

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.712/2023

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

SCANNED
KPBT
Peshawar

**Muhammad Shahid Ex-Constable No. 1299/FRP S/O Taj Ali Khan R/O P.O
Risalpur, Kalanjer Tehsil & District Nowshera.**

... (Appellant)

VERSUS

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

... (Respondents)

Mr. Rizwanullah
Advocate

... For Appellant

Mr. Syed Asif Ali Shah
Deputy District Attorney

... For Respondents

Date of Institution.....29.03.2023
Date of Hearing.....01.11.2023
Date of Decision.....01.11.2023

JUDGMENT

RASHIDA BANO, MEMBER (J):The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of this appeal, the impugned orders dated 12.05.2022 and 07.11.2022 passed by respondent No. 1 and 2 may very graciously be set aside and the appellant be reinstated into service full back wages and benefits.”

2. Brief facts of the case are that the appellant was serving the respondent department as constable. During service father of the appellant fell ill and was confined to bed for a long time. There was no other person to look after



him except appellant. He submitted an application for grant of leave but leave was not sanctioned and he was transferred from FRP HQr Peshawar to FRP line Kohat on the pretext of complaint vide order dated 26.01.2022. Disciplinary proceedings were initiated against the appellant and after fulfillment of codal formalities he was removed from service vide order dated 16.02.2022. Feeling aggrieved, he filed departmental appeal, which was rejected, hence the instant service appeal.

2. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

3. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law and rules and respondents violated Article 4 of the Constitution of Islamic Republic of Pakistan 1973. He further argued that no charge sheet and statement of allegations were served upon the appellant. He contended that no show cause notice was issued to appellant before imposition of major penalty therefore, the impugned order is not tenable in the eyes of law. Lastly, he submitted the no opportunity of personal hearing was afforded to the appellant and he was condemned unheard, therefore, he requested that instant appeal might be accepted. Reliance is placed on 2000 SCMR 1743, 1984, 2006 SCMR1641 and 1989 SCMR 1690.

4. Conversely, learned Deputy District Attorney contended that appellant was treated in accordance with law and rules. He further contended that appellant was deliberately failed to submit his arrival report at his new place of posting i.e FRP Kohat Range and remained absent from his lawful duty without any leave or prior permission of the competent authority. On the



allegation of willful absence he was proceeded against departmentally and after fulfillment of all codal formalities he was awarded major punishment of removal from service.


6. Perusal of record reveals that appellant was serving in police department as constable when disciplinary proceeding was initiated against him by the respondent on 24.03.2022 by issuing charge sheet and statement of allegation with the allegation "That as reported vide D.D No. 13 dated 16.02.2020 you while transferred from FRP HQrs Peshawar on complaint basis vide Deputy Commandant FRP order No. 156-59/PA dated 26.01.2022 and have to report your arrival at FRP Kohat on 16.02.2022 but you failed to do so and deliberately absented yourself from same date and have not reported back till date". Mr. Khalid Mehmood SI/PC was appointed as enquiry officer who after completion inquiry, submitted report on 07.04.2022 wherein he concluded that there was no good entry in the service book of the appellant and he is habitual absence and not interested in duty. Therefore, despite so many notices he doesn't not attend the inquiry proceeding for the purpose of receiving charge sheet and absent from 16.02.2022. It is admitted from the inquiry report that no charge sheet and statement of allegation was served upon the appellant and provide him opportunity of fair trial but in the instant case only two daily diary report bearing No. 7 dated 10.03.2022 and D.D NO. 13 dated 14.03.2022 was annexed for the purpose of showing service and knowledge of the appellant about inquiry proceeding which is not sufficient because it is duty of the inquiry officer to sent charge sheet along with statement of allegation upon the home address of the appellant



for fulfillment of requirement of a fair trial. Record reveals that total period of absent of the appellant was 87 days. Appellant contended that his absence was not willful rather it was due to illness of his father's and he filed proper application for medical leave to the authority for four months due to his father illness but the same was not accepted and appellant was transferred upon a baseless complaint.

7. It is a well settled legal proposition that regular inquiry is must before imposition of major penalty of removal from service, whereas in case of the appellant, no such inquiry was conducted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 have held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice. In absence of proper disciplinary proceedings, the appellant was condemned unheard, whereas the principle of Audi Alteram Partem was always deemed to be imbedded in the statute and even if there was no such express provision, it would be deemed to be one of the parts of the statute, as no adverse action can be taken against a person without providing right of hearing to him. Reliance is placed on 2010 PLD SC 483.

7. So it is established on record that appellant was not provided with an opportunity of self-defense, and personal hearing which is foremost requirement of a fair trial. Competent authority treated absence period of 87 days pay without leave. The competent authority itself had regulate



ORDER


01.12.20231. Appellant alongwith his counsel present. Mr. Muhammad Jan,

District Attorney Mr. Ihsan Ullah, ASI for the respondents present.

2. Vide our detailed judgement of today placed on file, penalty awarded to the appellant is too harsh and does not commensurate with misconduct. Therefore, we convert the impugned punishment of removal from service into minor punishment of stoppage of three annual increments for a period of two years. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 1st day of November, 2023.*


(MUHAMMAD ARBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)


the absent period of the appellant by treating the same as leave without pay, so the very basis upon which appellant was proceeded vanished away. Reliance is placed on 2006 SCMR 434 and 2012 TDC (Served) 348.

8. Appellant seek condonation of delay in filing departmental appeal which was filed on 13.09.2022 after obtaining copy of impugned order dated 12.05.2022 on 24.08.2022. Appellant contention is that, the impugned order was not communicated to him by the respondent. Respondent when asked failed to brought the proof of communication delivery or even dispatch no of impugned order dated 12.05.2022 to the appellant. Moreover, departmental/appellate authority dismissed the departmental appeal of the appellant on merit and not on the basis of limitation. Therefore, we condone limitation by accepting his application.

9. In view of the above discussion, penalty awarded to the appellant is too harsh and does not commensurate with misconduct. Therefore, we convert the impugned punishment of removal from service into minor punishment of stoppage of three annual increments for a period of two years. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 1st day of November, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

02.08.2023

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

Reply/comments on behalf of respondents not submitted. Representative of the respondents requested for further time to submit reply/comments. Another opportunity is granted to the respondents to submit-reply/comments on the next date positively, failing which their right for submission of reply/comments shall be deemed as struck off. To come up for reply/comments on 21.09.2023 before S.B. P.P given to the parties.

(Muhammad Akbar Khan)

Sep, 2023

1. Learned counsel for the appellant present. Mr. Muhammad Jan. District Attorney alongwith Mr. Ihsanullah, ASI for the respondents present.

Kamranullah

2. Reply/comments on behalf of respondents submitted which are placed on file. Copy of the same handed over to learned counsel for the appellant. To come up ^{for arguments on} 01.11.2023 before D.B. P.P given to the parties.

(Muhammad Akbar Khan)
Member (I:)

Kamranullah

SCANNED
K.P. ST
Peshawar

SA 712/23

16th June, 2023

01. Counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General alongwith Ihsanullah, ASI for the respondents present.

02. Reply/comments on behalf of respondents have not been submitted. Representative of the respondents requested for time. ~~_____~~ To come up for written reply/comments on 17.07.2023 before the S.B. Parcha Peshi given to the parties.

SCANNED
KF ST
Peshawar

(FAREEHA PAUL)
Member (E)

Furte Subhan. P.S

17.07.2023

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

Reply/comments on behalf of respondents not submitted. Learned Assistant Advocate General seeks time to contact the respondents for submission of reply/comments. Last opportunity is granted. To come up for reply/comments on 02.08.2023 before S.B. P.P given to the parties.

(Muhammad Akbar Khan)
Member (E)

SCANNED
KF ST
Peshawar
Sunramullah

04th April, 2023

Counsel for the appellant present. Preliminary arguments heard and record perused.

Points raised need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security within 10 days. Thereafter, local respondents be served through ordinary mode, while out-district respondent be served through TCS, the expenses of which shall be deposited by the appellant. To come up for written reply/comments 17.05.2023 before the S.B. Parcha Peshi given to learned counsel for the appellant.

Rs-100/-
Appellant Deposited
Security & Process Fee

Fareeha Paul
7/4/23

SCANNED
KFST
Peshawar

(Fareeha Paul)
Member(E)

17.05.2023

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

SCANNED
KFST
Peshawar

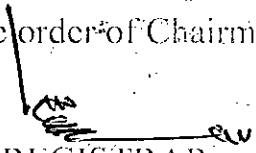
Reply/comments on behalf of respondents not submitted. Representative of the respondents requested for time to submit reply/comments. Adjourned. To come up for reply/comments on 16.06.2023 before S.B. Parcha Peshi given to the parties.

(Muhammad Akbar Khan)
Member (E)

FORM OF ORDER SHEET

Court of _____

Case No.- 712/2023

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|------------------------------|---------------------------|---|
| 1 | 2 | 3 |
| 1- | 29/03/2023 | <p>The appeal of Mr. Muhammad Shahid presented today by Mr. Rizwan Ullah Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on <u>4-4-23</u>. Parcha Peshi is given to appellant/counsel for the date fixed.</p> <p style="text-align: right;">By the order of Chairman  REGISTRAR</p> |
| 04 th April, 2023 | | <p>Counsel for the appellant present. Preliminary arguments heard and record perused.</p> <p>Points raised need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security within 10 days. Thereafter, local respondents be served through ordinary mode, while out-district respondent be served through TCS, the expenses of which shall be deposited by the appellant. To come up for written reply/comments 17.04.05.2023 before the D.B. Parcha Peshi given to learned counsel for the appellant.</p> |

**SCANNED
KPST
Peshawar**

**(Fareeha Paul)
Member(E)**

KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

CHECK LIST

Muhammad Shahid

Versus

SP (FRP) Kohat Range,
Kohat etc

..... Appellant

..... Respondents

| S NO | CONTENTS | YES | NO |
|------|--|-----|----|
| 1. | This petition has been presented by: <u>Advocate</u> <u>Court</u> | √ | |
| 2. | Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents? | √ | |
| 3. | Whether appeal is within time? | √ | |
| 4. | Whether the enactment under which the appeal is filed mentioned? | √ | |
| 5. | Whether the enactment under which the appeal is filed is correct? | √ | |
| 6. | Whether affidavit is appended? | √ | |
| 7. | Whether affidavit is duly attested by competent Oath Commissioner? | √ | |
| 8. | Whether appeal/annexures are properly paged? | √ | |
| 9. | Whether certificate regarding filing any earlier appeal on the subject, furnished? | √ | |
| 10. | Whether annexures are legible? | √ | |
| 11. | Whether annexures are attested? | | |
| 12. | Whether copies of annexures are readable/clear? | √ | |
| 13. | Whether copy of appeal is delivered to AG/DAG? | √ | |
| 14. | Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents? | √ | |
| 15. | Whether numbers of referred cases given are correct? | √ | |
| 16. | Whether appeal contains cutting/overwriting? | x | |
| 17. | Whether list of books has been provided at the end of the appeal? | √ | |
| 18. | Whether case relate to this court? | √ | |
| 19. | Whether requisite number of spare copies attached? | √ | |
| 20. | Whether complete spare copy is filed in separate file cover? | √ | |
| 21. | Whether addresses of parties given are complete? | √ | |
| 22. | Whether index filed? | √ | |
| 23. | Whether index is correct? | √ | |
| 24. | Whether Security and Process Fee deposited? On _____ | | |
| 25. | Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On _____ | √ | |
| 26. | Whether copies of comments/reply/rejoinder submitted? On _____ | | |
| 27. | Whether copies of comments/reply/rejoinder provided to opposite party? On _____ | | |

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

Name:- Muhammad Shahid

Signature:- [Signature]

Dated:- 29-3-2023

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

In the matter

Service Appeal No. 712 /2023

**SCANNED
KPST
Peshawar**

1. Muhammad Shahid Ex- Constable No. 1299/FRP s/o Taj Ali Khan r/o Post Office, Risalpur, Kalanjer Tehsil and District Nowshera.

APPELLANT

VERSUS

1. The Superintendent of Police, Frontier Reserve Police, Kohat Range Kohat etc.

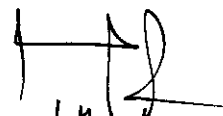
RESPONDENTS

I N D E X

| S.No | Description of documents | Annexure | Pages # |
|------|---|----------|---------|
| 1 | Service Appeal | — | 1-8 |
| 2 | Affidavit | — | 09 |
| 3 | Copy of application for leave | "A" | 10-11 |
| 4 | Copy of medical certificates/documents | "B" | 12-15 |
| 5 | Copy of impugned order dated 12-05-2022 | "C" | 16 |
| 6 | Copy of departmental appeal dated 13-09-2022 | "D" | 17 |
| 7 | Copy of rejection order dated 07-11-2022 | "E" | 18 |
| 8 | Copy of revision petition dated 30-11-2022 | "F" | 19 |
| 9 | Application for condonation of delay with affidavit | — | 20-23 |
| 10 | Wakalatnama | — | — |


Appellant

Through


Rizwanullah

Dated: 28-03-2023

Advocate High Court, Peshawar

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 712 /2023

1. Muhammad Shahid Ex- Constable No. 1299/FRP s/o Taj Ali Khan r/o Post Office, Risalpur, Kalanjer Tehsil and District Nowshera

APPELLANT

Khyber Pakhtunkhwa
Service Tribunal

Case No. 4614

Dated 29/3/2023

VERSUS

1. The Superintendent of Police, Frontier Reserve Police, Kohat Range Kohat.
2. The Commandant, Frontier Reserve Police, Khyber Pakhtunkhwa, Peshawar
3. The Inspector General of Police, Government of Khyber Pakhtunkhwa, Peshawar.
4. The Deputy Commandant, Frontier Reserve Police, HQrs; Peshawar.

RESPONDENTS

Filed to-day
Registrar
29/3/2023

**APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
IMPUGNED ORDER DATED 12-05-2022
PASSED BY THE SUPERINTENDENT
OF POLICE FRONTIER RESERVE
POLICE, KOHAT RANGE KOHAT
(RESPONDENT NO.1) WHEREBY THE
APPELLANT WAS AWARDED MAJOR
PENALTY OF REMOVAL FROM
SERVICE AGAINST WHICH A
DEPARTMENTAL APPEAL WAS
FILED WITH THE COMMANDANT
FRONTIER RESERVE POLICE
KHYBER PAKHTUNKHWA**

**(RESPONDENT NO. 2) ON 13-09-2022
BUT THE SAME WAS REJECTED ON
07-11-2022. HE THEN FILED REVISION
PETITION BEFORE THE INSPECTOR
GENERAL OF POLICE, KHYBER
PAKHTUNKHWA (RESPONDENT
NO. 3) ON 30-11-2022 HOWEVER, THE
SAME WAS NOT RESPONDED.**

Prayer in Appeal

By accepting this appeal, the impugned orders dated 12-05-2022 and 07-11-2022 passed by the respondents No. 1 and 2 may very graciously be set aside and the appellant may kindly be reinstated in service with full back wages and benefits.

Any other relief deemed appropriate in the circumstances of the case, not specifically asked for, may also be granted to the appellant.

Respectfully Sheweth,

Short facts giving rise to the present appeal are as under:-

1. That the appellant was serving as constable at the relevant time when his father was seriously ill and confined to bed for a long time. There was no other person to look after him except appellant as his elder brother Shah Khalid constable embraced Shahadat alongwith Malik Muhammad Saad Khan (Shaheed) DIG during suicide bombing at Peshawar. Therefore, appellant submitted an application for grant of four months leave on the above grounds. But it was indeed unfortunate that the request of appellant was not taken into consideration and instead, he was transferred from FRP HQrs Peshawar to FRP Lines Kohat on the pretext of complaint vide order dated 26-01-2022 and then, relieved from duty on 16-02-2022 as is evident from the impugned order. However, the appellant could not join duty on account of severe illness of his father.

document are appended as Annex-A & B).

2. That the Superintendent of Police FRP, Kohat Range, Kohat (respondent No. 1) initiated the so called disciplinary proceedings at the back of appellant. Ultimately, he was awarded harsh and extreme penalty of removal from service and his absence period w.e.f. 16-02-2022 till date was converted/treated as leave without pay vide order dated 12-05-2022 passed by respondent No. 1.

(Copy of impugned order is appended as Annex-C).

3. That the above impugned order was neither endorsed nor sent to the appellant through registered post by virtue of section 27 of the General Clause Act, 1897 to enable him to seek legal remedy against the same. However, he collected the said order through personal efforts on 24-08-2022. Thereafter, he filed a Departmental appeal with the commandant Frontier Reserve Police Khyber Pakhtunkhwa Peshawar (respondent No. 2) on 13-09-2022 but the same was rejected on 07-11-2022. He then filed revision petition under Rule 11-A (4) of Khyber Pakhtunkhwa Police Rules, 1975 before the Inspector General of Police Khyber Pakhtunkhwa Peshawar (respondent No. 3) on 30-11-2022 but the same was not responded.

(Copy of departmental appeal, rejection order and revision petition are appended as Annex-D, E & F).

4. That no charge sheet alongwith statement of allegation was served on the appellant to explain his position regarding the so-called allegation. Similarly, neither fair and impartial inquiry was conducted nor any show cause notice was given to him. He was also not provided any opportunity of personal hearing before passing the impugned order being the mandatory requirement of law.
5. That the appellant is jobless since his removal from service.

6. That the appellant now files this appeal before this Hon'ble Tribunal inter-alia on the following grounds.

GROUND OF APPEAL

- A. That respondents have not treated appellant in accordance with law, rules and policy on the subject and acted in violation of **Article 4 of the Constitution of Islamic Republic of Pakistan, 1973**. Therefore, the impugned orders are not sustainable in the eye of law.
- B. That father of appellant had faced the sacrifice of his elder son (Shah Khalid) constable during suicide attack at Peshawar in which Malik Muhammad Saad Khan, DIG also embraced Shahdaat but when he was ailing and needed care to save his life from disease, ironically, the application of his son (appellant) for grant of leave to serve his father was turned down. Needless to add that the solemn sacrifice of appellant's family was also not taken into consideration. Above all, his son (appellant) was removed from service notwithstanding the facts that he was ~~was~~ left as the sole earner of family after shahdaat of his elder brother on one hand, while on the other, the appellant had rendered more than four years service and as such, he was also legally entitled to avail such leave by virtue of **Rule 12 of the Khyber Pakhtunkhwa Civil Servants Revised Leave Rules, 1981**. Thus, the impugned orders are against the spirit of administration of justice.
- C. That prior to the enquiry, the competent Authority (respondent No. 1) was under statutory obligation to have served the appellant with charge sheet along with statement of allegation so as to enable him to explain his position regarding the so-called misconduct as required by virtue of Rule 6(1)(a) of the Khyber Pakhtunkhwa Police Rules, 1975 (amended in 2014) as well as law laid down by august Supreme Court of Pakistan reported in **2000-SCMR-page-1743 citation a**. It would be advantageous to reproduce herein the relevant citation for facility of reference: -

2000-SCMR-1743

Dismissal from service---Framing of charge and its communication to civil servant alongwith statement of

**allegations was not mere a formality
but was a mandatory requisite which
was to be followed.**

- D.** That the regular enquiry was conducted in utter violation of law as neither the appellant was served with a notice nor any publication was given in the leading Newspapers so as to fulfil the requirement of law. But he failed to do so and ex-parte proceedings were held against him notwithstanding the fact that right of fair trial is a fundamental right by dint of which a person is entitled to a fair trial and due process of law. The appellant has been deprived of his indispensable fundamental right of fair trial as enshrined in **Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973**. Thus, the impugned orders are bad in law.
- E.** That the absence of appellant was neither willful nor intentional. But the same was beyond his control due to protracted illness of his father. Moreover, the appellant was entitled for the grant of said leave under the Rules as referred to earlier. Therefore, the impugned orders are not maintainable in the eyes of law.
- F.** That the appellant was neither involved in any corruption, embezzlement and immoral turpitude, therefore, such harsh and extreme penalty of removal from service did not commensurate to the nature of allegation of absence from duty. Hence, the impugned orders are not tenable under the law.
- G.** That the appellate Authority (respondent No.2) was under statutory obligation to have applied his independent mind to the merit of the case by taking notice about the illegality and lapses committed by the inquiry officers as well as by the Competent Authority as enumerated in earlier paras. Nevertheless, he failed to do so and rejected the departmental appeal without any cogent reasons. Therefore, the impugned orders are not tenable under the law.
- H.** That the Revisional Authority (respondent No. 3) was under statutory obligation to have decided the revision petition filed by the appellant after application of mind with cogent reasons within reasonable time

as per law laid down by august Supreme Court of Pakistan reported in 2011-SCMR-page-1. It would be advantageous to reproduce herein the relevant citation for facility of reference: -

2011-SCMR-page-1

Citation-b

**S. 24-A---Speaking order-Public
functionaries are bound to decide
cases of their subordinates after
application of mind with cogent
reasons within reasonable time.**

But the respondent No. 1 failed to adhere the above law. Hence, the impugned orders are liable to set aside on this count alone

- I. That the respondent No. 1 was legally bound to have served a show cause notice on the appellant before awarding major penalty of removal from service but he failed to do so and patently violated the law laid down by august Supreme Court of Pakistan reported in 1989-SCMR-1690 (citation-a) & 2009-SCMR-605 (citation-c). The relevant citations of the judgments are as under:-

1989 S C M R 1690

(citation-a)

**---S.6--Constitution of Pakistan
(1973), Art. 203-F--Repugnancy to
Injunctions of Islam--Disclosure by a
show-cause notice of grounds on
which action under of the Act was
proposed to be taken and of an
opportunity of hearing to the person
concerned against whom an action
was required to be taken, held, was
necessary and its absence from a
statute was repugnant to the
Injunctions of Islam.**

2009 S C M R 605

(citation-c)

**----Misconduct, charge of---
Employee's right to show-cause
notice before passing of
termination order against him by
competent authority---**

Hence, the impugned orders are not tenable under the law.

- J.** That it was also incumbent upon the respondent No.1 to have provided an opportunity of personal hearing to the appellant before awarding major penalty but he failed to do so and blatantly violated the law laid down by august Supreme Court of Pakistan reported in **2006-SCMR-1641 (citation-c)**. The relevant citation is mentioned below: -

2006-SCMR-1641
(citation-c).

---Rr. 4(b), 5 & 6---Inquiry proceedings---Major penalty, imposition of---Personal hearing to civil servant, opportunity of---Scope---Such opportunity must be afforded by the authority competent to impose major penalty or his delegatee.

Therefore, the impugned orders are required to be reversed on this count alone.

- K.** That the impugned orders are against law, facts of the case and norms of natural justice. Therefore, the same are not tenable under the law.
- L.** That it is crystal clear from the impugned order of removal from service that the Competent Authority (respondent No.1) on the one hand had treated the absence of appellant as leave without pay but on the other side, he had awarded him major penalty of removal from service. This amounts to double-jeopardy and violation of Article 13 of the Constitution of Islamic Republic of Pakistan, 1973 as well as Section 403 CrPC & Section 26 of the General Clauses Act, 1897. It is also well settled law that no person can be prosecuted and punished twice for the same offence. Reliance can be placed on **2006-SCMR-434 (citation-a)** as well as judgment of this Hon'ble Tribunal dated 17/6/2016 passed in appeal No. 1200/2014 "Aziz-ur-Rehman (ex-constable) VS Police Department etc.". This judgment was also upheld by the august Supreme Court of Pakistan vide order dated 3/2/2017 in **CPLA No. 455-P/2016**. Thus, the impugned orders are bad in law.

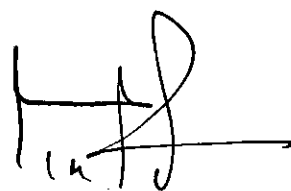
- M.** That the respondents have passed the impugned orders in mechanical manner and the same are perfunctory as well as non-speaking and also against the basic principle of administration of justice. Thus, the same are not warranted under the law.
- N.** That the impugned orders are based on conjectures and surmises. Hence, the same are against the legal norms of justice.
- O.** That the appellant would like to seek the permission of this Hon'ble Tribunal to advance some more grounds at the time of arguments.

In view of the above narrated facts and grounds, it is, therefore, humbly prayed that the impugned orders dated 12-05-2022 and 07-11-2022 passed by the respondents No. 1 and 2 may very graciously be set aside and the appellant may kindly be reinstated in service with full back wages and benefits.

Any other relief deemed proper and just in the circumstances of the case, may also be granted.


Appellant

Through



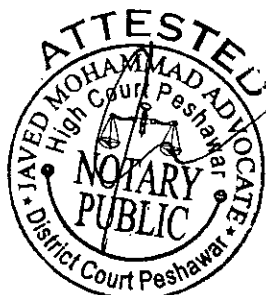
Dated: 28-03-2023

Rizwanullah
M.A. LL.B

Advocate High Court, Peshawar.

03005965843

advocate.rizwanullah@gmail.com



**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

- 1. Muhammad Shahid Ex- Constable No. 1299/FRP s/o Taj Ali Khan r/o Post Office, Risalpur, Kalanjer Tehsil and District Nowshera.

APPELLANT

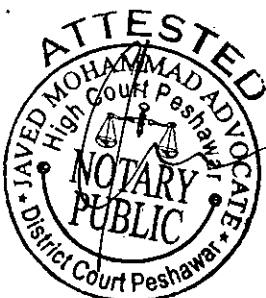
VERSUS

- 1. The Superintendent of Police, Frontier Reserve Police, Kohat Range Kohat.
- 2. The Commandant, Frontier Reserve Police, Khyber Pakhtunkhwa, Peshawar
- 3. The Inspector General of Police, Government of Khyber Pakhtunkhwa, Peshawar.
- 4. The Deputy Commandant, Frontier Reserve Police, HQrs; Peshawar.

RESPONDENTS

AFFIDAVIT

I, Muhammad Shahid Ex- Constable No. 1299/FRP s/o Taj Ali Khan r/o Post Office, Risalpur, Kalanjer Tehsil and District Nowshera, do hereby solemnly affirm and declare that the contents of the accompanied Service Appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.



M. Shahid
DEPONENT

گورنمنٹ ہائی اسکول، کھارو، ضلع جہلم

صاحب F.R.P پتہ اور

محمد شاہد 1299 B (سیپائی)

ولد سراج علی خان سکول ڈاکٹر خانہ، کھارو، ضلع جہلم

تحصیل و اطلاع نو مشورہ / سائل / درخواست گزار

درخواست مکملہ در عطا شدگی اجازت برائے لکھنے (59) چار

مہینے پورے بیماری سے سائل کے والد صاحب کا۔

Appellant

حساب عالی

۱) یہ کہ سائل آپ صاحبان کے زیر اثر بطور سیپائی

شمارہ 55 سال سے ڈیوٹی سرانجام دے رہا ہے

۲) یہ کہ آج تک سائل نے اپنی ڈیوٹی مکمل ایمانداری اور
قانون کے مطابق ہی ہے اور آئندہ بھی کرے گا۔

۳) یہ کہ یہی وجہ ہے کہ آج تک سائل کے خلاف ایک معمولی

مشکلات بھی نہیں ہے

۵ یہ کہ کل صوفی اللہ تعالیٰ ہی ذات مبارک ہے

انسان ناقص و پست ہے

۵ یہ کہ سائل کا والد شدید علیل ہے اور علاج معالجہ کیلئے گھر پر دوپٹے آٹوٹی کنبیا فرد نے یہ کوہ والد صاحب کے علاج معالجے کرنے میں فائبر ہو سوائے خواہشیں

۶ یہ کہ سائل بوجہ مجبوری بالاکچھٹی لیتا چاہتا ہے نہ کہ کسی اور مقصد وغیرہ کیلئے

۷ یہ کہ بقول مستند علماء والد سائل کے پاس ایک ماہر فرد کا بیونہ ضروری ہے اسلئے آپ صاحبان سے التماس کرتا ہوں کہ مجھے چار (04) مہینے کی طبیعت عنایت فرمادے

سائل آپ صاحبان کا ہمیشہ تالبرار رہے گا

محمد شاہد
Mob:- 0313-9084593

Attested
msk
Apparent
فردی

23/01/2022

D.H.Q. HOSPITAL NOWSHERA

OUT. DOOR PATIENTS TICKET



Rs.10

S.No: 55693

Yearly OPD No: 7857

Name (A. Z. J. 20) Date 20-1-22

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- Tams. Contrace 25mg

- (D.V.) ①

- Tams. Cocoproate

75mg

- (D.V.) ①

Attested
msh
Appellant

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D.H.Q. HOSPITAL NOWSHERA

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Attested
msk
Appellant

Time Calculation
→ U. G. Ch 1

Cardiologist
D.H.Q. Hospital
Nowshera

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D.H.Q. HOSPITAL NOWSHERA

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Rs. 10

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Yearly OPD No: 9918

Name Q. O. J. 2.5 Date 20-03-22

Tam. Gupta 26 & C

— R

Tam. Conroy 2 Mrs.

→ Mrs. ①

Tam. Woodhouse

→ Mrs. ①

Flora

Attested
[Signature]
Appellant

— Tam. Rasmussen

Cardiologist
D.H.Q. Hospital Nowshera
→ Mrs. ①

D.H.Q. HOSPITAL NOWSHERA

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Appellant

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Tues. 28

Cardiologist
D.H.Q. Hospital
Nowshera

10:00 @ 10:00

ORDER

This order will dispose off departmental inquiry conducted against Constable Shahid No. 1299/FRP, under Khyber Pakhtunkhwa Police Disciplinary Rules 1975 (Amended in 2014).

The allegations against him are that he was transferred from FRP HQs Peshawar on complaint basis to this Range vide Deputy Commandant FRP Order No. 156-59/PA dated 26.01.2022. He was relieved from FRP HQs; Peshawar vide DD No. 16 dated 16.02.2022 with the direction to report at FRP Lines Kohat but he failed to do so and was reported absent vide DD No. 13 dated 16.02.2022 till date. Proper departmental enquiry was conducted against him through LO/E.O FRP Kohat who, in his finding, stated that the said constable turned deaf ear towards his calls/directions and did not care to join the enquiry. Thereafter, final show cause notice vide this office No. 192/PA dated 12.04.2022 was issued to him, despite being directed time and again, he failed to receive the copy of F.S.C.N and is still absent till date. In this regard, detail report of Muharrar FRP Lines Kohat was perused and placed in enquiry file. His absence period w.e.f 16.02.2022 till date is 84 days and on.

His Service record perused which revealed that he was enlisted as Constable on 31.12.2018. There are 04 bad entries against him with no good entry in his credit. He has also been dismissed from service once by Commandant FRP Khyber Pakhtunkhwa Peshawar vide Order Endst; No. 1448-52/PA dated 20.08.2021 and later on reinstated. It is evident from his prolonged absence that he is not interested in his services.

Based on perusal of material in hand, finding report of E.O, his non joining the enquiry proceedings despite being directed time and again, I have no other option except to take ex-parte action against him.

Therefore, I, Amanullah Khan, SP FRP Kohat Range, Kohat in exercise of powers vested to me under Rule 5(5) of Khyber Pakhtunkhwa Police Rules-1975 (Amended in 2014), award him a major punishment of "Removal from Service" with immediate effect. His absence period w.e.f 16.02.2022 till date is treated as absence from duty i.e. without pay.

Superintendent of Police, FRP,
Kohat Range, Kohat.

OB No. 228

Dated 12-05-2022

OFFICE OF THE SUPERINTENDENT OF POLICE, FRP, KOHAT RANGE, KOHAT

NO. 234

Copy of the above is submitted to:-

- 1. The Commandant FRP Khyber Pakhtunkhwa Peshawar for favour of information please
- 2. Pay Officer
- 3. Reader
- 4. OHC
- 5. SRC

} for further necessary action

Superintendent of Police, FRP,
Kohat Range, Kohat

Attested
m/s
Appellant

23-1
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Attested
 M. S. ...
 Appella

ORDER

This order will dispose of the departmental appeal preferred by Ex-constable Shahid No. 1299 of FRP Kohat Range, against the order of SP FRP Kohat Range, Kohat issued vide OB No 228, dated 12.05.2022, wherein he was awarded major punishment of removal from service. The applicant was proceeded against on the allegations that he was transferred from FRP HQrs; Peshawar to FRP Kohat Range on complaint basis vide order Endst; No. 156-159/PA, dated 26.01.2022. He was relieved from FRP HQrs; Peshawar vide DD report No 16, dated 16.02.2022 with the direction to report at FRP Lines Kohat, but he failed to do so and remained absent from lawful duty vide DD report No. 13, dated 16.02.2022 till the date of removal from service i.e 12.05.2022 for total period of (85) days, without any leave or prior permission of the competent authority.

In this regard, proper departmental proceedings were initiated against him and LO/FRP Kohat Range was nominated as Enquiry Officer to conduct proper enquiry against him. After completion of enquiry, the Enquiry Officer submitted his finding report, wherein he reported that for association with the enquiry the delinquent constable was summoned time and again, but he did not bother to join the enquiry proceedings.

Upon the findings of Enquiry Officer, he was issued Final Show Cause Notice vide office memo No. 192/PA, dated 12.04.2022, but he failed to submit his reply or to appear before the competent authority.

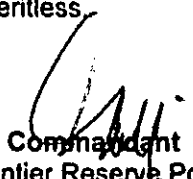
Keeping in view the above narrated facts and other material available on record, he was awarded major punishment of removal from service vide OB No. 228, dated 12.05.2022.

Feeling aggrieved against the impugned order of SP FRP Kohat Range, Kohat, the applicant preferred the instant appeal. The applicant was summoned and heard in person in Orderly Room held on 01.11.2022.

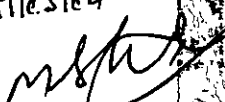
During the course of personal hearing, the applicant failed to present any justification regarding to his prolong absence. From perusal of enquiry file it has been found that the allegations of willful absence were fully established against him by the Enquiry Officer during the course of enquiry. Thus the applicant has been found to be an irresponsible person in utter disregard the discipline of the force. Therefore any leniency or complacency would further embolden the accused officer and impinge upon adversely on the overall discipline and conduct of the force. There doesn't seem any infirmity in the order passed by the competent authority, therefore no ground exist to interfere in same.

Based on the findings narrated above, I, Commandant FRP Khyber Pakhtunkhwa, Peshawar, being the competent authority, has found no substance in the appeal, therefore, the same is rejected and filed being meritless.

Order Announced.

o/r 
Commandant
Frontier Reserve Police
Khyber Pakhtunkhwa, Peshawar.

No. 1299 of FRP Kohat Range, Peshawar the 07/11/2022.
Copy of above is forwarded for information and necessary action to
SP R/o Kohat. His Service record alongwith D-file sent herewith.
No. 1299 S/o Taj Mali Khan R/o Village Kallinjar, Police
District Nowshera.

Attested

Appellant

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| No. 1723 |
| Date |

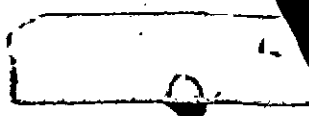
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Attested
M. Shyam
& P. S. S. S.

(19)

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BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In the matter

Service Appeal No. _____/2023

- 1. Muhammad Shahid Ex- Constable No. 1299/FRP s/o Taj Ali Khan r/o Post Office, Risalpur, Kalanjer Tehsil and District Nowshera.

APPELLANT/APPLICANT

VERSUS

- 1. The Superintendent of Police, Frontier Reserve Police, Kohat Range Kohat etc.

RESPONDENTS

APPLICATION FOR CONDONATION OF DELAY

- 1. That the appellant / applicant has filed Service appeal alongwith above captioned application for condonation of delay.
- 2. That the facts enumerated and grounds taken in the body of Service appeal may kindly be considered as an integral part of this application which makes out a sufficient cause in favour of appellant in order to condone the delay if any, caused bonafildely.
- 3. That the appellant was serving as constable at the relevant time when his father was seriously ill and confined to bed for a long time. There was no other person to look after him except appellant as his elder brother Shah Khalid constable embraced Shahadat alongwith Malik Muhammad Saad Khan (Shaheed) DIG during suicide bombing at Peshawar. Therefore, appellant submitted an application for grant of four months leave on the above grounds. But it was indeed unfortunate that the request of appellant was not taken into consideration and instead, he was transferred from FRP HQrs Peshawar to FRP Lines Kohat on the pretext of complaint vide order dated 26-01-2022 and then, relieved from duty on 16-02-2022. However, the

appellant could not join duty on account of severe illness of his father. Moreover, father of appellant had faced the sacrifice of his elder son as stated earlier but when he was ailing and needed care to save his life from disease, ironically, the application of his son (appellant) for grant of leave to serve his father was turned down. Needless to add that the solemn sacrifice of appellant's family was also not taken into consideration. Above all, his son (appellant) was removed from service notwithstanding the facts that he was left as the sole earner of family after shahdaat of his elder brother on one hand, while on the other, the appellant had rendered more than four years service and as such, he was also legally entitled to avail such leave by virtue of **Rule 12 of the Khyber Pakhtunkhwa Civil Servants Revised Leave Rules, 1981**.

4. That the impugned order was neither endorsed nor sent to the appellant through registered post by virtue of section 27 of the General Clause Act, 1897 to enable him to seek legal remedy against the same. However, he collected the said order through personal efforts on 24-08-2022. Thereafter, he filed a Departmental appeal with the commandant Frontier Reserve Police Khyber Pakhtunkhwa Peshawar (respondent No. 2) on 13-09-2022 but the same was rejected on 07-11-2022. He then filed revision petition under Rule 11-A (4) of Khyber Pakhtunkhwa Police Rules, 1975 before the Inspector General of Police Khyber Pakhtunkhwa Peshawar (respondent No. 3) on 30-11-2022 but the same was not responded. It is well settled law that limitation would start from the date of receipt of impugned order and not from the date born on the said order as per law laid down by august Supreme Court of Pakistan in various judgments.
5. That the appellant was not treated in accordance with the mandate of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 as prior to the enquiry the Competent Authority (respondent No.1) was under statutory obligation to have served the appellant with charge sheet along with statement of allegation so as to enable him to explain his position regarding the so-called misconduct as required by virtue of Rule 6(1)(a) of the Khyber Pakhtunkhwa Police Rules, 1975 (amended in 2014) as well as law laid down by august Supreme Court of Pakistan reported in 2000-SCMR-page-1743. Moreover, the regular enquiry was also not conducted in a manner prescribed by law as neither the appellant was served with a notice nor any publication was given in the leading Newspapers so as to fulfil the requirement

of law. But he failed to do so and ex-parte proceedings were held against him notwithstanding the fact that right of fair trial is a fundamental right by dint of which a person is entitled to a fair trial and due process of law. The appellant has been deprived of his indispensable fundamental right of fair trial as enshrined in **Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973**. Besides, appellant was neither served with a show cause notice nor he was provided any opportunity of personal hearing being the mandatory requirements of law. It is well settled law that when any order is passed in violation of mandatory provision of law, no period of limitation would run for challenging such order.

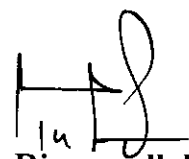
6. That when the Appellate Authority did not dismiss/reject the departmental appeal on the ground of limitation but on merits, then it would be deemed/presumed that the delay stood condoned. This view was taken by the august Supreme Court of Pakistan in various judgments.

In view of the above narrated facts and grounds, it is, therefore, humbly prayed that on acceptance of this application, the delay if any may kindly be condoned to meet the ends of justice.



(Muhammad Shahid)
Appellant/ Applicant

Through:



Rizwanullah
M.A. LL.B

Advocate High Court, Peshawar

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

In the matter

Service Appeal No. _____/2023

1. Muhammad Shahid Ex- Constable No. 1299/FRP s/o Taj Ali Khan r/o Post Office,
Risalpur, Kalanjer Tehsil and District Nowshera

APPELLANT

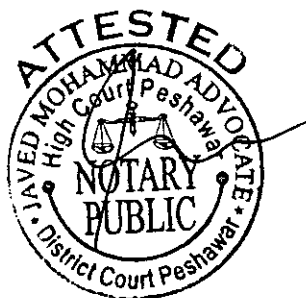
VERSUS

1. The Superintendent of Police, Frontier Reserve Police, Kohat Range Kohat etc.

RESPONDENTS

AFFIDAVIT

I, Muhammad Shahid Ex- Constable No. 1299/FRP s/o Taj Ali Khan r/o Post Office, Risalpur, Kalanjer Tehsil and District Nowshera, do hereby solemnly affirm and declare that the contents of the instant application are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.



M. Shahid
DEPONENT

Before the Hon'ble Chairman, KPK Service Tribunal,
Peshawar.

SCANNED
KPST
Peshawar

بجراالت

Service Appeal.

Appellant 2023

Muhammad Shahid بنام

VS

SP (FRP) Kohat Range Kohat etc

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی اور جواب دہی و کس کارروائی متعلقہ
آن مقام Peshawar کیلئے Pignawanullah

مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا مکمل اختیار دیا گیا۔ نیز
دیکل صاحب کو راضی نامہ کرنے و تقرر ثالثتہ فیصلہ بر حلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک دروپہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زراں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی اور مشورگی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کارروائی کے واسطے اور دیکل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیار حاصل ہوں گے اور اس کا ساختہ
پر داخلہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو دیکل صاحب پابند ہوں گے کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

msf
Appellant

المقام
المقام
27/3
March 2023
واہ العیب
Peshawar only کے لئے منظور ہے۔
Alas W. accept

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

21/9/23

Service Appeal No. 712/2023.

Muhammad Shahid, Ex-constable No. 1299/FRP s/o Taj Ali Khan r/o Post Office, Risalpur, Kalanjer Tehsil and District NowsheraAppellant.

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar & others.....Respondents

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RESPONDENTS

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 712/2023.

**Muhammad Shahid, Ex-constable No. 1299/FRP s/o Taj Ali Khan r/o Post Office,
Risalpur, Kalanjer Tehsil and District Nowshera**

Appellant
SCANNED
KPST
Peshawar
21/9/23

VERSUS

**Inspector General of Police, Khyber Pakhtunkhwa, Peshawar &
others**

Respondents.

PARAWISE REPLY BY RESPONDENTS 1 to 4.

RESPECTFULLY SHEWETH.

Khyber Pakhtunkhwa
Service Tribunal

PRELIMINARY OBJECTIONS:-

Entry No. 7729
Dated 21/09/23

1. That the appeal is badly barred by law & limitation.
2. That the appeal is bad for mis-joinder and non-joinder of necessary and proper parties.
3. That the appellant has no cause of action and locus stand to file the instant appeal.
4. That the appellant has not come to this Honorable Tribunal with clean hands.
5. That the appellant is estopped due to his own conduct to file the instant Service Appeal.
6. That the appellant is trying to conceal the material facts from this Honorable Tribunal.

FACTS:-

1. Incorrect. The appellant was transferred from FRP HQrs; Peshawar and posted at FRP Kohat Range on complaint basis. On transfer posting he was relieved from FRP HQrs; with the directions that to report his arrival at his new place of posting i.e FRP Kohat Range, but he failed to do so and deliberately remained absent from lawful duty with effect 16.02.2022 till the date of his removal from service i.e 12.05.2022 for total period of 87 days without any valid leave or prior permission of the competent authority. The plea of submission of leave application is a profound story.
2. Incorrect. On the allegations of willful absence the appellant was proceeded against proper departmentally as he was issued Charge Sheet alongwith Summary of Allegations and Enquiry Officer was nominated to conduct enquiry into the matter. After completion of enquiry, the Enquiry Officer submitted his findings report, wherein the appellant was found guilty of the charges leveled against him and recommended for major punishment. Upon the findings of Enquiry Officer he was issued Final Show Cause Notice, but he failed to receive the said notice, despite of facts that he was informed /contacted by the Enquiry Officer time and again through his cell phone No. **0313-9084593** vide DD report No. 07, dated 10.03.2022, No. 13, dated 14.03.2022. After fulfillment of all codal formalities he was awarded major punishment of removal from

service under the law/rules. (Copies of DD reports are attached herewith as "A, B").

3. Incorrect. The appellant well aware from the enquiry proceedings as well as removal order as evident from the DD report quoted above. His departmental appeal was thoroughly examined and rejected on sound grounds. The revision petition of the appellant was also thoroughly examined and rejected. (Copies attached herewith as annexure "C & D").
4. Incorrect. As explained in the preceding para No. 02 above, the Enquiry Officer contacted him through his cell phone number and directed to receive his Charge Sheet and also join the enquiry proceedings, but he deliberately failed to receive his Charge Sheet or to join the enquiry proceedings. However, after completion of enquiry the Enquiry Officer submitted his findings, wherein the appellant was found guilty of the charges leveled against him and recommended for major punishment. Upon the findings of Enquiry Officer, he was issued Final Show Cause Notice, but he refused to receive the said notice as in this regard he was contacted time and again. He was also called for personal hearing, but he failed to appear before the competent authority. Thus the appellant was absolutely treated in accordance with law, within the meaning of Section 4 of Constitution, by giving him sufficient opportunity at every level of defense and the entire proceedings were carried out in accordance the existing law/rules.
5. Incorrect. Perusal of record reveals that the appellant earlier had also been removed from service, on account of willful absence vide order dated 20.08.2021 and later on he was reinstated in service on departmental appeal, by taking lenient view, but he did not mend his way and again repeated the same practice by absenting himself from lawful duty. Thus the appellant was proceeded against the relevant law/rules and awarded the major punishment on the ground of his gross misconduct otherwise the respondents have no personal grudges with him.
6. Incorrect. The appellant has not come to this Honorable Tribunal with clean hands; hence this appeal being devoid of merits may kindly be dismissed on the following grounds.

GROUND:-

- A. Incorrect. The allegations are false and baseless. The appellant was absolutely treated in accordance with law, within the meaning of Section 4 of Constitution, by giving him sufficient opportunity at every level of defense and the entire proceedings were carried out in accordance the existing law/rules.
- B. Incorrect. The appellant failed to join his duty or submit any leave application before the respondents. As such the appellant was deliberately failed to submit his arrival report at his new place of posting i.e FRP Kohat Range and remained absent from his lawful duty without any leave or prior permission of the competent authority. On the allegations of willful absence he was

proceeded against proper departmentally and after fulfillment of all codal formalities he was awarded major punishment of removal from service as per law.

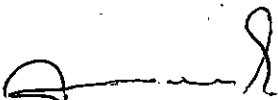
- C. Incorrect. As discussed above the appellant was issued Charge Sheet alongwith Summary of Allegations and Enquiry Officer was nominated. In order to serve the Charge Sheet the appellant was called by the Enquiry Officer through his cell phone number time and again vide attached DD reports, but he failed to submit his arrival report or to receive the Charge Sheet and to explain his position. Hence, the judgment of the August Supreme Court of Pakistan produced by the appellant is not applicable to the case of appellant. (Copy of Charge Sheet is attached herewith as annexure "E")
- D. Incorrect. Proper departmental enquiry has already been initiated against him and it is evident Charge Sheet Summary of Allegations. Upon the findings of Enquiry Officer the appellant was issued a final Show Cause Notice, but he excused from the receiving of said notice despite the facts he was contacted by the Muharrar Line as well as Enquiry Officer time and again accordingly. The appellant is found inefficient and disobedient person as he failed to report his arrival at his new place of posting despite of repeated direction of his seniors by meaning thereof that he is no more entrusted in the service of Police Department. Hence, the appellant was not deprived from his legal right.
- E. Incorrect. The appellant was deliberately remained absent from his lawful duty without any leave or prior permission of the competent authority for a long period of 85 days. The plea of illness of his father and submission of leave application taken by the appellant in the para is a propounded story and he suppose to have taken this plea before the Enquiry Officer or before the competent authority, during the course of enquiry, hence the instant appeal is liable to be dismissed.
- F. Incorrect. As the absence of the appellant was found deliberately and willfully by the Enquiry Officer during the course of enquiry. Hence suchlike absence on the part of a government employee is a gross misconduct on his part. Thus the punishment awarded to the appellant is commensurate with the gravity of his gross misconduct.
- G. Incorrect. For disposal of departmentally appeal the appellant was called and heard in person in orderly room held on 01.11.2022 in the office of the appellant authority during personal hearing the appellant failed to advance any cogent / plausible explanation in rebuttal of the charges leveled against him. Hence, there was seems no infirmity in the findings of Enquiry Officer as well as in the impugned order of the competent authority to interfere the same.
- H. Incorrect. The revision petition filed by the appellant was thoroughly examined and rejected on sound grounds. (Copy of rejection order is attached herewith as annexure "F").


repeated directions of the competent authority. Hence, the judgment of the August Supreme Court of Pakistan reproduced by the appellant is not applicable to the case of appellant. (Copy of Final Show Cause Notice attached herewith as annexure "F").


- J. Incorrect. The sufficient opportunities at every level of defense have already been offered to the appellant, but he deliberately failed to avail this opportunities, by meaning thereof that he was no more interested in the service of Police Department.
- K. Incorrect. The orders issued by the respondents in the case of appellant are legally justified and accordance to law/rules.
- L. Incorrect. In facts, the appellant was proceeded against special law i.e Police Rules 1975 (amended in 2014) hence the absence period of the appellant was correctly treated as leave without pay, which is not come into the ambit of punishment under the said rules. The cases mentioned by the appellant are not applicable to the case of appellant.
- M. Incorrect. The allegations are false and baseless. As on the allegations of willful absence the appellant was proceeded against proper departmentally and after completion of all codal formalities he was awarded major punishment in accordance to law/rules.
- N. Incorrect. The par has already explained in the preceding paras of the instant reply.
- O. The respondents may also be permitted to raise additional grounds at the time of arguments.

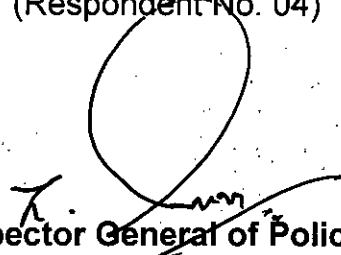
PRAYERS:-

Keeping in view the above facts and circumstances, it is most humbly prayed that the instant service appeal being devoid of merits may kindly be dismissed with costs please.


Superintendent of Police FRP,
Kohat Range, Kohat
(Respondent No. 01)


Deputy Commandant FRP,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 04)


Commandant FRP,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 02)


Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 03)

فرم کو بائیں

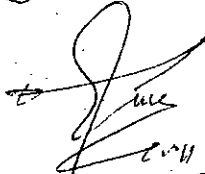
نقل درجہ 07 روزنامی 03/022 10

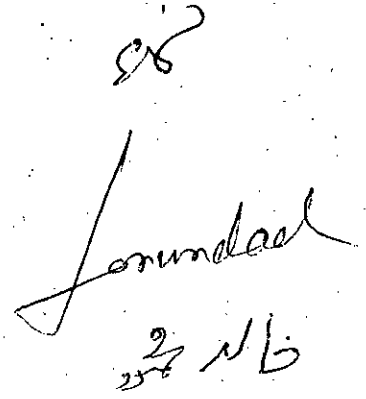
FRP پولیس لائن A

درجہ اطلاع/رپورٹ 05 مورفہ 03/022 10 وقت 11:40 بجے درجہ فیکہ اس وقت سنٹر
حاضر شدہ کنٹینل سٹاپڈ 1274 کے ذاتی جوابائل فون نمبر 9084593-0313 پر رابطہ
کر کے جس کا جوابائل نمبر بالا برادر اش لطیف خان نے آئینڈ کر کے مذکورہ
بالا کنٹینل کے بصورت تبادلہ حاضر از بخیرحاضری کے حعلق گفت و شنید
کر کے جس نے ظاہر کیا کہ برادر شاہد مہج وید سے تبادلہ کے سلسلے
میں پشاور ہیڈ کوارٹر FRP چلا گیا ہے۔ آفد پر بذریعہ جوابائل فون آپ
کے ساتھ بذات خود بات چیت کرے گا۔ اطلاع اختیاط درجہ روزنامی
کی جاتی ہے۔

جناب عالی!

نقل بمطابق اصل ہے


mm FRP Line kt
110-03-022


ظاہر ہے

FRP Line kt

Attested



0313-9084593

کنٹینل سٹاپڈ
1299

13 ص 13 (اطلاع) ریلوٹ L0 حورقہ 03/22 14 وقت 11:40 بجے درج پیکر کنیشنل فرم 1299 جو کہ ان کنیشنٹ
 پر پشاور سے پشاور کو FRP سے FRP کو ہاٹ میں فرم کی طرف ہوا تھا حورقہ 03/22 سے یہ دستور طریقہ
 والا آ رہا ہے۔ دافری کے بارے میں کنیشنل مذکورہ کے ذاتی نمائندہ نے 03139084593 پر حورقہ
 03/22 11 بجے وقت 14:10 بجے فرم رابطہ کر کے دافری کے متعلق گفت و شنید ہوئی۔ کنیشنل مذکورہ نے کہا کہ
 میں نہا۔ ڈپٹی مائنٹنگ صاحب کو پیشی کرنے گیا تھا ڈپٹی مائنٹنگ صاحب نے کہا کہ شام تک آپ کو والی
 ٹر اسٹریٹ والے ایجنٹوں کے ساتھ مل کر دافری کی ریلوٹ کروانگا مذکورہ کنیشنل نے ماحال دافری
 کی ریلوٹ نہیں کی ہے۔ اور اوقات دوبارہ مذکورہ کے ذاتی نمائندہ نے فرم رابطہ کر کے دافری سے آپ
 کو کہا کہ آپ دافری کی سہولت نہیں کرتے ہو۔ اور اسٹیشن مالروں کے حکم کی تعمیل کرتے ہو کیوں جو
 میں کہتا کہ میں آپ کو آگے آگے جو کہ FRP کنیشن کو ہاٹ میں اپنی دافری کو تقصیری بناؤں گا کنیشنل مذکورہ
 کو دافری کے متعلق اپنی سہولت کو کبھی دافری کے دروازے دار شام تک تقصیری بنائیں اور ساتھ ریلوٹ درج
 روزانہ کی ہوتی ہے۔

(ذی اسرار)

نقل مطابق اصل ہے
 [Signature]
 FRP line kb
 14/03/2022

Sir forwarded
 خالد
 Lo FRP line kb
 14/03/2022

Attested
 [Signature]

t c .

ORDER

This order will dispose of the departmental appeal preferred by Ex-constable Shahid No. 1299 of FRP Kohat Range, against the order of SP FRP Kohat Range, Kohat issued vide OB No. 228, dated 12.05.2022, wherein he was awarded major punishment of removal from service. The applicant was proceeded against on the allegations that he was transferred from FRP HQrs; Peshawar to FRP Kohat Range on complaint basis vide order Endst; No. 156-159/PA, dated 26.01.2022. He was relieved from FRP HQrs; Peshawar vide DD report No. 16, dated 16.02.2022 with the direction to report at FRP Lines Kohat, but he failed to do so and remained absent from lawful duty vide DD report No. 13, dated 16.02.2022 till the date of removal from service i.e 12.05.2022 for total period of (85) days, without any leave or prior permission of the competent authority.

In this regard, proper departmental proceedings were initiated against him and LO/FRP Kohat Range was nominated as Enquiry Officer to conduct proper enquiry against him. After completion of enquiry, the Enquiry Officer submitted his finding report, wherein he reported that for association with the enquiry the delinquent constable was summoned time and again, but he did not bother to join the enquiry proceedings.

Upon the findings of Enquiry Officer, he was issued Final Show Cause Notice vide office memo No. 192/PA, dated 12.04.2022, but he failed to submit his reply or to appear before the competent authority.

Keeping in view the above narrated facts and other material available on record, he was awarded major punishment of removal from service vide OB No. 228, dated 12.05.2022.

Feeling aggrieved against the impugned order of SP FRP Kohat Range, Kohat, the applicant preferred the instant appeal. The applicant was summoned and heard in person in Orderly Room held on 01.11.2022.

During the course of personal hearing, the applicant failed to present any justification regarding to his prolong absence. From perusal of enquiry file it has been found that the allegations of willful absence were fully established against him by the Enquiry Officer during the course of enquiry. Thus the applicant has been found to be an irresponsible person in utter disregard the discipline of the force. Therefore any leniency or complacency would further embolden the accused officer and impinge upon adversely on the overall discipline and conduct of the force. There doesn't seem any infirmity in the order passed by the competent authority, therefore no ground exist to interfere in same.

Based on the findings narrated above, I, **Commandant FRP**, Khyber Pakhtunkhwa, Peshawar, being the competent authority, has found no substance in the appeal, therefore, the same is rejected and filed being meritless.

Order Announced.

Commandant

Frontier Reserve Police

Khyber Pakhtunkhwa, Peshawar.

No 9027-28 /SI Legal, dated Peshawar the 07/11/2022.

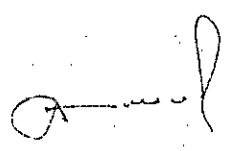
Copy of above is forwarded for information and necessary action to the:-

1. SP FRP Kohat Range, Kohat. His Service record alongwith D-file sent herewith.
2. Ex-constable Shahid No. 1299 S/o Taj Mali Khan R/o Village Kalinjar, Police Station Risalpur, District Nowshera.

Arrested
J. 28/11

No. 155 /PA/FRPDated 24 / 03 /2022CHARGE SHEET

- I) I, Aman Ullah Khan, SP FRP Kohat as competent authority, am of the opinion that you Constable Shahid No. 1299/FRP, have committed the following acts/omission as defined in Rule 2 (iii) of Police Rules 1975.
- (a) That as reported vide DD No. 13 dated 16.02.2022, you while transferred from FRP HQrs Peshawar on complaint basis vide Deputy Commandant FRP order No. 156-59/PA date 26.01.2022 and have to report your arrival at FRP Kohat on 16.02.2022, but you failed to do so and deliberately absented yourself from same date and have not reported back **till date**. Thus you have committed a gross "Misconduct" as defined in Rule 2 (iii) of Police Rules 1975".
- II). By reason of the above, you seem to be guilty as sufficient materials is placed before the undersigned, therefore it is decided to proceed against you in general police proceeding.
- III). You are, therefore, required to submit your written reply within 07 days of the receipt of this charge sheet to the Enquiry Officer.
- IV). Your written reply, if any, should reach the Enquiry Officer within specific period, failing which it shall be presumed that you have no defense to offer and in case, ex-parte action shall follow against you.
- V). Intimate as to whether you desire to be heard in person or not?
- VI) A statement of allegation is enclosed.


SUPERINTENDENT OF POLICE, FRP
KOHAT RANGE, KOHAT

Amir

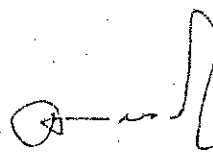
9/22

DISCIPLINARY ACTION

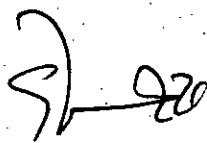
I, Aman Ullah Khan, SP FRP Kohat as competent authority, am of the opinion that you Constable Shahid No. 1299/FRP, have committed the following acts/omission as defined in Rule 2 (iii) of Police Rules 1975.

STATEMENT OF ALLEGATION

1. That as reported vide DD No. 13 dated 16.02.2022, you while transferred from FRP HQrs Peshawar on complaint basis vide Deputy Commandant FRP order No. 156-59/PA date 26.01.2022 and have to report your arrival at FRP Kohat on 16.02.2022, but you failed to do so and deliberately absented yourself from same date and have not reported back till date.. Thus you have committed a gross "Misconduct" as defined in Rule 2 (iii) of Police Rules 1975".
2. For the purpose of scrutinize the conduct of said Constable with reference to the above allegations, SI/PC KHAUD MEHMOOD, is appointed as enquiry officer.
3. The inquiry officer shall conduct proceeding in accordance with provision of Police Rules 1975 and shall provide reasonable opportunity of defense and hearing to the accused official, record it is finding and make with twenty five (25) days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused official.
4. The delinquent official shall join the proceeding on the date, time and place fixed by the officer.


SUPERINTENDENT OF POLICE, FRP
KOHAT RANGE, KOHAT

Attested



﴿ فائنڈنگ رپورٹ ﴾

حکمانہ انکوائری برخلاف کانسٹیبل محمد شاہد نمبر 1299 متعینہ FRP لائن کوھاٹ

جناب عالی:-

بحوالہ مشمولہ چارج شیٹ نمبر PA/155 مورخہ 24.03.2022 از دفتر جناب SP صاحب ایف آر پی ریج کوھاٹ بحوالہ لیٹر نمبر PA/472 مورخہ 04.03.2022 مجاریہ جناب ڈپٹی کمائنڈنٹ صاحب ایف آر پی پشاور کی روشنی میں برخلاف کانسٹیبل محمد شاہد نمبر 1299 کی انکوائری شروع ہو کر من SI کو انکوائری آفس مقرر کیا۔ جملہ کاغذات ملاحظہ پڑتال کرنے کے بعد معروض خدمت ہوں:-
حقائق:- کانسٹیبل مذکورہ کے خلاف جناب SP صاحب ایف آر پی کوھاٹ نے چارج شیٹ نمبر PA/155 مورخہ 24.03.2022 جاری ہو کر بروقت اطلاع عیابی پر روانہ مقرر روزنامہ کو جاری کیا کہ کانسٹیبل مذکورہ کو آگاہ کیا جائے کہ اپنا چارج شیٹ انکوائری دفتر سے وصول کرے۔ علاوہ ازیں روزنامہ کی بنیاد پر کانسٹیبل کے ساتھ ذاتی نمبر 0313-9084593 پر رابطے کی مسلسل کوشش کر رہے ہیں مگر کانسٹیبل مذکورہ کال اٹھانے کی زحمت نہیں کرتا اور قہراً عمداً کال نہیں اٹھاتا۔ اس کے علاوہ ٹیکسٹ میج بھی بھیجا چکے ہیں لیکن جواب ندرہ۔ احتیاطی رپورٹ بد نمبر 09 روزنامہ 28.03.2022 اندراج ہے۔ اس کے علاوہ از وقت دوبارہ بتاریخ 04.04.2022 پر کانسٹیبل مذکورہ کے ساتھ رابطے کی کوشش کی گئی۔ کال اسٹینڈ کر کے ہم نے تفصیلاً آگاہ کیا کہ اپنی حاضری اور چارج شیٹ وصولی کو یقینی بناؤ۔ اگر آپ کا کوئی مسلہ یا مجبوری ہو تو آپ آفسران بالا سے رخصت منظور کر کے اپنی مجبوری کو حل کرنے خانہ خود روانہ کیا جائیگا۔ کانسٹیبل مذکورہ نے جواباً کہا کہ میں مورخہ 05.04.2022 کو ہر صورت میں حاضری کی رپورٹ کرونگا اس کے بوجھدگی تا حال حاضری نہیں کی ہے اور بدستور غیر حاضر چلا آ رہا ہے۔ مذکورہ حیلے بہانوں سے کام لے رہا ہے اور اپنی حاضری کو یقینی بنانے میں دلچسپی نہیں رکھتا۔ رپورٹ احتیاط مد نمبر 15 مورخہ 06.04.2022 درج روزنامہ ہے جو ہمراہ لف انکوائری ہذا ہے۔ کانسٹیبل مذکورہ بحوالہ چھٹی نمبر PA/59-156 مورخہ 26.01.2022 ایف آر پی ہیڈ کوارٹر پشاور سے آن کمپلینٹ ہیں پر ایف آر پی ریج کوھاٹ ٹرانسفر ہوا تھا۔ بد 16 روزنامہ 16.02.2022 کو ہیڈ کوارٹر ایف آر پی پشاور سے FRP کوھاٹ ریج روانہ کیا گیا تھا اور بد نمبر 13 روزنامہ 16.02.2022 سے بدستور غیر حاضر چلا آ رہا ہے۔ جسکی تنخواہ بحوالہ آرڈر بک نمبر 71 مورخہ 23.02.2022 سے بند ہے۔ ریکارڈ:- SRC ریکارڈ کے مطابق کانسٹیبل مذکورہ 31.12.2018 کا بھرتی شدہ ہے۔ گڈ انٹری نہیں ہے جبکہ بید انٹری 04 سے اور 17 مرتبہ Without pay ہے ایک بار محکمہ پولیس سے برخواست بھی ہو چکا ہے ٹوٹل سروس 03 سال 03 مہینے اور 02 دن بنتی ہے جس میں کل ایام غیر حاضری 396 ہے۔ SRC ریکارڈ ہمراہ لف انکوائری ہذا ہے۔

خلاصہ:- من انکوائری آفس اس نتیجے پر پہنچا ہوں کہ کانسٹیبل کے سروس بک میں کوئی ٹیک شیٹون انٹری نہیں ہے اور SRC ریکارڈ کے مطابق انتہائی غیر حاضر باتش ہے اور نوکری کرنے کا شوقین نہیں ہے۔ اپنی من مانی سے نوکری کرتا ہے۔ بار بار اطلاع عیابی کے بوجھدنا اپنی حاضری کی رپورٹ کرتا ہے اور نہ ہی چارج شیٹ وصول کرتا ہے۔ بار بار رابطہ کرنے پر تفصیلاً آگاہ کیا مگر صبح کہتا ہے کہ شام کو حاضری کرونگا اور شام کو کہتا ہے کہ صبح آؤنگا لیکن یہ سارے حیلے بہانے ہیں مذکورہ کانسٹیبل ٹھس سے مس نہیں ہو رہا ہے اور مورخہ 16.02.2022 سے بدستور غیر حاضر چلا آ رہا ہے اور حاضری رپورٹ کرنے میں کوئی دلچسپی نہیں رکھتا۔ بہتر احکامات کی خاطر انکوائری آفسران بالا کی خدمت میں پیش کی جاتی ہے۔ مناسب حکم صادر فرمائیں۔

رپورٹ انکوائری مرتب ہو کر گزارش خدمت ہے۔

خالد محمود

خالد محمود (LO/E.O)

FRP کوھاٹ ریج کوھاٹ

07-04-022

Attested

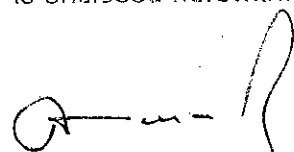
FINAL SHOW CAUSE NOTICE

That as reported vide DD No. 13 dated 10.02.2022, you Constable Shahid No. 1299/FRP, as you were transferred from FRP HQrs Peshawar on complaint basis vide Deputy Commandant FRP order No. 156-59/PA dated 26.1.2022 and have to report your arrival at FRP Kohat on 16.02.2022, but you failed to do so and deliberately absented yourself from same date and have not reported back till date.

Accordingly, charge sheet No. 155/PA dated 24.03.2022, and proper departmental enquiry was conducted by L.O FRP Kohat, in response to which you neither received the copy of charge sheet nor joined enquiry proceedings.

NOW, THEREFORE, I, Superintendent of Police, FRP Kohat Range, Kohat in exercise of the powers vested in me under the Khyber Pakhtunkhwa Police Rules - 1975 hereby call upon you Constable Shahid No. 1299/FRP, through this Final Show Cause Notice to explain your position within 07 days of the receipt of this notice as to why you should not be awarded one or more Major or Minor Punishment as mentioned in Rule (4) of KP Police Rules 1975. In case of non receipt of reply within the stipulated period, an ex-parte action will be taken against you. Also state in writing as to whether you desire to be heard in person or not. Copy of finding report of Enquiry Officer is enclosed herewith.

No. 192 /PA
Dated 12/04 /2022


Superintendent of Police, FRP
Kohat Range Kohat

Attesters



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 712/2023.

Muhammad Shahid, Ex-constable No. 1299/FRP s/o Taj Ali Khan r/o Post Office, Risalpur, Kalanjer Tehsil and District NowsheraAppellant.

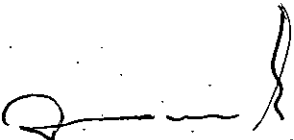
VERSUS


Inspector General of Police, Khyber Pakhtunkhwa, Peshawar & others.....Respondents.


AFFIDAVIT

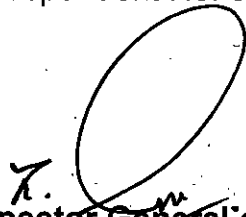
We respondents No. 1 to 4 do hereby solemnly affirm and declare on oath that the contents of the accompanying Para-wise Comments is correct to the best of our knowledge and belief that nothing has been concealed from this Honorable Court.

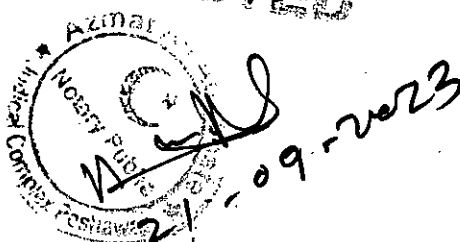
It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense has been struck off/costs.


**Superintendent of Police FRP,
Kohat Range, Kohat
(Respondent No. 01)**


**Deputy Commandant FRP,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 04)**


**Commandant FRP,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 02)**


**Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 03)**

ATTESTED

21-09-2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 712/2023.

Muhammad Shahid, Ex-constable No. 1299/FRP s/o Taj Ali Khan r/o Post Office,
Risalpur, Kalanjer Tehsil and District NowsheraAppellant.

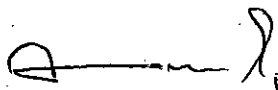
VERSUS


Inspector General of Police, Khyber Pakhtunkhwa, Peshawar &
others.....Respondents.


AUTHORITY LETTER

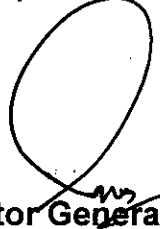
Respectfully Sheweth:-

We respondents No. 1 to 4 do hereby solemnly authorize Mr. Ghassan Ullah ASI FRP HQrs; to attend the Honorable Tribunal and submit affidavit/Para-wise comments required for the defense of above Service Appeal on our behalf.


Superintendent of Police FRP,
Kohat Range, Kohat
(Respondent No. 01)


Deputy Commandant FRP,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 04)


Commandant FRP,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 02)


Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 03)