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## KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

EXECUTION NO \_\_\_\_\_

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Muhammad Hamayun vs Police Department.

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Incharge Judicial Branch

bound to obey the will of the legislature & cannot deviate from any provision of enactment.

5. That the legislator has authority to legislate as they have mandate to do so by a recognize process and services law do not provides the provision of judicial review, hence, execution petition is not tenable.
6. **That the petitioner is at liberty to join service after due process of law equivalent to his qualification & the Government is not bound to pay advance increment.**
7. That the instant execution petition is time barred under the Limitation Act No. IX of 1908. Hence, liable to be dismissed without any further proceedings.
8. **That the instant execution petition is against the notification dated 27-10-2001 whereby, the basis of the claim of petitioner stood erased. In the year 2012 the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act No. IX of 2012 was promulgated which was made retrospective from 2001. Hence, the instant application is liable to be dismissed on this score alone.**
9. That the instant Restoration Application & Execution Petition is not maintainable in its present form.
10. **That the judgment of Honorable Peshawar High Court regarding the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act No. IX of 2012 has been set-aside on 02-06-2021 and the matters are remanded to the High Court for re-deciding the writ petition afresh by the August Supreme Court of Pakistan and Honorable Peshawar High Court Peshawar in WP No. 3081-P/2021 & 06 other Writ Petitions having similar question of law and facts disposed on 14-06-2023 with the direction to respondent department to consider the case of petitioners only and others cannot claim such benefits having not agitated the matter at the**

(1)

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

**Service Appeal No. 1564/2018**

**BEFORE: MRS. RASHIDA BANO ... MEMBER (J)**  
**MR. MUHAMMAD AKBAR KHAN... MEMBER (E)**

Muhammad Hamayun, Ex-Constable No. 173 District Police Mardan.  
... (Appellant)

VERSUS

1. Regional Police Officer Mardan.
2. District Police Officer Mardan.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.  
.... (Respondents)

Miss. Uzma Syed,  
Advocate --- For appellant

Mr. Asif Masood Ali Shah,  
Deputy District Attorney --- For respondents

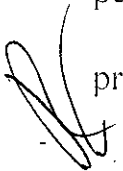
Date of Institution.....28.12.2018  
Date of Hearing .....29.04.2024  
Date of Decision .....29.04.2024

**JUDGMENT**

**RASHIDA BANO, MEMBER (J):** The service appeal in hand has been instituted under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the following prayer:-

**“On acceptance of this appeal the impugned orders dated 31.01.2014 of respondent No. 1 and Order dated 25.05.2004 of respondent No. 2 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.**

2. Precise averments as raised by the appellant in his appeal are that, he joined the Department as Constable on 01.08.1999 and performed his duty with honesty and devotion. Disciplinary proceedings were initiated against the appellant on the allegation that



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was granted nine months leave and was due to return back for duty on 21.02.2004 but he failed to report back his arrival on due date and remained absent without any leave or prior permission of the competent authority. On conclusion of the inquiry, the appellant was imposed major penalty of dismissal from service from the date of his absence vide impugned order bearing Endst: No. 1535-42/SB dated 25.05.2004. The appellant preferred departmental appeal, which was rejected vide order dated 31.01.2014, hence the appellant filed the instant service appeal on 28.12.2018 before this Tribunal for redressal of his grievances.

3. Respondents were put on notice who submitted their reply on the appeal.

4. Learned counsel for the appellant has argued that the absence of the appellant was not deliberated rather the same was due to illness of his wife. He next argued that the appellant was awarded major punishment of dismissal from service vide impugned order dated 25.05.2004 with retrospective effect, therefore, the impugned order dated 25.05.2004 being void ab-initio is liable to be set-aside. He further argued that as the impugned order dated 25.05.2004 was passed with retrospective effect, therefore, no limitation would run against the impugned order. He next argued that neither any charge sheet/statement of allegations or show-cause notice was issued to the appellant nor any inquiry was conducted in the mater, therefore, he was condemned unheard. In the last, he requested that the impugned

orders may be set-aside and the appellant may be reinstated in service with all back benefits.

5. On the other hand, learned Deputy District Attorney for the respondents has contended that the appellant was granted nine months leave and was due to return back for duty on 21.02.2004 but he failed to report back his arrival on due date and remained absent without any leave or prior permission of the competent authority, which is gross misconduct on the part of the appellant. He next contended that all the legal and codal formalities were fulfilled before passing the impugned orders. He further contended that the appellant failed to avail his legal remedy before the departmental authority as well as before this Tribunal, therefore, the appeal in hand is not competent before this Tribunal being barred by time and is liable to be dismissed on this score alone.

6. We heard the learned counsel for the appellant as well as learned District Attorney for the respondents and perused the case file with connected documents in detail.

7. We will have to decide first that whether impugned order passed by the competent authority vide which the appellant has been awarded punishment of dismissal from service with retrospective effect is void ab-initio and no limitation would run against the same. In our humble view this argument of the learned counsel for the appellant is misconceived. Though punishment could not be awarded with retrospective effect, however where a civil servant has been proceeded against departmentally on the ground of his absence from

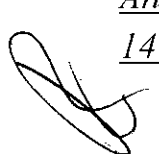


duty, then punishment could be awarded to him retrospectively from the date of his absence from duty and the same is an exception to the general rule that punishment could not be imposed with retrospective effect. Worthy, apex court in its judgment reported as 2022 PLC (C.S.) 1177 has observed as below:-

*“8. We find that the impugned judgment has totally ignored the record and facts of this case. The department has also been totally negligent in pursuing this matter and has allowed the Respondent to remain absent from duty for so long. On the issue of retrospective effect, we find that admittedly, the respondent has been absent from duty w.e.f. 01.09.2003, hence no illegality is made out by considering his dismissal from there as he has not worked with the department since the given date. (Emphasis provided).”*

8. Moreover, even void orders are required to be challenged within period of limitation provided by law. Supreme Court of Pakistan in its judgment reported as 2023 SCMR 866 has held as below:-

*“6. Adverting to the arguments of learned ASC for the petitioner that there is no limitation against a void order, we find that in the first place, the learned ASC has not been able to demonstrate before us how the order of dismissal was a void order. In addition, this Court has repeatedly held that limitation would run even against a void order and an aggrieved party must approach the competent forum for redressal of his grievance within the period of limitation provided by law. This principle has consistently been upheld, affirmed and reaffirmed by this Court and is now a settled law on the subject. Reference in this regard may be made to Parvez Musharraf v. Nadeem Ahmed (Advocate) (PLD 2014 SC 585) where a 14 member Bench of this Court approved the*



said Rule. Reference in this regard may also be made to Muhammad Sharif v. MCB Bank Limited (2021 SCMR 1158) and Wajdad v. Provincial Government (2020 SCMR 2046). (Emphasis supplied)”

9. Perusal of record reveals that appellant was dismissed from service from the date of his absence 21.02.2004 vide which order dated 25.05.2004 which was required to have been challenged through filing of departmental appeal within 15 days but appellant filed departmental appeal after lapse of long 09 years which is evident from his departmental appeal para-4, which is hopelessly barred by time. Moreover, his departmental appeal was rejected vide order dated 31.01.2014, while instant service appeal was filed on 28.12.2018 after lapse of 04 years, 10 months and 26 days of dismissal of his departmental appeal, which he was required to file within 15 days of passing of appellate authority order dated 31.01.2014. August Supreme Court of Pakistan in its judgment reported as 2011 SCMR 08 has held that question of limitation cannot be considered a technicality simpliciter as it has bearing on merit of the case.

10. It is well settled that law favours the diligent and not the indolent. The appellant remained indolent and did not agitate the matter before the departmental authority and the Service Tribunal within the period prescribed under the relevant law. This Tribunal can enter into merits of the case only, when the appeal is within time. Supreme Court of Pakistan in its judgment reported as 1987 SCMR 92 has held that when an appeal is required to be dismissed on the ground of limitation, its merits need not to be discussed.

11. Consequently, it is held that as the departmental as well as service appeal of the appellant was barred by time, therefore, the appeal in hand stands dismissed being not competent. Parties are left to bear their own costs. File be consigned to the record room.

12. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 29<sup>th</sup> day of April, 2024.*



**(MUHAMMAD AKBAR KHAN)**  
Member (E)





**(RASHIDA BANO)**  
Member (J)



22.04.2024 1. Learned counsel for the appellant present. Mr. Arshad Azam learned Assistant Advocate General alongwith Atta Ur Rehman, Inspector for the respondents present.

2. Learned counsel for the appellant requested for adjournment in order to further prepare the brief. Absolute last chance is given to argue the case on the next date, failing which case will be decided on the basis of available record without providing further adjournments and chance of arguments. Adjourned. To come up for arguments on 29.04.2024 before D.B. P.P given to parties.

  
(Fareeha Paul)  
Member (E)

  
(Rashida Bano)  
Member (J)

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**ORDER**

29<sup>th</sup> April, 2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

2. Vide our judgment of today placed on file, it is held that as the departmental as well as service appeal of the appellant was barred by time, therefore, the appeal in hand stands dismissed being not competent. Parties are left to bear their own costs. File be consigned to the record room.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 29<sup>th</sup> day of April, 2024.*

  
(Muhammad Akbar Khan)  
~~(Fareeha Paul)~~  
Member (Executive)

  
(Rashida Bano)  
Member (Judicial)

(3)

22<sup>nd</sup> Feb, 2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

2. These cases involve question of grant of retrospective effect to the impugned orders. Most of these cases are pending since 2018, therefore, the learned counsel were requested to give a date of their own choice, so that a last chance be given to all of the parties and their counsel to argue these appeals on the said date of their choice. The learned counsel, after consultation with each other, agreed that matters may be fixed for 22.04.2024. Adjourned accordingly to the above date, the date is given on their own choice with the observation that no further adjournment will be granted on any ground and in case any of the learned counsel could not argue, the other counsel would argue and the cases would be decided forthwith. And in case again further adjournment is sought, all the matters shall be deemed to have been adjourned sine-die. In that eventuality, the counsel or parties whenever desirous to argue may make an application for restoration of the appeals to get those argued and decided. P.P given to the parties.

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Peshawar

\*Adnan Shah\*



(Fareeha Paul)  
Member (E)



(Kalim Arshad Khan)  
Chairman

25.10.2023

Learned counsel for the appellant present. Mr. Atta-ur-Rehman, Inspector (Legal) alongwith Mr. Muhammad Jan, District Attorney for the respondents present.

Learned counsel for the appellant stated that issue of retrospectivity is involved in the instant appeal and similar nature appeals are fixed for arguments on 10.11.2023 therefore, the appeal in hand may also be fixed on the said date. Adjourned. To come up for arguments on 10.11.2023 before the D.B. Parcha Peshi given to the parties.

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(Muhammad Akbar Khan)  
Member (E)



(Salah-ud-Din)  
Member (J)

\*Naeem Amin\*

10<sup>th</sup> Nov, 2023

1. Clerk to counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Atta-Ur-Rehman, Inspector for the respondents present.

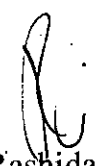
2. Clerk to counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is not available today.

Adjourned. To come up for arguments on 22.02.2024 before D.B. P.P given to the parties.

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(Muhammad Akbar Khan)  
Member (E)



(Rashida Bano)  
Member (J)

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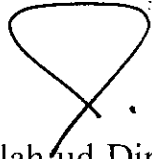
20.09.2023

Junior of learned counsel for the appellant present. Mr. Atta-ur-Rehman, Inspector (Legal) alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Junior of learned counsel for the appellant seeks adjournment on the ground that learned senior counsel for the appellant is not available today. Adjourned. To come up for arguments on 04.10.2023 before the D.B. Parcha Peshi given to the parties.

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(Fareeha Paul)  
Member (E)


  
(Salah-ud-Din)  
Member (J)

\*Naeem Amin\*

4<sup>th</sup> Oct. 2023

1. Junior to counsel for the appellant and Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.
2. Former made a request for adjournment as senior counsel for the appellant is not available today. Adjourned by way of last chance. To come up for arguments on 25.10.2023 before D.B. P.P given to the parties

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(Muhammad Akbar Khan)  
Member (E)

  
(Kalim Arshad Khan)  
Chairman

\*Mutazem Shah\*

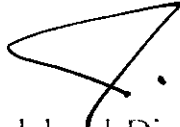
23<sup>rd</sup> August, 2023

1. Junior of learned counsel for the appellant present.  
Mr: Atta-ur-Rehman, Inspector (Legal) alongwith Mr. Asad  
Ali Khan, Assistant Advocate General for the respondents  
present.

2. Junior of learned counsel for the appellant requested for  
adjournment on the ground that learned senior counsel for the  
appellant has proceeded to her home due to emergency. Last  
opportunity is given to the appellant to ensure presence of his  
counsel and to argue this appeal on the next date positively.

To come up for arguments on 20.09.2023 before the D.B.

Parcha Peshi given to the parties



(Salah-ud-Din)  
Member (Judicial)



(Kalim Arshad Khan)  
Chairman

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KFST  
Peshawar

\*Naem Amin\*

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15/09/2023

19.05.2023

Clerk of learned counsel for the appellant present. Mr. Atta-ur-Rehman, Inspector (Legal) alongwith Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.

Clerk of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant has proceeded to his native village due to some domestic engagement. Adjourned. To come up for arguments on 20.06.2023 before the D.B. Parcha Peshi given to the parties.

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Peshawar

(Muhammad Akbar Khan)  
Member (E)

(Salah-ud-Din)  
Member (J)

\*Naeem Amin\*

20.06.2023

Learned counsel for the appellant present. Mr. Atta-ur-Rehman, Inspector (Legal) alongwith Mr. Muhammad Jan, District Attorney for the respondents present.

Learned counsel for the appellant seeks time for preparation of arguments. Adjourned. To come up for arguments on 20.07.2023 before the D.B. Parcha Peshi given to the parties.

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Peshawar

(Fareeha Paul)  
Member (E)

(Salah-ud-Din)  
Member (J)

\*Naeem Amin\*

20-07-23

Due to public holiday on account of 1st Muharram ul Haram. To come for the same on 23-8-2023.

*[Signature]*  
Reader.

13


19<sup>th</sup> Jan. 2023

Lawyers are on strike today.

To come up for arguments on 03.03.2023 before the D.B. Office is directed to notify the next date on the notice board as well as the website of the Tribunal.

SCANNED  
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Peshawar

  
(Fareeha Paul)  
Member(E)

  
(Rozina Rehman)  
Member (J)


3<sup>rd</sup> Mar, 2023


Nobody is present on behalf of the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Asst: AG alongwith Mr. Atta Ur Rehman, Inspector for respondents present.

On the previous date the matter was adjourned because of strike of the counsel and office was directed to notify the next date on the notice board as well as on the website but even then nobody is present on behalf of the appellant, therefore, fresh notices be issued to the appellant and his counsel. To come up on 19.05.2023 before DB. PP given to the parties.

*On 11/05/2023, Counsel was informed telephonically for the date fixed (19/05/2023)*

*Gr. Moharrir*

  
(Rozina Rehman)  
Member (Judicial)

  
(Kalim Arshad Khan)  
Chairman

12<sup>th</sup> Oct, 2022

Miss. Uzma Syed, Advocate present and submitted Wakalatnamat on behalf of the appellant. Syed Naseer Ud Din Shah, Asst: AG for respondents present.

Learned counsel for the appellant wants to amend the memo of appeal in order to challenge the original order dated 25.05.2004 which according to the learned counsel was not challenged by the ex-counsel for the appellant. She may do so within a week subject to all legal and just objections regarding limitation. To come up on 22.11.2022 before D.B.



(Fareeha Paul)  
Member(Executive)



(Kalim Arshad Khan)  
Chairman

22.11.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt Additional Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come for arguments before the D.B. on 19.01.2023.

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Peshawar



(Fareeha Paul)  
Member (E)



(Kalim Arshad Khan)  
Chairman



11.05.2022

Appellant in person present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

Appellant requested for adjournment as his counsel is not available today. Last opportunity is granted. To come up for arguments before the D.B on 27.06.2022.



(Fareeha Paul)  
Member (E)

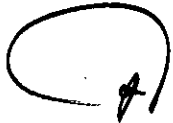


Chairman

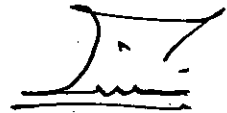
27.06.2022

Learned counsel for the appellant present. Mr. Atta-ur-Rehman, Inspector (Legal) alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that she has not made preparation for arguments. Adjourned. To come up for arguments on 27.07.2022 before the D.B.



(Rozina Rehman)  
Member (J)



(Salah-ud-Din)  
Member (J)

27<sup>th</sup> July 2022

Miss. Rabia Muzaffar, junior of learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Atta-ur-Rehman, Inspector (Legal) for respondents present.

Junior of learned counsel for the appellant seeks adjournment on the ground that learned counsel for the appellant is busy in the august Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 12.10.2022 before the D.B.



(Salah-Ud-Din)  
Member (J)



(Kalim Arshad Khan)  
Chairman

15.09.2021

Learned Addl, A.G be reminded about the omission and for submission of reply/comments within extended time of 10 days.

Stipulated period passed reply not submitted.


D

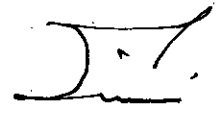
  
Chairman

11.11.2021

Ms. Uzma Syed, Advocate, for the appellant present and submitted fresh Wakalat Nama in favour of the appellant, which is placed on file. Mr. Kheyal Roz, Inspector (Legal) alongwith Mr. Javed Ali, Assistant Advocate General for the respondents present.

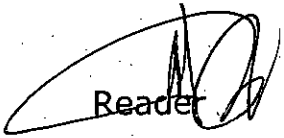
Reply/comments on behalf of respondents submitted, which is placed on file and copy of the same is handed over to learned counsel for the appellant. Adjourned. To come up for rejoinder, if any, as well as arguments on 04.02.2022 before the D.B.

  
(Atiq-Ur-Rehman Wazir)  
Member (E)

  
(Salah-Ud-Din)  
Member (J)

04.02.2022

The Tribunal is non-functional, therefore, the case is adjourned to 11.05.2022 before D.B for the same.

  
Reader

(17)

28.02.2004 but failed to report his arrival on due date followed by continuous absence without any leave. This act of the appellant in terms of the impugned order was treated as misconduct and consequently he was dismissed from service in exercise of powers under N.W.F.P Removal from Service (Special Power) Ordinance, 2000. Obviously, the ground of absence of the appellant was not covered under definition of misconduct as defined in Section 3(1)(b) of N.W.F.P Removal from Service (Special Power) Ordinance, 2000. Apart from misapplication of the ground for proceedings, there is a point for arguments whether the continued absence of the appellant after expiry of his leave could be treated as habitual absenteeism when previously he had availed the approved leave. Subject to all just and legal objections including limitation, this appeal is admitted for regular hearing. Let the respondents come up with their written reply/comments to justify the validity of the proceedings culminating in the impugned order. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days of the receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 11.11.2021 before the D.B.

Appellate Deposited  
Security & Process Fee



Chairman

**1564/2018**

29.06.2021 Counsel for the appellant present. Preliminary arguments heard.

Although there is violation on part of the appellant himself that on expiry of leave granted to him, he did not report for duty within the meaning of Rule 28 of the Civil Servants Revised Leave Rules 1981, which obviously is a burden on him to discharge but the narrative set up in the impugned order is arguable. Section 11 of the Khyber Pakhtunkhwa Removal from Service (Special Power) Ordinance, 2000 relates to overriding effect of the Ordinance viz-a-viz other laws. Accordingly, the provisions of the said Ordinance shall have effect notwithstanding anything to the contrary contained in the Khyber Pakhtunkhwa Civil Servants Act, 1973 and the rules made there-under and any other laws for time being in force. In view of the non-obstante clause in Section 11 ibid, if there is any provision in the Ordinance; and the Khyber Pakhtunkhwa Civil Servants Act 1973 and rules made there-under contain a provision contrary to the provisions of ordinance, the latter shall prevail within the meaning of Section 11 ibid. Section 3 of the Ordinance ibid enumerates the ground for dismissal, removal and compulsory retirement etc and amongst them one is being guilty of habitually absenting himself from duty without prior approval of leave. This ground is similar to ground in clause(b) of Rule 3 of the Government Servants (E&D) Rules, 2011. It is evident from discussion in the impugned order about facts that the appellant was granted nine months leave and he was due to turn back for duty on

1564/2018

22.09.2020

Appellant present in person.

Requests for adjournment as learned his learned counsel is indisposed today. Adjourned to 2.12.2020 before S.B.

Chairman

02.12.2020

Counsel for appellant is present.

Learned counsel requests for adjournment to a date after the decision of proposition regarding retrospective punishment by a Larger Bench of this Tribunal.

Adjourned to 17.02.2021 before S.B.

(MUHAMMAD JAMAL KHAN)  
MEMBER (JUDICIAL)

17.02.2021

The learned Member Judicial Mr. Muhammad Jamal Khan is under transfer, therefore, the case is adjourned. To come up for the same before S.B on 29.06.2021.

Reader

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22.01.2020

Junior to counsel for the appellant present.

Requests for adjournment due to general strike of the Bar. Adjourned to 20.02.2020 in order to avail the outcome of case(s) pending before the Larger Bench regarding retrospective punishment.



Chairman

20.02.2020

Counsel for the appellant present and seeks adjournment. Adjourned to 06.04.2020 in order to avail the outcome of case (s) pending before the Larger Bench regarding retrospective punishment.



(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

06.04.2020

Due to public holiday on account of COVID-19, the case is adjourned to 30.06.2020 for the same. To come up for the same as before S.B.



Reader

30.06.2020

Learned counsel for the appellant present and seeks adjournment. Adjourned to 22.09.2020 before S.B in order to avail the outcome of cases pending before Larger Bench of this Tribunal, regarding retrospective punishment.



Member (J)

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25.07.2019

Counsel for the appellant present.

Learned counsel states that a number of cases regarding similar proposition are fixed for hearing on 28.08.2019. Instant matter, therefore, be adjourned to a date thereafter.

Adjourned to 16.09.2019 for preliminary hearing before S.B.

Chairman



16.09.2019

Junior to counsel for the appellant present.

A request for adjournment is made due to general strike of the bar. Adjourned to 25.11.2019 for preliminary hearing before S.B.

Chairman

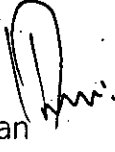


25.11.2019

Appellant present in person.

Requests for adjournment on account of general strike of the Bar. Adjourned to 22.01.2020 before S.B.

Chairman



07.02.2019

Appellant requests for adjournment due to over occupation of his learned counsel before the honourable High Court.

Adjourned to 14.03.2019 before S.B.

  
Chairman

14.03.2019

Counsel for the appellant present and seeks adjournment. Adjourned to 25.04.2019 for preliminary hearing before S.B.

21/03/19

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER


25.04.2019

Counsel for the appellant present and seeks adjournment. Adjourned to 18.06.2019 for preliminary hearing before S.B.

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

18.06.2019

Appellant in person present and requested for adjournment on the ground that his counsel is not available today. Adjourned to 25.07.2019 for preliminary hearing before S.B.

  
(Muhammad Amin Khan Kundi)  
Member



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Form- A

FORM OF ORDER SHEET

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

Case No. 1564/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	28/12/2018	<p>The appeal of Mr. Muhammad Hamayun presented today by Mr. Fazal Shah Mohmand Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR 28/12/18</p>
2-		<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>4-2-19</u>.</p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>
	04.2.2019	<p>Appellant requests for adjournment as his learned counsel is engaged in many cases before the Honourable High Court. Adjourned to 07.02.2019 before S.B.</p> <p style="text-align: right;"><i>[Signature]</i> Chairman</p>

24

**BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR**

Service Appeal No 1564 /2018

SCANNED  
KPST  
Peshawar

Muhammad Hamayun.....Appellant

**VERSUS**

RPO & others.....Respondents

**I N D E X**

S.No	Description of Documents	Annexure	Pages
1.	Service appeal with affidavit		1-3
2.	Application for condonation of delay with affidavit		4
3.	Copy of order dated 25-05-2004, departmental appeal and order dated 31-01-2014	A, B and C	5-7
4.	Wakalat Nama		8

Dated:-26-12-2018

M. S. S.  
Appellant

Through

[Signature]

**Fazal Shah Mohmand  
Advocate Peshawar.**

**OFFICE:-** Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell# 0301 8804841  
**Email:-** fazalshahmohmand@gmail.com

25  
①

**BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR**

Service Appeal No 1564/2018

Muhammad Hamayun Ex Constable No 173 District Police Mardan.

.....**Appellant**

**Khyber Pakhtukhwa  
Service Tribunal**

Diary No. 1823

Dated 28/12/2018

**V E R S U S**

1. Reginald Police Officer Mardan.
2. District Police Officer Mardan.
3. Provincial Police Officer KPK Peshawar.....**Respondents**

**APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974  
AGAINST THE ORDER DATED 31-01-2014 PASSED BY  
RESPONDENT NO 1 WHERE BY DEPARTMENTAL APPEAL  
OF THE APPELLANT FILED AGAINST THE ORDER DATED 25-  
05-2004 OF RESPONDENT NO 2 HAS BEEN REJECTED/FILED.**

**PRAYER:-**

On acceptance of this appeal the impugned orders dated 31-01-2014 of respondent No 1 and Order dated 25-05-2004 of respondent No 2 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

**Respectfully Submitted:-**

1. That the appellant joined the respondent Department as constable on 01-08-1999 remained posted to various Police Stations and since then he performed his duties with honesty and full devotion.

**Filed to-day**  
**Registrar**

28/12/18

2. That in the year 2003 the appellant while lastly posted to Police Station Rustam Mardan, was granted nine months leave and was due for duty on 21-02-2004. However in the meanwhile he was landed in domestic problems which resulted in mental order of his wife and as such the appellant was unable to have attended his duties, therefore informed the SHO concerned.
3. That the appellant was dismissed from service by respondent No 2 vide order dated 25-05-2004, where after he obtained copy of the order and filed departmental appeal before respondent No 1 which was filed vide order dated 31-01-2014. **(Copy of the Order dated 25-05-2014, Departmental appeal**

26  
②

and order dated 31-01-2014 is enclosed as Annexure A, B and C).

4. That the impugned order dated 31-01-2014 of respondent No 1 and order dated 25-05-2004 of respondent No 2 are against the law, facts and principles of justice on grounds inter alia as follows:-

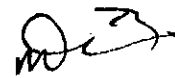
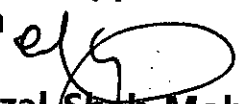
**GROUND S:-**

- A. That the impugned orders are illegal and void ab-initio.
- B. That mandatory provisions of law and rules have badly been violated by the respondents and the appellant has not been treated according to law and rules and the appellant did nothing that amounts to misconduct.
- C. That no charge sheet and show cause notice were communicated to the appellant.
- D. That exparte action has been taken against the appellant and he has been condemned unheard.
- E. That no inquiry was conducted to find out the true facts and circumstances.
- F. That the impugned order is not maintainable being passed with retrospective effect.
- G. That even otherwise the absence from duty was neither willful nor deliberate rather the same was because of circumstances compelling in nature and were beyond the control of the appellant as well.
- H. That the impugned orders are not speaking orders and thus not tenable in the eyes of law.
- I. That the appellant was not provided the opportunity of personal hearing and the impugned order is defective as well.
- J. That the appellant did nothing that would amount to misconduct.
- K. That the appellant has about 5 years of service with unblemished service record and is jobless since his illegal removal from service.

L. That the appellant seeks the permission of this honorable tribunal for further/additional grounds at the time of arguments.

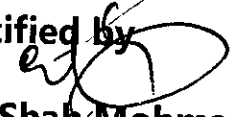
It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for in the heading of the appeal.

Dated:-26-12-2018.

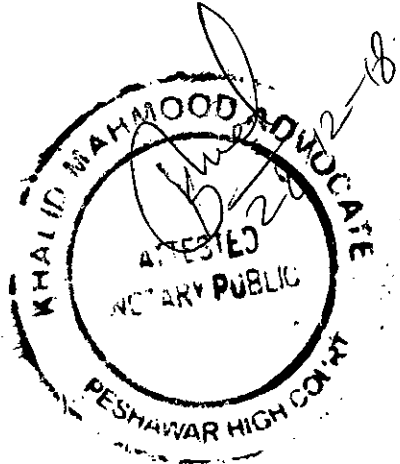
  
Appellant  
Through   
Fazal Shah Mohmand  
Advocate, Peshawar

**AFFIDAVIT**

I, Muhammad Hamayun Ex Constable No 173 District Police Mardan, do hereby solemnly affirm and declare on oath that the contents of this **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Identified by   
Fazal Shah Mohmand  
Advocate Peshawar

  
DEPONENT





(4) 22

**BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR**

Service Appeal No \_\_\_\_\_/2018

Muhammad Hamayun.....Appellant

**V E R S U S**

RPO & others.....Respondents

**Application for the condonation of delay if any.**

**Respectfully submitted:-**

1. That the accompanying appeal is being filed today in which no date of hearing has been fixed so far.
2. That the grounds of appeal may be considered as integral Part of this application.
3. That the impugned order being passed with retrospective effect is void ab-initio, illegal and time factor becomes irrelevant in such cases and the appeal is as such within time.
4. That the law as well as the dictums of the superior Courts also favors decisions of cases on merit.

**It is therefore prayed that on acceptance of this application, the delay if any in filing of appeal may kindly be condoned.**

**Dated:-26-12-2018.**

Through

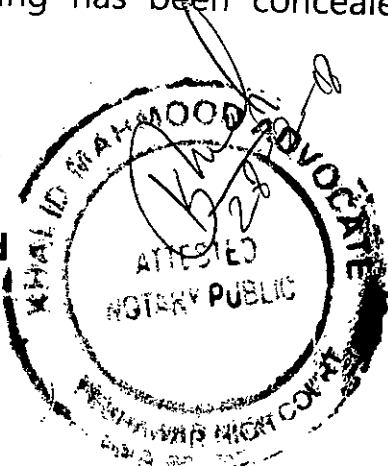
*M. J.*  
Appellant

*Fazal Shah Mohmand*  
Fazal Shah Mohmand,  
Advocate, Peshawar

**A F F I D A V I T**

I, Muhammad Hamayun Ex Constable No 173 District Police Mardan, do hereby solemnly affirm and declare on oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Identified by  
*Fazal Shah Mohmand*  
Fazal Shah Mohmand  
Advocate Peshawar



*M. J.*  
DEPONENT

29  
"A"  
ORDER

This order will dispose off departmental enquiry conducted against Constable Hamayun No. 173.

FACTS Facts of the enquiry are that the constable who is posted to Investigation Wing PS Rustam was granted 9 months leave and he was due to turn back for duty on 23.2.2004 but he failed to report his arrival on due date. He is still absent without any leave or prior permission of the competent authority.

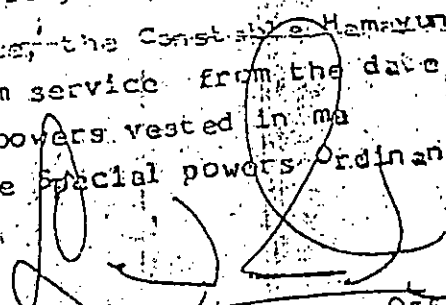
PROCEEDINGS The constable was Charge Sheeted and served with statement of allegation for the above wilful absence. An enquiry committee comprising of DSP/HQrs and R.I. Lines was constituted to conduct proper departmental enquiry into the allegation. The enquiry committee completed the enquiry and submitted its findings who found guilty the constable for the above misconduct.

CONCLUSION The constable was called for O.R on 25.5.2004 but he failed to appear for personal hearing. From the perusal of enquiry papers, it has been noticed that the Constable has gone abroad for earning livelihood and there is no hope of his return to join his duty.

Keeping in view his long absence, the Constable Hamayun No. 173 is hereby Dismissed from service from the date of his absence in exercise of powers vested in me under NMFPP Removal from Service Special powers Ordinance 2000.

Order announced.

Dated \_\_\_\_\_, 2004.



District Police Officer,  
Mardan.

OFFICE OF THE DISTRICT POLICE OFFICER MARDAN.  
Dated 25-5-2004.

NO. 1538-42/SB,

Copies to the:-

1. DSP/HQrs.
2. Pay Officer.
3. OASI 14 PPs.

OB No 667  
25/5/04

CIR  
all  
C.A.S



خواب عالی

گزارش صدر سائیل 1999 کا جوائن سٹرک تھا۔ سائیل  
مناخ رستم سے جنرل ڈیوٹی لقیات تھا۔ اسے دوران گھسریلو  
جھگڑے پیدا ہوئے۔ جھگڑوں کی وجہ سے سائیل اپنے والدین  
سے آگے ہوئے۔

سائیل کو صبح اٹلا تھا۔ اور کابی سواری پیدا ہوئی۔ اسے دوران  
سائیل کی بیوی کا دماغے توڑن میں خراب ہوا۔  
اور کو کا حالات روز بروز خراب ہو رہے تھے۔ ایک طرف کو  
کا حالات اور بچوں کا پرورش بہت مشکل ہوا۔

آخر کار سائیل سے  $21 \frac{2}{84}$  سے غیر حاضر ہوا۔ اور  $25 \frac{5}{84}$   
کو نوکری سے ڈسبس کیا گیا۔

سائیل کا ٹوٹل سے غیر جاضری 3 سال 4 دن ہے۔ سائیل نے  
اسی وقت خواب 9 ماہ کو اسیل کیا تھا۔ مگر حال نہیں ہوا  
سائیل نے تقریباً 9 سال در بدر کی ٹوکریں کرائی۔  
اب سائیل اپنے والدین کے ساتھ رہا نہیں پزیرے۔ جوانی  
اور والدین گنہگار اور بچھڑا گیا۔ گو کا گزارا بہت  
مشکل ہے جلتا ہے۔

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لہذا اسے صدر سائیل سے واپس بار نوکری کا موقع دے کر شکر  
رہوئے۔

خواب عالی کی اقبال بلدی کے عام عمر وغاوردنیلے

العارفین  
عین نواز شہر

محمد بجاوون سابق نمبر 173 ولد عجب خان سکتہ ہاتھان خان  
لوند

ORDER.

(7) "31" C"

This order will dispose-off the appeal preferred by Ex-Constable Muhammad Humayun No. 173 of Mardan District Police against the order of District Police Officer, Mardan wherein he was dismissed from service vide District Police Officer, Mardan OB: No. 667 dated 25.05.2004.

Brief facts of the case are that he while posted to Investigation Wing Police Station Rustam was granted 09 Months leave and he was due to turn back for duty on 21.02.2004 but he failed to report his arrival on due date. He is still absent without any leave or prior permission of the competent authority. He was charge sheeted and served with statement of allegation for the above willful absence an enquiry committee comprising of the then Deputy Superintendent of Police Headquarter, Mardan and the then RI Police Lines, Mardan was constituted to conduct proper departmental enquiry into the allegation. The enquiry committee completed the enquiry and submitted its findings who found guilty the Constable for the above misconduct. The appellant was called for Orderly Room on 25.05.2004 by the District Police Officer; Mardan but he failed to appear for personal hearing. From the perusal of enquiry papers, it has been noticed that the appellant has gone abroad for earning livelihood and there is no hope of his return to join his duty. Therefore he was dismissed from service.

I have perused the record and also heard the appellant in Orderly Room held in this office on 29.01.2014. He failed to justify his absence period and could not advance any cogent reason in his defence, the appeal time barred so far. Therefore, I MUHAMMAD SAEED Deputy Inspector General of Police, Mardan Region-I, Mardan in exercise of the powers conferred upon me reject the appeal, not interfere in the order passed by the competent authority, thus the appeal is filed.

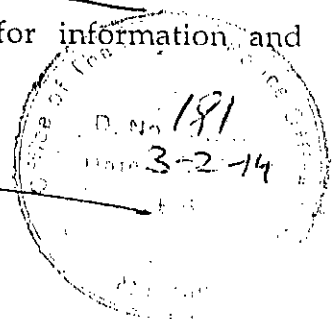
ORDER ANNOUNCED.

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

No. 753 /ES, Dated Mardan the 31-01 /2014.

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

(\*\*\*\*\*)  
OB/EC/OASI

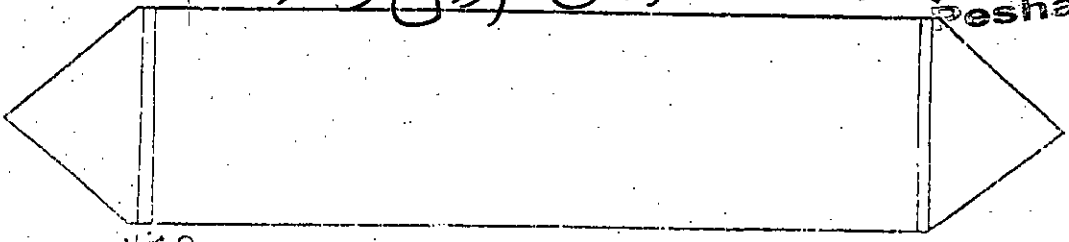


DPo Mardan

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2/1/14

# تعداد الت سروں ٹریبونل

SCANNED  
KPST  
Peshawar



2 مخائب

محمد سجاد بنام RPO و سزہ

موزخہ  
مقدمہ  
دعویٰ  
مزمعہ

## باعث تحریر آنکہ

مقدمہ بندرجہ عدالت عالیہ میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ  
 آج ان مقام کے لیے مفضل شاہ محمد الدرویش کے نام سے درخواست  
 مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز  
 وکیل صاحب کو رضی نامہ کرنے و تقرر ثالثتہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور  
 ہر صورت ڈگری کرنے اجراء اور وصولی چیک، وردیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق  
 زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری کیلٹرنہ یا اپیل کی برآمدگی اور منسوخی  
 نیز دائر کرنے اپیل ٹرائی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور  
 کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کی 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  
 و اخذ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے سبب سے ہوگا۔  
 کوئی تاخیر پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی  
 مذکورہ کریں۔ لہذا عدالت نامہ لکھ دیا کہ سند ہے۔

(Signature)

محمد سجاد

المرنوم 20 دسمبر 18

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KP Service Tribunal, Shahwar

C 37

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA  
PESHAWAR.

**Service Appeal No. 1564/2018**

**SCANNED  
KPST  
Peshawar**

Muhammad Hamayun EX Constable No. 173 District Police Mardan

.....Appellant

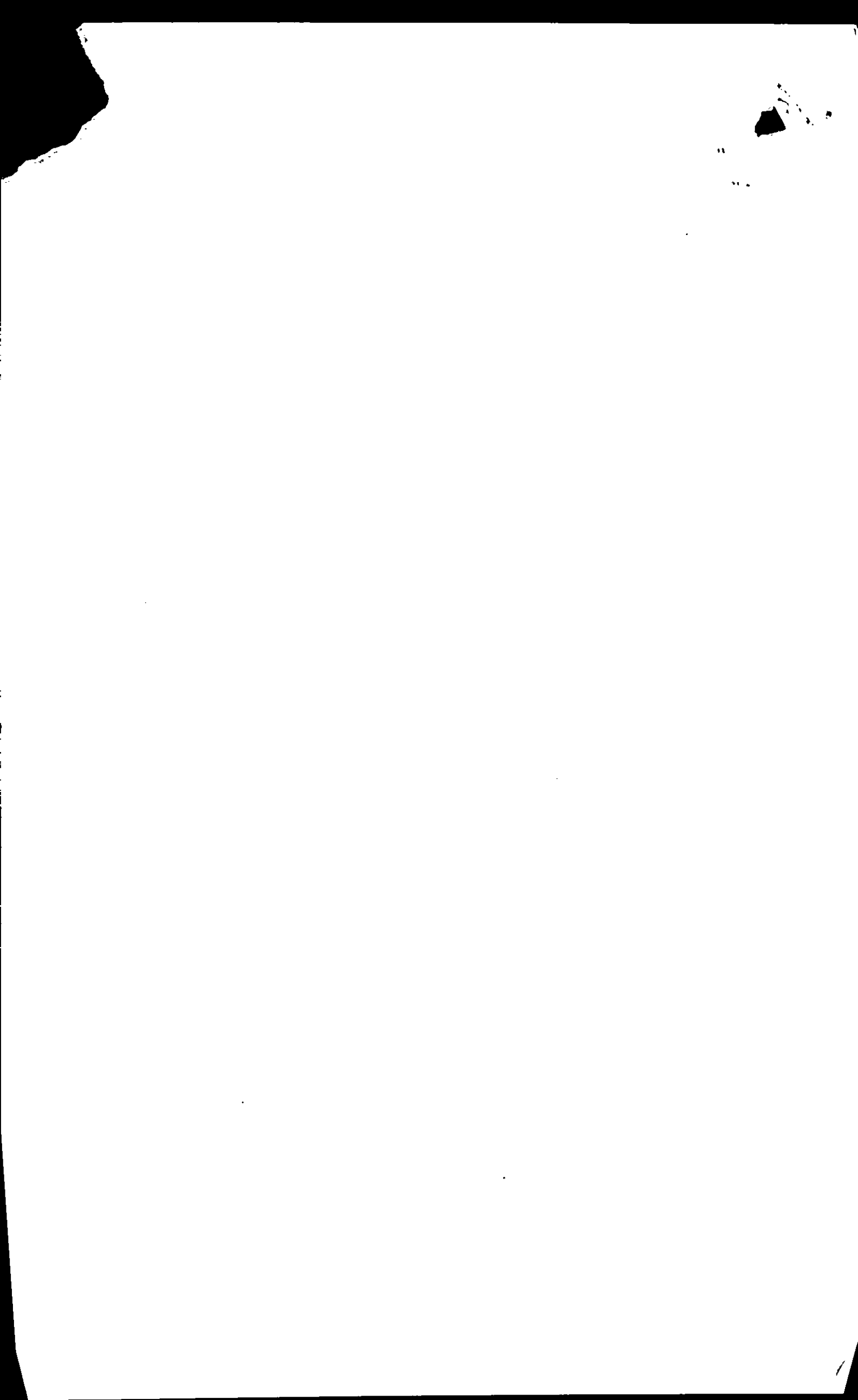
**VERSUS**

The Provincial Police Officer , Khyber Pakhtunkhwa, Peshawar and others

..... Respondents

**INDEX**

<b>S. No.</b>	<b>Description of Documents</b>	<b>Annexure</b>	<b>Pages.</b>
1.	Written Reply.	----	1-3
2.	Affidavit.	----	4
3.	Copy of Bad entries & order	A	5-7
4.	Copy of letter No.207/LB dated 10.19.2021	B	8
5.	Copy of Authority Letter.	----	9



C 38 ①

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

**Service Appeal No. 1564/2018**

Muhammad Hamayun EX Constable No. 173 District Police Mardan

.....Appellant

**VERSUS**

The Provincial Police Officer , Khyber Pakhtunkhwa, Peshawar and others

.....Respondents

**Para-wise comments on behalf of respondents:-**

**Respectfully Sheweth,**

**PRELIMINARY OBJECTIONS**

1. That the appellant has not approached this Hon'ble Tribunal with clean hands.
2. That the appellant has concealed the actual facts from this Hon'ble Tribunal.
3. That the appellant has got no cause of action or locus standi to file the instant appeal.
4. That the appellant is estopped by his own conduct to file the instant Service Appeal.
5. **That appeal of the appellant is badly time barred.**
6. That the appeal is unjustifiable, baseless, false, flawless and vexatious and the same is liable to be dismissed with special compensatory cost in favour of respondents.

**REPLY ON FACTS**

1. Para to the extent of enlistment in Police Department of appellant pertains to record needs no comments. While rest of para is incorrect because every police officer / official is under obligation to perform his duty regularly and with devotion because in this department no room lies for lethargy. Moreover, the perusal of service record of the applicant revealed that the appellant has short span of service i.e 4 years 9 months 24 days including nine months leave in the said service period and due to his lethargic attitude his entire service record is tainted with bad entries (Copy of list of bad entries with dismissal orders are attached as Annexure "A").
2. Correct to the extent that the appellant while posted at PS Rustam and the competent authority had granted nine months leave, while rest of para is incorrect because the appellant had neither informed the concerned SHO nor submitted any application for leave and failed to report for duty on 21.02.2004 and remained absent from his lawful duty without any leave/permission of the competent authority. On the said allegations he has been properly proceeded against departmentally by issuing him Charge Sheet with Statement of Allegations and enquiry was entrusted to the then DSP HQrs and the then RI Police Lines Mardan. The Enquiry Officers after fulfilling of all legal and codal formalities, submitted findings and found the appellant guilty for misconduct. The appellant was also summoned by the competent authority in Orderly Room on

25.05.2004, but he failed to appear for personal hearing. From the perusal of enquiry papers, the competent authority noticed that the appellant has gone abroad for earning livelihood and there is no hope of his return to join his duty, therefore, he was awarded major punishment of dismissal from service, which does commensurate with the gravity of misconduct of the appellant.

3. Correct to the extent that the appellant preferred departmental appeal which was also decided on merit because he was provided full-fledged opportunity of defending himself by the appellate authority but he bitterly failed to produce any cogent reasons in his defense. **The same was filed being badly time barred. It is worth to mention here that he has preferred the instant service appeal with a delay of 04 years 10 months 26 days after his departmental appeal.**
4. Incorrect. Stance taken by the appellant is totally false and baseless, the orders passed by the respondents No. 1 & 2 are not against but according to law, fact and principles of justice. Moreover, the appeal of the appellant is liable to be dismissed being badly time barred besides on the following grounds amongst the others.

**REPLY ON GROUNDS:**


- A. Incorrect. Plea taken by the appellant is not plausible the orders passed by the competent authority as well as appellate authority are legal, lawful hence, liable to be maintained.
- B. Incorrect. That the respondents did not violate any law & rules and the appellant has been treated in accordance with law, rules, policy & norms of natural justice. Hence plea of the appellant is devoid of any merits.
- C. Incorrect. Plea taken by the appellant is not plausible because he has been properly proceeded against departmentally by issuing him Charge Sheet with Statement of Allegations, but the appellant was not present in Pakistan and he was gone abroad for earning livelihood. In this connection a letter No. 207/LB dated 10.09.2021 has been sent to the Director, Federal Investigation Agency (HQrs) Integrated Border Management System, Islamabad for provision of travel history of the appellant, but still reply has not received (letter enclosed is attached as annexure "B").
- D. Incorrect. During the course of enquiry the appellant was called by enquiry officers but at that time he was not present in Pakistan and he had gone abroad for earning livelihood, however, after fulfilling all legal and codal formalities, the enquiry officers submitted findings and found the appellant guilty of misconduct. The appellant was also summoned by the competent authority in Orderly Room on 25.05.2004, but this time too he failed to appear for personal hearing, moreover, from the perusal of enquiry papers, it has been noticed by the competent authority that the appellant has gone abroad for earning livelihood and there is no hope of his return to join his duty, therefore, he was awarded major punishment of dismissal from service, which does commensurate with the gravity of misconduct of the appellant.



- E. Incorrect. Para already explained needs no comments.
- F. Incorrect. Para already explained needs no comments.
- G. Para pertains to personal affairs of the appellant needs no comments.
- H. Incorrect. The impugned orders are speaking one and thus tenable in the eye of law.
- I. Incorrect. Stance taken by the appellant is not plausible, because he has been properly proceeded against departmentally by issuing him Charge Sheet with Statement of Allegations and enquiry was entrusted to the then DSP HQrs and the then RI Police Lines Mardan, after fulfilling all legal and codal formalities the enquiry officers submitted his findings and found the appellant guilty of misconduct. The appellant was also summoned by the competent authority in Orderly Room on 25.05.2004, but he failed to appear for personal hearing, from the perusal of enquiry papers, it has been noticed that the appellant has gone abroad for earning livelihood and there is no hope of his return to join his duty, therefore, he was awarded major punishment of dismissal from service, which does commensurate with the gravity of misconduct of the appellant.
- J. Incorrect. Para earlier explained needs no comments.
- K. Incorrect. Plea taken by the appellant is not plausible from the perusal of service record of the applicant revealed that the appellant has short span of service i.e 4 years 9 months 24 days including nine months leave in the said service period and due to his lethargic attitude his entire service record is tainted with bad entries
- L. The respondents also seek permission of this honorable tribunal to adduce additional grounds at the time of arguments.

**PRAYER:-**

It is therefore, most humbly prayed that on acceptance of above submissions, appeal of the appellant may very kindly be dismissed **being a badly time-barred** and devoid of merits.

  
**Provincial Police Officer,  
Khyber Pakhtunkhwa,  
Peshawar.**  
(Respondent No. 03)

  
**Regional Police Officer,  
Mardan.**  
(Respondent No. 01)

  
**District Police Officer,  
Mardan.**  
(Respondent No. 02)

41 (4)

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

**Service Appeal No. 1564/2018**


Muhammad Hamayun EX Constable No. 173 District Police Mardan  
.....Appellant

**VERSUS**

The Provincial Police Officer , Khyber Pakhtunkhwa, Peshawar and others  
.....Respondents

**COUNTER AFFIDAVIT**

We, the respondents do hereby declare and solemnly affirm on oath that the contents of the Para-wise comments in the service appeal cited as subject are true and correct to the best of our knowledge and belief and nothing has been concealed from this Honourable Tribunal.

  
**Provincial Police Officer,  
Khyber Pakhtunkhwa,  
Peshawar.**  
(Respondent No. 03)

  
**Regional Police Officer,  
Mardan**  
(Respondent No. 01)

  
**District Police Officer,  
Mardan.**  
(Respondent No. 02)

Annexure "A"  
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(Continued)


CENSURES AND PUNISHMENTS.

ORDER

He is hereby Dismissed from service from the date of his absence i.e. 23.2.2004 under NWFP Removal from service special powers ordinance 2000.

OR No. 667

DT: 25.5.04.

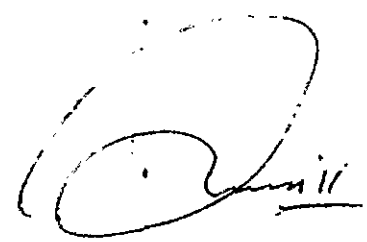
  
YDPO/mach.

APPEAL

The appeal is hereby filed finding no merit and also time barred vide DIG MBI Mardan Memo no. 3827/ES, dt: 25-8-2006.


OR No. 1546

DT: 28/8/2006

  
DPO Mardan

(Order inclosed)

Appeal filed vide his office Enclst: No. 753/ES dt: 31-1-14. Copy attached.

  
DPO Mardan

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16. LEAVE, ABSENCE AND BREAKS IN SERVICE.

All periods not counting as "approved service" to be entered in red ink.

DATE		EXTENT			No. of District Order	Description of leave i. e. privilege, hospital, sick leave, or furlough, or of absence, or forfeiture of approved service.  All entries to be initialed, by Superintendent of Police.
From	To	Years	Months	Days		
11-5-03	To 20-5-2003			20 days	680 17.5.03	initial on full pay. YOP/pml
11-5-03	To 10-2-2004			120 days 164 days	654 14.5.03	120 days on full pay and 164 days on half pay. YOP/pml

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(7) (2)

(ER)

O R D E R

This order will dispose off departmental enquiry conducted against Constable Hamayun No.173.

FACTS Facts of the enquiry are that the constable while posted to Investigation Wing PS Rustam was granted 9 months leave and he was due to turn back for duty on 23.2.2004 but he failed to report his arrival on due date. He is still absent without any leave or prior permission of the competent authority.

PROCEEDINGS. The constable was Charge Sheetted and served with statement of allegation for the above wilfull absence. An enquiry committee comprising of DSP/HQrs and R.I. Lines was constituted to conduct proper departmental enquiry into the allegation. The enquiry committee completed the enquiry and submitted its findings who found guilty the constable for the above misconduct.

CONCLUSION. The constable was called for O.R on 25.5.2004 but he failed to appear for personal hearing. From the perusal of enquiry papers, it has been noticed that the Constable has gone abroad for earning livelihood and there is no hope of his return to join his duty.

Keeping in view his long absence, the Constable Hamayun No.173 is hereby Dismissed from service from the date of his absence in exercise of powers vested in me under NWFP Removal from Service Special powers Ordinance 2000.

Order announced.

Dated \_\_\_\_\_, 2004.

District Police Officer,

Mardan.

OFFICE OF THE DISTRICT POLICE OFFICER MARDAN.

NO. 1533-42/SB, Dated 25-5-, 2004.

Copies to the:-

- 1. DSP/HQrs.
- 2. Pay Officer.
- 3. EC.
- 4. OASI 14 PPs.

667  
25/5/04



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OFFICE OF THE  
DISTRICT POLICE OFFICER,  
MARDAN

Tel No. 0937-9230109 & Fax No. 0937-9230111  
Email: [dpomdn@gmail.com](mailto:dpomdn@gmail.com)

NON  
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Annexure

"B"

8

No. 207 /LB

Dated 10/09/2021

To

The Director,  
Federal Investigation Agency (Hqrs)  
Integrated Border Management System,  
Islamabad.

Subject: REQUEST FOR PROVISION OF TRAVEL HISTORY.

Memo:

Please refer to the above noted subject.

That Muhammad Hamayun Ex-Constable No.173 of this District was dismissed from service vide order dated 25.05.2004 due to his prolong absence hence he availed departmental remedy which was also rejected. Later on the said Police Official approached Khyber Pakhtunkhwa Service Tribunal by filing Service Appeal No. 1564/2018 which is pending and during arguments the Honorable Judge/members raised question of his being abroad and in this regard issued verbal directions to verify his departure arrival, if any, from all Air Ports of Pakistan through concerned authority.

It is therefore, requested that Travel History in terms of arrival/departure may be provided to this office from 25.05.2004 to 07.09.2021, before the next date of hearing i.e 11.11.2021. Bio data of the above named official is as under:-

Name: Muhammad Hamayun  
Father Name: Ajab Khan  
CNIC No. 16102-2301862-9  
Address: Village Hathian Lund Khwar Teshsil & District  
Mardan.

  
District Police Officer  
Mardan.

No. 208 /LB,

Copy to the Regional Police Officer, Mardan for  
favour of information, please.

  
District Police Officer  
Mardan.

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

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**Service Appeal No. 1564/2018**

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Muhammad Hamayun EX Constable No. 173 District Police Mardan

.....Appellant


**VERSUS**

The Provincial Police Officer , Khyber Pakhtunkhwa, Peshawar and others

.....Respondents

**AUTHORITY LETTER.**

Mr. Khyal Roz Inspector Legal, (Police) Mardan is hereby authorized to appear before the Honourable Service Tribunal, Khyber Pakhtunkhwa, Peshawar in the above captioned service appeal on behalf of the respondents. He is also authorized to submit all required documents and replies etc. as representative of the respondents through the Addl: Advocate General/Govt. Pleader, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

  
**Provincial Police Officer,**  
**Khyber Pakhtunkhwa,**  
**Peshawar.**  
(Respondent No. 03)

  
**Regional Police Officer,**  
**Mardan**  
(Respondent No. 01)

  
**District Police Officer,**  
**Mardan.**  
(Respondent No. 02)