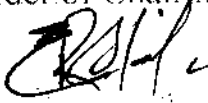


FORM OF ORDER SHEET

Court of _____

Appeal No. 757/2024


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	06/06/2024	<p>The appeal of Mr. Rafi Ullah resubmitted today by Mr. Nasir Mahmood Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 07.06.2024. Parcha Peshi given to counsel for the appellant.</p> <p>By the order of Chairman  REGISTRAR</p>

The appeal of Mr. Rafi Ullah received today i.e on 21.05.2024 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.


- 1- According to sub-rule-4 of rule-6 of Khyber Pakhtunkhwa Service Tribunal rules 1974 respondent no.1 is un-necessary/improper party, in light of the rules ibid and on the written direction of the Worthy Chairman the above mentioned respondent number be deleted/struck out from the list of respondent.
- 2- Address of the appellant is incomplete be completed according to rule-6 of Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 3- Memorandum of appeal is not signed by the appellant.
- 4- Cop of reply to charge sheet attached with the appeal is incomplete be completed.

No. 56 /Inst;/2024/KPST,

Dt. 22/05 /2024.


22/5/24
REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Nasir Mehmood Adv.
High Court Peshawar.

Resubmitted After doing
the need full.


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

In Re:
Service Appeal No. 757/2024

Rafi Ullah Police Constable No.847, District ^{Police} Karak R/O Chata
Banda, Takht-e-Nasrati District Karak **Appellant**

Versus

Regional Police Officer Kohat Region Kohat & Another

..... **Respondents**

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5.	Copy of the inquiry report and order dated:09.01.2024	B&C	12-16
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7.	Copy of the Order 05.04.2024	E	19
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Rafi Ullah
Appellant

Through

Nasir Mehmood
Nasir Mehmood
Advocate, Supreme Court

Dated: 21.05.2024

BEFORE THE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR

In Re:
Service Appeal No. 757 /2024

Rafi Ullah ^{Police} Constable No.847, District Karak R/O Chata
Banda, Takht-e-Nasrati District Karak

.....Appellant

Versus

1. Regional Police Officer Kohat Region Kohat.
2. District Police Officer District Karak

.....Respondents

Appeal U/S 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated:05.04.2024 passed by Regional Police Officer, Kohat Region which was filed for payment of Salaries for the intervening period was rejected and order dated:09.01.2024 passed by District Police Officer Karak was upheld.

Prayer in Appeal:-

On acceptance of the instant appeal, the impugned orders dated 05.04.2024 may kindly be set aside and order dated: 09.01.2024 to the extent of non payment of salaries to the appellant for the intervening

period may please be set aside being void ab-initio, illegal and without any legal justification and the appellant may kindly be held to be entitled for salaries for the intervening period with all back benefits.

Respectfully Sheweth:

Brief Facts:-

1. That the appellant has joined the Police Department in the year 2007 and was performing his duties to the entire satisfaction of his superiors and no complaint whatsoever has been pending against the appellant since joining in the Police Department.
2. That while posted as Gunner to DSP Headquarter Karak on 09.09.2011 on the instructions of DSP appellant took private Television of the DSP in Police Uniform along with his official weapon for repair to the mechanic Workshop. While sitting in work shop one Fazal Hanif Sub Inspector Incharge DSB, Karak in plain cloth came and started scolding the appellant. In response the appellant disclosed his position regarding his presence in the shop upon which the said SI further frustrated and at once order the appellant to hand over his weapon.
3. That the said SI registerd case against the appellant and in consequence of which the appellant was dismissed from service on 10.09.2011 against which departmental appeal was filed which was dismissed vide order dated:15.05.2012.

4. That the appellant assailed his dismissal order before this Hon'ble Tribunal in Service Appeal No.752/2012 which was allowed on 27.09.2023 in the following terms:-

"As a sequel to above discussion, appeal in hand is partially allowed. Impugned orders are set aside and appellant is reinstated into service for the purpose of denovo inquiry, respondents are directed to conduct denovo inquiry within 90 days of the receipt of copy of this judgment. The issue of back benefits shall be subject to the outcome of denovo inquiry. Costs shall follow the event. Consign." **(Copy of the judgment is annexed as Annexure "A")**.

5. That inquiry committee was constituted who held his proceedings and submitted report to District Police Officer, Karak who in the light of the inquiry report reinstated the appellant into service however, the intervening period was treated leave without pay vide order dated:09.01.2024. **(Copy of the inquiry report and order dated:09.01.2024 are annexed as Annexure "B" & "C")**.

6. That the appellant filed departmental appeal **(Annexure "D")** against the above mentioned order to Regional Police Officer Kohat who vide order dated:05.04.2024 **(Annexure "E")** rejected the same and when the appellant got knowledge of the rejection order then he applied for getting copy of the same which is supplied on 15.05.2024 **(Annexure "F")**

hence the appellant aggrieved is assailing the same before this Hon'ble Tribunal inter alia on the following amongst other grounds:-

GRUNDS:

- A. That the impugned orders are illegal and arbitrary in nature, against the rules, hence needs to be struck down.
- B. That the respondents while passing the impugned order has ignored the fact that the appellant was dismissed from service for no fault of his own and the appellant was not provided any opportunity of personal hearing/cross examination nor he was properly charge sheeted and statements of allegations was also not given to the appellant so, withholding of salaries for the intervening period is absolutely illegal and the appellant is entitled for the same by setting aside orders of the fora below.
- C. That once the inquiry committee has specifically held that the charges against the appellant have not been proved because the legal formality for proper departmental proceedings were not held so he cannot be punished by withholding the salaries for the intervening period for the appellant.

- D. That it is consistently held by the Apex Court of the country that once the dismissal order is held to be illegal and the employee has not joined any job for the intervening period then the employee is entitled for the payment of salaries for the intervening period.
- E. That any other ground will be raised at the time of arguments with the prior permission of this Hon'ble Tribunal.

Therefore, it is humbly submitted that On acceptance of the instant appeal, the impugned orders dated 05.04.2024 may kindly be set aside and order dated: 09.01.2024 to the extent of non payment of salaries to the appellant for the intervening period may please be set aside being void ab-initio, illegal and without any legal justification and the appellant may kindly be held to be entitled for salaries for the intervening period with all back benefits.

Appellant

Through


Nasir Mehmood
Advocate, Supreme Court

Dated: 21.05.2024

VERIFICATION:-

It is to certify that no appeal has been submitted on the subject earlier to the instant appeal.


DEPONENT

BEFORE THE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR

In Re:
Service Appeal No. _____/2024

Rafi Ullah Police Constable No.847, District ^{Police} Karak R/O Chata
Banda, Takht-e-Nasrati District Karak **Appellant**

Versus

Regional Police Officer Kohat Region Kohat & Another
..... **Respondents**

AFFIDAVIT

I, Rafi Ullah Police Constable No.847, District Karak, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

Rafi Ullah
DEPONENT
CNIC#
Cell#03

BEFORE THE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR

In Re:
 Service Appeal No. _____/2024

Rafi Ullah Police Constable No.847, District ^{Pkize}Karak R/O Chata
 Banda, Takht-e-Nasrati District Karak **Appellant**

Versus

Regional Police Officer Kohat Region Kohat & Another
 **Respondents**

ADDRESSES OF PARTIES

APPELLANT:

Rafi Ullah Police Constable No.847, District Karak R/O Chata
 Banda, Takht-e-Nasrati District Karak

RESPONDENTS:

1. Regional Police Officer Kohat Region Kohat.
2. District Police Officer District Karak

Rafi Ullah
 Appellant

Through


Nasir Mehmood
 Advocate, Supreme Court

Dated: 21.05.2024

⑧ Annex - A

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR



Service Appeal No. 752/Neem/2012

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

Rafi Ullah Ex-Police Constable No. 847, District Karak.
..... (Appellant)

VERSUS

1. Inspector General of Police Khyber Pakhtunkhwa Peshawar.
2. Regional Police Officer Kohat Region Kohat.
3. District Police Officer District Kohat.

..... (Respondents)

Mr. Nasir Mehmood
Advocate

For appellant

Mr. Muhammad Jan
District Attorney

For respondents

Date of Institution.....05.07.2012
Date of Hearing.....27.09.2023
Date of Decision.....27.09.2023

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 15.05.2012 and 10.09.201 passed by respondent No. 2 and 3 respectively may be set aside and the appellant may please be reinstated into service with all back benefits.”

2. Brief facts of the case, as given in the memorandum of appeal are, that appellant joined police department as foot Constable in the year 2007 and was performing duties upto the entire satisfaction of his superiors. In

ATTESTED

MEMBER (J)
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

September 2011 the appellant was posted as gunman of Deputy Superintendent of Police Karak. On 09.09.2011 appellant took his television set for repair in office uniform to a workshop where one Fazal Hanif Sub-Inspector Incharge DSB, Karak came there and altercation took place among them upon which false charge of placing unattended weapon by the appellant was levelled against the appellant vide daily dairy No. 10 dated 09.09.2011. Appellant was dismissed from service vide order dated 10.09.2011 which was challenged by the appellant in his departmental appeal which was dismissed vide order dated 15.05.2012, hence the instant service appeal.

3. 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 District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules. He further argued that appellant has been proceeded against without affording him an opportunity of personal hearing which is violation of principle of natural justice. He submitted that no enquiry was conducted in accordance with Section 3(2) of RSO and the impugned order was passed at the back of appellant, therefore, he requested for acceptance of instant service appeal.

5. The learned District Attorney contended that the appellant was treated in accordance with law and rules. He further contended that appellant was allotted official weapon for official duty but he misused it and Mr. Fazal Hanif Incharge DSB Karak found unattended weapon on the cot of the TV mechanic Shop. On query the mechanic informed him that the weapon was put by one uniformed person. The rifle was taken into possession by him and

ATTESTED
 [Signature]
 District Attorney
 Service Tribunal
 Islamabad

(10)

handed over to Reader to DPO Karak. Report to this effect was entered DD No. 10 dated 09.09.2011. He argued that appellant was provided opportunity of personal hearing and called in order room but he did not turn up. Moreover he was also charged in criminal case vide FIR No. 453 dated 28.10.2011 and after completing codal formalities he rightly dismissed from service.

6. Perusal of record reveals that appellant is serving in police department as constable and was posted as guard of Deputy Superintendent of Police Head Quarters Karak in September 2011. It was on 09.09.2011 when appellant took his television set for repair in office uniform to the workshop where one Fazal Hanif Sub-Inspector Incharge DSP Karak came there and altercation took place among them upon which false charge of placing unattended weapon by the appellant was levelled against the appellant by said Fazal Hanif DSP Karak vide daily diary NO. 10 dated 09.09.2011. Appellant was dismissed from service by disposing with the enquiry vide order dated 10.09.2011 which was challenged by the appellant in his departmental appeal which was dismissed vide order dated 15.05.2012. Denovo inquiry reinstated for enquiry to enquiry by providing proper opportunity of self defence and cross examination upon Fazal Hanif DSP. Appellant filed instant appeal on 05.07.2012 but he was behind the bar at the time of decision by the appellate authority on 15.05.2012 which is evident from said order wherein it is mentioned that appellant is involved in case FIR NO. 453 dated 28.10.2011 under Section 324 PPC of police station Yaqoob Khan Shaheed. Appellant was granted bail in said FIR NO. 453 by the learned Additional Sessions Judge Karak on 29.06.2012 and after release he filed instant appeal which is within time because no proof of communication of the appellate order to appellant is available on record.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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7. It is well settled legal proposition duly supported by numerous judgments of apex court that for imposition of major penalty, regular inquiry is must by providing opportunity of self-defence and cross examination is must. Reliance is placed on 2022 PLC (CS) and 2019 PLC (CS) 224. Moreover no opportunity of cross examination was provided to the appellant upon the witness who deposed inquiry against him which is very essential element of regular inquiry. But in the instant case even inquiry was dispensed with without showing any cause which is mandatory to show in accordance with section 5(4) of RSO 2000. Appellant must be provided an opportunity for cross examination upon Fazal Hanif who reported daily diary No. 10 about leaving official weapon unattended which resulted into dismissal of the appellant.

8. As a sequel to above discussion, appeal in hand is partially allowed. Impugned orders are set aside and appellant is reinstated into service for the purpose of denovo inquiry, respondents are directed to conduct denovo inquiry within 90 days of the receipt of copy of this judgment. The issue of back benefits shall be subject to the outcome of denovo inquiry. Costs shall follow the event. Consign.

9. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 27th day of September, 2023.

(MUHAMMAD AKBAR KHAN)
Member (E)

(RASHIDA BANO)
Member (J)

*Kaleemulla
Certified to be true copy
RASHIDA BANO
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 23/10/2023
Number of Pages Page 4
Copying Fee 20/-
Urgent 25/10/23
Total 25/10/23
Name of Copyist
Date of Completion of Copy 23/10/2023
Date of Delivery of Copy 23/10/2023

(12)

No. 3174 /Inv:
Dated 05/12/2023

Annex B

FINDINGS

Kindly this is in response to your good office charge sheet vide Endst: No. 160/Enq: dated 21.11.2023, issued to constable Rafi Ullah No. 847/709 Police Lines Karak whereas the undersigned was appointed as enquiry officer to on earth the real facts.

The upshot of the charges is that "The above named Police official was dismissed from service in the light of allegation that he while posted as Gunner to DSP HQrs Karak had left the station without permission of DSP HQrs Karak. He had also taken official Kalashnikov No. 31336-14604241 (04241). He had placed the said Kalashnikov alongwith magazine unattended at a Charpai outside the shop of one Amin Gul T.V Workshop Karak. He had abandoned the official weapon. The said Kalashnikov was recovered by SI Fazal Hanif. Incharge DSB Karak. Later on, during the course of enquiry, it came to light that the said Kalashnikov was abandoned by he Constable Rafi Ullah No. 847/709. This is quite adverse on his part and shows his carelessness, negligence and non-professionalism in the discharge of his official obligations. Later on in compliance of the KP Service Tribunal Peshawar Judgment dated 27.09.2023 in Service appeal No. 752/Neem/2012 the above named constable has been reinstated in service for the purpose of conducting denovo enquiry vide OB No. 460 dated 01.11.2023."

To probe into the matter, the defaulter constable was summoned in the office of undersigned. He appeared before the undersigned. He was heard in person and recorded his statement, placed on file. He stated in his statement that those days he was posted as Gunner to DSP HQrs Karak. On the eventful day he was on duty with the DSP concerned at his office wherein his Boss directed him to take his T.V set to the mechanic shop. He further stated that he had taken away the T.V set to Peshawari T.V centre situated at Main Bazar Karak. He was present in the T.V mechanic shop in proper uniform as well as duly armed with official weapon. In the meanwhile Fazal Hanif Khan SI entered into the said shop and asked him that what he was doing over there and also started scolding him. In response, the accused official disclosed his position regarding his presence in the shop. Upon which the said SI further frustrated and at once ordered him to hand over his weapon. He also mentioned in his statement that the concerned shopkeeper / mechanic may be asked in this regard so that the position of the matter could be cleared. His detailed written statement along with other documents is enclosed (annexure-A).

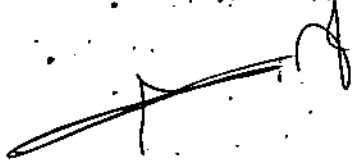
During the course of enquiry the said T.V mechanic namely Niaz Ali s/o Mamoor Khan age about 28/30 years CNIC No. 14202-8856075-9, Mobile No. 0306-8079579 was summoned in the office of undersigned. He appeared before the undersigned and his statement was recorded, placed on file. He stated in his statement that in the year 2011 in the month of September a police official in uniform boarded on motorcycle along with one private person bring a T.V set alighted from motorcycle. The police official having T.V set entered into their shop and disclosed that it was the T.V set of DSP HQrs Bakhtiar Khan and needs repairing. He further stated that upon seeing a Police uniformed person he give up other routine work and started checking of the said T.V and also told the police official not to leave the shop and if there was any little fault then it will be sought out within a few minutes. Meanwhile Fazal Hanif SI in plain clothes entered into the shop and asked constable Rafi Ullah that what he was doing over there in uniform and also started scolding him. Meanwhile during altercation he also took the Kalashnikov from Police official namely Rafi Ullah and left the shop. His detail written statement is enclosed (Annexure-B).

During the course of enquiry the posting card of the above named constable was also procured from your good office copy enclosed. According to the posting card he was enrolled in the department as a constable on 27.07.2007 and successfully recruited on 02.08.2007 PTC Hangu. Thereafter he was transferred / posted at various police stations Guard etc and subsequently dismissed from service on 10.09.2011. Record further revealed that he has been reinstated in his service on 01.11.2023 in the light of Judgment of Honorable Service Tribunal Khyber Pakhtunkhwa Service Appeal No. 752/Neem/2012 duly approved by the Police high-ups with the direction to conduct denovo enquiry as his appeal has been accepted by the Tribunal partially.

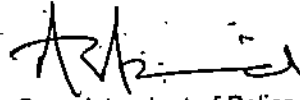
From the bare perusal of the record it has been observed that the defaulter constable after dismissal from service on 10.09.2011, he moved an appeal before the Regional Police Officer for setasiding the dismissal order issued by the then DPO Karak. In the meanwhile he was booked in a criminal case at his home town under FIR No. 453 dated 28.10.2011 u/s 324 PPC PS Yaqoob Khan Shaheed and remained absconded and did not pursue his appeal before the Regional Police and his appeal and subsequently his appeal was rejected by the Region Police Chief. Similarly, during absconding period in the above mentioned case, he was booked under another FIR No. 371 dated 04.10.2013 u/s 302/324/34 PPC Police station Yaqoob Khan Shaheed and FIR No. 11 dated 14.01.2015 u/s 324/34 PPC Police station Yaqoob Khan Shaheed. Thereafter he was arrested by the police and sent to the judicial lock up. The trial court completed trial in all the cases whereas

the accused official Rafi Ullah has been declared innocent in all the cases. Both the judgment copies are enclosed. (Annexure-C)

From the enquiry so far conducted the undersigned observed that neither the defaulter official was issued proper charge sheet and statement of allegation nor he was provided an opportunity of personnel hearing / cross examination. Furthermore, from the available record and circumstances, the allegation leveled against the defaulter constable Raif Ullah could not be proved as legal formalities for proper departmental proceeding were not fulfilled. As far as his intervening period is concerned, the same is recommended to be considered as leave without pay, if so approved.



Deputy Superintendent of Police,
Takht-e-Nasrati



Superintendent of Police
Investigation Wing Karak

ORDER

انور احمد
Anwar Ahmad

(15)

This order will dispose off the denovo departmental enquiry initiated against **Constable Rafi Ullah No. 847/709** of this district Police: -

"Facts are that in compliance of the KP Service Tribunal Peshawar judgment dated 27.09.2023 in Service Appeal No. 752/Neem/2012 Titled Mr. Rafi Ullah Ex-Police Constable No. 847 and approved by the AIG Legal Peshawar letter No. 6376/Legal dated 26.10.2023 and W/DIG internal Accountability Branch, KP Peshawar vide letter No. 1744-48/CPO/IAB dated 15.11.2023 wherein Ex-FC Rafi Ullah No. 847/709 was reinstated into service for the purpose of conducting denovo enquiry vide this office Order Book No. 460 dated 01.11.2023 on the allegations that Constable Rafi Ullah No. 847/709 while posted as Gunner to the then DSP HQrs Karak had left the station without his permission. He had also taken official Kalashnikov No. 31336-14604241(04241). He had placed the said Kalashnikov alongwith magazine unattended at a Charpai outside the shop of Amin Gul T.V Workshop Karak. He had abandoned the official weapon. The said Kalashnikov was recovered by SI Fazal Hanif, Incharge DSB Karak. Later on, during the course of enquiry, it came to light that the said Kalashnikov was abandoned by Constable Rafi Ullah No. 847/709. This is quite adverse on his part and shows his carelessness, negligence and non-professionalism in the discharge of his official obligations. Such act on his part is against service discipline and also amounts to gross misconduct."

He was served with charge sheet and statement of allegations under Police Disciplinary Rules 1975 (as amended 2014) vide this office No. 160/Enq: dated 21.11.2023. Mr. Asad Zubair, the then SP Investigation Wing, Karak and Mr. Darwish Khan, SDPO Takht-e-Nasrati were appointed as Enquiry Officers to conduct denovo enquiry into the matter.

The Enquiry Officers submitted findings report vide No. 3174/Inv dated 05.12.2023. The Enquiry Officers reported that the defaulter constable after dismissal from service on 10.09.2011, he moved an appeal before the Regional Police Officer for set-aside the dismissal order issued by the then DPO Karak. In the meanwhile, he was booked in a criminal case at his home town under FIR No. 453 dated 28.10.2011 u/s 324 PPC PS YKS and remained absconded and did not pursue his appeal before the Regional Police Officer Kohat due to which his appeal was rejected by the Regional Police Officer Kohat. Similarly, during absconding period in the above mentioned case, he was booked under another FIR vide Case FIR No. 371 dated 04.10.2013 u/s 302, 324, 34 PPC PS YKS and FIR No. 11 dated 14.01.2015 u/s 324, 34 PPC

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PS YKS. Thereafter, he was arrested by the local Police and sent to the Judicial lockup. The trial court completed trial whereas accused Rafillah was acquitted in case FIR No. 371 dated 04.10.2013 u/s 302, 324, 34 PPC PS-YKS judgment dated 22.09.2022 and FIR No. 11 dated 14.01.2015 u/s 324, 34 PPC PS YKS judgment dated 16.09.2023 by the court of law.

From the available record and circumstances, the allegations leveled against the defaulter Constable Rafi Ullah No. 847/709 has not been proved as legal formalities for proper departmental proceeding were not initiated/fulfilled against him so that the intervening period was recommended to be treated as leave without pay. Recommendations of the Enquiry Panel have been approved by the W/IGP Khyber Pakhtunkhwa, Peshawar vide letter No. 21-23/CPO/IAB dated 01.01.2024.

Keeping in view of above and having gone through available record and recommendations of the Enquiry Panel and from the approval of the competent authority, therefore, Constable Rafi Ullah No. 847/709 is hereby reinstated into service permanently and his intervening period is treated as leave without pay.

OB No. 10
Dated 09-01 /2024


District Police Officer,
Karak

OFFICE OF THE DISTRICT POLICE OFFICER, KARAK

No. 53-55 /Enq: dated Karak the 09-01 /2024

Copy of above is submitted for favour of information to: -

1. The Deputy Inspector General of Police, Internal Accountability Branch Khyber Pakhtunkhwa, Peshawar w/r to his office letter No. 21-23/CPO/IAB, dated 01.01.2024.
2. The AIG/Legal w/r to his office letter No. 6376/Legal dated 26.10.2023.
3. The Registrar Khyber Pakhtunkhwa, Service Tribunal Peshawar w/r Court order dated 27.09.2023 in Service Appeal No. 752/Neem/2012 Titled Mr. Rafi Ullah Ex-Police Constable No. 847


District Police Officer,
Karak

(17)
Annex D

To

The Regional police officer
Kohat Region, Kohat

Through: **PROPER CHANNEL**

Subject: **REPRESENTATION**

Respected Sir,

Appellant very humbly submits the representation based on the following facts and grounds, for considering the intervening period on duty by modifying the order of District Police Officer, Karak wherein the period was treated "Leave without pay".

Facts:

1. That appellant was recruited as constable in district Karak police in the year 2007. Appellant qualified recruit course. In the year 2011 was posted as gunman of Deputy Superintendent of police Headquarters Karak. On 09/09/2011, Appellant took TV of the said DSP to mechanic for repair. He was in uniform and was also possessing an official SMG rifle.
2. That he was present at TV shop when Fazal Hanif SI then posted as incharge District Security Branch Karak came and exchange hot words with him that appellant is doing private job in uniform. The said SI took his official SMG and lodged report in daily diary stating therein that the SMG was recovered while abandoned by appellant.
3. That appellant was proceeded against departmentally on the above charges and was dismissed from service order dated 10/09/2011 of district police Officer Karak. The Departmental appeal was also rejected vide order dated 15/05/2012. Thereafter appellant filed service appeal No. 752/2012.
4. That the service appeal was pending when appellant was charged in murder case FIR No. 371/2013 PS YKS (Takht-e-Nasrati) and attempted murder case FIR No. 11/2015 PS YKS. Appellant was detained in judicial lock up district Jail Karak. The trial court was pleased to record acquittal order in both the cases.
5. That the service appeal was accepted by the Service tribunal vide order dated 27/09/2023 and the case was remanded for de-novo enquiry proceedings. District Police officer, Karak was pleased to issue re-

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instatement in service order of appellant dated 09/01/2024; however, the intervening period was treated as leave without pay. Therefore appellant submits representation for review of the decision of the lower authority only to the extent of order with regard to intervening period.

Grounds

- a. That the enquiry committee was pleased to hold that the charge was unproved. Actually the TV mechanic namely Niaz Ali rebutted the charges leveled against appellant in his statement record by the enquiry committee. In view of the finding report of enquiry committee the intervening period was required to be treated on duty instead of leave without pay.
- b. That the appellant was compulsorily ousted from service as initial dismissal from service order was based on unproved charge, followed by innocently charge in murder and attempted murder case. Therefore appellant is entitled for all back benefits.
- c. That the trial court has declared the appellant as innocent by recording acquittal order in both the cases, which further establishes that appellant was compulsorily Ousted from service. There was no fault on the part of appellant.
- d. That appellant belongs to poor family. Appellant has done no other job during the intervening period rather appellant was in judicial lock up. Appellant is entangled in debt because defense of the criminal charge in two cases proved very expensive. The follow up of service appeal at Peshawar plus payment of Advocate fee etc also prove expensive. Therefore the treatment of intervening period on duty will help the appellant in staying out from the debt.
- e. That appellant also request to be heard in person for submitting additional grounds.

It is therefore requested that the order of Lower Authority may be modified and he intervening period may please be treated on duty with back and consequential benefits.

Yours Obediently

Rafi Ullah Constable

NO. 847/709 District Karak

(19) 1600
Annex E
19-04-2024

ORDER.

This order will dispose of the departmental appeal preferred by **Constable Rafi Ullah No.847** of Operation Staff Karak, against the order passed by District Police Officer, Karak vide OB No. 10, dated 09.01.2024 whereby he was re-instated in service and intervening period was treated as leave without pay.

Brief facts of the case are that in compliance with the KP Service Tribunal Peshawar judgment dated 27.09.2023 the applicant was reinstated in service for the purpose of conducting denovo enquiry vide DPO, Karak OB No.460 dated 01.11.2023 on the allegations that Constable Rafi Ullah No.847 while posted as Gunman to the then DSP, Hqrs: Karak had left the duty station without his permission. He had also taken official Kalashnikov No.31336-14604241. He had placed Kalashnikov with magazine unattended at Charpai outside the shop of Amin Gul TV workshop Karak and abandoned the official weapon. The said Kalashnikov was recovered by SI Fazal Hanif I/C DSB Karak. Later on, during the course of enquiry, it came to light that the said Kalashnikov had been abandoned by the Constable Rafi Ullah No.847.

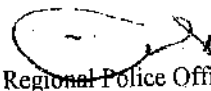
Proper departmental enquiry proceedings were initiated against him. The appellant was served with Charge Sheet and Statement of Allegations and an enquiry panel consisting of the SP/ Investigation Karak and SDPO Hqrs: Karak was nominated to conduct the subject denovo departmental enquiry. On the recommendations of the Enquiry Officers, the delinquent officer was re-instated in service and the intervening period was treated as leave without pay vide District Police Officer, Kohat OB No. 10 dated 09.01.2024.

Feeling aggrieved from the order of District Police Officer, Karak, the appellant preferred the instant appeal. He was summoned and heard in person in Orderly Room held in the office of the undersigned on 02.04.2024. During personal hearing, the appellant could not advance any plausible justification in his defense.

Foregoing in view, I, **Sher Akbar, PSP, S.St, Regional Police Officer, Kohat**, being the appellate authority, am of considered opinion that orders passed by District Police Officer, Karak is justified and, therefore, warrants no interference. Hence, appeal of Constable Rafi Ullah No.847 is hereby **rejected**, being devoid of substance and merit.

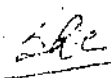
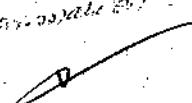
Order Announced

02.04.2024


Regional Police Officer,
Kohat Region

No. 3267 /EC, Dated Kohat the 15 /04/2024

Copy forwarded to District Police Officer, Karak for information and necessary w/r to his office Memo: No. 840/EC, dated 28.02.2024. His Service Roll and Fauji Misal are returned herewith.


for information

District Police Officer
Karak

(20) AMC/F

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463. R
13-5-24

Handwritten notes in the middle left section.

~~Allowed~~
~~order copy as per~~
~~rules~~

11.33
MKT
13/5/24

Handwritten notes below the crossed-out text.

Ref: attached

P.I.O
For Report

R/sir

The applicant is
entitled for provision
of order copy please.

[Signature]
D/o *[Name]*
13/05/24

[Signature]
Dy. Super. *[Name]*
Muzak

38-HCC
15-5-24

21

بعدالت سروس نرزینوس لستاد

S.A No	/2024
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2024ء پنجاب ایبیلانڈ
بینام ICAI وٹھرن

رضع رشد

موزخه
مقدمه
دعوی
جرم

باعث تحریر آئیکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی اور جواب دہی وکل کارروائی متعلقہ
 آن مقام ایبیلانڈ کیلئے ایبیلانڈ کے صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
 مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
 وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثتہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
 بصورت ڈگری کرنے اجراء اور صولی چیک دروپینا عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
 زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا ایبیل کی برآمدگی اور منسوخی
 نیز دائر کرنے ایبیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
 کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لیا اپنے بجائے تقرر کا اختیار
 ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساختہ
 پرواخصہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے وہ ہوگا۔
 کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
 مذکور کریں۔ لہذا وکالت نامہ لکھد یا کہ سند ہے

Pravin Mallick

المرقوم _____ ماہ _____ 2024ء
 واہ _____

بمقام ایبیلانڈ کے لئے منظور ہے۔