  
in service with all back benefit.*

*19/7/12*

*Respectfully Sheweth:*

*Brief facts leading to the instant appeal are as under: -*

- 1) That the appellant having been enlisted as Constable on 27/07/2007 in FRP, KPK, vide Annexure "A".*
- 2) That the appellant throughout his whole service has performed his duties with utmost of his capabilities and to the entire satisfaction of his superiors.*
- 3) That meanwhile the appellant was selected for SSG Course at Jalozai Training Centre Nowshera.*
- 4) That the appellant suffered from chronic disease and the Centre Authorities relieved the appellant for managing treatment.*
- 5) That thereafter the respondent No.3 has taken Ex-parte action against the appellant and has dismissed him from service vide impugned order dated 11/11/2010 at Annexure "B".*
- 6) That the appellant has filed representation vide Annexure "C" to respondent No.2, for reinstatement in service with all back benefits which has been rejected vide Annexure "D".*

7) *That thereafter the appellant has filed revision before respondent No.1 at Annexure "E" which was filed vide Annexure "F" and hence this appeal inter-alia on the following grounds:*

**Grounds:**

- A) *That the impugned order dated 11/11/2010 at Annexure "B" been given retrospective effect which is patently an illegal and void order which cannot be given any effect to under the law.*
- B) *That no show cause notice has been served upon the appellant and nor any inquiry has been conducted in the matter which led to the conclusion that only one side action has been taken against the appellant which is not permissible under the law.*
- C) *That the appellant was sick during the entire period and was permitted by his authorities for medical treatment and thereafter his dismissal from service is not their just and correct orders which needs interference by this Hon'ble Tribunal.*
- D) *That the charges of absence from duty if even proved would not justify the imposition of*

*major penalty of dismissal from service but in such circumstances the absence period shall be treated as leave without pay.*

- E) *That previously Muhammad Asghar Iqbal Ex-Constable No.1428, who was absent from duty for a total period of 5 months and 1 day has been reinstated in service and lenient view was taken vide Annexure "G". So the appellant whose absence period is 5 months and 16 days is also entitled for reinstatement in service otherwise it will be discrimination which is not permissible under the law.*
- F) *That the three impugned orders at Annexures "B,D&F" are illegal, malafide, without jurisdiction and without lawful authority and are liable to be set aside.*
- G) *That the appellant seeks leave of this Hon'ble Tribunal to rely on additional grounds at the time of arguments.*

*It is, therefore, prayed that on acceptance of appeal, the three impugned orders vide Annexures "B,D&F" may be set aside and the appellant may be reinstated in service with all back benefits.*

Dated 18/07/2012

Through

*Ukhito's*  
Appellant  
*Aslam*  
Aslam Khan Khattak  
Advocate, Peshawar.

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

*Umar Khitab*

*..... Appellant.*

**VERSUS**

*The Provincial Police Officer, KPK, Peshawar & others  
..... Respondents*

**APPLICATION FOR CONDONATION  
OF DELAY IF ANY**

*Respectfully Sheweth:*

*The petitioner prays for condonation of  
delay if any on the following grounds:*

**Grounds:**

- A) *That the grounds mentioned in appeal may be treated as the integral part of this application for condonation of delay if any.*
- B) *That it is the settled law, of the august Supreme Court of Pakistan that the cases be decided on merits instead of technicalities such as limitation.*
- C) *That the petitioner is a young man and was sick and if the delay if any is not condoned, his whole life shall be spoiled.*

*It is, therefore, prayed that on acceptance of  
this application, the delay if any may be condoned  
to meet the ends of justice.*

*Dated 18/07/2012*

*Through*

*Ukhites*  
*Applicant /Appellant*  
*Aslam*  
*Aslam Khan Khattak*  
*Advocate, Peshawar.*

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

*Umar Khitab*

..... *Appellant.*

**VERSUS**

*The Provincial Police Officer, KPK, Peshawar & others*  
..... *Respondents*

**Affidavit**

*I, Umar Khitab, Ex-Constable Resident of Muskan Tehsil Takht Nasrati, District Karak do hereby solemnly affirm and declare on oath that<sup>all</sup> contents of this application for condonation of delay if any are true and correct to the best of my knowledge and belief and nothing wrong has been stated by me in the matter.*

*U Khitab*  
**DEPONENT**






ORDER.

Mr. Umar Khitab S/O Mir Qalam Khan r/o Yaghi Mosakan , Tehsil Takht-e-Nasrati District Karak, having Height, 5'-9 3/4 " , Chest 33"x35", Education 10<sup>th</sup>, Date of birth 20.04.1978, is hereby enlisted as Constable, BPS-5 (2415-115-5865) with effect from 27.07.2007 in FRP NWFP. He is medically fit and also verified to be of good Character by the local Police. His service is liable to be terminated within 14 days notice with out assigning any reason.

He is allotted constabulary No.5333/ FRP, NWFP.

OB. No. 742  
Dated 2-7-7 /2007

  
(MUBARAK ZEB)  
District Police Officer, Karak.



Attested  
obly

(2)

Constable Umar Khitab No. 1370 was enrolled in Police Department on 27/07/2007 as Constable. He was remained absented himself from Fana Kot SSG, Jalozai Training Centre, Nowshera with effect from 25/05/2010 till to date. He was issued Show Cause Notice vide No. 96/PA dated 02/08/2010 and later on Charge Sheet was issued vide 121-22/PA dated 05/10/2010 and Final Show Cause Notice was issued vide No. 129/PA dated 19/10/2010, but no reply has been received so far.

Constable Umar Khitab No. 1370 is habitual absentee, non-dutiful and unwilling police official, therefore under Removal From Service (Special Powers) Ordinance, 2000 he is dismissed from service from the date of his absence i.e. 25/05/2010.

Order Announced

OB No. 386

Dated: 6/11 /2010

*[Signature]*  
S/C Superintendent of Police, FRP  
Kohat Range, Kohat

Copy to:-

1. Pay Officer
2. OASI
3. SRC
4. I/C General Godown

*Attested  
ash*

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ORDER.

This order shall dispose off on the appeal preferred by Ex-Constable Umer Khitab No.1370 of FRP Kohat Range against the order of SP FRP Kohat Range wherein he was removed from service.

Brief facts of the case are that he absented himself with effect from 25.05.2010 till the date of removal from service without any leave/permission of the competent authority for a total period of 05 months and 16 days. He was issued charge sheet/statement of allegation and Inspector Gul Raees Khan of FRP Kohat Range was appointed as enquiry officer. After conducting enquiry, the enquiry officer submitting findings wherein he recommends the defaulter constable for ex-parte action. He was issued Final show cause notice but he failed to submit reply.

Due to his absence as well as recommendation of enquiry officer he was removed from service from the date of his absence by the SP FRP Kohat Range Kohat vide his OB No.386 dated 11.11.2010.

From the perusal of record and findings there is no cogent reasons to interfere in the order of SP FRP Kohat Range. Therefore his appeal is rejected.

Attested  
es

Addl: IGP/Commandant  
Frontier Reserve Police  
Khyber Pakhtunkhwa Peshawar

19/3/2011

No. 2091-92 /EC dated Peshawar the 24/03/11

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

1. Superintendent of Police, FRP Kohat Range w/r to his Memo. No. 60/SRC dated 01.03.2011. His service roll and departmental enquiry file are returned herewith for record in your office.
2. Ex-Constable Umer Khitab No.1370 S/c Mir Qalam Khan R/o Yaghi Musakan Tehsil Takht-e-Nasrati District Karak.

۵۲۰

تاریخ ثبت سند: ۲۲/۱۱/۲۰۱۵  
محل ثبت سند: ...  
موضوع سند: ...  
این سند در تاریخ ...  
مهر و امضاء ...

تاریخ ثبت سند: ۲۲/۱۱/۲۰۱۵  
محل ثبت سند: ...  
موضوع سند: ...  
این سند در تاریخ ...  
مهر و امضاء ...

استاد

محل ثبت سند

تاریخ ثبت سند: ...

Amorceuse  
E  
⑪

تاریخ ثبت سند: ...

ہے۔ مسائل نے ہم علم غیر صاف پوری تصدیقاً ما ارادہ نہیں کی ہے  
بلکہ ہماری اور محبوبی کے ساتھ ہی ہے۔ علم حد تک نقل و حرکت  
نہیں ہے۔ جو کچھ ہے۔

استدعا ہے کہ مسائل کے حالات اور محبوبی اور معرفت کو  
حد تک رکھ کر مسائل کو دوبارہ انہی کے علم پر لیں انفارمی  
ہیں حال فرمایا جاوے۔ مسائل کی خدمت با دست مبارک سے

عمر حسن

سالہ کا تیسرا عشر صلاب 1370 ولید علیہ السلام خان مسکن ہاشمی

دوسراں ہاشمی

تاریخ ہجری - 27 7  
ریک - تاریخ 11-11-11

2011-11-11

Annexure F

(12)

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

To: - The Addl: IGP/Commandant,  
FRP, Khyber Pakhtunkhwa,  
Peshawar.

No. 2227 /Legal, Dated Peshawar the: 11/10/12 /2012.

Subject:- APPLICATION FOR RE-INSTATEMENT IN SERVICE.

Memo:-

Please refer to your office letter No. 8082/EC dated 30.11.2012,  
on the subject cited above.

The application of Ex-Constable Umer Khitab No.1370 of FRP  
was examined by the competent authority and filed being time barred. The  
applicant may be informed accordingly.

His service record/enquiry file received with your memo: under  
reference is returned herewith for record please.



(MOHAMMAD FAYAZ KHAN)  
AIG/LEGAL  
For Provincial Police Officer,  
Khyber Pakhtunkhwa, Peshawar.

Attested  
ash

ORDER.

Mem. No - 1257 - DL 112

This order shall dispose on the appeal of Ex. Constable Muhammad Asghar Iqbal No. 1428 against the order of SP FRP Kohat Range wherein he was discharged from service.

Brief facts of the case are that he absented himself from duty w.e.f 22.09.2008 till the date of discharge from service for a total period of 05 months and 01 day without any leave/permission of the competent authority. He was issued charge sheet and statement of allegations and Inspector Gul Raees Khan was appointed as Enquiry Officer. He was served with show cause notice to which his reply was not received. He was also informed through Newspaper Daily "MASIRIQ" dated 16.02.2009 to resume his duty but he did not pay any heed. Therefore he was discharged from service by the SP FRP Kohat Range vide his OB NO. 197 dated 23.02.2009.

Attested  
ash

He was heard in person . I take a lenient view and re-instated him in service and the period of absence is treated as leave without pay.

Stamp: FRONTIER RESERVE POLICE  
DIAD-840  
12-8-11

SRC

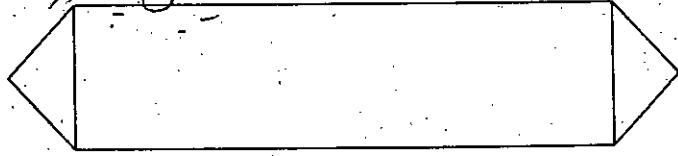
My  
Add: IGP/Commandant  
Frontier Reserve Police  
Khyber Pakhtunkhwa Peshawar.

No. 5786 /EC dated Peshawar the 09/08 2011. 8/8/2011

Copy of above is forwarded for information and necessary action to the Superintendent of Police FRP Kohat Range w/r to his Memo: No. 1107/EC dated 23.07.2011. His service record alongwith departmental file are returned herewith.

CHC/SRC/PO  
Superintendent of Police,  
FRP Kohat Range,  
Kohat





18 جولائی 2012ء منجانب اسلام آباد

مخبر خطاب بنام میرا وقت نرسول لیسٹا در

دیوڑہ

سرگزر نرسول

مورخہ

مقدمہ

دعوئی

جرم

### باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ آن مقام لیسٹا در کیلئے اسلم خان صاحب رٹرو وکٹ مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعوئی اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعوئی اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے 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۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کارروائی 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 ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا کالت نامہ لکھ دیا کہ سندر ہے۔

Accepted  
ash

2012ء

18 جولائی

ماہ

المرقوم

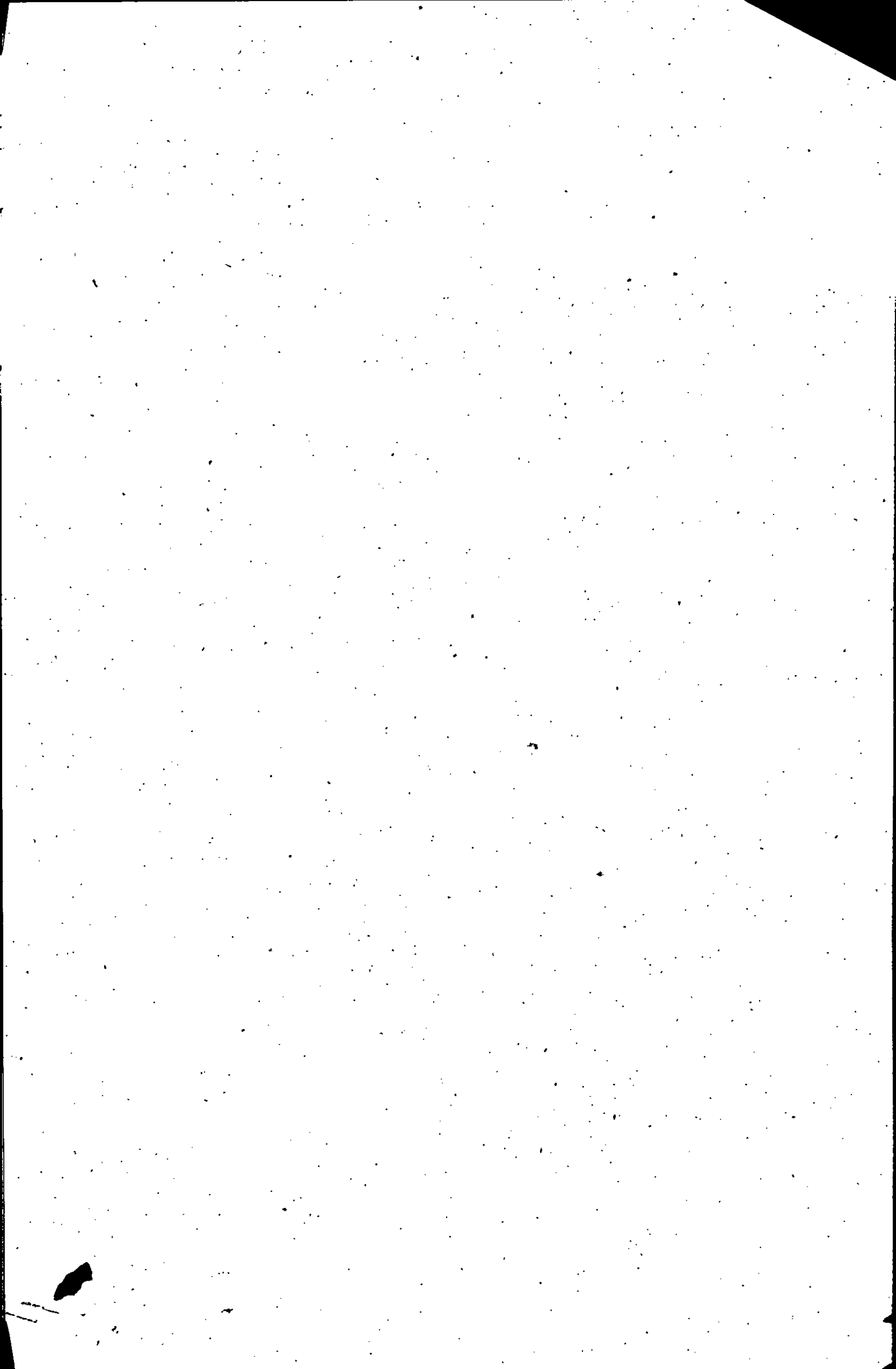
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العبد گواہ العبد

کے لئے منظور ہے۔

لیسٹا در

مقام



۱۲۶  
سختی کو سنبھالنا چاہئے بلکہ نہ تو اس کی لقم اس کو کوی مانتی کی۔ اور اس کے اہل  
ہاں ہو گئے۔

۱۱۹-۱۲۰۔ اگر کوئی قبیلہ خلافت کو پسند نہ کرے۔ دراز ہر ماہتے یا پھر  
پروردار سے توڑ دے۔ جو بجا و درست فہم و دماغ کے ساتھ ہو پسند کرے۔

۱۱۹-۱۲۰۔ اگر کوئی قبیلہ خلافت کو پسند نہ کرے۔ دراز ہر ماہتے یا پھر  
پروردار سے توڑ دے۔ جو بجا و درست فہم و دماغ کے ساتھ ہو پسند کرے۔

**بہا کی ابھار**

۱۱۹-۱۲۰۔ اگر سختی کے انتقام پر صاحب کے خلاف  
کئی راستے یہ ہو۔ کہ سختی سے اسے اس امر کو پسند کرے نہ کرے  
فہم نہ کر لیں ہرگز۔ خود اسے یا انہیں کان کر دیں گے۔ اس کو اہلیت  
کو اور دین کی فہم داری نا کم کرنے میں سختی کے اثر سے روکا جائے۔ صاحب کو بھی  
الٹا پھر جھڑول کرنا چاہیے کہ ایسے اقتدار کے متعلق اپنے اختیار و اختیارات کو بوجہ ہر  
۷۸-۷۹۔ کائنات اور استعمال کریں۔

**لازماتی حالات**

۱۱۹-۱۲۰۔ اگر کسی فراری کے مقدمہ میں غفلت یا  
پشیمانی ہو تو بہت برہماتے اور نہیں وہ سب سنا  
نائب ہو کر عزم تو یہ وہ وقت ۷۸-۷۹-۸۰-۸۱-۸۲-۸۳-۸۴-۸۵-۸۶-۸۷-۸۸-۸۹-۹۰-۹۱-۹۲-۹۳-۹۴-۹۵-۹۶-۹۷-۹۸-۹۹-۱۰۰-۱۰۱-۱۰۲-۱۰۳-۱۰۴-۱۰۵-۱۰۶-۱۰۷-۱۰۸-۱۰۹-۱۱۰-۱۱۱-۱۱۲-۱۱۳-۱۱۴-۱۱۵-۱۱۶-۱۱۷-۱۱۸-۱۱۹-۱۲۰

**مقدور فراری میں مصروف**

۱۱۹-۱۲۰۔ اگر مذکورہ حالات یا کسی نہ مصروف ہو جائے۔  
کہ عزم کی فراری غفلت کی وجہ سے ہو گئی ہے۔ تو یہ تو اس کے لازم  
ہو جائے گی۔ حالات سے روکا جائے ہو جائے کی صورت میں  
بشرط حالات سے دور فراری ہو جائے۔ اور اس کے متعلق کسی اور کے متعلق بھی  
ہو سکتی ہے۔ اور ایسے حالات کا دور دورہ یا جاسکے۔ ہر قسم کی سنگین ذہنی کم

۱۱۹-۱۲۰۔ اگر کوئی قبیلہ خلافت کو پسند نہ کرے۔ دراز ہر ماہتے یا پھر  
پروردار سے توڑ دے۔ جو بجا و درست فہم و دماغ کے ساتھ ہو پسند کرے۔

**قرآن مستقل**

۱۱۹-۱۲۰۔ اگر کوئی قبیلہ خلافت کو پسند نہ کرے۔ دراز ہر ماہتے یا پھر  
پروردار سے توڑ دے۔ جو بجا و درست فہم و دماغ کے ساتھ ہو پسند کرے۔

**اس کا امیل**

۱۱۹-۱۲۰۔ اگر کوئی قبیلہ خلافت کو پسند نہ کرے۔ دراز ہر ماہتے یا پھر  
پروردار سے توڑ دے۔ جو بجا و درست فہم و دماغ کے ساتھ ہو پسند کرے۔

**ظفر آن**

۱۱۹-۱۲۰۔ اگر کوئی قبیلہ خلافت کو پسند نہ کرے۔ دراز ہر ماہتے یا پھر  
پروردار سے توڑ دے۔ جو بجا و درست فہم و دماغ کے ساتھ ہو پسند کرے۔

**اخراج از فرزند**

۱۱۹-۱۲۰۔ اگر کوئی قبیلہ خلافت کو پسند نہ کرے۔ دراز ہر ماہتے یا پھر  
پروردار سے توڑ دے۔ جو بجا و درست فہم و دماغ کے ساتھ ہو پسند کرے۔



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No.828/2012

Umar Khitab Ex- Constable Resident of Muskan Tehsil Takht Nasrati, District Karak.....Appellant.

**VERSUS**

1. **Provincial Police Officer,**  
Khyber Pakhtunkhwa, Peshawar
2. **Addl: IGP/Commandant,**  
Frontier Reserve Police,  
Khyber Pakhtunkhwa, Peshawar.
3. **Superintendent of Police FRP,**  
Kohat Range Kohat.....**Respondents**

**PARAWISE COMMENTS ON BEHALF OF RESPONDENTS**

**PRELIMINARY OBJECTIONS**

1. That the appeal is badly time barred.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has no cause of action.
4. That the appellant has not come to this court with clean hands.
5. That the appellant is estopped due to his own conduct to file the instant Service Appeal.

**FACTS**


1. Pertains to the appellant record needs no comments.
2. Incorrect, that during the short length service, the appellant found a habitual absentee as before it he remained absent from duty on various occasions for a long period of 299 days and his absence was treated leave with out pay with fine Rs: 500/- (order attached as Annexure A')
3. Correct to the extent that the appellant along with others were selected to panakot SSG Jalojai training centre at Nowshera.
4. Para No. 4 is false and incorrect, hence denied. Nether application for leave is submitted nor it is sanctioned in favour of the appellant. He was absented himself from training Course from Panakot SSG Training Centre Nowshera with effect from 22.05.2010. It is pertain to mention here that information report regarding the absence of the appellant received vide Memo: No. 339/PA/EF dated 28.07.2010, with further stoppage of pay subsequently his pay was stopped by the respondent No. 3 vide office memo: No. 997/PO dated 04.08.2010. (Copy of memos of stoppage of pay is attached with as Annexure B & C)
5. Para No. 5 false and incorrect hence denied. On the allegation of absence, the appellant was issued/served with show cause notice and then served with charge sheet on his home address through postal registration vide No. 919 dated 06.10.2010 but the appellant failed to submit this reply or appeared before the competent authority then he was dismissed him from service (Copies of show cause notice) and charge sheet as annexure D & E)
6. Correct to the extent that the departmental appeal of the appellant was thoroughly examined and rejected on sound grounds.
7. That there is no revision of 2th appeal in law.


## • GROUNDS

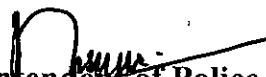
- A. Incorrect, the order is legally justified and in accordance with law.
- B. Incorrect, hence denied. As the appellant was served with show cause notice and charge sheeted which is already explained in the preceding paras of facts and the enquiry officer recommended him for further departmental action , subsequently the competent authority served the appellant with final show cause notice on his home Address i.e Takht Nasrati Tehsil Takht District Karak to postal registration vide No. 978 dated 20.10.2010, but the appellant did not bother to submit his reply or appear before the competent authority to defend himself (copy of Final show cause notice is attached as annexure- E) and after fulfilled all the codal formalities he was dismissed from service as per law/Rules.
- C. Incorrect, that the appellant was absented himself from training Program with out leave or prior permission of his superiors and after fulfilled all the codal formalities required as per law, the competent authority correctly passed an order of his dismissal from service.
- D. Incorrect, the appellant deliberately failed to perform lawful duties with out leave or prior permission of his superiors, therefore, the competent authority dismiss the appellant from service from the date of absence i.e 25.05.2010.
- E. Incorrect, every case has its own facts and merits while the case mentioned in the para is not at par with the case of appellant.
- F. The orders of replying respondent are justified and in accordance with law.
- G. That respondent may also be permitted to adduce Additional grounds at the time of arguments.

## PRAYERS

It is therefore, most humbly prayed that in the light of afore mentioned facts/submission the instant service appeal may kindly be dismissed with cost.

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

  
**Addl:IGP/Commandant,  
Frontier Reserve Police  
Khyber Pakhtunkhwa Peshawar.  
(Respondent No.2)**

  
**Superintendent of Police FRP,  
Kohat Range, Kohat.  
(Respondent No.3)**

A


O R D E R

This order relates to the Departmental Enquiry against Constable Umar Khitab No. 1370/FRP of Kohat Range Kohat he has absented himself from duty with effect from 31.08.2008 to 01.09.2008, 07.09.2008 to 17.09.2008, 27.09.08 to 24.11.2008, 24.11.2008 to 23.07.2009 total 299 days without any leave or prior permission from the senior officers.

He was served with Charge Sheet and Summary of allegation. He was also heard in person on OR, but did not produce any cogent reason towards his willful absence.

In light of his long absence i.e. 299 days from his official duty. His absence period is treated as leave without pay also fine Rs. 500/-.

CB No. 455  
Dated 15-08-2009

  
Superintendent of Police,  
FRP, Kohat Range, Kohat

Order announced

Copy to the:-

1. SRC/PO FRP
2. OASI FRP
3. D.A.O.

" B "

From : The Principal,  
Panah Kot, SSG Training Centre,  
Nowshera.

To : The Superintendent of Police,  
Khyber Pakhtunkhwa Reserve Police.  
Kohat.

No. 339 /PA/EF, Dated Peshawar the 28 /07/2010.

Subject: PAY STOP

Memo:

Constable Umar Khattak No. 1370 of your district has absented himself from lawful duty at Panah Kot, SSG Jallozai Training Centre, Nowshera w.e.from 22.05.2010 till to-date

It is, therefore, requested that his salary may please be stopped and report may be sent to this office for further necessary action.

PRINCIPAL,  
Panah Kot, SSG Training Centre,  
Nowshera.

*Always pay  
stoped.*

*OASi / PO*

*PO 27/9*

*[Signature]*  
Superintendent of Police  
FRP Kohat Range  
Kohat

*8/8  
2/8/10*



From: The Superintendent of Police,  
FRP Kohat Range


To: The Principal,  
Panah Kot, SSG Training Centre,  
Nowshera

No. 987 /PO, dated Kohat the 4/8 /2010

Subject: PAY STOP

Memo:

Kindly refer to your memo: No. 339/PA /EF dated 28/07/2010.  
Pay of Constable Umar Khitab No. 1370 has been stopped, as  
desired.

  
Superintendent of Police, F.P.P  
Kohat Range, Kohat

CD 7

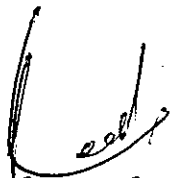

**SHOW CAUSE NOTICE**

WHERE AS YOU Const. Umer Khatib NO-1370 . While posted at Panah Kot, SSC Jalozai Training Centre,  
Now Umer absented yourself for duty w.o.p. 22/5/10 till 5/6/10

Your above act amounts to gross misconduct under the NWFP Removal From Service (Special Powers) Ordinance – 2000.

NOW THEREFORE, I Mr, Muhammad Khurshid, Superintendent of Police, FRP Kohat Range Kohat in exercise of the power vested upon me under the aforesaid rules hereby call you Constable Umer Khatib NO-1370 to show cause as to why departmental action for major punishment be not taken against you under the aforesaid rules.

Your reply to the show cause notice must reach to the office of the undersigned within seven days of the receipt of this show cause notice. In case your reply is not received within the stipulated period, it shall be presumed that you have no defence to offer and ex-parte departmental action will be taken against you and also state in writing whether you desire to be heard in person or otherwise.

  
of Superintendent Of Police, FRP,  
Kohat Range, Kohat  


No. 96/PA,  
dt. 02/08/2010.

" E "

## CHARGE SHEET

1. MR. KHURSHAD KHAN, SUPERINTENDENT OF POLICE, FRP, KOHAT as competent authority, hereby charge you Constable Umar Khitab No. 1370/FRP Kohat posted at Pannab Kot, SSG Jalojai Training Centre Nowshera COMMITTED THE FOLLOWING IRREGULARITIES:-

You absented yourself from official duties with effect from 22.05.2010 till to date from SSG, Jalojai Training Centre Nowshera.

2. By reasons of the above, you appear to be guilty of misconduct Under Section – 3 of the NWFP (Removal from Service) Special Power Ordinance 2000, and have rendered yourself liable to ail or any of the penalties specified in section – 3 of the Ordinance ibid.
3. You are, therefore, required to submit your written defence within seven days of the receipt of this Charge Sheet to the Enquiry Officer/Committees, as the case may be.
4. Your written defence, if any, should reach to the Enquiry Officer/Committees within the specified period, failing which it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.
5. Intimate whether you desire to be heard in person.
6. A statement of allegation is enclosed.

No. 121-22  
1370/PA  
Dt: 05/10/2010

  
(MUHAMMAD KHURSHID)  
SUPERINTENDENT OF POLICE,  
FRP, KOHAT



c f u. |

FINAL SHOW CAUSE NOTICE

I, Muhammad Khurshid Khan, SP/FRP, Kohat as competent authority, under the North West Frontier Province Removal from Service (Special Power) Ordinance, 2000 do hereby serve upon Const. Umar Khitab, 1730 as follows:-

- (i) That consequent upon the completion of enquiry conducted against you by the enquiry officer for which you were given opportunity of hearing vide office communication No. 121-22/PA, dated 05/10/2010 and
- (ii) On going through the finding and recommendation of the enquiry committee, the material on record and other connected papers including your defence the said committee.

I am satisfied that you have committed the following acts/ omissions specified in section 3 of the said Ordinance:-

Constable Umar Khitab No. 1730, absented from official duties w.e. from 22/05/2010 till to-date.

As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of punishment under section 3 of the said Ordinance.

You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon, also intimate whether you desire to be heard in persons.

If no reply to this notice is received within fifteen (15) days of its delivery in the normal course of circumstances, it shall be presumed that you have no defence to put in and in that case an exparte action shall be taken against you.

The copy of the findings of the enquiry committee is enclosed.

No: 129/PA,  
dt 19/10/2010.

  
SUPERINTENDENT OF POLICE,  
FRP, KOHAT

19/10

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.**

*Appeal No.828/2012*

*Umar Khitab, Ex-Constable*

**VERSUS**

*Provincial Police Officer KPK Peshawar and others*

**APPELLANT'S REJOINDER.**

*Respectfully Sheweth:*

**Preliminary Objection:**

*That none of the objections raised by the respondents are sustainable.*

**ON FACTS:**

- 1) Needs no comments*
- 2) Incorrect. Para No.2 of appeal is correct and its reply is incorrect.*
- 3) Needs no comments.*
- 4&5) Incorrect. Grounds 4&5 of appeal are correct and its replies are incorrect.*
- 6) Incorrect. That the respondents have incorrectly rejected the appellant's representation.*
- 7) Incorrect. That the appellant thereafter has filed revision before respondent No.1 according to law but has been rejected illegally.*

**GROUND:**

- A) Incorrect. Ground A of appeal is correct and its reply is incorrect.*

B) *Incorrect. That no show cause notice has been served upon the appellant and nor any inquiry in the matter has been conducted and so the three impugned orders at Annexures "B,D&F" are illegal under the law and are liable to be set aside.*

C to F) *Incorrect. Grounds C to F of appeal are correct and replies of the same grounds are incorrect.*

G) *Incorrect. That the respondents may not be permitted to rely on additional grounds at the time of arguments.*

*It is, therefore, prayed that on acceptance of appeal and rejoinder, the three impugned orders at Annexure "B,D&F" may be set aside and the appellant may be reinstated in service with all back benefits.*

Dated 8/03/2014

*Ukhites*  
Appellant  
Through *aslam*  
**(ASLAM KHAN KHATTAK)**  
**Advocate, Peshawar.**

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.**

*Appeal No.828/2012*

*Umar Khitab, Ex-Constable*

**VERSUS**

*Provincial Police Officer KPK Peshawar and others*

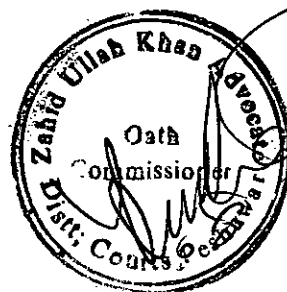
**AFFIDAVIT**

*I, Umar Khitab , Ex-Constable do hereby solemnly affirm and state on oath that all contents of appeal and rejoinder are true and correct to the best of my knowledge and belief and nothing wrong has been stated by me in the matter.*

*U Khitab*

**DEPONENT**

**ATTESTED**



KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1876 /ST : Dated 8 / 11 / 2016

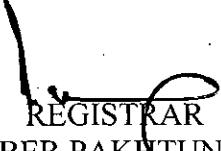
To

The Superintendent of Police FRP,  
Kohat.

Subject: - JUDGMENT

I am directed to forward herewith a certified copy of Judgement dated 31.10.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.