

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

SERVICE APPEAL NO.1419 of 2023

Sabir Hussain Shah son of Hayat Shah, Ex- Cook Constable No. 1077
District Mansehra**Appellant**

VERSUS

- 1) Government of Khyber Pakhtunkhwa through Provincial Police Officer/Inspector General of Police at Peshawar. District Police Officer, Mansehra.
- 2) The Additional Inspector General of Police Establishment central police office at Peshawar
- 3) The Regional Police officer, DIG Hazara Range, Abbottabad.
- 4) The District Police Officer, Mansehra.

.....**Respondents**

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Deponent

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

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District Mansehra**Appellant**

VERSUS

- 1) Government of Khyber Pakhtunkhwa through Provincial Police Officer/Inspector General of Police at Peshawar. District Police Officer, Mansehra.
- 2) The Additional Inspector General of Police Establishment central police office at Peshawar
- 3) The Regional Police officer, DIG Hazara Range, Abbottabad.
- 4) The District Police Officer, Mansehra.

.....**Respondents**

Parawise/Comments on behalf of respondents

**Khyber Pakhtunkhwa
Service Tribunal**

RESPECTFULLY SHEWETH:-

Diary No. 15120

PRELIMINARY OBJECTION:-

Dated 22/8/24

- a) That The appeal is not based on facts and appellant has got no cause of action or locus standi to file the appeal.
- b) That The appeal is not maintainable in the present form.
- c) That The appeal is bad for non-joinder and mis-joinder of necessary and proper parties.
- d) That The appellant is estopped by his own conduct to file the appeal.
- e) That The appellant has not come to the Honorable Tribunal with clean hands.
- f) That the appeal is badly time barred.
- g) That the appellant has been retired from service on medical ground and obtained all the financial benefits therefore the appeal is liable to be dismissed.

FACTS:-

- 1. Pertains to Record.
- 2. That appellant had absented himself from duty without any leave or permission and during the enquiry he disclosed his sickness and produced copies of medical record before the competent authority. **(Copies are attached as annex A)**
- 3. That the appellant was referred to King Abdullah Teaching Hospital vide respondent No- 4 letters No.6015/SMB dated 06-07-2022 Medical Superintendent was requested to constitute a medical board and to examine the medical condition of

appellant and to opine whether he is fit for Police service or not.

- 4. That appellant was appeared before the medical board where his detail medical examination was conducted the medical board held the following: -
"Sabir Hussain Shah (Appellant) is suffering from generalized brain atrophy leading to low mood and impaired thinking ability. He is considered permanently incapacitated unfit for further Government Service, invalid out of service with disability class A and not fit for Government job".
- 5. That upon the recommendation/opinion of standing medical board, the appellant was invalidated from service vide OB No.132 dated 05-08-2022. **(Copies attached as annex B)**
- 6. That appellant has received all the pensionary benefits and continuously receiving monthly pension. There is no provision of law which permits appellant to get reemployment after getting all the pensionary benefits.
- 7. That appellant has got no legal right to be reemployed in police service after getting retirement on medical ground. The instant appeal maintainable on the following grounds: -

GROUND:-

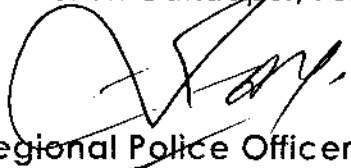
- A. Incorrect. The appellant has been declared permanently incapacitated due to his sickness described by medical board. The detail of his absence has already been mentioned in para above.
- B. Incorrect, No subsequent medical board has been constituted, the instant para is totally incorrect.
- C. That respondent department has followed the prescribed law and after following law, proper order of his retirement on medical ground was passed.
- D. Incorrect. The instant appeal is not maintainable as no remedy is available to appellant. The Honorable Tribunal has got no jurisdiction to entertain the instant appeal.
- E. Incorrect. The instant appeal is liable to rejection as medical board constituted according to law, has given its opinion on which the appellant has been retired from service. The appellant has not denied the receipt of pension benefit nor challenged the same at the relevant times. Now at this stage while he received all the benefits, his appeal is not maintainable.

3

PRAYER:-

In view of the above mentioned facts, the appeal in hand may kindly be dismissed with cost, being devoid of any legal force.

~~District Police Officer~~ District Police Officer,
Mansehra. Mansehra
(Respondent No. 04)
(Shafi Ullah Gandapur, PSP)


Regional Police Officer,
Hazara Region, Abbottabad
(Respondent No. 03)
(Capt.(r) Tahir Ayub, PSP)

~~Regional Police Officer~~
Hazara Abbottabad

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District Mansehra**Appellant**

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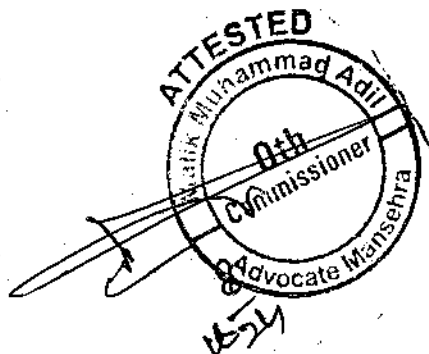
AFFIDAVIT

I, Shafi Ullah Gandapur, District Police officer Mansehra, do solemnly affirm and declare that the contents of the comments are true and correct to best of my knowledge and belief and that nothing has been concealed from this Honorable tribunal.

It is further stated on oath that in this appeal respondents neither has been placed defence have been struck off.

the answering Ex-parte not their

District Police Officer,
Mansehra
(Respondent No. 04)
(Shafi Ullah Gandapur, PSP)



Room No : 030
Department : NEUROSURGERY
Date : 07-JUN-22 09:24:57
Dept Fee : 30
User : KIRAN IFTIKHAR
MIRNO : K0400002991646
Invoice No : K04221394070
Sex : Male

OPD Prescription form

Sabir Hussain Shah
HAYAT SHAH

Age :
Sex :
Occupation :

36 Year(s) 00 Month(s) 0 Day(s)
REGULAR
ایسوی ایٹھ سو و تیس سال کا مرد
ڈاکٹر عبدالعزیز خان

4 sided weakness.

Annex "A" (8, pages)

The Paravertebral
3-2-2022

light duty

3-2-2022
The A2 val
(1)

Altaf

Neurosurgeon
Dr. Ehtisham Ahmed
Asstt. Professor Neurosurgen
MTIATHAID

DSP LEGAL
MANJEHRA

Tibia
Ankle
Poplit
6/3/21

Room No :
Department : NEUROSURGERY
Date : 07-JUN-22 09:24:57
Dept Fee : 30
User : KIRAN IFTIKHAR
MRNO : K0400002991646
Invoice No : K04221394070
Sex : Male

6

A

OPD Prescription form

Hussain Shah
HAYAT SHAH

35 Year(s) 00 Month(s) 0 Day(s)
REGULAR

ایسوسی ایٹڈ پروفیسر نیوروسرجری
ڈاکٹر عبدالعزیز خان

Added weakness.

The Paracetamol
1/2 - 1/2

light duty

the weakness
the weakness
the A2Vae
①

Attended
DSP LEGAL
MANSEHRA

Neurosurgeon
Dr. Ehtisham Ahmed
Asstt. Professor Neurosurgery
MTI ATH'Atd

7

"A"

AYUB TEACHING HOSPITAL, ABBOTTABAD

Accident & Emergency Service Department

Pat No.

Serial # 347067
S. No. 23

Case No. ACE22108114

Sabir Hussain Shah

35 Yearl Male

Date: 30-MAY-22 10:55:30

Receipt # K04220514191

Dr. M. HAYAT SHAH

Case # K04221303284

Sided weakness

Advice

NCS both
upper &
lower limb

Power = 4/5
5/5
5/5
5/5

↓ Sensory on
Left side

Rx
Cap Co-Depn Cap
3/5 2/5 3/5 2/5

Reflexes - Normal

Tabs Sumetin N-
7/10

Plantars = downgoing

7/10 (+)

Hoffman ⊖

Cap Nexum 400
1/1 1/1

Spurling ⊕

cap Suroat-7
1/1 1/1

↓ (5) on OPD ACS, 1/1/19

Attested
DSP LEGAL
MANSEHRA

TRAKS

⑧

Department Of Radiology

Ayub Teaching Hospital, MTI Abbottabad

" A "

Name	Sabir Shah	MR Number	2943404
Age / Gender	35Y/M	Dept ID	
Study Date	24/05/2022	Reporting Date	25/05/2022
Clinical Info	Hx of weakness and fits	Comparison	None

MRI BRAIN WITHOUT CONTRAST

Technique:
Multi planner, multi sequential image of brain were obtained without IV contrast.

Findings:

Prominent cerebellar folia noted.
The grey and white matter differentiation is normal with normal signals.
There is no hemorrhage, infarct or SOL. No midline shift or mass effect noted.
The basal ganglia structures are within normal limits. Normal corpus callosum and periventricular white matter seen. The ventricular chain appears normal.
Brainstem appears normal. Bilateral vestibulo-cochlear nerve complexes are normal. The cervico medullary junction appears normal.
The pituitary fossa appears normal in size. The pituitary gland shows normal signal intensity.
The pituitary stalk is central with normal thickness and signal intensity.
Visualized parts of orbits, retro-bulbar soft tissues and paranasal sinuses unremarkable.
The skull bones and scalp soft tissues appear normal.
DNS with convexity towards left noted.

MRI WHOLE SPINE WITHOUT CONTRAST:

Pronounced anterior curvature of cervical spine.
There are normal high disc signals. Vertebral heights are normal. Intervertebral disc heights are normal. Bone marrow and cord signals are normal. Paravertebral soft tissue signals are normal.

IMPRESSION:


Cerebellar atrophy
DNS with convexity towards left noted.
Please also see detail report above.

Case reviewed by: Dr. Ghayur Khan
Residents on duty: Dr Bilqees, Dr Sadaf, Dr Haider, Dr Fatima, Dr Mubashir, Dr Hira

Dr. Faiza Akram
MBBS MCPS FCPS
Chairperson and Associate professor

Dr. Ghayur Khan
MBBS DMRD
Associate professor

Dr. Azmat Ali
MBBS, FCPS
Assistant professor

Attested

**DSP LEGAL
MANSEHRA**

Note: This report is not valid for court or other medico legal purpose.

(9)

n A

CHARGE SHEET

I, Irfan Tariq (PSP), District Police Officer, Mansehra as Competent Authority, hereby charge you Cook Constable Sabir No. 1077 PP Naran as follows.

Vide DD No. 04 dated 15-06-2022 PP Naran it has been reported that you have absented yourself from duty with effect from 12-06-2022 till date without any leave or permission. It shows that you are indisciplined and irresponsible police official. It amounts to gross misconduct.

Due to reasons stated above you appear to be guilty of misconduct under Khyber Pakhtunkhwa Police Disciplinary Rules 1975 (amended in 2014) and have rendered yourself liable to all or any of the penalties specified in the said Police Disciplinary Rules.

You are, therefore, required to submit your written defense within 07 days of the receipt of this charge sheet to the enquiry officer.

Your written defense, if any, should reach the enquiry officer within the specified period, failing which it shall be presumed that you have no defense to put in and in that case ex parte action shall follow against you.

Intimate whether you desire to be heard in person or otherwise.

Statement of allegation is also enclosed.


17/06/22
District Police Officer,
Mansehra

Attested

DSP LEGAL
MANSEHRA

(10)

A

DISCIPLINARY ACTION

I, Irfan Tariq (PSP), District Police Officer Mansehra, as Competent Authority of the opinion that Cook Constable Sabir No. 1077 PP Naran has rendered himself liable to be proceeded against as he committed the following act/omissions within the meaning of Khyber Pakhtunkhawa Police Disciplinary Rules 1975 (amended in 2014).

Vide DD No. 04 dated 15-06-2022 PP Naran it has been reported that you have absented yourself from duty with effect from 12-06-2022 till date without any leave or permission. It shows that you are indisciplined and irresponsible police official. It amounts to gross misconduct.

For the purpose of scrutinizing the conduct of the said accused Officer with reference to the above allegations, Mr. Sabri, DSP Sirkiani is deputed to conduct formal departmental enquiry against Cook Constable Sabir No. 1077 PP Naran. The Enquiry Officer shall in accordance with the provisions of the Khyber Pakhtunkhawa Police Disciplinary Rules 1975 (amended in 2014), provide reasonable opportunity of hearing the accused, record findings and make recommendations as to punishment or other appropriate action against the accused.

The accused and a well conversant representative of the department shall in the proceedings on the date, time and place fixed by the Enquiry Officer.

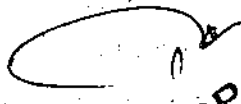

District Police Officer,
Mansehra

No 2952-53 /PA dated Mansehra the 17-06-2022

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

1. The Enquiry Officer for initiating proceedings against the defaulter officer under the provisions of the Khyber Pakhtunkhawa Police Disciplinary Rules 1975. Copy of aforementioned DD report is enclosed.
2. Cook Constable Sabir No. 1077 PP Naran with the direction to submit his written statement to the Enquiry Officer within 07 days of the receipt of this charge sheet/statement of allegations and also to appear before the Enquiry Officer on the date, time and place fixed for the purposes of departmental proceedings.


District Police Officer,
Mansehra

Attested

DSP LEGAL
MANSEHRA

DSP LEGAL
MANSEHRA

Handwritten signature

~~Dy. Superintendent of Police
Circle Manshera~~

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(4)

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FINDING OF DEPARTMENTAL INQUIRY AGAINST COOK CONSTABLE SABIR SHAH NO. 1077
PP BESAL KAGHAN MANSEHRA UNDER THE K.P.K DISCIPLINARY
RULES 1975.

جناب عالی!

بحوالہ حکم نمبری 2952-53/PA مورخہ 17-06-2022 حکمانہ انکوآزری ازان کلک کانسٹیبل صابر حسین شاہ نمبر 1077 چونکہ میسر تھانہ کاغان موصول ہو کر مطالعہ سے پایا گیا کہ مذکورہ پر یہ الزام عائد ہو گیا کہ وہ مورخہ 12-06-2022 تا 16-06-2022 کل 4 ایام بارخصت/اجازت کے غیر حاضر ہوا معاملہ کی انکوآزری کیلئے مجھے بطور انکوآزری آفیسر مقرر کیا گیا میں نے حسب ضابطہ حکمانہ انکوآزری کا آغاز کرتے ہوئے الزام علیہ کلک کانسٹیبل صابر حسین شاہ نمبر 1077، یاسر حسین نمبر 947 محرر چونکہ میسر کو طلب کر کے بیانات ریکارڈ کئے جبکہ الزام علیہ کلک کانسٹیبل مذکورہ پر کراس سوالات بھی کئے گئے۔ جملہ کارروائی ہمراہ انکوآزری لف قابل ملاحظہ ہے۔

فائینڈنگ!

حالات و واقعات الزام علیہ کلک کانسٹیبل صابر حسین شاہ نمبر 1077، یاسر حسین نمبر 947 محرر چونکہ میسر کے بیانات، کلک کانسٹیبل مذکورہ سے ہوئی جرح، کلک کانسٹیبل مذکورہ کی جانب سے پیش کردہ علاج معالجہ کی نسبت ایوب میڈیکل کیمپلیکس ایبٹ آباد ڈاکٹر صاحب سے چیک اپ ریکارڈ اور مذکورہ کی سابقہ مزا یا بیویوں کی نسبت ریکارڈ کا مطالعہ/تجزیہ کرنے کے بعد یہ بات سامنے آئی کہ کلک کانسٹیبل صابر حسین شاہ نمبر 1077 مورخہ 12-06-2022 تا 16-06-2022 کل 4 ایام بارخصت/اجازت کے غیر حاضر ہوا جبکہ مذکورہ نے عرصہ غیر حاضری کی نسبت یہ عذر پیش کیا کہ وہ چونکہ میسر سے اچانک طبیعت خراب ہونے پر گھر آ گیا تھا اور وہ 3/4 ایام تک گھر پر رہا اور ادویات استعمال کیں کچھ افاقہ ہونے پر مورخہ 16-06-2022 اپنی جائے تعیناتی چونکہ میسر اپنی حاضری رپورٹ کی جبکہ دوران جرح بیانی ہوا کہ اُس نے اچانک طبیعت خراب ہونے پر گھر آنے کی نسبت چونکہ انچارج کے نوٹس میں نہیں لگایا تھا البتہ راستہ میں گھر آتے ہوئے اُس نے بذریعہ موبائل کال کر کے چونکہ میں اطلاع دی تھی مگر اُس نے جس نمبر پر اطلاع دی وہ اُسے یاد نہیں اسی طرح مذکورہ نے جو میڈیکل چیک اپ ریکارڈ پیش کیا وہ اس عرصہ غیر حاضری کو کوور نہیں کرتا تاہم کانسٹیبل مذکورہ کو اس قبل دوران سروس ایک مرتبہ باآتخوہ کی سزا بھی ہو چکی۔

جملہ انکوآزری سے کلک کانسٹیبل صابر حسین شاہ نمبر 1077 کا عرصہ غیر حاضری مورخہ 12-06-2022 تا 16-06-2022 کل 4 ایام ثابت ہوتا ہے تاہم اس بات میں کوئی دوران نہ ہے کہ مذکورہ واقعی اب بھی بیمار ہے جس کی بیماری کو مد نظر رکھتے ہوئے ہمدردی کی بناء پر مذکورہ کو محتاط رہنے کی خاطر آخری وارننگ دینے جانے کی سفارش کی جاتی ہے۔

ڈی ایس پی سرکل
شکھیاری

DPO Mansehra

ملفوظہ جات: (20)

Attest

DSP LEGAL
MANSEHRA

Annex - "B"
(2- Pages) (13)

S.M.B

**OFFICE OF THE MEDICAL SUPERINTENDENT
KING ABDULLAH TEACHING HOSPITAL MANSEHRA**

Tel: 0997-920096, Fax: 0997-540211; Email: mskathmansehra@gmail.com
Website: www.kathmansehra.com

No. 6015 /SMB
Dated 06/07/2022

The District Police Officer
Mansehra

Subject **STANDING MEDICAL BOARD.**

Reference to your letter No/6707/OIC dated 15.06.2022 and in-continuation of this office letter No.5415/SMB dated 20.06.2022.

Standing Medical Board of King Abdullah Teaching Hospital Mansehra comprising of following Specialist Doctors assembled in the office of undersigned on 29.06.2022 (Wednesday) at 10.00 AM to examine Cook Constable Sabir Hussain Shah No.1077 S/O Hayat Shah of your department.

- 1. Medical Superintendent King Abdullah Teaching Hospital Mansehra : (Chairman)
- 2. Orthopedic Surgeon, King Abdullah Teaching Hospital Mansehra : (Member)
- 3. Medical Specialist, King Abdullah Teaching Hospital Mansehra : (Member)
- 4. Neurosurgeon, King Abdullah Teaching Hospital Mansehra : (Member)

FINDING OF THE MEDICAL BOARD IS AS UNDER:-

Mr. Sabir Hussain Shah is suffering from: - Generalized Brain Atrophy leading to low mood and impaired thinking ability. He is also suffering from body aches with persistent low mood. So he is unable to continue the Government Job.

OPINION OF THE MEDICAL BOARD IS AS UNDER:-

Medical Board is of the opinion that Mr. Sabir Hussain Shah is considered permanently incapacitated, unfit for further government service, Invalid out of service with disability class 'A' not attributable to not aggravated by service. Unfit for govt. Job.

Ahsan
Medical Superintendent
King Abdullah Teaching
Hospital Mansehra
(Chairman)

Ahsan
Medical Superintendent
King Abdullah Teaching
Hospital Mansehra

Ahsan
DSP LEGAL
MANSEHRA

Muhammad
Medical Specialist
King Abdullah Teaching
Hospital Mansehra
(Member)

Muhammad
Neurosurgeon
King Abdullah Teaching
Hospital Mansehra
(Member)
Dr. Nazir Ali
(FCPS)
Consultant Neurosurgeon
K.A.T. Mansehra Ph:0353-593677

Muhammad
Orthopedic Surgeon
King Abdullah Teaching
Hospital Mansehra
(Member)
Dr. H.Q. Teaching Hospital
Mansehra.

**OFFICE OF THE MEDICAL SUPERINTENDENT KING ABDULLAH TEACHING HOSPITAL
MANSEHRA**

To:
The District Police Officer,
Manshra

Subject: **STANDING MEDICAL BOARD**

Reference to your office letter No/6/07/OIC dated 15/06/2022 and in continuation of this office letter No. 5415/SMB dated 20/06/2022

Standing Medical Board of King Abdullah Teaching Hospital Manshra comprising of following specialist doctors assembled in the office of undersigned on 29/06/2022 (Wednesday) at 10:00 AM to examine cook Constable sabir Hussain Shah No.1077 S/O Hayat Shah of your Department.

1. Medical superintendent King Abdullah teaching Hospital Manshra: (Chairman)
2. Orthopaedic surgeon, king Abdullah Teaching Hospital Manshra: (Member)
3. Medical Specialist, king Abdullah Teaching Hospital Manshra: (Member)
4. Neurosurgeon, King Abdullah Teaching Hospital Manshra: (Member)

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Mr. Sabir Hussain shah is suffering from: Generalized Brain Atrophy leading to low mood and impaired thinking ability. He is also suffering from body aches with persistent low mood. So he is unable to continue the government job.

OPINION OF THE MEDICAL BOARD IS AS UNDER:-

Medical Board is of the opinion that Mr. Sabir Hussain Shah is Considered permanently incapacitated, unfit for Government Service. Invalid out of service with disability class "A" not attributable to not aggravated by service. Unfit for govt. Job.

-SD-

Medical Superintendent,
King Abdullah Teaching
Hospital, Manshra

-SD-

Medical Superintendent,
King Abdullah Teaching
Hospital, Manshra

-SD-

Medical Specialist,
King Abdullah Teaching
Hospital, Manshra

-SD-

Neurosurgeon,
King Abdullah Teaching
Hospital, Manshra

-SD-

Orthopedic Surgeon,
King Abdullah Teaching
Hospital, Manshra

Attested
1/2/22
**DSP LEGAL
MANSEHRA**

(15)

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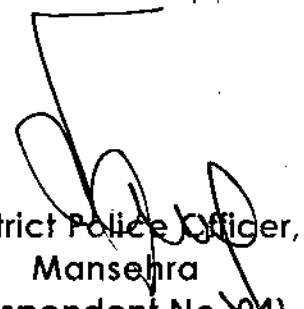
VERSUS

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- 4) The District Police Officer, Mansehra.

.....**Respondents**

AUTHORITY LETTER

I, District Police Officer, Mansehra, hereby authorized Mr. Haq Nawaz, ASI Legal Mansehra to attend Honorable Court of Service Tribunal, KPK, Peshawar in Service Appeal NO. 1419/2023 on my behalf.


District Police Officer,
Mansehra
(Respondent No. 04)
(Shafi Ullah Gandapur, PSP)