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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

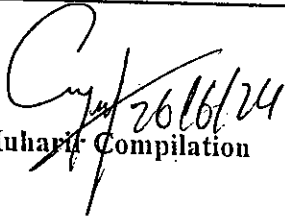
EXECUTION NO _____


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AMAN ULLAH vs GOVT OF K.P.K


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 Muharif Compilation


 Incharge Judicial Branch

S #	NAME OF OFFICIAL	HOME DISTRICT	DATE OF BIRTH	DATE OF JOINING GOVT: SERVICE.	DATE OF APPOINTMENT/ PROMOTION AS ASI IN E&T DEPTT:	REMARKS
106	Mr. Anwar Said	Dir	10.04.1977	21.03.2003	01.11.2017	Promotee
107	Mr. Shafi Ullah	Mardan	12.06.1965	01.04.2003	01.11.2017	Promotee
108	Mr. Naeem Khan	Peshawar	16.12.1971	01.04.2003	01.11.2017	Promotee
109	Muhammad Sareer	Mardan	01.04.1976	01.07.2003	01.11.2017	Promotee
110	Mr. Abdur Rashid	Karak	01.01.1977	28.07.2003	01.11.2017	Promotee
111	Mr. Zulfiqar Ali	Mardan	02.05.1971	26.01.2004	01.11.2017	Promotee
112	Mr. Abdul Majeed	Abbottabad	13.05.1978	27.01.2004	01.11.2017	Promotee
113	Mr. Zahid Anwar	Peshawar	13.01.1984	15.03.2007	01.11.2017	Promotee
114	Mr. Ibrahim	Swat	01.04.1983	01.06.2007	01.11.2017	Promotee
115	Mr. Sher Shah	Mardan	16.03.1984	01.06.2007	01.11.2017	Promotee
116	Mr. Shakeel Munir	Charsadda	10.03.1988	30.11.2017	30.11.2017	Deceased Son Quota
117	Mr. Sajid Khan	Peshawar	06.06.1991	30.11.2017	30.11.2017	Deceased Son Quota
118	Muhammad Arif	Mardan	02.03.1980	19.02.2018	19.02.2018	Deceased Son Quota
119	Mr. Shaban Nasir	Haripur	07.01.1995	09.04.2018	09.04.2018	Deceased Son Quota
120	Mr. Waleed Khan	Peshawar	18.08.1997	09.04.2018	09.04.2018	Deceased Son Quota
121	Muhammad Nazir	Peshawar	13.07.1999	13.04.2018	13.04.2018	Deceased Son Quota
122	Mr. Farhad Ali	Mardan	04.04.1969	26.11.2007	23.05.2018	Promotee
123	Syed Masroor Shah	Mardan	25.09.1973	26.11.2007	23.05.2018	Promotee
124	Mr. Faheem Ullah	Peshawar	30.10.1989	18/12/2007	23.05.2018	Promotee
125	Mr. Zakirullah	Nowshera	02.10.1970	24.06.2008	23.05.2018	Promotee
126	Mr. Sarbiland	Charsadda	11.04.1984	24.06.2008	23.05.2018	Promotee
127	Mr. Shah Zeb Khan	Nowshera	07.09.1986	24.06.2008	23.05.2018	Promotee


 SUPERINTENDENT
 PESHAWAR
 DISTRICT
 PESHAWAR

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 1108/2018

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

Aman Ullah, Ex-Constable No. 1624, S/o Mirza Ali Khan Village Shubli
Banda Tehsil Takht Nusrati District Karak.

... (Appellant)

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Commandant FRP, Khyber Pakhtunkhwa, Peshawar.
3. The Superintendent of Police FRP Kohat Range Kohat.

.... (Respondents)

Miss. Uzma Syed,
Advocate

For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney

For respondents

Date of Institution.....29.08.2018

Date of Hearing29.04.2024

Date of Decision29.04.2024

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:-

“That on acceptance of this appeal, the order dated 31.12.2010 not communicated to the appellant and 26.07.2018 may be set aside and the appellant may be reinstated with all back and consequential benefits. Any other remedy which this august Tribunal deems fit and appropriate that may also be awarded in favour of appellant.”

2. Precise facts giving rise to filing of the instant appeal are that the appellant was appointed as Constable in Police Department in the year 2007. Departmental proceedings were initiated against the appellant on



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PESHAWAR

the allegations that he absented himself from his official duty with effect from 14.03.2009 without any leave or permission of the competent authority. On conclusion of the inquiry, the appellant was discharged from service from the date of his absence vide impugned order dated 02.10.2009. The appellant filed departmental appeal on 12.07.2018, which was rejected vide order dated 26.07.2018. The appellant has now approached this Tribunal through filing of instant service appeal on 29.08.2018 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 due to his some domestic problems as well as illness of his mother, he was unable to attend his duty, therefore, his absence was not intentional rather the same was due to the said reasons. He next argued that the appellant was discharged from service from the date of his absence vide impugned order dated 02.10.2009 with retrospective effect, therefore, the impugned order dated 02.10.2009 being void ab-initio is liable to be set-aside. He further argued that as the impugned order dated 02.10.2009 was passed with retrospective effect, therefore, no limitation would run against the impugned order. He also argued that the appellant was neither issued any charge sheet/statement of allegations or show-cause notice nor any inquiry was conducted in the matter, 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 remained absent from duty for a long period of 202 without prior permission of the competent authority. He next contended that appellant was issued charge sheet alongwith summery of allegations and was also conducted inquiry in the matter but the appellant failed to reply the charge sheet. He further contended that the appellant was also failed to appear before the inquiry officer despite being summoned. He also contended that the departmental appeal as well as service appeal of the appellant are badly time barred, therefore, the appeal in hand 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 discharged 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. Appellant was discharged from service from the date of absence i.e 14.03.2009 vide order dated 21.10.2009, which was required to have been challenged through filing of departmental appeal within 15

days but the appellant filed departmental appeal on 12.07.2018 i.e after a delay of 08 years, 04 months and 04 days, which was badly time barred. The departmental appeal of the appellant was rejected being time barred for about 09 years vide order dated 26.07.2018. 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 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 29th day of April, 2024.*



(MUHAMMAD AKBAR KHAN)
Member (E)



(RASHIDA BANO)
Member (J)

6

10th Nov, 2023

1. Clerk to counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney 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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kamranullah



(Muhammad Akbar Khan)
Member (E)



(Rashida Bano)
Member (J)

22nd 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.



(Fareeha Paul)
Member (E)



(Kalim Arshad Khan)
Chairman

Adnan Shah

22.04.2024 1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney 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.

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PESHAWAR

(Fareeha Paul)
Member (E)

(Rashida Bano)
Member (J)

Kaleemullah
ORDER

29th 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 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 29th day of April, 2024.*

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

(Rashida Bano)
Member (Judicial)

7

13.07.2023

Appellant alongwith his counsel present. Mr. Asad Ali Khan,
Assistant Advocate General for the respondents present.

Joint request was made that as the issue of retrospectivity is
involved in the instant appeal, therefore, the same may be placed for
arguments alongwith other similar nature appeals, which are fixed on
15.09.2023. Adjourned. To come up for arguments on 15.09.2023
before the D.B. Parcha Peshi given to the parties.

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Peshawar



(Rashida Bano)
Member (J)



(Salah-ud-Din)
Member (J)

Naeem Amin

15th Sep, 2023

1. Learned counsel for the appellant present. Mr. Asad Ali Khan,
Assistant Advocate General for the respondents present.

2. Learned counsel for the appellant requested for adjournment
in order to prepare the brief. Last opportunity is granted. To come up
for arguments on 10.11.2023 before D.B. Parcha Peshi given to the
parties.

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Peshawar



(Muhammad Akbar Khan)
Member (E)



(Kalim Arshad Khan)
Chairman


Kamranullah

12th May, 2023

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

2. Learned counsel for the appellant seeks adjournment on the ground that she has not prepared the brief. Adjourned. To come up for arguments on 12.06.2023 before D.B. P.P given to the parties.

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KPST
Peshawar


(Fareeha Paul)
Member (E)


(Kalim Arshad Khan)
Chairman


Kaleemullah


12th June, 2023

1. Clerk of counsel for appellant present. Mr. Fazal Shah Mohmand, Additional Advocate General for respondents present.

2. Lawyers are on strike. Therefore, case is adjourned to 13.07.2023 for arguments before D.B. P.P given to the parties.

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Peshawar


(Fareeha Paul)
Member (E)


(Kalim Arshad Khan)
Chairman

Mutazem Shah

9

31st Jan, 2023

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl: AG for respondents present.

Learned counsel for the appellant seeks adjournment on the ground that she has not prepared the case. Adjourned but as a last chance. To come up for arguments on 24.03.2023 before the D.B. P.P is given to the parties.

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PESHAWAR



(Muhammad Akbar Khan)
Member(Executive)



(Kalim Arshad Khan)
Chairman

24.03.2023

Counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.

The Worthy Chairman is on leave today, therefore, the bench is incomplete. The case is adjourned to 12.05.2023 as last chance for arguments before the D.B. Parcha Peshi given to the parties.

SCANNED
KABIT
PESHAWAR




(FAREEHA PAUL)
Member (E)

1108/2018

13th Oct., 2022

Counsel for the appellant present. Mr. Naseerud Din Shah,
Asstt. dvocate General for the respondents present.

Counsel for the appellant seeks adjournment in order to further
prepare the brief. Last opportunity is granted. To come up for
arguments on 24.11.2022 before the D.B.


(Fareeha Paul)
Member (E)

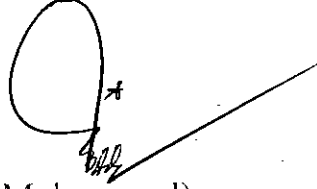

(Kalim Arshad Khan)
Chairman

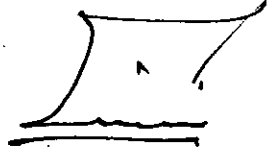
24.11.2022

Learned counsel for the appellant present. Mr. Naseer-ud-Din
Shah, Assistant Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on
the ground that he has not gone through the brief of the instant appeal.
Adjourned. To come up for arguments on 31.01.2023 before the D.B.

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(Mian Muhammad)
Member (E)

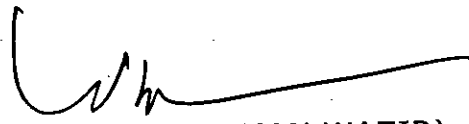

(Salah-Ud-Din)
Member (J)

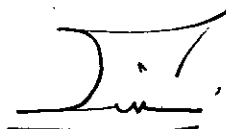
11

16.09.2021

Ms. Uzma Syed, Advocate, for the appellant present. Mr. Riaz Ahmed Paindakheil, Assistant Advocate General for the respondents present.

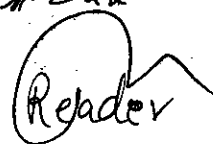
Learned counsel for the appellant requested for adjournment on the ground that she is not feeling well. Adjourned. To come up for arguments before the D.B on 30.12.2021.


(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

30.12.2021

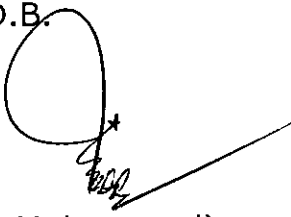
Due to winter vacation, the case is adjourned. To come up on 8/5/2022.


Reader

01.04.2022

Clerk to learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

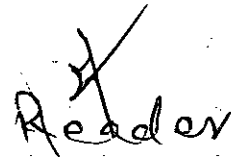
Clerk to learned counsel for the appellant seeks adjournment on the ground that learned counsel for the appellant is not available today. Last chance given. Adjourned. To come up for arguments on 05.07.2022 before the D.B.


(Mian Muhammad)
Member (Executive)


Chairman

5-7-2022

Proper DB not available the case is adjourned 13-10-2022


Reader

08.03.2021 Counsel for appellant present.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

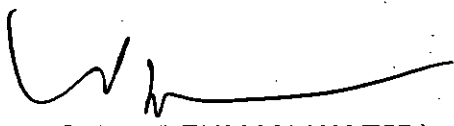
Due to non-availability of D.B, case is adjourned to 08.06.2021 for the same as before.

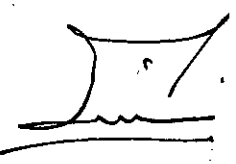

Reader

08.06.2021 Appellant alongwith his counsel Mr. Mir Zaman Safi, Advocate, present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

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Learned counsel for the appellant submitted fresh Vakalatnama on behalf of the appellant and sought adjournment on the ground that the issue of retrospectivity is involved in the instant appeal and as the issue is also pending adjudication before the Larger Bench of this Tribunal, therefore, the appeal in hand may be adjourned. Adjourned. To come up for arguments before the D.B on 16.09.2021.


(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

25.06.2020

Learned counsel for the appellant and Mr. Kabirullah Khattak learned Addl. AG for the respondents present.

Former requests for adjournment in order to further prepare the brief.

Adjourned to 23.09.2020 before D.B.

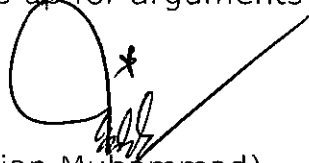

Member

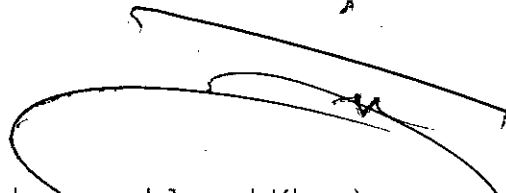

Chairman

23.09.2020

Appellant is present in person. Mr. Kabirullah Khattak, Additional Advocate General for the respondents is also present.

According to appellant his counsel has proceeded to village in connection with domestic affairs. Requested for adjournment. Last chance is given. The case is adjourned to 14.12.2020 on which to come up for arguments before D.B.

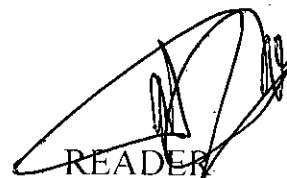

(Mian Muhammad)
Member (Executive)


(Muhammad Jamal Khan)
Member (Judicial)

14.12.2020

Counsel for appellant and Mr. Kabirullah Khattak learned Addl. AG for respondents present.

Due to COVID-19 the case is adjourned for the same on 08.03.2021 before D.B.


READER

18.12.2019

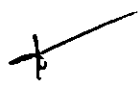
Appellant in person present. Mr. Kabir Ullah Khattak learned Additional Advocate General present. Appellant seeks adjournment as his counsel is not in attendance. Adjourn. To come up for arguments on 31.01.2020 before D.B.


Member


Member

31.01.2020

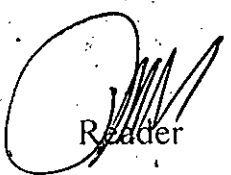
Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 02.04.2020 before D.B.


Member


Member

02.04.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 25.06.2020 before D.B.


Reader

15

11.07.2019

Appellant in person and Addl. AG present. No representative of the respondents is available.

Learned AAG is required to ensure attendance of representative of respondents and submission of written reply/comments on 04.09.2019 before S.B.

Chairman 

04.09.2019

Counsel for the appellant and Mr. Usman Ghani District Attorney alongwith Ihsanullah, H.C for the respondents present.

Representative of the ^{respondents} requests for further time to furnish parawise comments. Adjourned to 02.10.2019 by way of last chance to the respondents for submission of requisite reply/comments.

Chairman 

02.10.2019

Appellant alongwith his counsel present. Addl: AG alongwith Mr. Ihsan, ASI for respondents present.

Representative of the respondents submitted reply, which is placed on file.

To come up for rejoinder and arguments on 18.12.2019 before D.B.

Chairman 

16

26.03.2019

Appellant in person present. Written reply not submitted. Ihsan Ullah S.I legal representative of the respondent department present and seeks time to furnish written reply/comments. Adjourn. To come up for written reply/comments on 25.04.2019 before S.B.



Member

25.04.2019

Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Written reply on behalf of respondents not submitted. Learned Additional AG requested for further adjournment for filing of written reply. Adjourned to 18.06.2019 for written reply/comments before S.B.



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

18.06.2019

Appellant alongwith his counsel and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Ihsanullah, ASI for the respondents present. Written reply on behalf of respondents not submitted. Representative of the department requested for further adjournment to submit written reply. Last chance is granted. Adjourned to 11.07.2019 for written reply/comments before S.B.



(Muhammad Amin Khan Kundi)
Member

(17)

26.12.2018

Learned counsel for the appellant present and seeks adjournment. Adjourn. To come up for preliminary hearing on 30.01.2019 before S.B.


Member

30.01.2019

Counsel for the appellant Amanullah present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in Police Department. He was discharged from service vide order dated 02.10.2009 by the competent authority on the allegation of absence from duty. It was further contended that the appellant filed departmental appeal on 12.07.2018 which was rejected on 26.07.2018 and communicated to the appellant on 31.07.2018 hence, the present service appeal on 29.08.2018. Learned counsel for the appellant further contended that neither charge sheet, statement of allegation was served upon the appellant nor inquiry was conducted therefore, the impugned order is illegal and liable to be set-aside. It was further contended that the impugned order has been passed retrospectively i.e from the date of absence therefore, the same is void and limitation does not run against the said order.

The contention raised by the learned counsel for the appellant needs consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter, notice be issued to the respondents for written reply/comments for 26.03.2019 before S.B.

Appellant Deposited
Security & Process Fee


(Muhammad Amin Khan Kundi)
Member

18

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 1108/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	06/09/2018	<p>The appeal of Mr. Aman Ullah resubmitted today by Syed Noman Ali Bukhari Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR 6/9/18</p>
2-	7-9-18	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>21-9-2018</u></p> <p style="text-align: right;"><i>MA</i> MEMBER</p>
	22.9.2018	<p>Due to muharram w/ haramm vacations the case was not heard on 20.9.2018 Adjournd for <u>7-11-2018</u></p> <p style="text-align: right;"><i>[Signature]</i> READER</p>
	7-11-2018	<p>Due to indisposment of honorable chairman the Tribunal is non functional therefore the case is adjourned to come up for the same on <u>25-12-2018</u></p> <p style="text-align: right;"><i>[Signature]</i> Reader</p>


19

The appeal of Mr. Aman Ullah Ex-Constable No. 1624 son of Mirza Ali Khan Distt. Karak received today i.e. on 29.08.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Annexure-C of the appeal is illegible which may be replaced by legible/better one.

No. 1747 /S.T,

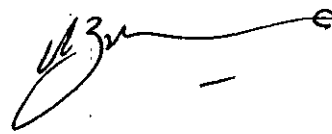
Dt. 29/8 /2018.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Syed Noman Ali Bukhari Adv. Pesh.

Sir,

objection removed & file
re-submitted



6-9-2018

(20)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

SCANNED
KPK
Peshawar

APPEAL NO. 1108/2018

Aman Ullah

V/S

Police Deptt:

INDEX

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	1-3
2.	Copy impugned order	-A-	04
3.	copy of departmental appeal	-B -	05
4.	Copy of rejection order	-C-	06
5.	Vakalat Nama	-----	07



APPELLANT
Aman Ullah

THROUGH:



UZMA (SYED)



(SYED NOMAN ALI BUKHARI)
ADVOCATES, HIGH COURT

(21) (1)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1108 /2018

Aman Ullah Ex-Constable nO 1624
S/o Mirza Ali Khan village Shubli Banda
Tehsil Takht Nusrati District Karak.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1347

Dated 29/8/18

.....(Appellant)

VERSUS

1. The IGP KPK, Peshawar.
2. The Commandant FRP, KPK, Peshawar.
3. The Superintendent of police FRP KOhat range Kohat.

.....(Respondents)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER of RESPONDENT NO. 2 DATED 31.12.2010 WHEREBY, THE APPELLANT HAS BEEN DISMISSED FROM SERVICE AND REJECTION ORDER DATED 26.07.2018 COMMUNICATED ON 31.07.2018 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED FOR NO GOOD GROUNDS.

PRAYER:

Filed to day
29/8/18
Registrar

THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDERS DATED 31.12.2010 NOT COMMUNICATED TO THE APPELLANT and 26.07.2018 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

Re-submitted to -day
and filed.

6/9/18
Registrar

22

2

RESPECTFULLY SHEWETH:

FACTS:

Facts giving rise to the present service appeal are as under:

1. That the appellant was appointed as Constable in Police force in year 2007 and the appellant was performed his duties with entire satisfaction of his superiors.
2. That the appellant had some domestic problems and mother of appellatn got serious ill, there was no other family member to takecare of appellant mother therefore appellant was absented from duty which was not willful.
3. That, thereafter, the appellant was departmentally proceeded, without charge sheet, statement of allegation, regular inquiry and even without showcause notice, the impugned order dated 02.10.2009 was passed against the appellant whereby the appellant was dismissed from service with retrospective effect which was also never communicated to the appellant. The appellant been agrrieved from the impugned dismissal order preffered departmental appeal which was rejected vide order dated 26.07.2018 communcated to the appellant on 31.07.2018. **(Copy of impugned order and departmental appeal is attached as Annexure-A & B).**
4. That now the appellant come to this august Tribunal on the following grounds amongst others.

GROUND:

- A) That the impugned orders dated 02.10.2009 and 31.07.2018 is against the law, facts, norms of justice and void-ab-initio as has been passed with retrospective effect and material on record, therefore not tenable and liable to be set aside.
- B) That the impugned order was retrospective order which was void in the eye of law and according to Superiors Court Judgment reported as 2002 SCMR, 1129 and 2006 PLC 221.
- C) That there is no order in black and white form to dispense with the regular inquiry which is violation of law and rules and without charge sheet, statement of allegation and proper inquiry the appellant was dismissed from the service vide order dated 02.10.2009 without given personal hearing with retrospective effect

ATTACHED

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3

which is necessary and mandatory in law and rules before imposing major penalty. So the whole procedure conducted has nullity in the eye of law. So the impugned order is liable to be set aside.

- D) That the appellant has been condemned unheard and has not been treated according to law and rules.
- E) That neither charge sheet, statement of allegation, show cause notice was served upon the appellant nor inquiry was conducted against the appellant, which was necessary and mandatory in law before imposing major punishment which is violation of law, rules and norms of justice.
- F) That the appellant has not been treated under proper law despite he was a civil servant of the province, therefore, the impugned order is liable to be set aside on this score alone.
- G) That the abscent of the appellant was not intentially but due to some domestic problem and mother illness. So the penalty imposed upon the appellant was so harshed.
- H) That the appellant's guilt has not been proved beyond the shadow of doubt and the appellant has been punished on the basis of conjecture and surmises.
- I) That no chance of personal hearing was provided to the appellant and as such the appellant has been condemned unheard throughout.
- J) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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



APPELLANT

Aman Ullah

THROUGH:

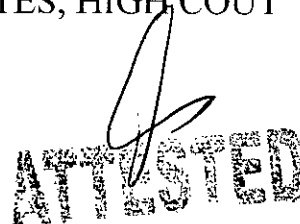


UZMA SYED)

&

(SYED NOMAN ALI BUKHARI)

ADVOCATES, HIGH COURT



260

A 4

D: Order

ORDER

Constable Aman Ullah No. 1626²⁴ has absented himself from his official duty with effect from 14.03.2009 without any leave or permission of the competent authority. He was issued Show Cause Notice/Charge Sheet to explain the reason of his willful absence from his official duty, but no reply to this effect has been received.

Line Officer, FRP Kohat was appointed as enquiry officer to look into the matter and submit his findings to the undersigned within stipulated period. The Enquiry Officer in his enquiry has mentioned that the above named defaulter constable has gone abroad for earning his livelihood.


In light of above, Ex-parte departmental action is taken against the above named defaulter constable and he discharged from service from the date of his absence under Removal From Service (Special Power) Ordinance – 2000.


OB 5581

Dated 2/2/2009

Copy to :

1. Pay Officer
2. OASI
3. LO
4. SRC


Superintendent of Police, FRP,
Kohat Range, Kohat


ATTESTED

بکھنور جناب آئی جی صاحب خیبر پختون خوا پولیس

عنوان۔ درخواست برآمد بحالی بر ملازمت بطور سپاہی FRP کوہاٹ

جناب عالی۔

سائل ہمدردانہ گزارش کرتا ہے۔

۱۔ یہ کہ من سائل نہایت ہی غریب خاندان سے تعلق رکھتا ہے۔

۲۔ یہ کہ من سائل بال بچہ دار ہے۔

۳۔ یہ کہ سائل 2008 میں FRP کوہاٹ میں بھرتی ہوا اور باقاعدہ طور پر ٹریگ پاس کیا اور ٹریگ پاس کرنے کے بعد سائل باقاعدہ طور پر دل جمعی سے

ڈیوٹی سرانجام دے رہا تھا۔

۴۔ یہ کہ چونکہ دوران ڈیوٹی سائل کے گھریلو حالات خراب ہو گئے اور والدہ صاحبہ شدید بیمار ہو گئی اور والدہ صاحبہ کی تیمارداری کرنے والا کوئی نہیں تھا۔

۵۔ یہ کہ سائل ایک روزن چند یوم کی چھٹی پر آیا اور اس کے بعد والدہ کی بیماری کی وجہ سے وریں نوکری پر نہ جاسکا اور جس کی وجہ سے کو بتاریخ 2/10/09

کو 7 ماہ 12 دن کی غیر حاضری پر OB No. 558 کے تحت ڈسچارج کیا۔

۶۔ یہ کہ اب چونکہ سائل کے گھریلو حالات اور والدہ صاحبہ ٹھیک ٹھاک ہے صحت یاب ہو چکی ہے بدیں وجہ سائل دوبارہ اپنی نوکری کرنا چاہتا ہے۔

لہذا سائل کو اپنی نوکری پر جمع سارے مراعات بحال کیا جائے اور بعد از بحالی شکایت کا موقع نہیں دوں گا۔ اور انجناب کے ترقی و اقبال کے لئے

میرے بچے بھی دُعا رہینگے۔

عین نوازش ہوگی۔

نقطہ مورخہ۔ 12/07/2018

العارض

امان اللہ بلٹ نمبر 1624 ولد میرزا علی خان سکنہ شوہلی بانڈہ تحصیل تخت نصرتی ضلع کرک

شناختی کارڈ نمبر۔ 14203-7199106-3

موبائل نمبر۔ 0348-9655260

کے
ATTESTED

26

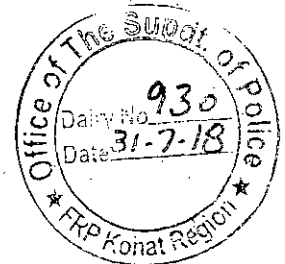
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26 of 2018

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
CENTRAL POLICE OFFICE,
PESHAWAR.

9
6

No. SI 3055 /18, dated Peshawar the 26/07/2018.

The Commandant,
FRP, Khyber Pakhtunkhwa,
Peshawar.



APPEAL (EX-PC AMAN ULLAH NO. 1624)

Ex-Commander Aman Ullah No. 1624 of FRP Kohat Range had submitted appeal to the Inspector General of Police, Khyber Pakhtunkhwa, Peshawar for reinstatement into service. The appeal was processed / examined at Central Police Office, Peshawar and filed by the appellant. The appellant has been in bad time barred for about 09 years.

The applicant may please be informed accordingly.

S/ Legal
for m/ action
26/7

Syed Anis Ull Hassan
Registrar
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

office of Commandant FRP KP, Peshawar
No 8093 /SI copy, dated Peshawar on 30/07/2018

copy of above is forwarded to the SP FRP
Kohat Range, Kohat for information and
further m/ action if

S R/OHC

for m/ a.
Superintendent of Police,
FRP Kohat Range
Kohat
30/7

Appellant for Commandant FRP
Kohat Range, Kohat for information and
further m/ action if

offe
31/7

ATTACHED

64 20/7/18
13/8/18

27

VAKALAT NAMA

NO. _____/20

SCANNED
KPST
Peshawar

IN THE COURT OF K.P.L. Service Tribunal, Peshawar

Aman Ullah

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Police Deptt

(Respondent)
(Defendant)

I/We, Aman Ullah

Do hereby appoint and constitute **SYED NOMAN ALI BUKHARI and Uzma Syed Advocate High Court Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20

[Signature]
(CLIENT)

ACCEPTED

[Signature]
SYED NOMAN ALI BUKHARI
Advocate High Court Peshawar.

[Signature]
UZMA SYED
Advocate High Court Peshawar.

(31)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1108/2018.

Aman Ullah Ex-constable No. 1624 S/O Mirza Ali Khan Village Shubli Banda, Tehsil
Takht Nusrati, District Karak.....**Appellant.**

VERSUS

1. **Inspector General of Police,**
Khyber Pakhtunkhwa, Peshawar.
2. **Commandant FRP,**
Khyber Pakhtunkhwa, Peshawar.
3. **Superintendent of Police, FRP**
Kohat Range, Kohat.....**Respondents.**

**SCANNED
KPST
Peshawar**

PRELIMINARY OBJECTIONS

1. That the appeal is badly time barred.
2. That the appeal is not maintainable in the present form.
3. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
4. That the appellant has no cause of action to file the instant appeal.
5. That the appellant has not come to this Honorable Tribunal with clean hands.
6. That the appellant is estopped due to his own conduct to file the instant Service Appeal.
7. That the appellant is trying to conceal material facts from this Honorable Tribunal.

WRITTEN REPLY ON BEHALF OF RESPONDENTS.

RESPECTED SHEWETH.

FACTS:-

1. Para No. 1 is admitted to the extent that the appellant was remained absent from lawful duty for a long period of 202 days during his short length service.
2. Incorrect and denied. The appellant was remained absent from lawful duty with effect from 14.03.2009 till the date of his dismissal from service without prior permission of the competent authority. The plea taken by the appellant regarding to the illness of his mother is a propounded story.
3. Incorrect and denied. On the allegation of prolong absence the appellant was issued Charge Sheet alongwith Summary of Allegations and Enquiry Officer was nominated to conduct enquiry against him. The appellant failed to submit reply of Charge Sheet or appear before Enquiry Officer, despite he was summoned time and again. After fulfillment of codal formalities, he was dismissed from service by the competent authority. His departmental appeal was filed by the competent authority being time barred about 09 years.
4. Incorrect and denied. The appellant has not come to this Honorable Tribunal with clean hands, the appellant has no cause of action to file the instant appeal, therefore, the same may be dismissed on the following grounds.

GROUND:-


- A. Incorrect and denied. The impugned orders passed by the respondents are legally justified and in accordance to law.
- B. Incorrect and denied. The appellant was proceeded against departmentally and during the course of enquiry it has been found that the appellant has bring abroad for labor. The Enquiry Officer recommended him for major punishment. After fulfillment the due codal formalities he was awarded the major punishment of dismissal from service in accordance to law. Judgment mentioned by the appellant in the Para is not applicable to the case of appellant.
- C. Incorrect and denied. The appellant was absented himself lawful duty for a long period of 202 days, without any leave or prior permission of the competent authority. In this regard he was issued Charge Sheet alongwith Summary of Allegations and Line Officer FRP Kohat Range, was nominated as Enquiry Officer to conduct enquiry against him. After completion of enquiry, the Enquiry Officer submitted his findings, wherein he stated that the appellant has been bring abroad for labor purpose, and there is no hope of his returned soon in future. Upon the findings of Enquiry Officer, he was issued Final Show Cause Notice, which was served upon him through postal service on his home address. He failed to submit his reply of Show Cause Notice and an ample opportunity of personal hearing was also provided to the appellant, but he failed to avail the opportunity of personal hearing. He was awarded major punishment of dismissal from service after adopting the due codal formalities, therefore the instant appeal is liable to dismissed.(Copies of Charge Sheet, Enquiry Report and Show Cause Notice are attached as annexure A, B & C)
- D. Incorrect and denied. An ample opportunity of personal hearing had already been offered to the appellant, but he failed to appear before the competent authority to defend himself.
- E. Incorrect and denied. The appellant was issued Charge Sheet alongwith Summary of Allegations, but he failed to submit his reply. During the course of enquiry the enquiry officer found him guilty of the charges leveled against him and recommended for major punishment. Upon the finding of enquiry officer he was issued Show cause notice, which was served upon him on his home address through postal service. In the light of recommendation of enquiry officer and other material available on record the appellant was dismissed from service by the competent authority. Moreover, after lapse of more then 10 years now the appellant desire for reinstatement in service.
- F. Incorrect and denied. The appellant was treated in accordance to law/rules as he was issued Charge Sheet, Show Cause Notice and enquiry was conducted

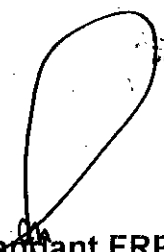
33
against him and after completion of enquiry he was awarded major punishment of dismissal from service under the relevant law.

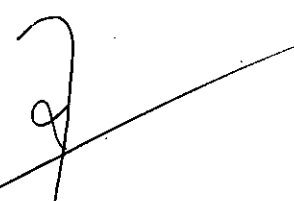
- G. Incorrect and denied. The appellant was remained absent from lawful duty with effect from 14.03.2009 till the date of his dismissal from service without prior permission of the competent authority. The plea taken by the appellant regarding to the illness of his mother is a propounded story. The penalty awarded to the appellant is commensurate with the gravity of his misconduct.
- H. Incorrect and denied. The appellant remained absented himself from lawful duty with effect from 14.03.2009 till the date of his dismissal from service. Proper departmental enquiry had been initiated against him and his guilt was fully established by the Enquiry Officer during the course of enquiry and therefore he was dismissed from service as per law/rules.
- I. Incorrect and denied. As explained in the preceding Paras an ample opportunity of personal hearing had already been offered to the appellant, but he failed to appear before the competent authority to defend himself.
- J. The respondents may also be permitted to raise additional grounds at the time of arguments.

PRAYERS:-

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


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


Commandant FRP,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 2)


Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
(Respondent No.1)

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✓ "A"

CHARGE SHEET

1. Superintendent of Police FRP Kohat
as competent authority, hereby charge you Const. Amanullah No. 1626
committed the following irregularities: -

a. Constable Amanullah No. 1624, Remained
absent from official duty w.e. from
14.3.2009 till to-date.

دینا

دینا

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 a or any of the penalties specified in section - 3 of the Ordinance ibid.

3. You are, therefore, required to submit your written defence within 7 days of the receipt of this Charge Sheet to the Enquiry Officer/ Committees, as the case may be.

L.O.
in order
4/15/09

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.

Superintendent of Police, FRP,
Kohat/Range Kohat

No. 153 /PA

Dated 19/7 /2009

55

'A/2'

DISCIPLINARY ACTION

1. I, Superintendent of Police FRP, Kohat, as competent authority, am of the opinion that Const. Amanullah, No. 1624, has rendered himself liable to be proceeded against as he committed the following acts/omissions within the meaning of section - 3 of the NWFP (Removal from Service) Special Power Ordinance 2000.

STATEMENT OF ALLEGATIONS


Constable Amanullah, No. 1624, remained absent from official duty w.e. from 14.3.2009 till to-date.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations, an Enquiry Committee consisting of the following is constituted under section-3 of the Ordinance: -

i. R.I./L.O

13. The Enquiry Committee shall, in accordance with the provisions of the Ordinance, provide reasonable opportunity of hearing to the accused, record its findings and make, within twenty five days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

14. The accused and a will conversant representative of the department shall join the proceedings on the date, time and place fixed by the Enquiry Committee.


Superintendent of Police, FRP,
Kohat Range Kohat

A copy of the above is forwarded to: -

11. R.I./L.O. The committee for initiating proceedings against the accused under the provisions of the NWFP, Removal from Service (Special Power) Ordinance - 2000.

12. Constable Amanullah No. 1624. The concerned official's with the directions to appear before the Enquiry Committee, on the date, time and place fixed by the Committee, for the purpose of the enquiry proceedings.

36

"B"

Blue

تعمیراتی کاموں کے لیے 17/19/1933 سے 17/19/1933 تک کیلئے

1624 فروری 1933ء کے کارڈ کے تحت فراہم کیے گئے

FRP

کے تحت فراہم کیے گئے

کے تحت فراہم کیے گئے

کے تحت فراہم کیے گئے

کے تحت

کے تحت فراہم کیے گئے

26.9.33

Discharge from
The date of

absence

558
2/1/34

[Signature]

37

SHOW CAUSE NOTICE

WHERE AS YOU Const: Amanullah No. 1624 While posted at Line Kohat

Absent himself with effect from 14.3.2009

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

NOW THEREFORE, I Superintendent of Police FRP, Kohat Range exercise of the power vested upon me under the aforesaid rules hereby call you Const: Amanullah No. 1624 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.


Superintendent Of Police, FRP,
Kohat Range, Kohat

No. 281/PA
Date. 16-5-09