

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.630/2018

Date of Institution:- 04.05.2018

Date of Decision:- 09.11.2020

Imran Ullah Ex Constable, No. 207 Bannu, District Police.

... (Appellant)

VERSUS

The AIG/ Establishment for Inspector General of Police, Khyber Pakhtunkhwa Peshawar and 2 others

... (Respondents)

Miss. Naila Jan
Advocate

...

For Appellant

Mr. Kabirullah khattak,
Additional Advocate General

...

For Respondents

Mr. MUHAMMAD JAMAL

...

Member (J)

Mr. ATIQ UR REHMAN WAZIR

...

Member (E)JUDGEMENT: -.

Mr. ATIQ UR REHMAN WAZIR:- Appellant Mr. Imran Ullah Ex- Constable Police, initially enlisted as Constable in the year 2007 has assailed the impugned order dated 27-04-2009 of his discharge from police force, order dated 02-10-2014 of the rejection of departmental appeal and final order dated 17-08-2017, whereby his review petition has been rejected.

2. Brief facts of the case are that the appellant Mr. Imran Ullah Ex Constable enlisted as constable on 15-07-2007. He was discharged from Police force on 27-09-2009 on the charges of long absence from duty and under the provisions of section 12:21 of Police rules 1934. The appellant preferred departmental appeal, which was rejected by RPO Bannu vide order dated 02-10-2014. The appellant preferred review petition on 04-05-2017, which was also rejected on the grounds of limitations dated 17-08-2017, hence the instant appeal instituted on 09-05-2018 with prayers that the orders dated 02-10-2014, 27-04-2009 and 17-08-2017 may be set aside and the appellant may be reinstated in service with all back benefits.

3. Written reply/comments were submitted by respondents.

4. Arguments heard and record perused.

5. Learned counsel for the appellant contended that the appellant preferred departmental appeal against impugned order dated 27-04-2009, which was rejected on 02-10-2014, but the appellant received rejection order on 26-03-2017, hence the appellant preferred review petition on 04-05-2017, which was also rejected on 17-08-2017, hence the instant service appeal instituted on 09-05-2018. The learned counsel blamed the respondents for late communications, which resulted into delay in the whole process and to this effect referred to 2013 SCMR 1053. On the question of limitation the learned counsel referred to 2007 SCMR 834, that since the orders were passed in violation of mandatory provision of law, hence no period of limitation will run for challenging such orders. That the appellant was not proceeded against under the law but discharged on a single order under the provisions of rule 12:21 of the police rules 1934, which is void ab-initio as in the presence of The Removal from service (Special Powers)

Ordinance 2000, invoking jurisdiction of police rules was against law, facts and norms of justice. That no statement of allegations and charge sheet were served upon the appellant, nor proper inquiry was conducted by the respondents. That no opportunity of personal hearing was afforded to the appellant as was required under the ordinance, so the whole proceedings conducted has nullity in the eyes of law. Reliance: 2016 SCMR 943. That discharge from service and withholding of pay for the absence period tantamount to double jeopardy on the one hand, but on the other hand it can also be construed that absence period has already been condoned by treating the period as leave without pay and as such, there remained no action to penalize the appellant. The learned counsel prayed that the impugned orders may be set aside and the appellant may be reinstated in service with all back benefits.

6. The learned Additional Advocate General appeared on behalf of official respondents opposed the contention of learned counsel for appellant. He argued that during the course of his total service of one year and nine months, he remained absent for one year 3 months and 22 days. That the appellant was still in probation period, hence he was discharged under provisions of rule 12:21 of police rules 1934, where no other proceedings are required as per law. Reliance: PLD 2003 SC 913. The learned Additional Advocate General referred to Rule 11-A sub section 4 of Police rules 1975, where the appellant was required to prefer review petition within 30 days of the order passed on original appeal, whereas the appellant preferred such appeal after three years, which creates no fresh cause of action for the appellant. Reliance: 2015 SCMR 165 citation D and 2011 SCMR 676 citation D. On the question of leave without pay, the learned Additional Advocate General argued that in a situation it is not a punishment or reward but treatment of the absence period, which in any case has to be

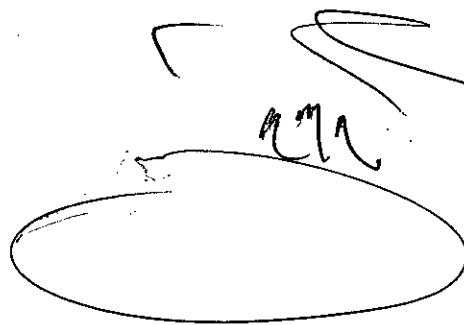
considered by the competent authority under the principle of "no work no pay".
Reliance: SA No 332/2017, CA No: 1661/2019 and CA No. 1618/2019. The learned Additional Advocate General prayed that his appeal is badly time barred, not maintainable and devoid of merit may be dismissed.

7. We have heard learned counsels for the parties and perused the record. We have observed that the petitioner remained absent for longer time without any valid reason. The time spoiled between departmental appeal and its rejection and again in filing review petition under the plea of late communication also show his reckless approach towards his responsibilities. The contention of the learned Additional Advocate General to the effect that regular inquiry was not necessary in the case of appellant as he was proceeded against while still in the probation period, also has force, but simultaneously the appellant was also a civil servant and the question as to whether the appellant was supposed to be proceeded against under RSO 2000 or Police Rules cannot be ignored, as RSO 2000 having overriding effect over other laws at that particular time and provision in ordinance existed for the appellant. Section 11 of the ordinance is reproduced as under: "The provisions of this ordinance shall have effect notwithstanding anything to the contrary contained in the Civil Servants Act, 1973 (LXXI of 1973) and the rules made there under and any other law for the time being in force." The learned Additional Advocate General when confronted with such proposition was still of the opinion that he was rightly proceeded against under police rules, as there was no other option with the respondent to proceed him as the appellant was still in probation period. Contention of the learned Additional Advocate General is correct to the extent of probation period, but section 11 of the ordinance bars the respondents to proceed him under any other law except the Ordinance and other option was also available in the Ordinance. The ordinance vide section 3 (a) provides: "that

dismissal, removal and compulsory retirement of certain persons in Govt. or corporation service etc, where in the opinion of the competent authority , a person in Govt. or corporation service is inefficient or has ceased to be efficient for any reason; or is guilty of being habitually absent from duty without prior approval of leave, the competent authority, after inquiry by the committee constituted under section 5, may notwithstanding anything contained in any law or the terms and conditions of service of such person, by order in writing dismiss or remove such person from service, compulsory retire from service or reduce him to lower post or pay scale, or impose one or more minor penalties as prescribed in the Govt. Servant (Efficiency & Discipline) Rules, 1973 made under Section 25 of Civil Servant Act, 1973." Besides Section 5 (4) of the ordinance also provides for proceeding the appellant, which is almost similar to section 12:21 of Police Rules 1934, so in presence of RSO 2000, the proceedings under police rules is void ab-initio in the eyes of law and which also disposes of the question of limitation.

8. This Tribunal is of the view that in order to meet the ends of justice, the appeal is partially accepted and the appellant is reinstated in service for the purpose of de-novo inquiry with directions to the respondents to conduct de-novo inquiry within 90 days strictly under law & rules. No orders as to costs. File be consigned to record room.

ANNOUNCED
09.11.2020



(MUHAMMAD JAMAL KHAN)
MEMBER (J)



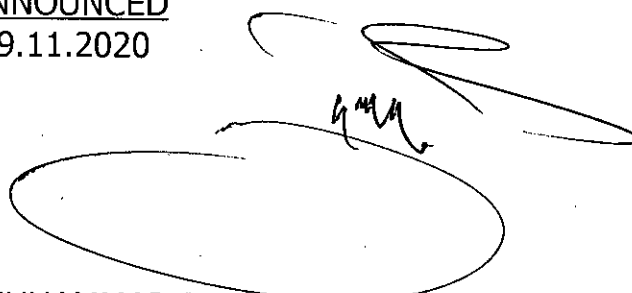
(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

09.11.2020


Learned counsel for appellant present. Mr. Kabirullah Khattak
learned Additional Advocate General for respondents present.

Vide our detail judgment of today placed on file, the appeal is
partially accepted and the appellant is reinstated in service for the
purpose of de-novo inquiry with directions to the respondents to
conduct de-novo inquiry within 90 days strictly under law & rules.
No orders as to costs. File be consigned to record room.

ANNOUNCED
09.11.2020



(MUHAMMAD JAMAL KHAN)
MEMBER (J)



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

10-4.2020

Due to COVID19, the case is adjourned to

8/7/2020 for the same as before.


Reader

08.07.2020

Counsel for the appellant and Mr. Kabirullah Khattak, Adl. A.G for the respondents present.

Learned counsel for the appellant has not fully recovered from COVID 19, therefore, requests for adjournment. Adjourned to 11.08.2020 for arguments before the D.B.


Member (E)


Chairman

11.08.2020

Due to summer vacations case to come up for the same on 14.10.2020 before D.B.


Reader

14.10.2020

Learned counsel for appellant present. Mr. Kabirullah Khattak learned Additional Advocate General alongwith Yaqoob H.C for respondents present.

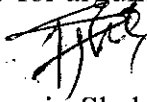
Arguments heard. To come up for order on 09.11.2020 before D.B.



(Atiq-Ur-Rehman Wazir)
Member


(Muhammad Jamal Khan)
Member

21.02.2020

Learned counsel for the appellant and Mr. Kabirullah Khattak learned Additional AG for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 10.04.2020 for arguments before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

02.08.2019

Naila Jan Advocate present and submitted wakalat nama in favor of appellant. Mr. Usman Ghani learned District Attorney for respondents present. Being freshly engaged, learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 28.10.2019 before D.B.



Member



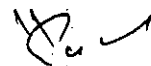
Member

28.10.2019

Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Learned counsel for the appellant seeks adjournment on the ground that she has no contact with the appellant. Notice be issued to the appellant. Adjourn. To come up for further proceedings/arguments on 30.12.2019 before D.B.



Member



Member

30.12.2019

Appellant in person present. Mr. Mr. Riaz Paidakhel learned Assistant Advocate General for the respondents present. Appellant requested for adjournment as his counsel is not available today. Adjourned. To come up arguments on ~~24~~ 24.02.2020 before D.B.



(Hussain Shah)

Member



(M. Amin Khan Kundi)

Member

21.01.2019

Clerk of counsel for the appellant present. Mr. Usman Ghani, District Attorney alongwith Mr. Yaqoob Khan, Head Constable for the respondents present. Clerk of counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is not available today due to strike of Khyber Pakhtunkhwa Bar Council. Adjourned to 25.03.2019 for arguments before D.B.


(HUSSAIN SHAH)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

25.03.2019

Counsel for the appellant and Mr. Riaz Ahmad Paindakheil, Assistant AG for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned to 11.06.2019 for arguments before D.B.


(HUSSAIN SHAH)
MEMBER


(M. AMIN KHAN KUNDI)
MEMBER

11.06.2019

Counsel for the appellant and Mr. Muhammad Farooq, Inspector (Legal) for the respondents present.

Due to paucity of *time* the matter is adjourned to 02.08.2019 for arguments before the D.B.


Member


Chairman

13.08.2018

Counsel for the appellant and Mr. Kabirullah Khattak AAG alongwith Mr. Asghar Ali, Head Constable for respondents present. Written reply by respondent submitted. To come up for rejoinder and arguments on 15.10.2018 before D.B.


(Muhammad Amin Khan Kundi)

Member

15.10.2018

Clerk to counsel for appellant and Mr. Muhammad Jan learned Deputy District Attorney present. Clerk to counsel for appellant submitted rejoinder which is placed on file. Due to general strike of the bar, the case is adjourned. To come up on 28.11.2018 before D.B


Member


Member

28.11.2018

Counsel for the appellant and Mr. Ziaullah DDA for the respondents present.

The former requests for adjournment ^{as} ~~the~~ brief in the instant appeal could not be prepared due to over-load. Adjourned to 21.01.2019 before the D.B.


Member


Chairman

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 630/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	09/05/2018	<p>The appeal of Mr. Imran Ullah resubmitted today by Uzma Syed Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR 9/05/18</p>
2-	15/05/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>28/05/18.</u></p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>
28.05.2018		<p>Learned counsel for the appellant present. Preliminary arguments heard.</p> <p>Vide original impugned order dated 27.04.2009 the appellant (Ex-Constable) was discharged from the Police Force. The present service appeal seems to be barred by limitation. In the interest of justice the present service appeal is admitted for regular hearing subject⁵ all legal objections including the issue of limitation.</p> <p>The appellant is directed to deposit security and process within 10 days, thereafter notices be issued to the respondent for written reply/comments. To come up for written reply/comments on 13.08.2018 before S.B.</p>

Appellant Deposited Security & Process Fee

[Signature]

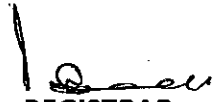
[Signature]
Member

The appeal of Mr. Inamullah Ex-Constable No. 207 Bannu Distt. Police received today i.e. on 04.05.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of first departmental appeal and its rejection order dated 02/10/2014 mentioned in the memo of appeal is not attached with the appeal which may be placed on it.

No. 963 /S.T,

Dt. 7/5 /2018.


REGISTRAR -
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Uzma Syed Adv. Pesh.

Sir. That the copy of first departmental appeal and its rejection order is

not available with the appellant. The same which may be requisite from the department, which is also mention in Para No 3 of the appeal.



9-5-2018

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 630 /2018

Imran Ullah

V/S

Police Deptt:

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APPELLANT

THROUGH:


(UZMA SYED)

&


SYED NOMAN ALI BUKHARI
(ADVOCATES, PESHAWAR)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 630 /2018

Khyber Pakhtunkhwa
Service Tribunal

Imran Ullah, EX- Constable, No.207
Bannu District Police.

Diary No. 658
Dated 04-5-2018

.....(Appellant)

VERSUS

1. The AIG/ Establishment, For Inspector General of Police, KP, Peshawar.
2. The Regional Police Officer, Bannu Region, Bannu.
3. The District Police officer Bannu.

.....(Respondents)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE REJECTION ORDER DATED 02.10.2014 OF RESPONDENT NO. 2, WHEREBY THE DEPARTMENTAL APPEAL AGAINST THE ORDER DATED 27.04.2009 HAS BEEN REJECTED AND AGAINST THE ORDER DATED 17.08.2017 RECEIVED BY APPELLANT ON 30.04.2018 WHEREBY, THE REVIEW PETITION UNDER 11-A OF THE APPELLANT HAS BEEN REJECTED FOR NO GOOD GROUNDS.

Filed to-day
Registrar
4/5/18

PRAYER:

Re-submitted to -day
and filed.

Registrar
9/5/18

THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDERS DATED 02.10.2014, 27.04.2009 AND 17.08.2017 RECEIVED BY APPELLANT ON 30.04.2018 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED

IN TO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH:

FACTS:

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

1. That the appellant was appointed as Constable in Police and the appellant was performed his duties with entire satisfaction of his superiors.
2. That the appellant has some serious domestic problems due to which appellant didn't performed his duties so the absence of the appellant was not willing full but due to serious domestic problem.
3. That, thereafter, the appellant was departmentally proceeded, without charge sheet, statement of allegation, regular inquiry and even without showcause notice, the impugned order dated 27.04.2009 was passed against the appellant whereby the appellant was dismissed from service while treating the absence period as leave without pay. The appellant been aggrieved from the impugned dismissal order preferred departmental appeal but the copy of the departmental appeal was not available with the appellant so the same will may be requisite from the department. **Copy of impugned order is attached as Annexure-B.**
4. That the departmental appeal of the appellant was rejected vide order dated 02.10.2014 received on 26.03.2017 for no good ground. Thereafter, the appellant filed review petition which was also rejected vide order dated 17.08.2017. The same was received by appellant on 30.04.2018 **(Copy of appeal and order is attached as Annexure-C & D).**
5. That now the appellant come to this August Tribunal on the following grounds amongst others.

GROUNDS:



- A) That the impugned orders dated 02.10.2014, 26.03.2017 and 17.08.2017 are against the law, facts, norms of justice and void-ab-initio as the period of absentia already condoned as leave without pay there is no more ground remained to punished appellant. So material on record, therefore not tenable and liable to be set aside.
- B) That the absence has already been condoned by treating the period as leave without pay and as such after that there remained no action to penalize the appellant.
- C) That there is no order in black and white form to dispense with the regular inquiry which is violation of law and rules and without charge sheet, statement of allegation and proper inquiry the appellant was dismissed from the service vide order dated 27.04.2009 without given personal hearing which is necessary and mandatory in law and rules before imposing major penalty. So the whole procedure conducted has nullity in the eye of law. So the impugned order is liable to be set aside.
- D) That the appellant has been condemned unheard and has not been treated according to law and rules.
- E) That the communication of the order is the responsibility of the respondents and the impugned orders is not communicated to the appellant in time.
- F) That neither charge sheet, statement of allegation, show cause notice was served upon the appellant nor inquiry was conducted against the appellant, which was necessary and mandatory in law before imposing major punishment which is violation of law, rules and norms of justice.
- G) That the appellant has not been treated under proper law despite he was a civil servant of the province, therefore, the impugned order is liable to be set aside on this score alone.
- H) That the absent of the appellant was not intentionally but due to some domestic problem. So the penalty imposed upon the appellant was so harshed.
- I) That the appellant's guilt has not been proved beyond the shadow of doubt and the appellant has been punished on the basis of conjecture and surmises.
- J) That no chance of personal hearing was provided to the appellant and as such the appellant has been condemned unheard throughout.

K) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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


APPELLANT
Imran Ullah

THROUGH:


(UZMA SYED)
&

(SYED NOMAN ALI BUKHARI)
ADVOCATES, PESHAWAR

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. _____/2018

Imran Ullah

V/S

Police Deptt

.....

**APPLICATION FOR CONDONATION
OF DELAY IN THE INSTANT APPEAL**


RESPECTFULLY SHEWETH:

1. That the instant appeal is pending before this Honourable Tribunal in which no date has been fixed..
2. That according to Superior Court Judgment the limitation run from the date of communication of the order. In the instant appeal the rejection order dated 17.08.2017 communicated to the appellant 30.04.2018. so the limitation run fromt the date 30.04.2018.
3. That the august Supreme Court of Pakistan has held that decision on merit should be encouraged rather than knocking-out the litigants on technicalities including limitation. Therefore, appeal needs to be decided on merit (2003, PLD (SC) 724.
4. That, the appeal of the appellant on merit is good enough to be decided on merits.

It is therefore most humbly prayed that the instant appeal may be decided on merit by condoning the delay to meet the ends of justice.


APPELLANT
Imran Ullah

THROUGH:


(UZMA SYED)


**SYED NOMAN ALI BUKHARI
(ADVOCATES, PESHAWAR)**

AFFIDAVIT

It is affirmed and declared that the contents of appeal and application are true and correct to the best of my knowledge and belief and nothing has been concealed from Hon'able tribunal.

محمد علی

DEPONENT

713/12

Javed Muhammad
Advocate High Court
Commissioner
Distt: Court Peshawar.

ORDER

Annex - A




Constable Imran Ullah No. 2017 was enlisted on dated 15-7-2007 in this District Police. On 28.3.2009, Gul Muhammad OASI of DPO Office Bannu reported to the undersigned that constable imran Ulalh No. 2017, on dated 5/1/2008, after making arrival on duty absented himself from govt duty without any leave or prior permission from the competent authority. On 6.9.2008 his pay was stopped vide OB No.1111 dated 29.11.2008 and is still absented from official duty.

His service record was perused and it was found the services of the said defaulter constable is less than three years and he has proved himself as inefficient Police Officer even in the initial stage of service life which is crystal clear form the above facts. The said constable is a burden on the shoulder of police force and his retention in police force is no longer productive.

Keeping in view the above facts, the undersigned has got no other option except to kick him out from the force. Therefore, constable Imran Ulalh No. 2017 is hereby discharged from the Police Force under Police Rule 12:21. His absence period from 5-1-2008 to date is treated as leave without pay.


OB No. 620
Dated 27/4/2009.


District Police Officer,
Bannu.

No. _____

Copies to all concerned.

S.E.


ATTESTED

بخدمت جناب انسپکٹر جنرل آف پولیس، صاحب خیبر پختونخوا پشاور۔

جناب عالی!

گزارش کی جاتی ہے کہ من سائل مورخہ 15.07.2007 کو محکمہ پولیس ریگولر میں بطور کانسٹیبل بھرتی ہوا تھا۔ سائل نے ریکورڈ کورس PR مردان سنٹر سے پاس کیا ہے۔ سائل نے بعد از ریکورڈ ٹریننگ پولیس لائن اور تھانہ جات وغیرہ میں پوری جانفشانی کے ساتھ ڈیوٹی سرانجام دی ہے۔ لیکن اس دوران سائل کو ایسے گھریلو مسائل نے جکڑ لیا جس کی وجہ سے نوکری داؤ پر لگ گئی۔

سائل کا جوان سائل بھائی مسی کامران خان کو کسی ظالم نے بڑی بے دردی کے ساتھ بحوالہ مقدمہ علت نمبر 279/2009 تھانہ صدر قتل کیا گیا۔ جو سائل اس صدمے اور اپنی گھریلو حالات کی بناء پر نوکری سے غیر حاضر رہا۔ بدیں وجہ سائل کو محکمہ پولیس سے بحوالہ OB نمبر 620 مورخہ 27.04.2009 ڈسچارج کیا گیا۔

عالیجاہ! سائل ایک غریب گھرانے سے تعلق رکھتا ہے اور ابھی تک بے روزگاری کے عالم میں در بدر کی ٹھوکریں کھا رہا ہے۔ سائل کا خدا کی ذات کے بعد آپ کے سوا دیگر کوئی وسیلہ کار نہیں جو میری شنوائی اور دادرسی کر سکے۔

جناب والا!

بذریعہ درخواست ملتمس ہوں کہ سائل کے حال پر رحم فرما کر محکمہ پولی دوبارہ بحال کرنے کے احکامات صادر فرمادیں۔ سائل خود اور اہل و عیال تاحیات دعا گو رہینگے۔

عین نوازش ہوگی

مورخہ 04.05.2017

العارض!

Ex: Constable عمران اللہ خان ولد رحمت اللہ خان Ex: 2017 سکنہ خلیل بوزی خیل داؤد شاہ
حال کوئٹہ بابر دغلی شہباز عظمت خیل علاقہ تھانہ صدر تحصیل ضلع بنوں۔

موبائل نمبر: 0331-8326915

شناختی کارڈ نمبر: 11101-6402820-1

Register

As process

Suspect

As process

24/5/17

AS
For n. act
24/5

24/5/17

24/5/2017

ATTESTED

Office of the PPO KPK, Peshawar
(Secret Branch)
No. 1872/17
Dated 24-5-17



Annex - C

**OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
PESHAWAR.**

No. SI/ 5096 /17, dated Peshawar the 17/08/2017.

ORDER

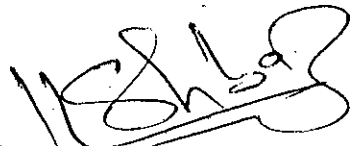
This order is hereby passed to dispose of departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 submitted by Ex-FC Imran Ullah No. 2017. The appellant was discharged from service by DPO Bannu vide OB No. 620, dated 27.04.2009 on the charges of absence from duty for a period of 01 year, 03 months and 22 days.

His appeal was rejected by Regional Police Officer, Bannu vide order dated 02.10.2014.

Meeting of Appellate Board was held on 10.08.2017 wherein petitioner was heard in person. During hearing petitioner contended that his brother was murdered by unknown accused.

Perusal of record revealed that petitioner was dismissed from service on the charges of absence from duty for a period of 01 year, 03 months and 22 days. The impugned order of dismissal was passed vide order dated 27.04.2009 and his appeal was filed by RPO vide order dated 02.10.2014. The instant review petition filed on 04.05.2017 which is badly time barred. Therefore, his petition is hereby rejected.


This order is issued with the approval by the Competent Authority.



(ARIF SHAHBAZ KHAN)
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

No. SI/ 5097-5103 /17,

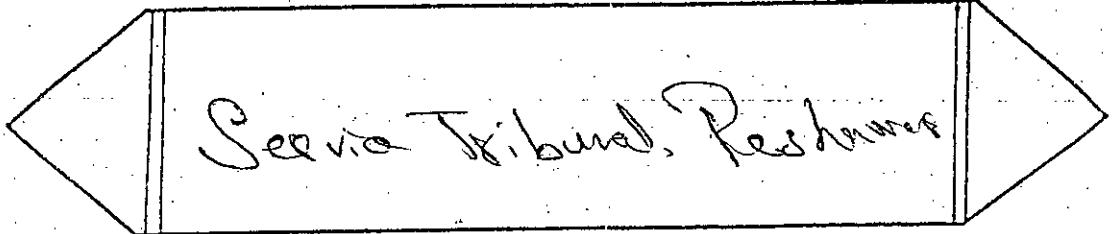
Copy of the above is forwarded to the:

1. Regional Police Officer, Bannu Region Bannu.
2. District Police Officer, Bannu.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. PA to AIG/Legal, Khyber Pakhtunkhwa, Peshawar.
7. Office Supdt: E-IV CPO Peshawar.


30/8/2018


ATTESTED

بعد الت



2 منجانب
بنام

موزخه
مقدمه
دعوی
جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام پیر اور کیلئے عظیمی پیر اور دھمان
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی براندگی اور منسوخی
نیز دائرہ کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ
پر واختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جائہ التوائے مقدمہ کے سبب سے وہ ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی لے
مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ مندر ہے۔

المرقوم 4 ماہ 2018
واہ الب

بمقام Reshams کے لئے منظور ہے۔

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No.630/2018

Imran Ullah Ex-Constable, No.207,

Bannu District Police,

..... Appellant

Versus

1. The AIG Establishment for Inspector General of Police, KPK, Peshawar,
2. The Regional Police Officer, Bannu Region, Bannu.
3. The District Police Officer, Bannu .

..... Respondents

PARA WISE COMMENTS/REPLY ON BEHALF OF RESPONDENTS NO.1,2 & 3.

Preliminary Objections

1. That the appeal of the appellant is badly time-barred.
2. That the appeal is not maintainable in its present form.
3. That the appellant has concealed the actual facts from this Honorable Tribunal.
4. That the appeal is bad in law due to mis-joinder and non-joinder of necessary parties.
5. That the appellant has approached the Honourable Tribunal with unclean hands.
6. That the appellant has got no cause of action and locus-standi to file the instant appeal.
7. That the appellant has been estopped by his own conduct.

OBJECTIONS ON FACTS:

Respectfully Sheweth

1. Correct to the extent that the appellant was appointed/ enlisted as constable but rest of the para is incorrect. The appellant was a habitual absentee having a colorful service record did not follow the prescribed rule/ law.
2. The appellant is a habitual absentee did not inform his senior or superior officers about his domestic problems and willingly absented without permission or information.
3. Incorrect. All legal procedure was adopted according to land laws but he (appellant) did not bother to appear/ made his arrival before the Respondent Department. He was dismissed from service on 27.04.2009 while he preferred departmental appeal in 2014 after a lapse of 5 years which shows his disinterest in service. Rest of the para pertains to record.
4. The appeal of the appellant was rejected being badly time barred, rest of the para is incorrect there is no provision of second appeal in Police Rules 1975.
5. The respondent department also submit their reply on the following grounds.

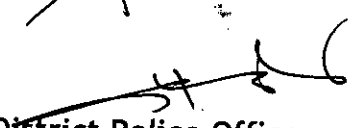
OBJECTIONS ON GROUNDS


- A. The impugned orders issued by high ups are quite legal according to law/ rules.
- B. Incorrect. According to Police Rules 1975, the competent authority is empowered to impose such like penalty.
- C. Incorrect. He was called time and again to associate with the inquiry proceedings but he did not obey legal order of high ups which shows dis-efficiency on his part.
- D. Incorrect. The appellant was given opportunity of defense and personal hearing but he badly failed to appear before the competent forum.
- E. Incorrect. All codal formalities of defense and personal hearing were provided and the impugned orders was communicated to him.
- F. Incorrect. As the services of the said defaulter constable is less than three years and he proved himself as inefficient police officer even in the initial stage of service which is crystal clear from his service record therefore, the competent authority discharged him from the Police Force under Police Rule 12:21. (Copy of the Police Rules 1934 is annexed as annexure "A").
- G. Incorrect. The appellant was properly treated according to the laws/rules.
- H. Incorrect. The appellant is a habitual absentee and willingly absented without permission from authority. The penalty imposed upon the appellant is quite legal and there is no malafide intentions on the part of Respondent Department.
- I. Incorrect. The appellant is like a black sheep, having a painted service record in initial stage which shows his incompetency for Police Force.
- J. Incorrect. Reply has already been given in para "F".
- K. The Respondents department may kindly be allowed to advance any other grounds & material as evidence in the time of arguments.

PRAYER:

In view of the above replies, it is most humbly prayed that the appeal of the appellant may kindly be dismissed with cost please.


AIG/Establishment Khyber
Pakhtunkhwa Peshawar
(Respondent No.1)


District Police Officer,
Bannu
(Respondent No.3)


Regional Police Officer,
Bannu Region, Bannu
(Respondent No.2)

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Appeal No.630/2018

Imran Ullah Ex-Constable, No.207,

Bannu District Police,

..... Appellant

Versus


1. The AIG Establishment for Inspector General of Police, KPK, Peshawar,
2. The Regional Police Officer, Bannu Region, Bannu.
3. The District Police Officer, Bannu


..... Respondents

AUTHORITY LETTER.

Mr. Muhammad Farooq Khan, Inspector Legal is hereby authorized to appear before The Service Tribunal Khyber Pakhtunkhwa Peshawar on behalf of the undersigned in the above cited case.

He is authorized to submit and sign all documents pertaining to the present appeal.


AIG Establishment Khyber
Pakhtunkhwa Peshawar
(Respondent No.1)


District Police Officer,
Bannu
(Respondent No.3)


Regional Police Officer,
Bannu Region, Bannu
(Respondent No.2)

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Appeal No.630/2018

Imran Ullah Ex-Constable, No.207,

Bannu-District Police,

..... **Appellant**

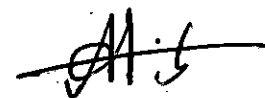
Versus

1. The AIG Establishment for Inspector General of Police, KPK, Peshawar,
2. The Regional Police Officer, Bannu Region, Bannu.
3. The District Police Officer, Bannu

..... **Respondents**

AFFIDAVIT

I, **Muhammad Farooq Khan**, Inspector Legal representative for Respondent Nos. 1,2 & 3 do hereby solemnly affirm and declare that the contents of the accompanying comments submitted by me are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honourable Tribunal.



DEPONENT

11101-1483421-1

ORDER

Annex - A


(7)

Constable Imran Ullah No. 2017 was enlisted on dated 15-7-2007 in this District Police. On 28.3.2009, Gul Muhammad OASI of DPO Office Bannu reported to the undersigned that constable imran Ulah No. 2017, on dated 5/1/2008, after making arrival on duty absented himself from govt duty without any leave or prior permission from the competent authority. On 6.9.2008 his pay was stopped vide OB No.1111 dated 29.11.2008 and is still absented from official duty.

His service record was perused and it was found the services of the said defaulter constable is less than three years and he has proved himself as inefficient Police Officer even in the initial stage of service life which is crystal clear form the above facts. The said constable is a burden on the shoulder of police force and his retention in police force is no longer productive.

Keeping in view the above facts, the undersigned has got no other option except to kick him out from the force. Therefore, constable Imran Ulah No. 2017 is hereby discharged from the Police Force under Police Rule 12:21. His absence period from 5-1-2008 to date is treated as leave without pay.

OB No. 620
Dated 27/4/2009.


District Police Officer,
Bannu.

No. _____

Copies to all concerned.

SRE

بخدمت جناب انسپکٹر جنرل آف پولیس، صاحب خیبر پختونخوا پشاور۔

جناب عالی!

گزارش کی جاتی ہے کہ میں ساکھ مورخہ 15.07.2007 کو محکمہ پولیس ریگولز میں بطور کانسٹیبل بھرتی ہوا تھا۔ ساکھ نے ریکورڈ کورس PR مردان منتر سے پاس کیا ہے۔ ساکھ نے بعد از ریکورڈ ٹریننگ پولیس لائن اور تھانہ جات وغیرہ میں پوری جانفشانی کے ساتھ ڈیوٹی سرانجام دی ہے۔ لیکن اس دوران ساکھ کو ایسے گھریلو مسائل نے جکڑ لیا جس کی وجہ سے نوکری داؤ پر لگ گئی۔

ساکھ کا جوان ساکھ بھائی سہی کامران خان کو کسی ظالم نے بڑی بے دردی کے ساتھ بحوالہ مقدمہ علت نمبر 279/2009 تھانہ صدر قتل کیا گیا۔ جو ساکھ اس صدمے اور اپنی گھریلو حالات کی بناء پر نوکری سے غیر حاضر رہا۔ بدیں وجہ ساکھ کو محکمہ پولیس سے بحوالہ OB نمبر 620 مورخہ 27.04.2009 ڈسچارج کیا گیا۔

عالیجاہ! ساکھ ایک غریب گھرانے سے تعلق رکھتا ہے اور ابھی تک بے روزگاری کے عالم میں در بدر کی ٹھوکریں کھا رہا ہے۔ ساکھ کا خدا کی ذات کے بعد آپ کے سوا دیگر کوئی وسیلہ کار نہیں جو میری شنوائی اور داد رسی کر سکے۔

جناب والا!

بذریعہ درخواست ملتیس ہوں کہ ساکھ کے حال پر رحم فرما کر محکمہ پولی دوبارہ بحال کرنے کے احکامات صادر فرمائیں۔ ساکھ خود اور اہل و عیال تاحیات دعا گو رہینگے۔

عین نوازش ہوگی

مورخہ 04.05.2017

العارض!

Ex: Constable خان ولد رحمت اللہ خان 2017 بیلٹ نمبر 2017 سکینہ خلیل بوزی خیل داؤد شاہ

حال کوئٹہ بابر داغلی شہباز عظمت خیل علاقہ تھانہ صدر تحصیل ضلع بنوں۔

موبائل نمبر: 0331-8326915

شخصی کارڈ نمبر: 11101-6402820-1

Registrar

As process

AS

For n. act

24/5/17

Office of the PPO KPK, Peshawar
(Secret Branch)

No. 1872/17
Dated 24-5-17



(Annex - C) (9)

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
PESHAWAR.

No. SI/ 5096 /17, dated Peshawar the 17/08/2017.

ORDER

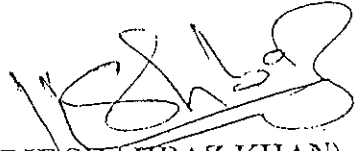
This order is hereby passed to dispose of departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 submitted by Ex-FC Imran Ullah No. 2017. The appellant was discharged from service by DPO Bannu vide OB No. 620, dated 27.04.2009 on the charges of absence from duty for a period of 01 year, 03 months and 22 days.

His appeal was rejected by Regional Police Officer, Bannu vide order dated 02.10.2014.

Meeting of Appellate Board was held on 10.08.2017 wherein petitioner was heard in person. During hearing petitioner contended that his brother was murdered by unknown accused.

Perusal of record revealed that petitioner was dismissed from service on the charges of absence from duty for a period of 01 year, 03 months and 22 days. The impugned order of dismissal was passed vide order dated 27.04.2009 and his appeal was filed by RPO vide order dated 02.10.2014. The instant review petition filed on 04.05.2017 which is badly time barred. Therefore, his petition is hereby rejected.


This order is issued with the approval by the Competent Authority.

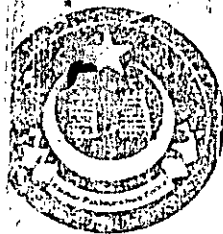

(ARIF SHAHBAZ KHAN)
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

No. SI/ 5097-5103 /17,

Copy of the above is forwarded to the:

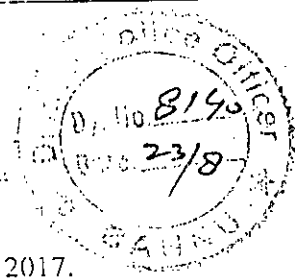
1. Regional Police Officer, Bannu Region Bannu.
2. District Police Officer, Bannu.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. PA to AIG/Legal, Khyber Pakhtunkhwa, Peshawar.
7. Office Supdt: E-IV CPO Peshawar.


received on
30/8/2018



OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar.

No. S/ 5123 /17, dated Peshawar the 17/08/2017.



To : The Regional Police Officer,
Bannu Region, Bannu.

Subject: SERVICE RECORD (EX-FC IMRAN ULLAH NO. 2017)

Memo:

Please refer to your office memo: No. 2048 / EC, dated 11.06 2017.

Service Record in r/o Ex-FC Imran Ullah No. 2017 is returned herewith for your office record please.

Encl: Service Roll
Fauji Missal

OFFICE SUPDT: SECRET
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

17/7

EC
2/8/17

No 2469 EC dt. 22/8/2017.

Copy of above along
with Service Roll and
Fauji Missal of the Ex-constable
is returned herewith for
your office record. This also
refer to your office memo
No 5857 dt 2/6/2017.

R. P. Khan
22/8/2017

SRC/CPB

For my call
reception

BEFORE THE KPK, SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 630/2018

Imran Ullah

VS

Police Deptt:

.....
REJOINDER ON BEHALF OF APPELLANT
.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-7) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

- 1 First portion of para-1 of the appeal is admitted correct by the respondents, while rest of the para of reply is incorrect hence denied. Moreover para-1 of the appeal is correct.
- 2 Incorrect. While para-2 of the appeal is correct as mentioned in the main appeal of the appellant.
- 3 Incorrect. While para-3 of the appeal is correct as mentioned in the main appeal of the appellant. Moreover, if the charge sheet was issued to the appellant, then the department is bound to same was annexed with the comments but the

department is fail to annexed the same, which means that the charge sheet and other procedure was not followed by the department..

- 4 Incorrect. While para-4 of the appeal is correct as mentioned in the main appeal of the appellant. Moreover, the order of RPO was never communicated to the appellant but only the appellant was verbally informed about the order, from the date of information appellant filled appeal well in time. Further it is added that if the order of RPO was communicated to the appellant why the same was not annexed with appeal.
- 5 No comments.

GROUND:

- A) Incorrect. The orders of the respondents are against the law, rules and norms of justice therefore not tenable and liable to be set aside.
- B) Incorrect. While para-B of the appeal is correct as mentioned in the main appeal of the appellant.
- C) Incorrect. Incorrect. While para-C of the appeal is correct as mentioned in the main appeal of the appellant.
- D) Incorrect. Incorrect. While para-D of the appeal is correct as mentioned in the main appeal of the appellant.
- E) Incorrect. Incorrect. While para-E of the appeal is correct as mentioned in the main appeal of the appellant.
- F) Incorrect. Incorrect. While para-F of the appeal is correct as mentioned in the main appeal of the appellant.
- G) Incorrect. Incorrect. While para-G of the appeal is correct as mentioned in the main appeal of the appellant.

- H) Incorrect. Incorrect. While para-H of the appeal is correct as mentioned in the main appeal of the appellant.
- I) Incorrect. Incorrect. While para-I of the appeal is correct as mentioned in the main appeal of the appellant.
- J) Incorrect. Incorrect. While para-J of the appeal is correct as mentioned in the main appeal of the appellant.
- K) Legal.

It is, therefore, most humbly prayed that the appeal of appellant may kindly be accepted as prayed for.

[Signature]
APPELLANT

Through:

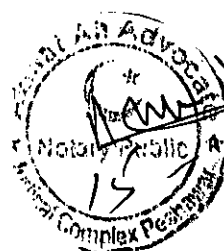
[Signature]
(UZMA SYED)
& *[Signature]*
SYED NOMAN ALI BUKHARI
ADVOCATE, PESHAWAR.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.

[Signature]
DEPONENT

ATTESTED



BEFORE THE KPK, SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 630/2018

Imran Ullah

VS

Police Deptt:

REJOINDER ON BEHALF OF APPELLANT

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-7) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

- 1 First portion of para-1 of the appeal is admitted correct by the respondents, while rest of the para of reply is incorrect hence denied. Moreover para-1 of the appeal is correct.
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department is fail to annexed the same, which means that the charge sheet and other procedure was not followed by the department..

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- 5 No comments.

GROUND:

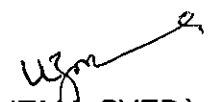

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- B) Incorrect. While para-B of the appeal is correct as mentioned in the main appeal of the appellant.
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- D) Incorrect. Incorrect. While para-D of the appeal is correct as mentioned in the main appeal of the appellant.
- E) Incorrect. Incorrect. While para-E of the appeal is correct as mentioned in the main appeal of the appellant.
- F) Incorrect. Incorrect. While para-F of the appeal is correct as mentioned in the main appeal of the appellant.
- G) Incorrect. Incorrect. While para-G of the appeal is correct as mentioned in the main appeal of the appellant.

- H) Incorrect. Incorrect. While para-H of the appeal is correct as mentioned in the main appeal of the appellant.
- I) Incorrect. Incorrect. While para-I of the appeal is correct as mentioned in the main appeal of the appellant.
- J) Incorrect. Incorrect. While para-J of the appeal is correct as mentioned in the main appeal of the appellant.
- K) Legal.

It is, therefore, most humbly prayed that the appeal of appellant may kindly be accepted as prayed for.


APPELLANT

Through:


(UZMA SYED)
& 
SYED NOMAN ALI BUKHARI
ADVOCATE, PESHAWAR.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.


DEPONENT

ATTESTED



قیمت
50 روپے

25037



ایڈوکیٹ: Naaila Fau

بار کونسل/ ایسوسی ایشن نمبر:

رابطہ نمبر: 03129215471

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: محمد سعید احمد

مخاطب: <u>بعدالت</u>	دعویٰ:
محمد سعید احمد بنام کیس	علت نمبر:
	مورخہ:
	جرم:
	تھانہ:

باعت تحریر آگے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ

آن مقام شہلہ کیلئے Naaila Fau کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: 09/08/2019

العبد گواہ شد العبد

مقام _____ کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی فونو کاپی ناقابل قبول ہوگی۔

Accepted
Accepted
Naaila Fau
57

محمد سعید احمد
اسٹریٹ

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 3887 /ST

Dated 20 / 11 / 2020

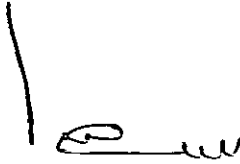
To

The District Police Officer,
Government of Khyber Pakhtunkhwa,
Bannu.

Subject: - JUDGMENT IN APPEAL NO. 630/2018, MR. IMRAN ULLAH.

I am directed to forward herewith a certified copy of Judgement dated 09.11.2020 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.