

# INDEX

## KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

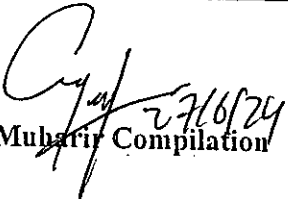
EXECUTION NO. \_\_\_\_\_


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Shah Afzal vs POLICE Department.

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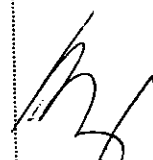
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Muharir Compilation

  
Incharge Judicial Branch

**TENTATIVE SENIORITY LIST OF ASSISTANT SUB INSPECTOR (BPS-11) OF EXCISE, TAXATION AND NARCOTICS CONTROL, KHYBER PAKHTUNKHWA AS IT STOOD ON 31.12.2023.**

S #	NAME OF OFFICIAL	HOME DISTRICT	DATE OF BIRTH	DATE OF JOINING GOVT. SERVICE.	DATE OF APPOINTMENT/ PROMOTION AS ASI IN E&T DEPTT:	REMARKS
1-	2-	3-	4-	5-	6-	7-
1	Mr. Zaffar Iqbal	Karak	01.01.1981	14.10.1999	28.03.2009	Promotee (appointed as SI on acting charge)
2	Mr. Iftikhar Ahmad	Nowshera	05.10.1981	14.10.1999	28.03.2009	
3	Mr. Murad Ali	Charsadda	10.03.1968	21.10.1986	28.03.2009	
4	Muhammad Ayaz	Charsadda	20.03.1964	01.02.1985	28.03.2009	
5	S. Mehboob Hussain	Mansehra	12.06.1976	25.01.2001	28.03.2009	
6	Mr. Ikramullah	Bannu	13.11.1972	10.02.1995	28.03.2009	
7	Muhammad Nasir	Peshawar	28.03.1974	11.12.1990	28.03.2009	
8	Mr. Azmat Ali	Swat	14.02.1981	01.03.2010	01.03.2010	Deceased Son Quota (appointed as SI on acting charge) on 13.2.2023
9	Mr. Asif Mir Dad	Peshawar	12.01.1981	07.12.2010	07.12.2010	
10	Mr. Tariq Khan	Abbottabad	11.04.1985	07.12.2010	07.12.2010	
11	Syed Touqeer Abbas	Abbottabad	19/09/1983	07.12.2010	07.12.2010	Direct appointees. (appointed as SI on acting charge) on 20.3.2023
12	Mr. Shah Nawaz	Nowshera	02.02.1979	07.12.2010	07.12.2010	Direct appointees. Seniority fixed in accordance with the order of merit assigned by the Departmental Selection Committee (DSC) (appointed as SI on acting charge) on 13.2.2023
13	Mr. Waheed Akbar	Nowshera	15.02.1990	10.12.2010	10.12.2010	
14	Muhammad Tahir	Malakand Agency	15.08.1983	13.03.2012	13.03.2012	
15	Mr. Kamran Ali	Peshawar	30.06.1977	14.03.2012	14.03.2012	
16	Mr. Rashid Munir	Lakki Marwat	01.04.1984	13.03.2012	13.03.2012	
17	Mr. Farhad Ullah Khan	Karak	12.04.1992	15.03.2012	15.03.2012	
18	Muhammad Kamran Mandoori	Nowshera	02.07.1989	13.03.2012	13.03.2012	
19	Mr. Sajjad Ali	Nowshera	13.03.1991	13.03.2012	13.03.2012	Seniority fixed in accordance with the order of merit assigned by the Departmental Selection Committee (DSC) (appointed as SI on acting charge) on 13.2.2023

  
**EXCISE, TAXATION & NARCOTICS CONTROL**  
**SUB-DIRECTOR GENERAL**  
**KHYBER PAKHTUNKHWA**

①

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

**Service Appeal No. 1215/2018**

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

Shah Afzal S/O Khan Afzal, R/o Darband Hangu, Ex-Constable No. 196,  
Police Line, Hangu.

... (Appellant)

**VERSUS**

1. District Police Officer, Hangu.
  2. Deputy Inspector General of Police, Kohat Region Kohat.
  3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
- .... (Respondents)

Mr. Arbab Saif-ul-Kamal,  
Advocate --- For appellant

Mr. Asif Masood Ali Shah,  
Deputy District Attorney --- For respondents

Date of Institution.....03.10.2018  
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 the appeal, orders dated  
17.04.2009 and 19.04.2010 of the respondents be set  
aside and appellant be reinstated in service with all  
back benefits, with such other relief as may be  
deemed proper and just in circumstances of the  
case.”**

2. Precise facts as alleged by the appellant in his appeal are that,  
he was appointed as Constable in Police Department in the year 2007.

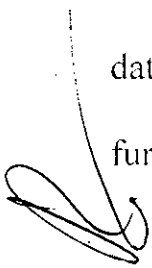
Departmental inquiry was initiated against the appellant on the

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allegation that he while nominated for Elite Course at Punjab Regiment Mardan absented himself from the said course with effect from 20.08.2008 till issuance of charge sheet without prior permission or leave. On conclusion of the inquiry, the appellant was awarded major punishment of dismissal from service from the date of absence vide impugned order dated 17.04.2009. The appellant filed departmental appeal, which was filed being time barred vide order impugned order dated 19.04.2010. The appellant filed application before the Provincial Police Officer/Appeal Revision Board, Khyber Pakhtunkhwa, Peshawar on 26.04.2010, which was not responded, therefore, the appellant filed reminder on 18.09.2018, however the same was not responded. The appellant has now filed the instant service appeal before this Tribunal on 03.10.2018 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 appellant was deputed to Elite Course and on return he was directed to report to police line Hangu but he became ill and started his treatment, therefore, his absence was not intentional rather the same was due to his illness. He next argued that the appellant was awarded major punishment of dismissal from service vide impugned order dated 17.04.2009 with retrospective effect, therefore, the impugned order dated 17.04.2009 being void ab-initio is liable to be set-aside. He further argued that as the impugned order dated 17.04.2009 was passed



with retrospective effect, therefore, no limitation would run against the impugned order. He also argued that neither any notice, charge sheet, final show-cause notice was issued to the appellant nor any inquiry was conducted in the matter, therefore, the impugned orders are illegal and liable to be set-aside.

5. On the other hand, learned Deputy District Attorney for the respondents has contended that the appellant was sent for basic recruit course, however he failed the same. He next contended that the appellant was detailed for Elite course but he deliberately did not attend the said course and reported absent vide Police Lines Hangu, daily diary No. 5 dated 17.08.2008. He further contended that the appellant has neither made his arrival report to his place of posting nor joined the inquiry proceedings. He also argued that the departmental appeal as well as revision petition and service appeal of the appellant are barred by time, therefore, the appeal in hand is not maintainable and 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 Musharraf 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. Record reveals that appellant was dismissed from service from the date of his absence i.e 20.08.2008 vide order dated 17.04.2009. As per appellant contention, he filed departmental appeal against the same on 15.05.2009, while respondent denied from filing of departmental appeal within time as his appeal was filed being time barred by the Inspector General of Police, Khyber Pakhtunkhwa, Peshawar vide order dated 19.04.2010. If we consider that the appellant has filed departmental appeal on 15.05.2009 against the impugned order dated 17.04.2009 even then the departmental appeal of the appellant is barred by time as prescribed under Section-9 of Removal from Service (Special Powers) Ordinance, 2000. Appellant filed instant service appeal on 03.10.2018 after lapse of more than 08 years and 05 months which he was required to file within 30 days after expiry of 60 days of filing of departmental appeal. 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 and the Service Tribunal

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 as well as service 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)



22.04.2024 1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney alongwith Israr Uddin, Inspector 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.

  
(Fareeha Paul)  
Member (E)

  
(Rashida Bano)  
Member (J)

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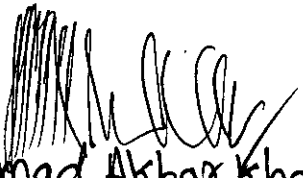
**ORDER**


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 as well as service 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)  
~~(Fareeha Paul)~~  
Member (Executive)

  
(Rashida Bano)  
Member (Judicial)

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.



(Fareeha Paul)  
Member (E)



(Kalim Arshad Khan)  
Chairman

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\*Adnan Shah\*

15.09.2023

Junior of learned counsel for the appellant present.  
Mr. Arif Saleem, Steno alongwith 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.

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(Fareeha Paul)  
Member (E)

(Salah-ud-Din)  
Member (I)

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

\*Naeem Anin\*

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

2. Learned counsel for the appellant requested for adjournment on the  
ground that he has not made preparation for arguments. Adjourned. To  
come up for arguments on 22.02.2024 before D.B. P.P given to the  
parties.

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(Muhammad Akbar Khan)  
Member (E)


(Rashida Bano)  
Member (J)

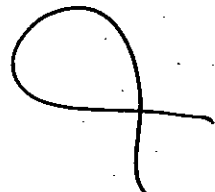
\*kamranullah\*

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

- 1. Learned counsel for appellant present. Mr. Fazal Shah Mohmand, Additional Advocate General 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.

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(Fareeha Paul)  
Member (E)


  
(Kalim Arshad Khan)  
Chairman


\*Mutazem Shah\*

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.

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(Fareeha Paul)  
Member (E)

  
(Kalim Arshad Khan)  
Chairman

\*Fazle Subhan P.S\*

\*Muazzem Shah\*

(Roziina Rehman)  
Member (J)

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.

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Appellant present through counsel.  
Fazal Shah Mohmand, learned Additional Advocate General

26.04.2023

(ROZINA REHMAN)  
Member (J)

(FAREHA PAUL)  
Member (B)

Learned counsel for the appellant present.  
Shah, Assistant 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.

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10.02.2023

22.12.2022

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

Learned counsel for the appellant sought time for preparation of arguments. Adjourned. To come up for arguments on 04.01.2023 before D.B.

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(Mian Muhammad)  
Member (E)

(Salah-ud-Din)  
Member (J)

04.01.2023

Learned counsel for the appellant present. Mr. Noor Muhammad, S.I alongwith Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

Inquiry record has neither been submitted by the appellant nor by the respondents, therefore, respondents shall positively submit copy of complete inquiry record within 10 days and to come up for arguments on 10.02.2023 before the D.B.

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(Mian Muhammad)  
Member (E)

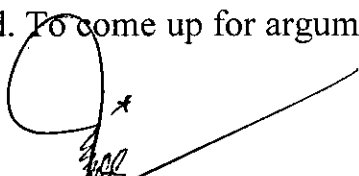
(Salah-Ud-Din)  
Member (J)

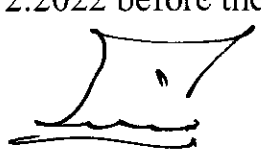
08.12.2022

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

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments on 13.12.2022 before the D.B.

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(Mian Muhammad)  
Member (E)


  
(Salah-Ud-Din)  
Member (J)

13.12.2022

Junior to counsel for the appellant present. Muhammad Adeel Butt learned Additional Advocate General for respondents present.

Former made a request for adjournment on the ground that senior counsel for the appellant is busy in Hon'ble Peshawar High Court, Peshawar. Last chance is given. To come up for argument on 22.12.2022 before D.B.

  
(Fareeha Paul)  
Member (E)

  
(Rozina Rehman)  
Member (J)

30<sup>th</sup> Nov. 2022

Learned counsel for the appellant present. Mr. Naseerud Din Shah, Assistant Advocate General for the respondents present.

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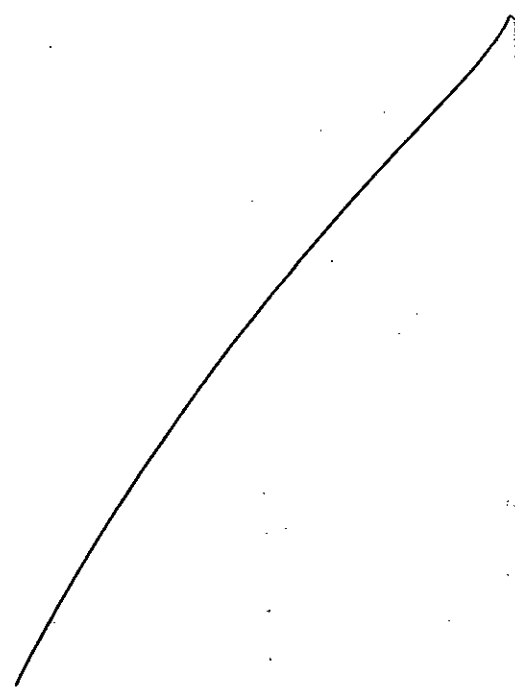
File received from the learned D.B-II with the observation that the matter was heard by both of us (the undersigned) but vide order sheet dated 31.05.2022 in connected Service Appeal No. 1369/2018 titled "Farman Ali Vs. DPO, Swat and others", the bench sought some clarification which were not made, therefore, let it be fixed before any available D.B. To come up for arguments on 08.12.2022 before the D.B.



(Fareeha Paul)  
Member (E)



(Kalim Arshad Khan)  
Chairman

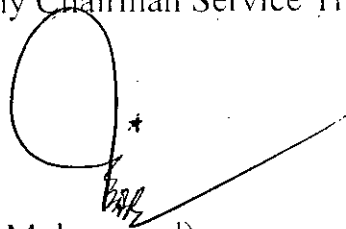




30.11.2022

Learned counsel for the appellant present. Mr. Hikmat Khan, Head Constable alongwith Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

Learned Assistant Advocate General stated that arguments in similar nature appeal have been heard by a bench comprising of worthy Chairman and Miss. Fareeha Paul learned Member (Executive) and the appeal was fixed for order, therefore, the appeal in hand may also be fixed before the said bench. The appeal in hand is, therefore, sent to worthy Chairman Service Tribunal for further appropriate order. Learned counsel for the parties shall appear before the worthy Chairman Service Tribunal today at 12:55 P.M.



(Mian Muhammad)  
Member (E)





(Salah-Ud-Din)  
Member (J)

06.06.2022

Clerk of learned counsel for the appellant present. Muhammad Fayaz, Head Constable alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Clerk of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is not available today due to strike of lawyers. Adjourned. To come up for arguments on 18.08.2022 before the D.B.

  
(Fareeha Paul)  
Member (E)

  
(Salah-ud-Din)  
Member (J)

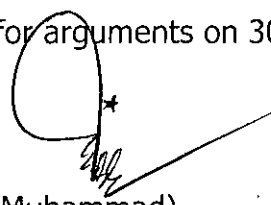
18.8.22


*due to summer vacation the case is adjourned to 16-9-22 for the same.*

16.09.2022

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

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments on 30.11.2022 before the D.B.

  
(Mian Muhammad)  
Member (E)

  
(Salah-Ud-Din)  
Member (J)

13.01.2022

Learned counsel for the appellant present. Mr. Javed Ullah, Assistant Advocate General for respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not gone through the record. Adjourned. To come up for arguments before the D.B on 10.05.2022.

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

Chairman

10<sup>th</sup> May, 2022

Learned counsel for the appellant present Mr. Muhammad Riaz Khan Painsdakheil, Asstt. AG for the respondents present.

Learned counsel for the appellant requested for adjournment in order to assist the court. To come up for arguments before the D.B on 06.06.2022.

(Fareeha Paul)  
Member(E)

(Kalim Arshad Khan)  
Chairman

29.06.2021

Appellant alongwith his counsel present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

We being Members of Larger Bench, remained busy in hearing arguments in the appeals fixed before the Larger Bench, therefore, arguments in the instant appeal could not heard. Adjourned. To come up for arguments before the D.B on 18.10.2021



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



(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

18.10.2021

Appellant present through representative.

Muhammad Riaz Khan Paindakheil learned Assistant Advocate General for respondents present.

Lawyers are on general strike, therefore, case is adjourned. To come up for arguments on 13.01.2022 before D.B.

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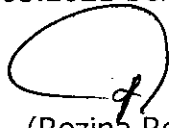
(Atiq-Ur-Rehman Wazir)  
Member (E)



(Rozina Rehman)  
Member (J)

09.12.2020 Counsel for the appellant and Addl. AG for the respondents present.

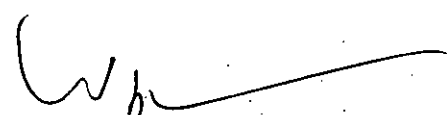
The issue of retrospective application of orders has not yet been decided by the Larger Bench of this Tribunal. The hearing is, therefore, adjourned to 03.03.2021 before the D.B.

  
(Rozina Rehman)  
Member(J)

  
Chairman

03.03.2021 Counsel for the appellant and Asif Masood Ali Shah, DDA for the respondents present.

The issue of retrospective application of order is yet to be decided by the Larger Bench, therefore, instant matter is adjourned to 09.06.2021 for hearing before the D.B.


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

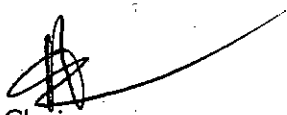
  
Chairman

09.06.2021 Appellant present through counsel.

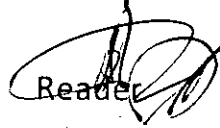
Riaz Khan Paindakheil learned Assistant Advocate General for respondents present.

Request for adjournment was made on behalf of appellant as issue involved in the instant case is pending before Larger Bench of this Tribunal. Adjourned. To come up for arguments on 29.06.2021 before D.B.

  
(Rozina Rehman)  
Member (J)

  
Chairman

\_\_\_\_\_.2020 Due to COVID19, the case is adjourned to  
12/8/2020 for the same as before.


Reader 


12.08.2020 Due to summer vacations case to come up for the same on  
 15.10.2020 before D.B.

Reader 

15.10.2020 Miss. Uzma Syed, Advocate for appellant is present. Mr. Kabirullah Khattak, Additional Advocate General alongwith representative of the department Mr. Abdur Rauf, Head Constable, are also present.

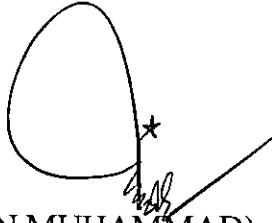
Learned Additional Advocate General while making reference to impugned order dated 17.04.2009 submitted that retrospective effect was given to the referred to order, the issue with retrospectivity is pending before the Larger Bench of this august Tribunal constituted for the purpose therefore, unless and until judgment is made by the worthy Larger Bench of this Tribunal, this appeal is kept pending. File to come up for further proceedings on 09.12.2020 before D.B.

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

  
 (Muhammad Jamal Khan)  
 Member (Judicial)

19.03.2020

None for the appellant present. Addl: AG alongwith Mr. Zahid Ur Rehman, Inspector for respondents present. Due to general strike on the call of Peshawar Bar Council, the case is adjourned. To come up for arguments on 20.05.2020 before D.B.



(MAIN MUHAMMAD)  
MEMBER



(M.AMIN KHAN KUNDI)  
MEMBER

17.10.2019

Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Zahid-ur-Rehman, Inspector (Legal) for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 04.12.2019 for arguments before D.B.




(Ahmad Hassan)  
Member



(M. Amin Khan Kundi)  
Member

04.12.2019

Learned counsel for the appellant present. Mr. Usman Ghani learned District Attorney alongwith Mr. Zahid Ur Rehman Inspector for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 03.02.2020 before D.B.



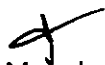
(Hussain Shah)  
Member



(M. Amin Khan Kundi)  
Member

03.02.2020

Learned counsel for the appellant present. Mr. Ziaullah, DDA alongwith Mr. Zahid ur Rehman, Inspector for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 19.03.2020 before D.B.



Member



Member



09.05.2019

Nemo for the appellant. Mr. Riaz Painsdakhel learned Assistant Advocate General alongwith Mr. Atif ASI for the respondents present. The learned Member (Executive) Mr. Hussain Shah is on leave, therefore, the bench is incomplete. Adjourned. To come up for rejoinder/arguments on 08.07.2019 before D.B.

  
(Muhammad Amin Khan Kundi)  
Member

08.07.2019

Junior to counsel for the appellant and Addl: AG for respondents present. Junior to counsel for the appellant submitted rejoinder which is placed on file. Adjourned. Case to come up for arguments on 02.09.2019 before D.B.

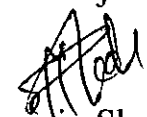
  
Member


  
Member

02.09.2019

Counsel for the appellant and Mr. Usman Ghani, District Attorney alongwith Mr. Zahid-ur-Rehman, Inspector (Legal) for the respondents present.

Learned District Attorney states that the present appeal was assigned to Mr. Kabirullah Khattak, Additional Advocate General who is not available today due to death of his father. He therefore requested for adjournment. Adjourned to 17.10.2019 for arguments before D.B.

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

03.01.2019

Counsel for the appellant Shah Afzal present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in Police Department, he was imposed major penalty of dismissal from service vide order dated 17.04.2009 on the allegation of absence from duty with effect from 20.08.2008. It was further contended that the appellant filed departmental appeal on 15.05.2009 which was rejected on 19.04.2010 thereafter, the appellant filed revision petition on 24.04.2010 which was not responded hence, the present service appeal on 03.10.2018. Learned counsel for the appellant further contended that the appellant was ill and it was beyond the control of the appellant to attend the duty. It was further contended that the impugned order of dismissal from service of the appellant was passed retrospectively from the date of absence therefore, the impugned order is illegal and liable to be set-aside.

The contention raised by the learned counsel for the appellant needs consideration. The appeal is admitted for regular hearing subject to limitation and all legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter, notice be issued to the respondents for written reply/comments for 14.03.2019 before S.B.

Appellant Deposited  
Security & Process Fee

(Muhammad Amin Khan Kundi)  
Member

14.03.2019

Appellant alongwith counsel present. Mr. Saleem Superintendent representative of the respondents present and submitted written reply. Adjourn. To come up for rejoinder/arguments on 09.05.2019 before D.B.

  
Member

Form- A

FORM OF ORDER SHEET

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

Case No. 1215/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	03/10/2018	The appeal of Mr. Shah Afzal presented today by Mr. Saadullah Khan Marwat Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please.  REGISTRAR 3/10/18
2-	4-10-18	This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>15-11-2018</u>  MEMBER
	15-11-2018	Due to Retirement of Honorable Chairman the Tribunal is non functional therefore the case is adjourned to come up for the same on 3-1-2019  Reader

SCANNED  
KPST  
Peshawar

26

**BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR**

S.A No. 1215 /2018

Shah Afzal

versus

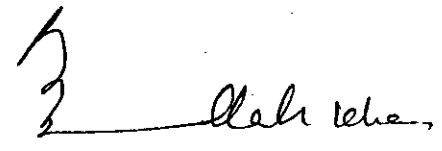
D.P.O & Others

**I N D E X**

S.#	Description of Documents	Anne	Page
1.	Memo of Appeal		1-3
2.	Medical Receipts	"A"	4-14
3.	Dismissal from service dated 17-04-2009	"B"	15
4.	Representation dated 15-05-2009	"C"	16
5.	Rejection order dated 19-04-2010	"D"	17
6.	Revision Petition dated 26-04-2016	"E"	18
7.	Reminder dated 18-09-2018	"F"	19

Appellant

Through



Saadullah Khan Marwat  
Advocate  
21-A Nasir Mansion,  
Shoba Bazaar, Peshawar.

Ph: 0300-5872676  
0311-9266609

Dated: 22-09-2018

**BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR**S.A No. 1215 /2018Khyber Pakhtukhwa  
Service TribunalDiary No. 1447Dated 03/10/2018

Shah Afzal S/O Khan Afzal,  
R/o Darband Hangu,  
Ex-Constable No. 196,  
Police Line, Hangu .....

Appellant

**VERSUS**

1. District Police Officer, Hangu.
2. Deputy Inspector General of Police,  
Kohat Region Kohat.
3. Provincial Police Officer,  
KP, Peshawar. .... Respondents

⇔<=>⇔<=>⇔<=>⇔<=>⇔

**APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT,  
1974 AGAINST OFFICE ORDER NO. 277 DATED 17-  
14-2009 OF R. NO. 1 WHEREBY APPELLANT WAS  
AWARDED MAJOR PUNISHMENT OF DISMISSAL  
FROM SERVICE FROM THE DATE OF HIS ABSENCE  
OR OFFICE ORDER NO. 3778-79 / EC DATED 29-  
04-2010 OF R. NO. 02 WHEREBY  
REPRESENTATION OF APPELLANT WAS FILED:**

⇔<=>⇔<=>⇔<=>⇔<=>⇔

**Respectfully Sheweth:**

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

1. That appellant was appointed as Constable in June 2007 and served the department to the best of his ability and with devotion.
2. That in the year 2008, appellant got training from Police Training Centre Kohat and thereafter reported to police line kohat.

Filed to-day  
Registrar  
3/10/18

3. That appellant was transferred to Police Station Sadar and after serving the said station for one year he was deputed to Elite Course and on return he was directed to report to Police Line Hangu.
4. That appellant became ill and started treatment as per Medical receipts since 18-02-2009 till 15-02-2010. Finally the same was diagnosed a case of Hepatitis B as per Medical specialist report dated 15-02-2010, etc. (Copies as annex "A")
5. That on 17-04-2009 major punishment of dismissal from service from the date of absence i.e. 20-08-2008 was imposed by R. No. 01. (Copy as annex "B")
6. That on 15-05-2009, appellant submitted departmental appeal for reinstatement in service before R. No. 02, followed by subsequent application which was filed / rejected on 19-04-2010. (Copies as annex "C" & "D")
7. That appellant submitted Revision petition before R. No. 03 for reinstatement in service, followed by reminder dated 18-09-2018 for the said purpose but in vain. (Copies as annex "E" & "F")

Hence this appeal, inter alia, on the following grounds:-

### **GROUND S**

- a. That appellant never absented from duty willfully but he was and was diagnosed as a case of Hepatitis B as per Medical specialist.
- b. That appellant was neither served with any Notice, Charge Sheet, Final Show Cause Notice, so he was condemned unheard.
- c. That neither any enquiry was conducted nor any statement was recorded in presence of appellant nor he was afforded opportunity of cross-examination.
- d. That the impugned order was passed with retrospective effect while on the other hand, no such order could be passed in the aforesaid manner.

- e. That the impugned order is illegal and ab-initio void, so the same was effected retrospectively, so no limitation runs against void order.
- f. That absence, if any, and that too not willful, does not constitute misconduct. The impugned orders are not, per the mandate of Law, so are based on malafide and requires interference.

It is, therefore, most humbly prayed that on acceptance of the appeal, orders dated 17-04-2009 and 19-04-2010 of the respondents be set aside and appellant be reinstated in service with all back benefits, with such other relief as may be deemed proper and just in circumstances of the case.

شاہد علی

Appellant

Through

سید سعید

Saadullah Khan Marwat

Amjad Nawaz

Advocates,

Dated 22--09-2018

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A 4

18-2-0



H No: 825/19, F-Block  
Satellite Town, Rawalpindi.  
Tel: 92-51-8087616/4580204  
Mob: 0321-5000616  
Fax: 92-51-4580204

FMDC No **8429-19**

Name	Shah Afzal	Age	23 Years	Sex	Male
Referred by	Dr Noor ul iman	Contact	-	Reporting Date	25/02/09
Source Of Sample	Blood( sample was brought to the lab)			Receiving Date	18/02/09
Request	HBV DNA GENOTYPING				

Interpretation	HBV GENOTYPE "UNTYPLABLE"
----------------	---------------------------

METHODOLOGY:

DNA extracted from 200ul of serum and was subjected to two rounds of PCR amplification with nested pairs of primer. The 1<sup>st</sup> round utilized the outer primers specific for the PreS1 & S regions of HBV genome. The 2<sup>nd</sup> round was performed with one universal inner-sense and genotype-specific anti-sense primers. The amplified specific target sequence for particular genotypes was detected by agarose gel electrophoresis.

COMMENTS:

Presently, HBV can classified into eight (A-H) major genotypes and a series of subtypes. Different hepatitis B virus (HBV) genotypes are associated with different profiles of pathogenicity, infectivity, and response to antiviral therapy (Kao et. al., 2002 *HepatoI. 17:643-650*). HBV genotype C has been associated with Hepatocellular carcinoma (Orito et. al., 2001 *Hepatology 34:590-594*) and genetic recombination with this genotype might render genotype B strains more pathogenic and more carcinogenic. Genotypic effects on the treatment response shows that genotype B is associated with better response to interferon compared with genotype C while patients with genotype D have a lower response rate to Interferon compared with genotype A. Genotype D is the most widely distributed genotype and has been found universally but predominates in the Mediterranean area. Genotype A infected patients responded better to Interferon treatment than those infected with genotype D or E (Zhang et. al., 1996)

Electronically verified report requires no signature

Real-Time PCR, Histopathology, Cytopathology, Hematology, Microbiology, Chemical Pathology, Immunology, Endocrinology, Viral Markers, Drug Monitoring

COLLECTION CENTER  
Rasool, 15  
G-8/4 Islamabad

COLLECTION CENTER  
Shop, 2678, Near  
Millad Chowk,  
Saddar Rawalpindi.

**INCORRECT RESULT**  
Please feel free to call within 48 hours  
for a free repeat of any blood test

This report is solely based on the sample received and needs clinical correlation.  
The referring physician may contact reporting pathologist for detailed discussion.  
Not valid for court use.  
Web : [www.fatimalabs.com](http://www.fatimalabs.com) e-mail: [info@fatimalabs.com](mailto:info@fatimalabs.com)



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18-2-09



H No: 825/19, F-Block  
Satellite Town, Rawalpindi  
Tel: 92-51-6087616/4580304  
Mob: 0321-5000616  
Fax: 92-51-4580204

FMDC No. 8429-19  
Name Shzh Afzal Age 23 Years Sex Male  
Referred by Dr Noor-ul-Iman Contact Reporting Date 25/02/09  
Source Of Sample Blood(sample was brought to the lab) Receiving Date 18/02/09  
Request **HBV DNA QUANTIFICATION**

**Interpretation** < 3.8 IU/ml

**Method (ROTOR-GENE™ RT-PCR)**

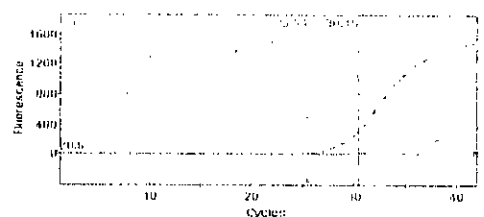
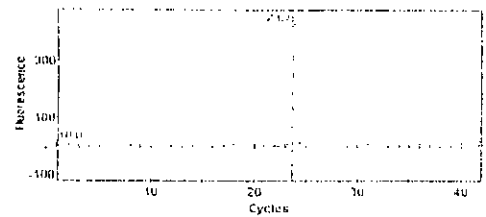
HBV DNA was extracted from patient plasma and amplified by Real-Time PCR. Amplification and detection was carried out simultaneously by ROTOR GENE 6000 the world's only rotary real-time thermo-optical analyser using kits from QIAGEN, Germany an ISO Certified manufacturer of In-Vitro Real-Time PCR kits (ISO 9001, ISO 13485, ISO 17025).

Positive, Negative & Internal Controls were applied

**Comments**

By using Real-Time PCR, we developed a rapid, sensitive, specific and reproducible method for the detection and quantification of Hepatitis B Virus (HBV) DNA in Plasma. This method allowed us to screen plasma & Serum Samples over a range 3.8 IU/ml to  $4 \times 10^9$  IU/ml

**Graph**



Electronically verified report requires no signature

Real-Time PCR, Histopathology, Cytopathology, Hematology, Microbiology, Chemical Pathology, Immunology, Endocrinology, Viral Markers, Drug Monitoring

COLLECTION CENTER  
Rescue #55  
G-8/4 Isfahabad

COLLECTION CENTER  
Shop: 2678, Near  
Mild Chowk,  
Sadar Rawalpindi.

**INCORRECT RESULT**  
Please feel free to call within 48 hours  
for a free repeat of any blood test

This report is solely based on the sample received and needs clinical correlation.  
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Not valid for court use.  
Web: www.fatimalabs.com info@fatimalabs.com



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18-2-09

II No: 825/19, F-Block  
Satellite Town, Rawalpindi.  
Tel: 92-51-8087616/4580304  
Mob: 0321-5000616  
Fax: 92-51-4580204

FMDC No. 8429-19  
Name Shah Afzal Age 23 Years Sex Male  
Referred by Dr.Noor Ul Iman Contact Reporting Date 25/02/09  
Source Of Sample Blood (The sample was brought to the lab) Receiving Date 18/02/09

### VIROLOGY REPORT

HBeAg: Non-Reactive  
Cut Off Value: 1.00  
Patient value: 0.641

Anti HBe: Reactive  
Cut Off Value: 1.00  
Patient value: 0.665

Interpretation of results for Anti HBe: Patient value less than cut off value, Result considered reactive. Patient value greater than cut off value, result considered non-reactive.

Pathologist  
Prof. Dr. Waseem Iqbal  
MBBS, MCPS, M.Phil, PhD  
Chief Pathologist/Hematologist

Asst. Prof. Dr. Sami Saeed  
MBBS, MCPS, M.Phil, PhD  
Chemical Pathologist

Dr. Masood Khan  
MBBS, MCPS, M.Phil  
Histopathologist

Real-Time PCR, Histopathology, Cytopathology, Hematology, Microbiology, Chemical Pathology, Immunology, Endocrinology, Viral Markers, Drug Monitoring

COLLECTION CENTER  
Rauce - 12  
G-8/4 Islamabad

COLLECTION CENTER  
Shop: 2678, Near:  
Millau Chowk,  
Saddar Rawalpindi

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Web: [www.fatimalabs.com](http://www.fatimalabs.com); Email: [info@fatimalabs.com](mailto:info@fatimalabs.com)

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18-2-09



H No: 825/19, F-Block  
Satellite Town, Rawalpindi.  
Tel: 92-51-8087616/4580304  
Mob: 0321-5000616  
Fax: 92-51-4580204

FMDC No. 8429-19  
Name Shah Afzal Age 23 Years Sex Male  
Referred by Dr. Noor Ul Iman Contact - Reporting Date 23/02/09  
Source Of Sample Blood (The sample was brought to the lab) Receiving Date 18/02/09

### VIROLOGY REPORT

Anti HDV:  
( IgM & IgG )

Negative

Patient value: 0.602

Negative: > 0.455

Gray Zone: 0.35 - 0.455

Positive: < 0.35

Pathologist  
Prof Dr. Waseem Iqbal  
MBBS, MCPS, M.Phil, PhD  
Chief Pathologist/Hematologist

Asst. Prof Dr. Sami Saeed  
MBBS, MCPS, M.Phil, PhD  
Chemical Pathologist

Dr. Masood Khan  
MBBS, MCPS, M.Phil  
Histopathologist

Real-Time PCR, Histopathology, Cytopathology, Hematology, Microbiology, Chemical Pathology, Immunology, Endocrinology, Viral Markers, Drug Monitoring

COLLECTION CENTER  
Nasrullah - 35  
G-2/4 Islamabad

COLLECTION CENTER  
Shop: 2678, Near  
Miliad Chowk,  
Sector Rawalpindi.

**INCORRECT RESULT**  
Please feel free to call within 48 hours  
for a free repeat of any blood test

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The referring physician may contact reporting pathologist for detailed discussion.  
Not valid for court use.  
Web : www.fatimabs.com | mail : info@fatimabs.com

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13-3-09

# ITTEHAD

Computerized Clinical Laboratory



TECHNICAL STAFF

Technologist

Lab Incharge.

Lab. Asstt:

Near DHQ Hospital Hangu  
Ph: 0925-620202

Date .....

NAME: SHAHZIB

AGE: ?

SEX: MALE

TEST REQUESTED: HBSAg BY ELISA.

DATE: 13-Mar-09

ADVISED BY: SHARIF LAB HANGU.

HBS Ag. By Elisa

HBS Ag TEST IS ..... (REACTIVE)

Patient INDEX VALUE ..... (PMU)

CUT OFF INDEX FOR NON REACTIVE ..... (IC)

NOTE: NOW AVAIL. ABLE HBSAg & HBsAb BY ELISA 3<sup>rd</sup> GENERATION.

*J. Hussain*  
Signature

اتحاد کمپیوٹر انزڈ کلینکل لیبارٹری اینڈ بلڈ ٹرانسفیوژن سنٹر نزد ڈسٹرکٹ ہیڈ کوارٹر ہسپتال ہنگو۔ فون: 620202

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17-3-09

### City Medical Laboratory

G.75, 76, 77, Auqaf Plaza, Daugari Garden Peshawar.  
Phone: 091-2219651 Fax: 091-256-8690  
E-mail: info@citylab.com.pk URL: www.citylab.com.pk



**ADMINISTRATOR**  
A. Latif Malik  
Microbiologist  
MIASCP/CLS (INCAI MTISFH) USA

**CONSULTANTS:**  
Dr. Nizam ud Din Khan  
MBBS, F.C.P.S., Ph. D (Histopathology)  
Prof. Dr. Liaqat Ali  
MBBS, D.C.P., M. Phil (Microbiology) —  
Dr. Fazal-ur-Rehman  
MBBS, D.C.P., M. Phil (Haematology)

PATIENT ID	: 903024099	REPORT NO	: 103443
PATIENT	: SHAH AFZAL	DATE / TIME	: 17/03/09 17:49:47
SEX	: Male	AGE	: 23 Yr
REFERRED BY	: ITEHAD LAB	SPECIMEN	: Blood
TEST REQUIRED	: HBsAg/HBeAg/HBeAb		

### RESULT

HBsAg ..... Reactive( 120 )  
Cut of index for Non-Reactive HBsAg..... 2  
METHOD: Microparticle Enzyme Immunoassay (MEIA)  
(3rd Generation ELISA)

HBeAg ..... Non\_Reactive( 0.21 )  
Cut of index HBeAg..... 1  
METHOD: Microparticle Enzyme Immunoassay (MEIA)  
(3rd Generation ELISA)

ANTI-HBe ANTIBODY ..... Reactive( 0.01 )  
Cut of Index for Reactive Anti HBeAB Total..... <1  
METHOD: Microparticle Enzyme Immunoassay (MEIA)  
(3rd Generation ELISA)



Haematologist  
**Dr. FAZAL-UR-REHMAN**  
M.B.B.S., D.C.P.  
M.Phil (Haematology)

All queries/Discrepancies if any may be referred to our lab. within 24 Hrs. of reporting for re-evaluation / confirmation.

#### Collection Points

- PESHAWAR Karachi Market, Shop No 08, Ph: 091-2563676
- PESHAWAR Ali Medical Centre Opposite LRH OPD, Ph: 091-254022
- PESHAWAR Noor Plaza University Road, Ph. 091-5701918
- PESHAWAR Babou Plaza, Hashtnagar G.T. Road 091-5004259
- KOHAT Behram Medical Centre Opposite Company Bugh Hangu Road Ph: 0922-522291
- MARDAN Gul Market Near Municipal Committee Shamsi Road, Ph. 0937-876491
- SAWABI Near Jamal Medical Centre Ph. 0936-223691
- PABBI Opposite Publi Hospital, GT Road, Peshawar Ph. 0923-529400
- NOWSHERA Rafeed Plaza, Cavalry Road, Nowshera Cantt Ph: 0923-613402

Note: See Reverse for Terms & Conditions.

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28-3-09

### City Medical Laboratory

G.75, 76, 77, Auqaf Plaza, Dabgari Garden Peshawar.  
Phone: 091-2219651 Fax: 091-256-8690  
E-mail: info@citylab.com.pk URL: www.citylab.com.pk



**ADMINISTRATOR**  
A. Latif Malik  
Microbiologist  
MIASCP/CLS (NCA) MT(SFH) USA

**CONSULTANTS:**  
Dr. Nizam ud Din Khan  
MBS, FCP, Ph. D. (Histopathology)  
Prof. Dr. Liaqat Ali  
MBS, DCP, M. Phil (Microbiology)  
Dr. Fazal-ur-Rahman  
MBS, DCP, M. Phil (Haematology)

PATIENT ID	: 903024100	REPORT NO	: 11781
PATIENT NAME	: SHAH AFZAL	DATE/TIME	: 28/03/09 11:18:30
SEX	: Male	AGE	: 23 Yr 0 /M
REFERRED BY	: ITEHAD LAB	SPECIMEN	: Blood

## P C R REPORT

**Result: Hepatitis B Virus DNA Detected**

### METHOD

This assay involves isolation of HBV DNA from 100ul serum, hemi-nested PCR amplification of target sequence and sequencing. After the amplification of target DNA by the 1st set of external HBV specific oligonucleotide primers, a second round of PCR was performed using oligonucleotide primers out of which was nested to the first set of primers. This set was also specific to the HBV sequence. Amplicons were subjected to Agarose gel electrophoresis, stained with ethidium bromide and visualized on UV transilluminator. When HBV specific bands were visualized in lanes corresponding to the positive HBV control products were observed in lanes corresponding to patient's specimen. This result supports the presence of detectable HBV in the 100ul serum aliquot that analyzed in this assay.

### COMMENTS/NOTE

This hemi-nested PCR test has a sensitivity of about 92% and specificity of sometimes, a false negative result may occur if: 1) the patient strain HBV has mutation in target sequence. 2) the titer of virus is below the sensitivity of the assay. It is also important to note that a negative HBV-DNA PCR does not rule out a past HBV infection, for which serological tests may be positive.



*(Signature)*  
**MICROBIOLOGIST**  
**A. LATIF MALIK**  
MT (ASCP) USA  
CLS (NCA) USA

All queries/Discrepancies if any may be referred to our lab, within 24 Hrs. of reporting for re-evaluation / confirmation.

### Collection Points

- PESHAWAR**  
Karachi Market,  
Shop No 08  
Ph: 091-2563676
- PESHAWAR**  
Ali Medical Centre  
Opposite LRH OPD  
Ph: 091-2554022
- PESHAWAR**  
Noor Plaza  
University Road  
Ph: 091-5701918
- PESHAWAR**  
Bikour Plaza,  
Hashinagni G.T. Road,  
091-5004259
- KOHAT**  
Behram Medical Centre  
Opposite Company Bagn  
Hangu Road,  
Ph: 0922-522291
- MARDAN**  
Gul Market Near  
Municipal Committee  
Shamsi Road,  
Ph: 0937-878491
- SAWABI**  
Near Jamal Medical  
Centre,  
Ph: 0938-223691
- PABBI**  
Opposite Pubbi  
Hospital, GT Road,  
Peshawar  
Ph: 0923-529400
- NOWSHERA**  
Rahool Plaza,  
Cavalry Road,  
Nowshera Cantt  
Ph: 0923-613402

Note : See Reverse for Terms & Conditions.







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17-8-09

**ITTEHAD**  
**COMPUTERIZED MEDICAL LABORATORY**  
NEAR D.H.Q. HOSPITAL HANGU  
PH: 0925-620202



**TECHNICAL STAFF**  
Technologist:  
Farman Asad  
Lab. Assitt:  
Saif Sohail

\*\*\*\*\*  
NAME: SHAH AFZAL AGE: 00Yrs SEX: MALE  
TEST REQUESTED: HBS Ag DATE: 17-Aug-09  
ADVISED BY: Dr: FIDA MUHAMMAD (MEDICAL SPECIALIST)  
\*\*\*\*\*

TEST:

RESULT:

HBS Ag:

(POSITIVE)

NOTE: NOW AVAILABLE HBSAg & HCV BY ELISA 3<sup>rd</sup> GENERATION

Signature  
Signature:

اتحاد کمپیوٹرائزڈ میڈیکل لیبارٹری - نزد رسول ہسپتال ہنگو فون: 0925-620202

(39)

14

15-2-10



**Dr. Fida Muhammad**

MBBS, FCPS

**Medical Specialist**

Liaqat Memorial Hospital Kohat.

**Clinic:** Near Civil Hospital Hangu.

Mob # 0333-9679879

### MEDICAL FITNESS CERTIFICAT

It is certified that Mr. Shah Afzal s/o Khan Afzal visited our clinic on 15/09/2008 with the following complains.

Fever with yellow discoloration of eyes for 10 days

Generalized aches & pains for 07 days

Asthenai for 05 days


He was investigated and diagnosed as a case of **Hepatitis B**.

Then certain specialized investigatin were advised.

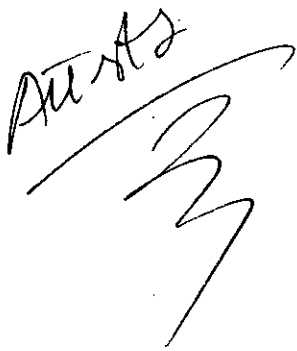
Treatment was given for 06 months with success like clearacne of **HBeAg** and appearance of anti **HB e** (seroconversion) but clearance of **HBsAg** did not occur.

He was given tablet adefovir dipivoxil (Hepsera) for 06 months.

Now certain advanced investigation like **HBV DNA VIRSUS LOAD** is awaited.

  
Dr Fida Muhammad  
Medical Specialist  
LMH, Kohat.

Dated 15/02/2010



ڈاکٹر فدا محمد

میڈیکل سپیشلسٹ

لیاقت میموریل ہسپتال کوہاٹ

کلینک: نزد سول ہسپتال ہنگو

40

B

15  
ORDER

17-4-09

This order of mine will dispose off the departmental enquiry initiated against Constable Shah Afzal No. 196 on the basis of allegations that he while nominated for Elite Course at Punjab Regiment Mardan absented himself from the said course with effect from 20.08.2008 till now without prior permission or leave.

Charge sheet together with statement of allegations was issued to him, to which he failed to submit his reply. Mr. Shah Ali Kiyani, DSP (HQrs), Hangu was appointed as Enquiry Officer to conduct departmental enquiry against him under NWFP Removal from Service (SPECIAL POWERS) Ordinance 2000. Consequent upon the transfer of Enquiry Officer, the enquiry file was entrusted to Inspector Legal Ishaq Gul for further proceedings. After completion of enquiry, the Enquiry Officer submitted his findings on 10.04.2009 and recommended him for major punishment.

Thereafter, Final Show Cause Notice was issued to him but he failed to submit his reply. He was called in Orderly Room, but did not turn up.

Keeping in view of above and having gone through available record, the undersigned has come to the conclusion that the defaulter constable absented himself from duty, failed to appear and defend himself, which indicates that he was not interested to serve further. Moreover, in these circumstances his retention in Police Department is burden on public exchequer, therefore, I, Sher Akbar, PSP, S.St District Police Officer, Hangu in exercise of the powers conferred upon me, awarded him major punishment of Dismissal from Service from the date of his absence.

Order Announced.

OB No. 277

Dated 17-4/2009.

(SHER AKBAR)  
PSP, S.St  
DISTRICT POLICE OFFICER,  
HANGU.

OFFICE OF THE DISTRICT POLICE OFFICER, HANGU.

No. 2684-87 /PA, dated Hangu, the 18/04/2009.

Copy of above is submitted to the Dy. Inspector General of Police, Kohat Region, Kohat for favour of information please.

- 2. Pay Officer, Reader, SRC & OHC for necessary action.

DISTRICT POLICE OFFICER,  
HANGU.

پروفیسر صاحب دیوبند کی طبیعت کو تھکانے

بجلی ابر ملازمت

ظاہر علی -

۱۔ گزشتہ سال ۲۰۰۶ میں بحیثیت کونسل  
 اہلی ہوئی۔ اور پھر سال ۲۰۰۸ء میں پورس ٹریننگ سٹریٹجی کے  
 سے ٹریننگ حاصل کی۔ بعد ازاں اہلیٹ کو رسک سے نئے منتخب ہوا۔

۲۔ یہ سائنس سائنس سائنس سائنس سائنس سائنس سائنس سائنس  
 مورفم ۱۷/۰۹ کو غیر صفحہ پر مورفم ۲۰۰۸ سے مورفم سے برطرف کیا۔

۳۔ یہ سائنس سائنس سائنس سائنس سائنس سائنس سائنس سائنس  
 تیز حرکت کو محدود خواہ پر عمل نہ کیا اور سیدھا سرکار سے  
 برکھنی کا کلچ جاری کیا۔

۴۔ یہ کلچ مورفم ۱۷/۰۹ کو سائنس کو اربح سے جاری کیا گیا۔  
 جو سائنس کے لیے بنیاد ہے۔

۵۔ یہ کلچ مورفم ۱۷/۰۹ کو سائنس کو اربح سے جاری کیا گیا۔  
 سائنس کے لیے بنیاد ہے۔

الکافور شاہ افضل مورفم ۱۵-۵-۰۹

شاہ افضل دکن افضل سائنس ڈیپارٹمنٹ،  
 سائنس کونسل، ۱۹۶، پورس ٹریننگ، سائنس

ASAD

42

D

17

19/09-11-10

POLICE DEPARTMENT

KOHAT REGION.

ORDER.

This order will dispose off the application of Ex. Constable Shah Afzal No.196 of District Police Hangu. Wherein he requested that the punishment awarded to him e.g dismissal from Service vide DPO Hangu, OB No.277 dated 17.04.2009 may be set-aside and he may kindly be reinstated in service.

Brief facts of the allegation are that the defaulter constable while nominated for Elite course at PRC Center Mardan absented himself from the said course w.e.f 20.08.2008 till the date of dismissal i.e. 17.04.2009.

He was dealt departmentally Under Removal from Service (Special Powers), Ordinance 2000. Charge Sheet & Statement of Allegation was issued and Inspector Legal Ishaq Gul, was appointed as Enquiry Officer. The Enquiry Officer submitted his findings and recommended him for one of the major punishment as laid down in the aforesaid ordinance.

Final Show Cause Notice was issued to him but he failed to reply. He was called in Orderly Room by the DPO Hangu but he did not turn up.

On the recommendation of Enquiry Officer the DPO Hangu vide OB No.277 dated 17.04.2009 awarded him a major punishment of dismissal from service.

He was heard in person on 19.04.2010 in Orderly Room held in this office but he failed to give any satisfactory account in his defence.

From the perusal of his Service Record and other relevant papers, the undersigned has examined the application and the same is hereby filed being time barred.

ORDER ANNOUNCED.

19.04.2010


( ABDULLAH KHAN ) PSP  
Dy: Inspector General of Police,  
Kohat Region, Kohat.

No. 3778-78 /EC, dated Kohat the 29/04 /2010.

Copy of above for information and necessary action to the District Police Officer, Hangu w/r to his Memo: No.1290/LB, dated 05.04.2010. His service record is also enclosed herewith for record which may please be acknowledged.

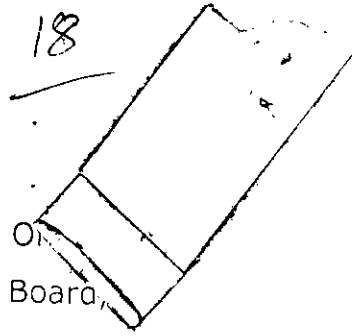
2  
District Hangu.

Ex-Constable Shah Afzal No.195 S/o Khan Afzal R/o Darband

  
( ABDULLAH KHAN ) PSP  
Dy: Inspector General of Police,  
Kohat Region, Kohat.



E 18



To,

Provincial Police Officer  
Appeal Revision Board,  
KP, Peshawar.

**Subject: REQUEST FOR REINSTATEMENT IN SERVICE:**

**Respectfully Sir,**

1. That after observing the due codel formalities of Law, appellant was enlisted in service in June 2007. He also qualified his training from Police Training Centre Kohat.
2. That thereafter appellant served in various Police Stations for about five (03) years without any complaint.
3. That appellant fell seriously ill and was unable to perform his duties.
4. That on account of the aforesaid score appellant was dismissed from service vide order dated 19-04-2009.
5. That after recovery, appellant submitted representation before Regional Police Officer, Kohat which was rejected on 19-04-2010.
6. That appellant was neither served with Charge Sheet, Statement of Allegation nor any enquiry was conducted, appellant was never associated with enquiry proceedings and was also not served with Final Show Cause Notice, so the impugned orders are ab-initio-void.

It is therefore most humbly requested that the impugned orders mentioned above be set aside and I be reinstated in service with all back benefits.

Yours obediently,

Shah Afzal S/O Khan Afzal,  
R/o Darband Hangu,  
Ex-Constable No. 196,  
Police Line, Hangu

Dated 26-04-2010

43  
F

19

To,

Provincial Police Officer  
KP, Peshawar.

**Subject: REMINDER / REINSTATEMENT IN SERVICE:**

Respectfully Sir,

1. That applicant was enlisted in service June 2007 and served the department till the date of removal from service.
2. That applicant submitted departmental appeal on 26-04-2010 for reinstatement in service to the Appeal / Review Board but so far no action was taken. (Copy Attached)
3. That details for reinstatement in service have been fully mentioned in the departmental appeal which requires my honor kind consideration.

It is therefore most humbly requested that the impugned orders mentioned in my departmental appeal be set aside and I be reinstated in service with all benefits.

Yours obediently,

*Shah Afzal*

Shah Afzal S/O Khan Afzal,  
R/o Darband Hangu,  
Ex-Constable No. 196,  
Police Line, Hangu  
Cell No. 0333-9677803

Dated 18-09-2018

*Adarsh*

**No. 629**

For Insurance Notices see reverse. Stamps affixed except in case of uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgment is due.

Received a registered\* addressed to \_\_\_\_\_ Date-Stamp \_\_\_\_\_

\*Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

Initials of Receiving Officer \_\_\_\_\_

Insured for Rs. (in figures) \_\_\_\_\_ (in words) \_\_\_\_\_

insured. { Insurance fee Rs. \_\_\_\_\_ Ps. \_\_\_\_\_ (in words) } Weight \_\_\_\_\_ Kilo \_\_\_\_\_ Grams

Name and address \_\_\_\_\_

مجناب املاٹ

محلہ پولیس

شاہ افضل

دعویٰ اپیل

باعتبار شکریہ ایٹکہ

مستند مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام پشاور کیسٹے اسٹیکس اڈاسا خان سرور سے ایڈوکیٹ ہائی کورٹ کو وکیل مقرر کرنے کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کابل اختیار ہوگا نیز وکیل صاحب کو کرنے باطنی نامہ و تقریر ثالث و فیصلہ بر عطف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ اور رضی دعویٰ اور درخواست ہر قسم کی تعلیق اور اس پر دستخط کرنے کا اختیار ہوگا نیز بصورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی اور مشورتی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ بند کر کے کل یا جزوی کاروائی سے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے تہذیب کا اختیار ہوگا اور اس میں مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور قبول ہوگا و دوران مقدمہ میں جو خرچہ و ہرجانہ التوا مقدمہ کے سبب سے ہوگا اس کے مستحق وکیل صاحب موصوف ہوں گے نیز بقایا خرچہ کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام روہہ پر ہو یا عد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی اندر کر کریں۔

لہذا وکالت نامہ رکھ دیا کہ مستند ہے۔

آلتر قوئم

التعبیر

التعبیر

التعبیر

ارباب سٹیکس اڈاسا خان  
ایڈوکیٹ

delivered  
سید اللہ محمد خان شرف  
ایڈوکیٹ

شاہ افضل

من روایت تار  
ایڈوکیٹ  
محمد نواز ایڈوکیٹ



47

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

Service appeal No. 1215/2018  
Shah Afzal No. 196

.....Appellant

VERSUS

District Police Officer, Hangu & others

..... Respondents

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S N	Description of documents	Annexure	pages
1.	Reply Parawise comments	-	01-03
2.	Counter affidavit	-	04
3.	Copy of DD No. 5 dated 17.08.2008	A	05
4.	Copy of order on second departmental appeal	B	06
5.	Copy of letter No. 3932-33 dated 03.10.2018	C	07

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

**Service Appeal No. 1215/2018**  
**Shah Afzal No. 196**

..... Appellant


**VERSUS**


District Police Officer, Hangu & others

..... Respondents

**COUNTER AFFIDAVIT**

We, the below mentioned respondents, do hereby solemnly affirm and declare on oath that contents of parawise comments are correct and true to the best of our knowledge and belief. Nothing has been concealed from this Hon: Tribunal:

  
Dy: Inspector General of Police,  
Kohat Region Kohat  
(Respondent No. 2)  
Deputy Inspector General of Police  
Regional Police Officer  
Kohat Region

  
Provincial Police Officer,  
Khyber Pakhtunkhwa,  
(Respondent No. 3)

  
District Police Officer,  
Hangu  
(Respondent No. 1)

49

BEFOURE THE HONOURABLE SERVICE TRIBUNAL KHYBER  
PAKHTUNKHWA PESHAWAR

Service Appeal No. 1215/2018

Shah Afzal.....(Appellant)

Versus

District Police Officer, Hangu & others.....(Respondents)

PARAWISE COMMENT ON BEHALF OF RESPONDENTS.

Para-wise Comments & Counter Affidavit prepared by Legal Branch of District Police Officer, Hangu and signed by remaining respondents is submitted for favour of signature as Respondent No.03 (Worthy Inspector General of Police Khyber Pakhtunkhwa Peshawar) The drafted vetted by Assistant Advocate General Khyber Pakhtunkhwa Service Tribunal Peshawar placed at F/A please.

*Agar*  
SP Court & Litigation

DIG/HQrs: please. *[Signature]*

W/IGP please. *Sd*  
*[Signature]*  
*27/2/13*

(52)

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

---

Service appeal No. 1215/2018  
Shah Afzal No. 196

.....Appellant

**VERSUS**

District Police Officer, Hangu & others

..... Respondents

**PARAWISE COMMENTS ON BEHALF OF RESPONDENTS.**

**Respectively Sheweth:-**

Parawise comments are submitted as under:-

**Preliminary Objections:-**

- a) That the appellant has got no cause of action.
- b) That the appellant has got no locus standi.
- c) That the appeal is not maintainable in the present form.
- d) That the appellant is estopped to file the instant appeal for his own act.
- e) That the appellant has not come to this Hon: Tribunal with clean hands.
- f) That the second departmental appeal of the appellant was dismissed on 08.03.2011, against which the appellant has not sought any relief / remedy. Therefore, the appeal is not maintainable.
- g) That the appellant willfully slept over his rights, if any and did not approach this Honorable Tribunal in time, therefore, the appeal is badly time barred.
- h) That the appellant has not filed application for condonation of willful delay in lodging service appeal.

**FACTS:-**

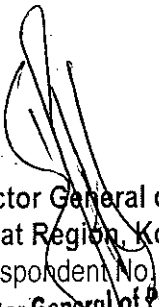
1. The appellant was enlisted as constable on 25.07.2007. During his one year service, the appellant willfully absented himself i.e **20.08.2008**. Furthermore, the appellant was sent for basic recruit course and failed the said course.
2. The appellant failed basic recruit course held at Police Training College Hangu for the term ending 05.01.2008.
3. The appellant was detailed for Elite course, he deliberately did not attend the course and reported absent vide Police Lines Hangu, daily diary No. 5 dated 17.08.2008. Copy is **annexure A**.
4. Incorrect, the appellant made a concocted story of his illness. The appellant did not submit any application for leave. The appellant was required to follow the law and rules, but failed.

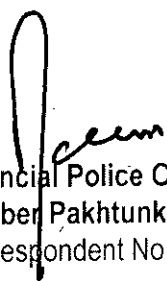
5. The appellant neither made his arrival report to his place of posting, nor joined the inquiry proceedings. On completion of all codal formalities, the appellant was awarded punishment of dismissal from service. It is added that the appellant had about only one year service.
6. The appellant filed a time barred departmental appeal to the respondent No. 2, which was processed. He was called for personal hearing in orderly room on 19.04.2010, but the appellant did not appear before the appellate authority. Therefore, the departmental appeal was filed. The appellant again failed second departmental appeal to the same authority. The appellant was heard in person on 08.03.2011, but could not submit any satisfactory account in his defense. The same was dismissed vide order dated 08.03.2011. Copy of order on second departmental appeal of the appellant is **annexure B**.
7. Incorrect, the revision petition of the appellant dated 26.04.2010 seems fake, however, the appellant submitted remainder dated 18.09.2018 only to cover the limitation, however, the same was filed being time barred vide order dated 03.10.2018 and the appellant was informed accordingly. Copy is **annexure C**.

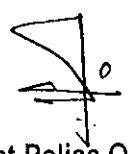
**GROUNDS:-**

- a. Incorrect, the appellant willfully absented himself from duty, did not make his arrival report to his place of posting, nor join the departmental proceedings and did not appear before the appellate authority.
- b. Incorrect, charge sheet alongwith statement of allegation was issued against the appellant but his whereabouts was not ascertained.
- c. Incorrect, proper departmental inquiry was conducted against the appellant under the law & rules.
- d. The appellant deliberately did not join the inquiry proceedings till the disposal of inquiry by the competent authority. Therefore, there was no other option except to pass the impugned order in the interest of department.
- e. Incorrect, the impugned orders were passed in accordance with law & rules.
- f. Incorrect, the appellant deliberately / willfully absented himself from lawful duty. Furthermore, filing of delayed departmental and service appeal also speaks of disinterest of the appellant in serving.

In view of the above, it is submitted that the appellant had served about one year in Police department (from the date of appointment and absent date 20.08.2008), failed basic recruit course. The appeal is devoid of merits without any substantiate and badly time barred. It is, therefore, prayed that the appeal may kindly be dismissed with cost please.

  
Dy: Inspector General of Police,  
Kohat Region, Kohat  
(Respondent No. 2)  
Deputy Inspector General of Police  
Regional Police Officer  
Kohat Region

  
Provincial Police Officer,  
Khyber Pakhtunkhwa,  
(Respondent No. 3)

  
District Police Officer,  
Hangu  
(Respondent No. 1)

62

**BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR**

S. A. No. 1215 /2018

Shah Afzal

versus

D.P.O & Others

**REPLICATION**

**Respectfully Sheweth,**

**Preliminary Objections:**

All the preliminary objections are illegal and incorrect. No reason in support of the same is ever given as to why appellant has no cause of action, locus standi, appeal is not maintainable, estoppel, unclean hands, relief was sought, being void order, appellant can approach any time for relief to the Tribunal and void order needs no limitation.

**ON FACTS**

1. Not correct and if he absented himself in initial period of service of one year as stated by the respondents then he should not be dismissed from service but to discharge him as such.
2. As above.
3. Not correct. He attended the course and remained there for one year.
4. Not correct. The para not concocted but the same is supported by proof of medical receipts by Medical Specialist diagnosing the same as Hepatitis.
5. Not correct. The para is without proof regarding conduct of enquiry and more so, he should have been discharged from service and not to dismiss him as per law.
6. Not correct. Representation was filed well within time which was not decided, so subsequent application was filed which was rejected.
7. Not correct. The revision petition of appellant is quite genuine preferred to the authority with postal receipt.

**GROUNDS:**

All the grounds of the appeal are legal and correct, while that of the comments are illegal and incorrect. The same are once again relied upon. The impugned order is void as is evident from the same which does not hit by limitation.

It is, therefore, most humbly prayed that the appeal be accepted as prayed for.

شہ آفزیل

Appellant

Through

سید سعید اللہ خان

Saadullah Khan Marwat

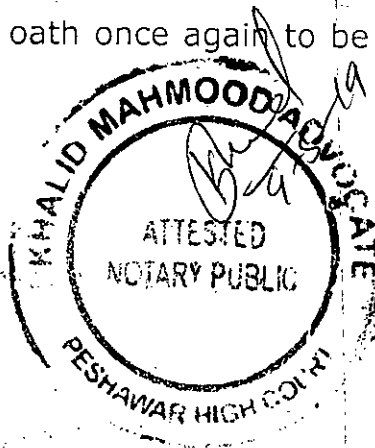
Advocate,

Dated: 08-05-2019

**AFFIDAVIT**

I, **Shah Afzal**, appellant do hereby solemnly affirm and declare that contents of the **Appeal & replication** are true and correct to the best of my knowledge and belief while that of reply of respondents are illegal and incorrect.

I reaffirm the same on oath once again to be true and correct as per the available record.



شہ آفزیل

DEPONENT



64

**BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR**

S. A. No. 1215 /2018

Shah Afzal

versus

D.P.O & Others

**REPLICATION**

**Respectfully Sheweth,**

**Preliminary Objections:**

All the preliminary objections are illegal and incorrect. No reason in support of the same is ever given as to why appellant has no cause of action, locus standi, appeal is not maintainable, estoppel, unclean hands, relief was sought, being void order, appellant can approached any time for relief to the Tribunal and void order needs no limitation.

**ON FACTS**

1. Not correct and if he absented himself in initial period of service of one year as stated by the respondents then he should not be dismissed from service but to discharge him as such.
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6. Not correct. Representation was filed well within time which was not decided, so subsequent application was filed which was rejected.
7. Not correct. The revision petition of appellant is quite genuine preferred to the authority with postal receipt.

65

**GROUND:**

All the grounds of the appeal are legal and correct, while that of the comments are illegal and incorrect. The same are once again relied upon. The impugned order is void as is evident from the same which does not hit by limitation.

It is, therefore, most humbly prayed that the appeal be accepted as prayed for.

شہد افضل

Appellant

Through

3

Saadullah Khan Marwat

Advocate,

Dated: 08-05-2019

**AFFIDAVIT**

I, **Shah Afzal**, appellant do hereby solemnly affirm and declare that contents of the **Appeal & replication** are true and correct to the best of my knowledge and belief while that of reply of respondents are illegal and incorrect.

I reaffirm the same on oath once again to be true and correct as per the available record.

شہد افضل

DEPONENT