

# INDEX

## KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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

APPEAL NO	INSTITUTION	ORIGINAL INSTITUTION	DECISION	PAGES
870/2018		09-07-2018	29-04-2024	34

*Ishtiaq Ahmad* vs *Police Department*

Sr.No.	No of Pages	Documents	Page No
Part-A			
1	01 - 05	Judgment	05
2	06 - 19	Order sheets	14
3	20 - 26	Memo of Appeal	07
4	27 - 27	Wakalatnamah	01
5	28 - 29	Notices	02
6	30 - 34	Reply	05
7	-		
8	-		
9	-		
10	-		
11	-		
12	-		
Part-B			
1	-		
2	-		
3	-		

Total Pages in Part-A	0	
Total Pages in Part-B	0	34

*[Signature]*  
Muharir  
4/7/24  
Compilation

*[Signature]*  
5/7/24  
Incharge Judicial Branch

25 B-15

It was found from the service book & accounts record that the appellant had taken over charge of her post on 04/08/1994 which was also reflected at Column No. 5 & 6 against her name in the 1<sup>st</sup> Seniority List dated 25/05/1995 and all these documents were found duly signed by the appellant (Annexure-H/8-13 Supra). However, frequent changes at Column No. 1, 5 & 6 in the subsequent Seniority Lists dated 23/10/2012, 15/11/2012 & 16/04/2013 (Annexure-K/5-7) has disputed the seniority list dated 21/01/2016 (Annexure-K/8).

ii) Tendering of "forego option" for Promotion on the Part of the Appellant:

The record revealed that in light of final Seniority List dated 16/04/2013 (Annexure-K Supra), the Director had addressed a letter dated 13/06/2013 to the appellant, followed by a reminder dated 28/06/2013, with the directions to submit "availing or forgo option" for prospective promotion against the post of Senior Clerk available at the Directorate (Annexure-L/1-2). The appellant submitted "forego option on the basis of domestic affairs" duly forwarded by Librarian, Public Library Abbottabad under dispatch No. 1266 dated 08/07/2013 which also possessed Diary No. 1159 dated 11/7/2013 of the Directorate (Annexure-L/3-4). The record further revealed that the Director, on availability of post of Senior Clerk at the Directorate in the following year, once again sought opinion of the appellant for prospective promotion through letter dated 14/11/2014 (Annexure-L/5) but the appellant again submitted "declined option" through application possessed Diary No. 33/3/1/DA dated 06/01/2015 of the Directorate (Annexure-L/6). However, the Committee found that signatures of the appellant upon both the "forego options" were quite different from those reflected in her service book, medical certificate, arrival report, seniority list and appeal in hand (Annexure-H/8-13 Supra). On the other hand no clear law / rule was found in support of the letters through which the appellant was directed for "acceptance or decline of prospective promotion" (Annexure-L/1, 2 & 5 Supra). However, irrespective of authenticity of her signatures on forego options or legality of the letters of the Directorate regarding availing or otherwise of prospective promotion, it was, whatsoever, found on record that the appellant has exercised two "forego options" for prospective promotion.

iii) Deferment of promotion on the basis of sub-judice CPLA.

The available record revealed that the Departmental Promotion Committee (DPC) had held as many as five meetings from April, 2013 to January, 2015 (Annexure-N/1-13) wherein it was found that promotion of the appellant was deferred in the 1<sup>st</sup>, 3<sup>rd</sup> & 4<sup>th</sup> meetings held on 29/04/2013, 14/05/2014 & 09/06/2014 respectively till decision of CPLA pending against her in the apex court (Annexure-N/1-9 Supra) while in the 2<sup>nd</sup> & 5<sup>th</sup> meeting held on 19/08/2013 & 22/01/2015 respectively, her promotion was deferred on the basis of forego option (Annexure-N/10-14).

①

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

Service Appeal No. 870/2018

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

Ishtiaq Ahmad, Ex-Constable No. 833/306 Elite Force, Khyber Pakhtunkhwa,  
Peshawar.

... (Appellant)

**VERSUS**

1. The Commandant Elite Force, Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Commandant Elite Force, Khyber Pakhtunkhwa, Peshawar.

... (Respondents)

Miss. Uzma Syed,  
Advocate

--- For appellant

Mr. Asif Masood Ali Shah,  
Deputy District Attorney

--- For respondents

Date of Institution.....09.07.2018

Date of Hearing .....29.04.2024

Date of Decision .....29.04.2024

**JUDGMENT**

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

**“That on acceptance of this appeal, the order dated 30.01.2011 not communicated to the appellant may please be set aside and the appellant may be reinstated into service 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, while serving as Constable in Elite Force, was

SCANNED  
PESHAWAR

proceeded against departmentally on the allegation of absence from duty with effect from 13.08.2008. On conclusion of the inquiry, the appellant was imposed major penalty of dismissal from service from the date of absence vide impugned order dated 30.01.2011. The appellant challenged the impugned order dated 30.01.2011 through filing of departmental appeal on 16.03.2018, which was not responded. The appellant has now approached this Tribunal through filing of instant service appeal on 09.07.2018 for redressal of his grievances.

3. Respondents were put on notice who submitted their para-wise comments on the appeal.

4. Learned counsel for the appellant has argued that the absence of the appellant was not willful rather the same was due to some domestic problems. He next argued that the appellant was awarded major punishment of dismissal from service vide impugned order dated 30.01.2011 with retrospective effect, therefore, the impugned order dated 30.01.2011 being void ab-initio is liable to be set-aside. He further argued that as the impugned order dated 30.01.2011 was passed with retrospective effect, therefore, no limitation would run against the impugned order. In the last, he requested that the impugned order 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 without prior permission of the concerned authority, therefore, he

was rightly dismissed from service. He next contended that all the legal and codal formalities were fulfilled before passing the impugned order. He further contended that the appellant was dismissed from service vide order dated 30.01.2011, however he has filed the departmental appeal in the year 2018, which is badly barred by time, 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 awarded punishment of dismissal from service with retrospective effect is void ab-initio and no limitation would run against the same. In our humble view this argument of the learned counsel for the appellant is misconceived. Though punishment could not be awarded with retrospective effect, however where a civil servant has been proceeded against departmentally on the ground of his absence from duty, then punishment could be awarded to him retrospectively from the date of his absence from duty and the same is an exception to the general rule that punishment could not be imposed with retrospective effect. Worthy, apex court in its judgment reported as 2022 PLC (C.S.) 1177 has observed as below:-

*"8. We find that the impugned judgment has totally ignored the record and facts of this case. The department has also been totally*



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

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

*"6. Adverting to the arguments of learned ASC for the petitioner that there is no limitation against a void order, we find that in the first place, the learned ASC has not been able to demonstrate before us how the order of dismissal was a void order. In addition, this Court has repeatedly held that limitation would run even against a void order and an aggrieved party must approach the competent forum for redressal of his grievance within the period of limitation provided by law. This principle has consistently been upheld, affirmed and reaffirmed by this Court and is now a settled law on the subject. Reference in this regard may be made to Parvez Mushurraf v. Nadeem Ahmed (Advocate) (PLD 2014 SC 585) where a 14 member Bench of this Court approved the said Rule. Reference in this regard may also be made to Muhammad Sharif v. MCB Bank Limited (2021 SCMR 1158) and Wajdad v. Provincial Government (2020 SCMR 2046). (Emphasis supplied)"*


9. Perusal of record reveals that appellant was dismissed from service from the date of absence i.e 13.08.2008 vide order dated 30.01.2011. The appellant was required to have challenged the order dated 30.01.2011 through filing of departmental appeal within 15 days,

however the appellant filed departmental appeal after lapse of more than 07 years on 16.03.2018, which is badly barred by time. 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 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 29<sup>th</sup> day of April, 2024.*

  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

6

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.

SCANNED  
BY ST  
Peshawar



(Fareeha Paul)  
Member (E)



(Rashida Bano)  
Member (J)

Kaleemullah

### ORDER

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

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

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

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



(Muhammad Akbar Khan)  
Member (Executive)



(Rashida Bano)  
Member (Judicial)




7


10<sup>th</sup> 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.

SCANNED  
K.P.S.T  
Ipeshawar

  
(Muhammad Akbar Khan)  
Member (E)

  
(Rashida Bano)  
Member (J)


\*kamranullah\*

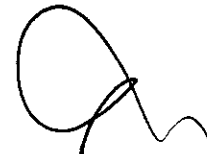
22<sup>nd</sup> Feb, 2024

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

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

SCANNED  
K.P.S.T  
Ipeshawar

  
(Fareeha Paul)  
Member (E)

  
(Kalim Arshad Khan)  
Chairman

\*Adnan Shah\*

8

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

1. Counsel for the appellant present. Mr. Fazal Shah Mohmand, Addl. Advocate General for the respondents present.

2. Counsel for the appellant seeks adjournment in order to further prepare the brief. Granted. To come up for arguments on 15.09.2023 before the D.B. Parcha Peshi given to the parties.

SCANNED  
KFPT  
Peshawar

(Fareeha Paul)  
Member (E)

(Kalim Arshad Khan)  
Chairman

\*Fazle Subhan P.S\*

15.09.2023

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

Junior of learned counsel for the appellant requested for adjournment on the ground that learned senior counsel for the appellant is busy in the Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 10.11.2023 before the D.B. Parcha Peshi given to the parties.

SCANNED  
KFPT  
Peshawar

(Fareeha Paul)  
Member (E)

(Salah-ud-Din)  
Member (J)

\*Naeem Amin\*

26.04.2023

Appellant in person present.

Muhammad Jan; learned District Attorney for respondents present.

Learned Member Executive (Mr. Muhammad Akbar Khan) is on leave; therefore, case is adjourned. To come up for arguments on 23.05.2023 before D.B. Parcha Peshi given to the parties.

SCANNED  
KPST  
Peshawar

(Rozina Rehman)  
Member (J)

\*Mutazem Shah\*

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

1. Learned counsel for appellant present. Mr. Muhammad Jan, District Attorney for respondents present.

2. Being not prepared, learned counsel for appellant requested for adjournment in order to prepare the brief. Adjourned. To come up for arguments on 10.07.2023 before D.B.

P.P given to the parties.

SCANNED  
KPST  
Peshawar

(Kalim Arshad Khan)  
Chairman

  
(Fareeha Paul)  
Member (E)

\*Mutazem Shah\*

03.01.2023

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

Learned counsel for the appellant requested that as connected nature appeal has been fixed for arguments on 04.01.2023, therefore, the appeal in hand may also be fixed for the said date. Adjourned. To come up for arguments on 04.01.2023 before the D.B.

(Mian Muhammad)  
Member (E)

(Salah-ud-Din)  
Member (J)

4-1-23

Due to Rush of work therefore case is adjourned to 10-2-23

Revised

10.02.2023

Learned counsel for the appellant present. Mr. Muhammad Adcel Butt, Addl. Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment in order to further prepare the brief. Granted. To come up for arguments on 26.04.2023 before the D.B.

SCANNED  
KPST  
Peshawar

(FAREEHA PAUL)  
Member (E)

(ROZINA REHMAN)  
Member (J)

30.06.2022

11  
Learned counsel for the appellant present. Mr. Sheraz Khan HC alongwith Mr. Naseer Ud Din Shah, Assistant Advocate General for respondents present.

Learned counsel for the appellant requested for adjournment in order to prepare the brief. Adjourned. To come up for arguments on 06.10.2022 before the D.B.



(Rozina Rehman)  
Member (J)

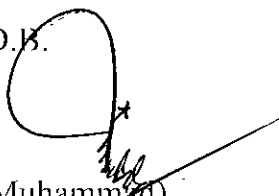


(Salah Ud Din)  
Member (J)

06.10.2022

Junior to counsel for the appellant present. Mr. Kabir Ullah Khattak, Additional Advocate General respondents for present.

Junior to counsel for the appellant requested for adjournment on the ground that his counsel is not available today. Adjourned. To come up for arguments on 07.11.2022 before D.B.



(Mian Muhammad)  
Member (E)



(Kalim Arshad Khan)  
Chairman

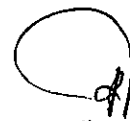
07.11.2022

Counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment in order to further prepare the brief. Adjourned. To come up for arguments on 03.01.2023 before the D.B.



(Fareeha Paul)  
Member (E)



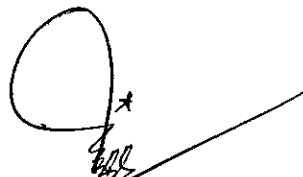
(Rozina Rehman)  
Member (J)

SCANNED  
K. ST  
Peshawar

06.10.2021

Counsel for the appellant and Mr. Muhammad Adeel Butt, Addl. AG for the respondents present.

Counsel for the appellant seeks adjournment for preparation and proper assistance. Request is accorded. To come up for arguments before the D.B on 03.01.2022.


  
(Mian Muhammad)  
Member-E

  
Chairman

03.01.2022

Counsel for the appellant and Mr. Asif Masood Ali Shah, DDA for the respondents present.

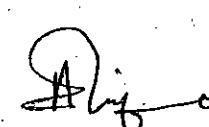
Former requests for adjournment in order to further prepare the brief. Request accorded. To come up for arguments on 10.03.2022 before the D.B.

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

  
Chairman

10-3-2022

Due to retirement of the Hon'ble Chairman the case is adjourned to come up for the same as before on 30-6-2022

  
Reader

*[Faint, mostly illegible text, possibly a stamp or official note]*

*[Faint, mostly illegible text, possibly a stamp or official note]*

*[Faint, illegible text]*

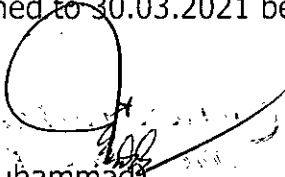
*[Faint, illegible text]*


11.01.2021 Junior counsel for appellant present.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

A request for adjournment was made as issue involved in the present case is pending before Larger Bench of this Tribunal.

Adjourned to 30.03.2021 before D.B.

  
(Mian Muhammad)  
Member (E)

  
(Rozina Rehman)  
Member (J)


30.03.2021 Due to non availability of the concerned D.B, the case is adjourned to 28.06.2021 for the same.

28.06.2021

Syed Noman Ali Bukhari, Advocate, for the appellant present. Mr. Mukhtar, LHC alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Learned counsel for the appellant requested that the issue of retrospectivity is involved in the instant appeal, regarding which a Larger Bench has already been constituted. Adjourned. To come up for further proceedings before the D.B on 06.10.2021.

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

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

2.4.2020 Due to public Health fear on account of (COVID-19) the case is adjourned. To come up for same on 29-6-2020.



29.06.2020

Due to COVID-19, the case is adjourned to 24.08.2020 for the same.

  
Reader

24.08.2020

Due to summer vacation case to come up for the same on 03.11.2020 before D.B.

  
Reader

03.11.2020

Junior to counsel for the appellant and Addl. AG for the respondents present.

The Bar is observing general strike, therefore, the matter is adjourned to 11.1.2021 for hearing before the D.B.

  
(Mian Muhammad)  
Member  
Chairman




15

03.09.2019

Learned counsel for the appellant present. Mr. Usman Ghani learned District Attorney alongwith Mr. Akbar Hussain SI for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 14.11.2019 before D.B.

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

14.11.2019

Appellant with counsel present. Mr. Ziaullah, DDA for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 14.01.2020 before D.B.

  
Member

  
Member

14.01.2020


Due to general strike on the call of Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Kabirullah Khattak, Additional AG for the respondents present. Adjourned to 24.02.2020 for arguments before D.B.

  
(Ahmad Hassan)  
Member

  
(M. Amin Khan Kundi)  
Member

24-2-2020

The Bench is incomplete  
Therefore case is adjourned  
to 2-4-2020

  
Reader

16

04.04.2019

Appellant in person and Mr. Kabirullah Khattak learned Addl; AG for the respondents present.

Due to general strike on the call of Bar Council learned counsel for the appellant is not in attendance.

Adjourned to 23.05.2019 before D.B.

  
Member

  
Chairman

23.05.2019

Appellant in person and Mr. Kabirullah Khattak learned Addl. AG for the respondents present.

A request for adjournment is made due to indisposition of his learned counsel.

Adjourned to 10.07.2019 before D.B.

  
Member

  
Chairman

10.07.2019

Learned counsel for the appellant and Mr. Riaz Khan Paindakheil learned Assistant Advocate General present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 03.09.2019 before D.B.

  
Member

  
Member

24.12.2018

Syed Numan Ali Bukhari, Advocate for appellant and Addl. AG alongwith Niaz Muhammad Inspector for the respondents present.

Representative of the respondents states that the requisite reply is in the process which shall be positively submitted on the next date of hearing.

Adjourned to 30.01.2019 before S.B.

  
Chairman

30.01.2019

Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Sheraz Khan, Head Constable for the respondents present and requested for adjournment for filing of written reply. Adjourned to 19.02.2019 for written reply/comments before S.B.

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

19.02.2019

Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Sheryar H.C present. Written reply on behalf of respondent department submitted. Adjourn. To come up for rejoinder/arguments on 04.04.2019 before D.B.

  
Member

11.09.2018

Miss. Uzma Syed, Advocate and Syed Noman Ali Bukhari, Advocate counsels for the appellant present and heard in limine.

Contends that the major punishment of dismissal from service has been imposed on the appellant without affording opportunity of hearing and again with retrospective effect.

Points raised need consideration. The appeal is admitted to full hearing, subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 06.11.2018 before S.B.

Appellant Deposited  
Security & Process Fee

Appellant Deposited  
Security & Process Fee

7/11/18

Chairman

06.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 24.12.2018. Written reply not received.

READER

24.12.2018

Syed Numan Ali Bukhari, Advocate for appellant and Addl. AG alongwith Niaz Muhammad Inspector for the respondents present.

The reply by respondents is already placed on file. To come up for arguments before the D.B on 25.02.2019. The appellant may submit rejoinder within a fortnight, if so advised.

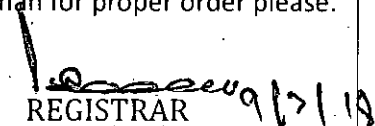


SCANNED  
KFST  
Peshawar

Chairman

Form- A  
FORM OF ORDER SHEET

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

Case No. 870/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	09/07/2018	<p>The appeal of Mr. Ishtiaq Ahmad presented today by Syed Nouman Ali Bukhari Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 9/7/18</p>
2-	27.07.2018	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>27/7/18</u>.</p> <p style="text-align: right;"> CHAIRMAN 27/7/18</p> <p>Neither appellatant nor his counsel present. Case to come for preliminary hearing on 11.09.2018 before S.B.</p> <p style="text-align: right;"> Chairman</p>

20

SCANNED  
KPST  
Peshawar

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 870/2018

Ishtiaq Ahmad

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-	05-07
4.	Vakalat Nama	-----	08

**APPELLANT**

THROUGH:

*(Signature)*  
**(SYED NOMAN ALI BUKHARI)**

&

*(Signature)*  
**(UZMA SYED)**  
ADVOCATES, HIGH COURT  
PESHAWAR

(21)

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 870 /2018

Ishtiaq Ahmad, EX- Constable, No.833/306  
Elite Force, Kp Peshawar.

Khyber Pakhtukhwa  
Service Tribunal

Diary No. 1132

Date: 09-07-2018

.....(Appellant)

**VERSUS**

1. The Commandant Elite Force KP, Peshawar.
2. The Deputy Commandant Elite Force KP, Peshawar.

.....(Respondents)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER of RESPONDENT NO. 2 DATED 30.01.2011 WHEREBY, THE APPELLANT HAS BEEN DISMISSED FROM SERVICE AND AGAINST NOT TAKEN ACTION ON THE DEPARMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD OF 90 DAYS.

**PRAYER:**

THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDERs DATED 30.01.2011 NOT COMMUNICATED TO THE APPELLANT MAY PLEASE BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED IN TO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPOPRIATE THAT MAY ALSO BE AWARADED IN FAVOUR OF APPELLANT.

Filed to-day  
Registrar  
9/7/18

**RESPECTFULLY SHEWETH:**

**FACTS:**

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

1. That the appellant was the employe of the Police force and was on the strength of Elite Force Peshawar.
2. That the appellant had been some serious domestic problems (mother illness) due to which appellant didn't performed his duties so the absentia of the appellant was not willingfull but due to above mentioned reasons.
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 30.01.2011 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 recived the same on 14.2.2018 through its own efforts. The appellant been agrrieved from the impugned dismissal order preffered departmental appeal, the same was not responded within statutory period of 90 days. **(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 30.01.2011 not communicated to the appellant and not taken action on the departmental appeal of the appellant with in statutory period of 90 days 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. And no limitation run against the void order.
- 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



22

30.01.2011 which is never communicated to the appellant, without given personal hearing 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 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.
- F) That the absence of the appellant was not intentionally but due to some domestic problem and serious illness of his mother. So the penalty imposed upon the appellant was so harshed.
- G) That no chance of personal hearing was provided to the appellant and as such the appellant has been condemned unheard throughout.
- H) That the appellant is young and efficient but due to some serious problems he can't attend the duties, the department taken so harsh view, may kindly be taken lenient view and reinstate the appellant in to service.
- I) 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**  
Ishtiaq Ahmad

THROUGH:

  
**(SYED NOMAN ALI BUKHARI)**

&  
  
**(UZMA SYED)**  
ADVOCATES, HIGH COURT  
PESHAWAR

23

A

4

ORDER

You Constable Ishiaq Ahmad No. 883/306 of elite Force remained absent from duty 13.08.2008 till this date.

Proper departmental enquiry was conducted against you and given full opportunity but you did not appear before the enquiry officer, but you neither joined the enquiry proceeding conducted against you nor appeared for duty. It seems that you have no interest in your official duty the enquiry officer recommended you for major punishment.

I, Muhammad Iqbal Deputy Commandant Elite Force KPK Peshawar as the competent authority impose major penalty of dismissed from service upon you from the date of absence.

(MUHAMMAD IQBAL)

Deputy Commandant

Elite Force Khyber Pukhtunkhwa Peshawar

No. 4505-05 /EF, dated Peshawar the 30/01/2011.

Copy to the:-

1. Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar.
2. DSP/HQrs., Elite Force, Khyber Pukhtunkhwa, Peshawar.
3. Accountant, Elite Force, Khyber Pakhtunkhwa, Peshawar.
4. EC/SRC and OASI, Elite Force, Khyber Pukhtunkhwa, Peshawar.

اشياق احمد  
Received on Date: 14/2/2018

Attested

To

The Commandant Elite Force  
Khyber Pakhtunkhwa, Peshawar.

Through proper Channel

**SUBJECT: DEPARTMENTAL APPEAL AGAINST THE ORDER  
DATED 30.01.2011, WHEREBY THE APPELLANT WAS  
DISMISSED FROM SERVICE.**

Respected Sir,

Most humbly it is submitted that:

1. That the appellant was the employee of the police and was on the strength Elite Force, Peshawar.
2. That the appellant had been some serious Domestic Problem (mother illness) due to which appellant didn't performed his duties so the absentia of the appellant was not willing full but due to above mentioned reasons.
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 30.01.2011 has been passed against the appellant whereby the appellant was dismissed from service from retrospective effect.

**ATTESTED**

ATTESTED

liable to be set aside on this score alone.

D) That the appellant has not been treated according to law despite he was a civil servant of the province, therefore, the impugned order is

and norms of justice.

C) That neither charge sheet, statement of allegation, show cause notice was not served upon the appellant nor was inquiry conducted against the appellant, which was necessary and mandatory in law before imposing major punishment which is violation of law, rules

no limitation was run against the void orders.

B) That the impugned order was retrospective order which was void in the eye of law and also void according to Superior Court Judgment reported as 1985 SCMR 1178, 2006 PLC 221. Further it is added that

judgment. Hence the impugned order is liable to be set aside.

A) That the appellant has not been treated in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan 1973 by the respondents and the appellant has been dismissed from his legal service without adopting legal Pre-requisite mandatory Legal procedure. The order passed in violating of mandatory provision of law, such order is void and illegal order according to superior court

GRUNDS:

4. That appellant being aggrieved of the impugned order of respondent and now file this departmental appeal inter-alia on the following grounds amongst others.

6

95

96

7

- E) That no chance of personal hearing was provided to the appellant and as such the appellant has been condemned unheard throughout.
- F) The undersigned is young and efficient but due to some serious problems he can't attend the duties, kindly take a lenient view and re-instate the appellant in to service.

It is therefore, most humbly requested that impugned order dated 30.01.2011 may be set aside and reinstated the appellant with all back and consequential benefits.

*Ishtiaq Ahmad*

**Appellant**

Ex. constable Ishtiaq Ahmad  
 Belt No. 883/306  
 Cell No. 0305-9799192,

Date: 16.03.2018

E.C  
*Rh*  
 16/3

*to*  
**ATTESTED**

No. 2344  
 to 16-3-18  
 Immediate Elite Force

(27)

**VAKALAT NAMA**

(8)

**SCANNED  
KPST  
Peshawar**

NO. \_\_\_\_\_/20

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

Ishfaq Ahmad (Appellant)  
(Petitioner)  
(Plaintiff)

VERSUS

Police Deptt (Respondent)  
(Defendant)

I/We, Ishfaq Ahmad

Do hereby appoint and constitute **Syed Noman Ali Bukhari and Uzma Syed, Advocates 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

اشفاق احمد  
(CLIENT)

**ACCEPTED**

Syed Noman Ali Bukhari  
**SYED NOMAN ALI BUKHARI**  
Advocate, Peshawar.

Uzma Syed  
**UZMA SYED**  
Advocate, Peshawar.

**BEFORE THE HON'BLE KPK SERVICE TRIBUNAL PESHAWAR  
APPEAL NO. 870/2018**

Ishtiaq Ahmad, Ex-Constable, No. 833/306  
Elite Force, KPK Peshawar

.....APPELLANT

**VERSUS**

Commandant Elite Force KP & others  
Deputy Commandant Elite Force

..... RESPONDENTS

**PARAWISE COMMENTS ON BEHALF OF RESPONDENTS 1 & 2**

Respectfully Sheweth,

**Preliminary objections:**

1. That appeal is badly time barred.
2. That appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That appellant has not come to this Tribunal with clean hands.
4. That appellant is estopped by his own conduct to the instant appeal.
5. That appeal is not based on false and fabricated facts.

**ON FACTS:**

1. Pertains to record. Hence, need no comments.
2. Correct to the extent that appellant was absent from his lawful duty without prior permission from concerned authority. Moreover, no application for leave had been submitted. He was wilfully absent from his lawful duty and has rightly been dismissed from service after satisfying all the codal and legal procedure.
3. Appellant was departmentally proceeded after fulfilling all the pre-requisites, codal procedure and has rightly been dismissed from service. Over writing on the receiving date of the dismissal order reflects clear manipulation and fabrication on the part of appellant. Moreover, no departmental appeal is available on record. Furthermore, law helps vigilant and not indolent. **(Copy of dismissal order is attached as Annexure-A)**

4. That the respondents have approached this Hon'ble Tribunal to dismiss this appeal of the appellant on the following grounds.

**GROUNDS:**

- A. Incorrect. Order passed by the competent authority is legal and has been communicated to appellant within a stipulated period of time. Moreover, over-writing made on the date mentioned on the impugned order annexed with appeal reflects clear manipulation and fabrication. Whereas no departmental appeal preferred by appellant is available on record. Hence, impugned order is liable to be maintained.
- B. Incorrect. Impugned order has been passed by competent authority in accordance to law.
- C. Incorrect. Impugned order is passed, in accordance to law, after fulfilling all the codal procedure and had been communicated to appellant well within a time.
- D. Incorrect. Appellant had been departmentally proceeded in accordance to law.
- E. Already explained in para-D.
- F. Incorrect. Appellant wilfully remained absent from lawful duty without prior permission. Hence, action taken against appellant is appropriate and justified.
- G. Incorrect. Appellant had been departmentally proceeded in accordance to law.
- H. Already explained in para-F.
- I. Respondents may also be allowed to advance any additional ground at the time of hearing the instant appeal.




**PRAYER:**

It is, therefore, most humbly prayed that in the light above-narrated facts, appeal may kindly be dismissed for being devoid of merit.



**Commandant**  
**Elite Force Kpk, Peshawar.**  
**(Respondent No. 1)**



**Deputy Commandant**  
**Elite Force Kpk, Peshawar.**  
**(Respondent No. 2)**

**BEFORE THE HON'BLE KPK SERVICE TRIBUNAL PESHAWAR  
APPEAL NO. 870/2018**

Ishtiaq Ahmad, Ex-Constable, No. 833/306  
Elite Force, KPK Peshawar.

.....APPELLANT

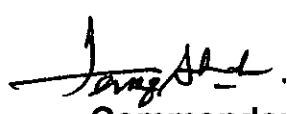
**VERSUS**

- 1. Commandant Elite Force KPK, Peshawar.
- 2. Deputy Commandant Elite Force KPK, Peshawar.

.....RESPONDENTS

**AFFIDAVIT**

We respondents 1 & 2 do hereby solemnly affirm and declare that the contents of this written reply are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



**Commandant  
Elite Force Kpk, Peshawar.  
(Respondent No. 1)**



**Deputy Commandant  
Elite Force KPK, Peshawar.  
(Respondent No. 2)**

34

ORDER

You Constable Ishiaq Ahmad No. 883/306 of elite Force remained absent from duty 13.08.2008 till this date.

Proper departmental enquiry was conducted against you and given full opportunity but you did not appear before the enquiry officer, but you neither joined the enquiry proceeding conducted against you nor appeared for duty. It seems that you have no interest in you official duty the enquiry officer recommended you for major punishment.

i, Muhammad Iqbal Deputy Commandant Elite Force KPK Peshawar as the competent authority impose major penalty of dismissed from service upon you from the date of absence.

  
(MUHAMMAD IQBAL)

Deputy Commandant

Elite Force Khyber Pukhtunkhwa Peshawar

No. 4505-05 /EF, dated Peshawar the 30/01/2011.

Copy to the:-

1. Deputy Commandant, Elite Force, Khyber Pukhtunkhwa, Peshawar.
2. DSP/HQrs., Elite Force, Khyber Pukhtunkhwa, Peshawar.
3. Accountant, Elite Force, Khyber Pukhtunkhwa, Peshawar.
4. EC/SRC and OASI, Elite Force, Khyber Pukhtunkhwa, Peshawar.

OB : 115

Date: 04/2/2011