FORM OF ORDER SHEET

Court of	
Appeal No.	880/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	26/06/2024	The appeal of Mr. Gulab Zar re-filed today by registered post through Mr. Nasir Ayub Advocate. It is fixed
		for preliminary hearing before touring Single Bench at A.Abad on 23.07.2024. Counsel for the appellant has been informed telephonically.
		By the order of Chairman
U		REGISTRAR
•		
		*/

The appeal of Mr. Gulab Zar received today i.e on 12.06.2024 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- (i) According to sub-rule-4 of rule-6 of Khyber Pakhtunkhwa Service Tribunal rules 1974 respondent no.3 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 Appeal has not been flagged/marked with annexures marks.
- (3) Address of appellant is incomplete be completed according to rule-6 of Khyber Pakhtunkhwa Service Tribunal rules 1974.
- # In the memo of appeal the word petitioner is used but there exists no provision in the Khyber Pakhtunkhwa Service Tribunal Act/rules 1974 for using the word of petitioner in service appeal.

5/ Three copies/sets of the appeal along with annexures i.e. complete in all respect for Tribunal and one for each respondent may also be submitted with the appeal in file covers.

__/lnst;/2024/KPST,

SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Nasir Ayub Khan Adv. High Court A.Abad.

24-06-2024: Réfiled today of-ter removing live objections. Mainhable

BEFORE THE SERVISES TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWER

Service Appeal No. __/ 2024

Gulab Zar

Versus

Commissioner & others

APPEAL

<u>INDEX</u>

S.	Description of Documents	Annex.	Page
	,		
1	Writ Petition along with affidavit and certificate A		1-5
2	Addresses of the parties P		06
3	Copy of the order NO. 4708E 11/Levies/DC/TG dated 06.D3.2024 A	A	67
4	Copy of the appeal & orderN No.CHD/ACR/Reader/10/2 (B)/5347-51	В	8-10
			45
;	Power of Attorney		

Appellant

Through:

(Nasir Ayub Khan) Advocate High Court

BEFORE THE SERVISES TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWER

A. No 880/2024

Gulab Zar	son of Zubair K	han resident o	f Darband Sl	nahnawian, Digtr	ict Torghar
Fv	Solog	le lies	Force	Torghar	Appellan
	- / //			0	11
i .	•	Versus			

- 1- Commissioner Hazara Division, At Abbottabad.
- 2- Deputy Commissioner Torghar/ Commandant Levies Force, At Torghar.

.....Respondents

SERVICE APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT 1974, AGAINST IMPUGNED ORDER NO.4708-11/LEVIES/DC/TG DATED 06.03.2024 WHEREOF THE APPELLANT WAS REMOVED FROM SERVICE BY RESPONDENT No.2 AND THEREAFTER THE DEPARTMENTAL APPEAL OF THE APPELLANT WAS DISMISSED BY RESPONDENT NO.1 VIDE NOTIFICATION NO.CHD/ACR/READER/10/2(B)/5347-51 DATED 21.05.2024.

PRAYER ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL IT IS HUMBLY PRAYED THAT THE IMPUGNED ORDER NO. 4708-11/LEVIES/DC/TG DATED 06.03.2024 **AND NOTIFICATION** NO.CHD/ACR/READER/10/2 (B)/5347-51 DATED 21.05.2024. DEPARTMENTAL APPEAL MAY GRACIOUSLY BE SET-ASIDE AND THE APPELLANT BE REINSTATED INSERVICE WITH CONSEQUENTIAL AND BACK BENEFITS THAT ANY OTHER RELIEF/ ORDER WHICH THIS HONORABLE COURT MAY GRACIOUSLY DEEM FIT AND APPROPRIATE IN THE CIRCUMSTANCES OF THE CASE MAY ALSO BE GRANTED.

Respectfully Sheweth:

The facts giving rise to the instant appeal are arrayed as under:

1. That the appellant was appointed spoy in levies Force in the year 2010, since than appellant has performed his duties with full dedication and has left no stone



unturned to give his best, who number of time risked his life for his duty, throughout his service not a single complaint of absence or otherwise has been recorded, appellant has unblemished record.

- 2. The petitioners joined Levies Force governed by the Rules promulgated in 1962. Later on the Rules of 1962 were repealed and Provincially Administrated Tribal Area (PATA). Levies force Services Rules 2012 were promulgated for PATA Levies force vide notification dated 13/09/2012 where as for FATA Levies Force, the Federal Levies Force (Service) Rules 2012 were framed. There after the Government of Khyber Pakhtunkhwa notified Service Rules for PATA i.e Provincially Administrated Tribal area PATA Federal Levies Force Service (Amended) Rules 2013 vide notification dated 04/02/2013, where as the Federal Government promulgated Federal Levies force (Amended) Services Rules 2013 vide notification dated 08/04/2013. There after the 25th amendment in the constitution Federally Administrated Tribal Areas were merged in the Province of Khyber Pakhtunkhwa. Federal Levies Force Regulation 2012 lost its legal status and in consequence the Khyber Pakhtunkhwa Government promulgated Khyber Pakhtunkhwa Levies Force Act 2019 and according to section 9 of the Act members of Levies Force were absorbed in police and till their absorption Levies Force is to be Governed by Federal Levies force (Amended) Service Rules 2013.
- 3. That the appellant was suspended by respondent No.2 on 27.02.2024 on the charge of remaining absent from duty.
- 5. That appellant was not served with the showcase or charge sheet, no personal hearing was given, as no charge sheet or show cause was served upon appellant no written reply was ever submitted to the inquiry officer.
- 6. That feeling aggrieved of the removal order dated 06.03.2024 appellant preferred departmental appeal on 08.03.2024 to the respondent No.1. Respondent No.1 dismissed the appeal vide order No.CHD/ACR/Reader/10/2 (B)/5347-51 dated 15.05.2024. It is worth to mention that the order was not conveyed to the appellant, who on 03.06.2024 moved an application to respondent No.1 for the copy of the order which they received on the same day i.e 03.06.2024. Copy of the appeal & order No.CHD/ACR/Reader/10/2 (B)/5347-51 is annexed as B.

That feeling aggrieved of the order No. 4708-07/Levies/DC/TG dated 06.03.2024 whereof the appellant was removed from service by Respondent No.2 and thereafter the Departmental Appeal of the appellant was dismissed by Respondent No.1 vide notification No.CHD/ACR/Reader/10/2(B)/5347-51 dated 21.05.2024, appellant has come to this honorable Court inter alia amongst many other:-

Grounds:



- a. That the impugned order is against the Law, unconstitutional, discriminatory, victimizing, perverse and void abini-tio, hence, it liable to be struck down.
- b. That the penalty imposed upon the appellant is not correct, totally baseless, unjustifiable and is liable to be struck down.
- c. That the appellant has never been absent from duty ,he was very much present in the line at Judba Torghar, where there is process of marking attendance, attendance is only marked when the spoy is deputed to the point of duty.
- d. That no show cause was issued to the appellant as per Law hence the impugned orders issued by respondent No.1 & No2 are liable to be set-aside.
- e. That the proceedings conducted against the appellant are not in accordance with law, E&D rules are tainted with malafide and ill-will towards appellant.
- f. That under the Law respondent No.2 was duty bound to give personal hearing to the appellant which he badly failed to do so.
- g. That no charge sheet or statement of allegations has ever been issued by the Competent authority hence the whole proceedings stand vitiated consequently upon the recommendations of Inquiry officer (respondent No.3), the impugned order is also against the law and is liable to be set aside.
- h. That the impugned order is itself self explanatory that the period of so called absentee has not been mentioned thus the whole process in nullity in the eye of law.
- i. That according to the settled law no proper rules regarding charge/allegation, facts finding inquiry, charge sheet/show cause and proper inquiry proceedings, chance of cross-examination and final showcase notice has not been observed, which is illegality and no inquiry in the eye of law and the impugned order is baseless and liable to be set-aside.
- j. That the appellant serves the department with complete devotion dedication to the entire satisfaction of her superiors and always abide the service laws and rules.
- k. That in way entire proceedings carried out are unknown to the principle of natural justice, fundamental rights, jurisprudence and the law on the subject.
- 1. That good governance demands that the law and the rules are to be strictly adhered.

- 7. That there is no other speedy, efficacious and adequate remedy available to the appellant, except the present appeal.
- 8. That the appeal is well within time as the copy of the impugned order was received on an application on 03.06.2024.

In the light of the fact mentioned above it is humbly prayed that on acceptance of the instant service appeal it is humbly prayed that the impugned order No. 4708-07/Levies/DC/TG dated 06.03.2024 and notification No.CHD/ACR/Reader/10/2 (B)/5347-51 dated 21.05.2024 in departmental appeal may graciously be set-aside and the appellant be reinstated in service with all consequential and back benefits. That any other relief/ order which this honorable court may graciously deem fit and appropriate in the circumstances of the case may also be granted.

Appellant

Through:

(Nasir Ayub Khan) Advocate High Court

VERIFICATION:

I, Gulab Zar son of Zubair Khan resident of Darband Shahnawian, District Torghar. Verify on oath that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

Dated:/2024	- Appellant
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BEFORE THE SERVISES TRIBUNAL PESHAWER

S.Appeal No.___/ 2023

Gulab Zar

Versus

Commissioner & others

APPEAL

<u>AFFIDAVIT</u>

I, Gulab Zar son of Zubair Khan resident of Darband Shahnawian, District Torghar, do hereby solemnly affirm and declare that the averments as contained in the accompanying Appeal are correct and true to the best of my knowledge and belief and nothing has been concealed there from. The contents of accompanying petition may kindly be read as integral part of this affidavit.

Deponent

IDENTIFIED BY:-

Nasir Ayub Khan Advocate High Court

6

BEFORE THE SERVISES TRIBUNAL PESHAWER

S. Appeal No.___/2023

Gulab Zar

Versus

Commissioner & others

<u>APPEAL</u>

ADDRESSES OF THE PARTIES

Petitioner

Gulab Zar son of Zubair Khan resident of Darband Shahnawian, District Torghar

Respondents

1. Commissioner Hazara Division Abbottabad.

2. Deputy Commissioner/ Commandant levies Force Torghar.

3. Assistant Commissioner/Depth Commandant Levies Force (HQ) Judba, Torgha.

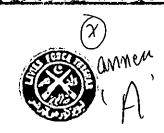
Petitioner

Through:

Nasir Ayub Khan Advocate High Court



OFFICE OF THE DEPUTY COMMISSIONER/ Commandant Levies Force **TORGHAR**



/Levies/DC/TG

Dated Torghar the 06/03 /2024

OFFICE ÖRDER

WHEREAS, Mr. Gulab Zar Sepoy Levies Force, Torghar was reported willfully absent from his duty without any prior approval from competent authority w.e.f 15-01-2024 to 27-02-2024.

AND WHEREAS, the accused was proceeded against under the relevant law/rules on that count as well as showing lack of discipline; Mr. Hasrat Khan Assistant Commissioner (HQ) Judba was appointed as an Inquiry Officer. A Charge Sheet was served to Mr. Gulab Zar vide letter No. 4692-94/Levies/DC/TG dated 27-02-2024; the delinquent official submitted his reply to the charge sheet and the Inquiry Officer in his inquiry report vide letter No. 4698/Levies/DC/TG dated 04-03-2024 submitted that the delinquent official had willfully absented himself from duty w.c.f 15-01-2024 till 27-02-2024; that the Inquiry Officer proved willful absence of the delinquent and recommended strict disciplinary action.

AND WHEREAS, Mr. Gulab Zar was directed to appear before the undersigned on 04-03-2024; the delinquent official attended the office of the undersigned on 05-03-2024. The written reply available on file was perused wherein, the delinquent official has taken a stance that his blood relative was ill due to which he couldn't attend his duty but he hasn't substantiated his stance with any documentary evidence. Also, he couldn't mention any cogent reason for his absence.

AND WHEREAS, in view of the foregoing facts regarding the absence of the delinquent official, findings and recommendations of the Inquiry Officer/ Deputy Commandant Levies Force Torghar as well as his unsatisfactory written reply and failure to justify his unauthorized absence during the personal hearing, it can be safely concluded that Mr. Gulab Zar has committed gross misconduct; has been absent from duty without any prior approval in the instant case and has also ceased to be efficient anymore.

NOW THEREFORE, I, Deputy Commissioner/Commandant Levies Force, Torghar impose major penalty of Removal from Service upon Mr. Gulab Zar, Sepoy Levies Force, Torghar U/S 10 (Schedule-II) (b) of Provincially Administered Tribal Areas (PATA) Federal Levies Force Service (Amended) Rules, 2013 with effect from 15-01-2024.

> Commandant Levies Force **₹TORGHAR**

Enstt: No & Date Even:

Copy forwarded to the:-

1. Commissioner, Hazara Division, Abbottabad.

2. District Account Officer Torghar.

3. Section officer (Police-II), Government of Khyber Pakhtunkhwa Peshawar.

4. Mr. Gulab Zar C/O Subidar Levies Force, Torghar to serve the order upon the official

Commandant Levies For **4** TORGHAR

بخدمت جناب تمشنرصاحب ہزارہ ریجن ایبٹ آباد Departmental Appeal/درخواست برائے بحال کرنے سائلان نز دنو کری۔ عنوان! جناب عالى! درخواست ذیل *عرص ہے*۔ ىيە كەساكلان Commandant Levies Force تورغر كا المازىيىن بىس-يركرسائلان عرصه 15/20 سال سے اپنی ڈیوٹی احس طریقہ سے سرانجام دیتے آرہے ہیں اور بھی بھی اپنے _2 فرائض كى انجام دى ميں كوئى كوتا كى نہيں بر تى -یر کر مور خد 27/02/2024 کو جناب ڈپٹی کمشنرصا حب تو رغر نے سائلان کو بغیر کسی شوکا زنوٹس کے نوکری معطل کیا۔اور دجہ بیبتائی کہ ماکلان غیر حاضر تھے حالانکہ ساکلان نوکری پرموجود تھے اور ڈپٹی کمشنر تو رغرنے صوبیدارتورغر کے کہنے پرغیر قانون طور پرساکل ن کونوکری ہے عطل کیااور بعداز ال مورخہ 05/03/2024 کوسائلان کو کمل طور پرنوکری ہے Dismiss کردیا۔ Seckta یے کہ ساکلان کونو کری سے Dismiss کرنے کے پیچھے صوبیدار تو رغر اور DC تو رغر کا PA فیصل جمی ملوث -4 llease ہیں۔جنہوں نے سامی دباؤ میں آ کرسائلان کونوکری ہے Dismiss کروایا جس بابت صوبیدارتو رغر کا examire Voice Note بھی سائلان کے پاس موجود ہے۔ and process یک سائلان نے ہمیشا حس طریقہ سے اپی ڈیوٹی سرانجام دی اور بھی کسی تم کی کوئی کوتائی ندبرتی ہے۔ سیکہ سائلان نے ہمیشا حسن طریقہ سے اپنی ڈیوٹی سرانجام دی اور بھی کسی تم کی کوئی کوتائی ندبرتی ہے۔ ا پنے اپنے گھر کے واحد فیل ہے اور کو تی ذریعہ معاش بھی نہ ہے اور ساکلان کے چھوٹے جھوٹے بیچے ہیں اور RE. اس مہر گائی کے دور میں گز ارانتہائی مشکل ہے۔ Commr. الهذا استدعاه عد بمنظور درخواست بذاسائلان كونوكرى يربحال كرف احكامات صادر فرماع جاع-ما کل ن آپ کیلئے ہمیشہ دعام گور ہیں گے۔ الرتوم:08/03/2024 NI Sulleta نعمت الله ولد جان ثمر خان سكنه چيرا كوث ،تو رغر م كل محد ولد دنسزت عمر سكنه بسي خيل اتو رغر 13504-8889483-7 13504-9432089-7

> ئىن خىرانىڭ كاروژىداخىل ، تورغر عبدالرۇف گل دلدروزىيت گل سىنىد كاروژىداخىل ، تورغر 13504-5896694-7

گل_اب زرولدز بیرخان *سکنه در بندهینا کیاں ہ*ورغر 1-13504-6182504



COMMISSIONER HAZARA DIVISION ABBOTTABAD

No. CHD/ACR/Reader/10/2 (B)/ 5347-51

Dated Tuesday, May 21, 2024

Phone No. 0992-9310111-461 Fax No. 0992-9310540

<u>08058</u> 15/05/2024

Whereas, the appellants Mr Gul Muhammad S/o Hazrat Umar e e-Sepo, Levies Force Torghar, Mr. Niamatullah S/o Jan Muhammad Khan Using Lax Sepay Levies Force Torghar, Mr. Gulab Zar S. o Zubair Khan Umar 1 18 go, Levies Force Torghar, and Mr. Abdur Rauf Gul S/o Rozimat Gul. Ex-Servey Lexus Force Torghar, have filed a joint appeal dated; 08/03/2024 moinst the impugued orders No 4716-20, 4708-11, 4704-7, 4712-15 passed bу 06:03:2024 dated Commandant Levies Force Torghar whereby major Penalty of DOING DOITG. remedal from service had been imposed upon the appellants under the praisions of Section- 10(Schedule-II) (b) of Provincially Administered Tribal hrea (PATA) Federal Levies Force Service (Amended) Rules, 2013 and Section-14 (schedule II) (b) of Provincially Administered Tribal Areas (PATA) Federal CALS Force Service Rules, 2015.

The brief instory of the case in hand is that the above mentioned appellants were serving as Sepoy Levies Force Torghar. They were reported willfully absent from their duties without any prior approval. the Competent Authority w.e f 15/UI, 2024 to 26/02/2024.

A fact finding inquiry was conducted by the Assistant Commissioner, Deputy Commandant Levies Force District Torghar against the accused. The inquiry proceedings transpired that the accused have failed to justify their willful absence and also committed gross negligence and defiance. The Deputy Commissioner/Commandant Levies Force after completion of all legal formalities and in light of the recommendations made by the Inquiry Officer had imposed major penalty of removal from service upon the accused.

Whereas, the comments on the instant appeals were requisitioned of the Deputy Commissioner/Commandant Levies Force vide his letter No.4774/Levies/DC (TG) dated 30/04/2024.

And whereas, the appellants appeared in person for personal hearing on 15/05/2024 in the presence of Mr. Hasrat Khan, Assistant Commissioner/Deputy Commandant Levies Force Torghar, representative of the Deputy Commissioner/Commandant Levies Force Torghar and it was also revealed that appellants have failed to report for duty despite various revealed that appellants have failed to report for duty despite various revealed that appellants have failed to report for duty despite.

Now therefore, after going through the contents of the appeal, careful perusal of available record, comments offered by the Deputy Commissioner/Commandant Levies Force Torghar, the written reply of the accused and their stance during the personal hearing they were found guilty of the charges.

Therefore, I see no valid grounds to set aside the order of the Deputy Commissioner /Commandant levies force Torghar which is upheld. The instant appeals are hereby rejected.

ANNOUNCED 15/05/2024



Commissioner Hazara Division Abbottabad

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	S.No. <u>226487</u> Mob:		10 11/	(1)
1	Name of Advocate Name of Advocate		ووالث نامه	2100
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	بنام	<i></i>	دان: <u>صلاحب ح</u>	نخز
	_نوعیتِ مقدمه کرچیز کر		اب <u>ليماريط</u>	جنم
	ثُرِيراً مُله	•		-
	ں برائے بیش یا تصفیہ مقدمہ بمقام ہے ۔ ا			
	الدس فال المروليث ها لي كورث -			
	یابذراید بختارخاص روبروعدالت حاضر ہوتار ہوں گاادر بروتت پکارے کا میں میں میشند است میں است کی رہے ہوتا کی کا در بروت پکارے			
	الت کردن گا۔ اگر بیٹنی پرمظہر حاضر نہ ہواا در مقد میں بری غیر حاضری کی وجہ ی پلوز پڑنا بند داریند ہوں کے نیز دکیل صاحب موضوف صدر مقام کچہری کے			ľ
	ن ہوروپر و بقد ارزید ہوں نے بیر ویں صاحب ہوسوف سفر رمقا م پہر ہائے رہے ہوری کرنے اسکے ذیحہ آزنہ ہوئ کے اور مقد کے چری کے علاوہ کی اور جگہ	. 47	•	
	ع بروی جراح محدد متر دار ایند بوق این اور طرفه در پهری محال دو ما در جد	* 35. 11		
	ين وقع پر سهر وون مشان پيدون کا خد مدوروي کا در اخته صاحب موصوف باحب موصوف ذ مددار نه دو انگيا مجوز کول ساخته پرداخته صاحب موصوف	4 (132 7)	·· •	
	ناخب و خوک در مدوارید. او سیاح کی طاقوان ما حصد پرداخته ما حب و رق دعویٰ یا جو ک و عرف اور درخواست انجرا اللیار و کرگی ونظر تانی اپیل تگرانی و هرشم	3 ML N. E 19M ?	•	1,
	یاڈ گری کرانے اور ہرفتم کا دوبیہ وصول کرانے اور داخل کرنے پاڈ گری کرانے اور ہرفتم کا دوبیہ وصول کرانے اور داخل کرنے			
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	ا المام الم	ه مخانه پر دې کااختار وگاپه اور کا	موصوف کوبشر طادا نیگی علید	3
	الکوائے جانے ماای ایم او مقر در کری اورا ہے ویل کو جی ہرامریں	مورت ایل کی دوسرے ویلا	- کسی جزوکی کاروائی کرمالج	.2
	لوَمَا مِيلَ مِينَ إِدِرِ دَوْرَانَ مَقَدَمَ جُو يَجَهِ بِرِجَانِهِ التَّوَارِيِّ عِلَّادِهُ صَاحْبِ مُوصُوفَ لوَمَا مِيلَ مِينَ إِدِرِ دَوْرَانَ مَقَدَمَ جُو يَجَهِ بِرِجَانِهِ التَّوَارِيِّ عِلَّادِهُ صَاحْبِ مُوصُوفَ			` \ I
	مستحتین فی سے پہلے ادانہ کروں گا تو صاحبِ موصوف کو پوراا ختیار ہوگا کہ وہ مقدمہ			
	ہ. اصاحبِ موصوف کے برخلاف نہیں ہوگا۔	· · · · · · · · · · · · · · · · · · ·	•	
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