


08.07.2022

Due to Public Holiday on account of Eid-UI-Adha case
to come for the same on 12.09.2022.

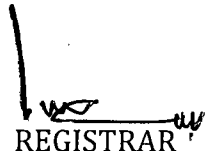


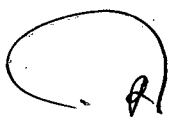

Reader

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- _____ 7903/2021 _____


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	22/12/2021	<p>The appeal of Mr. Waqar Ahmad resubmitted today by Mr. Nazir Ahmad Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2-	11.02.2022	<p>This case is entrusted to S. Bench at Peshawar for preliminary hearing to be put there on <u>11/02/22</u>.</p> <p> CHAIRMAN</p>
	28.04.2022	<p>Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 28.04.2022 for the same as before.</p> <p> Reader</p> <p>Appellant in person present.</p> <p>He made a request for adjournment in order to prepare the brief of the case. Adjourned. To come up for preliminary hearing on 8.07 07.2022 before S.B.</p> <p> (Rozina Rehman) Member (J)</p>

This is an appeal filed by Mr. Waqar Ahmad today on 21/12/2021 against the order dated 21.03.2017 against which he preferred/made departmental appeal/ representation on 01-11.2021 the period of ninety days is not yet lapsed as per section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, which is premature as laid down in an authority report as 2005-SCMR-890.

As such the instant appeal is returned in original to the appellant/Counsel. The appellant would be at liberty to resubmit fresh appeal after maturity of cause of action.

No. 2544/ST,

Dt. 21/12/2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Nazir Ahmad Adv. Pesh.

*The rejection comments of legal advisors of the Report is
submitted on page 47. Re-submitted,*

Nazir
22/12/21

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No 7903 /2019

Mr. Waqar Ahmad S/O Yar Muhammad **versus** Govt: of KPK
through IGP/ Commandant Elite Force .

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Rejection of Appeal

Appellant

Through

Nazir Ahmad Advocate,
Peshawar High Court Peshawar.

Cell: 0301-8571879

0332-8540783.

①

Before the Khyber Pakhtunkhwa Service Tribunal Peshawar

Service Appeal No-----/2021

Waqar Ahmad S/O Yar Muhammad Constable No 679 Elite
Force Khyber Pakhtunkhwa R/O Zakhi Qabristan Akbar-Pura
District Nowshera)..... **(Appellant)**

Vs

1. Inspector General of Police Khyber Pakhtunkhwa Peshawar
2. Commandant Elite Force Khyber Pakhtunkhwa Peshawar.
3. Deputy Commandant Elite Force KPK Peshawar.

(Respondents)

Appeal Under Section 4 of the KPK Service Tribunal Act 1974 against the impugned Order No. 5388-95/EF dated 21.03.2017 of Deputy Commandant Elite Force KPk Peshawar(Muhammad Hussain)PSP, whereby the Appellant is dismissed from service with immediate effect due to his conviction by the Trial Court of Additional Session judge Nowshera and the Departmental Appeal under Rule 3 of the K.P. Civil Servants Appeal Rules, 1986, read with Rule 11 of the Police Rules 1975 of the Appellant before the higher forum is orally dismissed.

Prayer:-

May this Honourable Tribunal be gracious, to accept this Appeal and set- aside the impugned Order No. 5388-95/EF dated 21.03.2017 of Deputy Commandant Elite Force KPk Peshawar(Muhammad Hussain) PSP *and reinstate the Appellant with all back benefits on account of his honourable acquittal by the Peshawar High Court Peshawar Bench on its judgment delivered on 05.10.2021 from all charges level against him.*

Respectfully Sheweth: - The need for the instant Appeal before this Honourable Tribunal arises due to the following facts:

Facts:

1. That the Appellant was enlisted as constable time scale on three year probation on the recommendation of the competent Authority on 26.7.2007 and was allotted constabulary No 1256. **(The enlisting order is attached as Annexure A).**
2. That the Appellant served with dedication and with all his fairness but was unlucky that due to strain relation of his family with the opponent they falsely involved him in ***FIR No- 59 dated 23.4.2014 under Section 302/324/148/149 Police Station Akbar Pura District Nowshera*** and the Deputy Commandant through order No 5406-12/EF dated 2.5.2014 suspended the Appellant from service as per CSR and closed him to Elite Head Quarter.

(The Order dated 2.5.2014 is attached as Annexure B).

3. That the Court of Additional Session judge Nowshera, convicted the Appellant on dated 7.3.2016 in the criminal case and awarded him death sentence with a fine of Rs 500000/.
4. That the Deputy Commandant through impugned Order No. 5388-95/EF dated 21.03.2017 dismissed the Appellant from service with immediate effect despite the fact that the Appellant right to appeal before the High Court and that of the Supreme Court of Pakistan was still intact.

(Copy of the impugned order is attached as Annexure C).

5. That before it the Appellant was suspended as per CSR 194 –A and was receiving a salary till 31.12.2016 and on his dismissal the salary is stopped from date onward.

(Copy of CSR-194_A and pay slip is attached as Annexure D).

6. That the Appellant filed a criminal appeal against the judgment of the Session Judge Nowshera in the Peshawar High Court

Peshawar and the Honourable High Court partially accepting his Appeal set aside the sentence granted by the Court of Session Judge and remanded the case back to the court for retrial.

7. That the Appellant filed an appeal on 11.4.2019 before the Deputy Commandant from prison with a prayer that he is not finally convicted but his appeal was not entertained as considered already dismissed. So the Appellant filed an Appeal before the Service tribunal but it was dismissed as the Appellant was convicted though it was against the law but the appellant waited for the justice..

(Copy of judgment is attached as Annexure E).

8. That the trial Court Nowshera again convicted the Appellant in consequence thereof the appellant filed an Appeal before the Peshawar High Court Peshawar which is accepted and the Appellant is acquitted with honour

.(Copy of the Judgment is attached as Annexure F).

9. That now the appellant is acquitted with honour and was dismissed from service due to the FIR registered against him so with new cause of action he filed another departmental appeal due to the emerging circumstance but it is ~~orally~~ rejected

(Copy of Appeal is attached as Annexure G).

Being aggrieved this Appeal before this Tribunal is preferred on the following grounds:

Grounds:-

A. That the impugned order is against the law and is against CSR 194-A as the criminal proceeding against the Appellant was not yet final and the Appellant had a right to Appeal and his right to appeal at two high forums was still intact and that the Honourable Peshawar High Court Peshawar decided that the Appellant was innocent and was falsely involved by the opponents which is a tradition in the entire Pakhtunkhwa, therefore, the impugned order requires your interference in the

light of ESTACODE. Under the Code the accused is to be suspended so when acquitted shall be reinstated.

B. That the Deputy Commandant has passed the impugned order in hurry without waiting for the final order of the last court of competent jurisdiction and has acted against the Police rules as the reasons given were not final and for enquiry he has not followed the Police Rules 1975 and the Efficiency and Discipline Rules, therefore the order is void *abi initio*.

(Copy of Police Rules is attached as Annexure H)

C. That the Appellant is dismissed from service on his conviction but the order of his conviction is not sustained in the eyes of law and with perusal of the Rules Police and Efficiency and Discipline his conduct does not come within the definition of misconduct.

D. The propriety and the Principle of law demand that Appellant is to be restored to that position i.e. where he was and all back benefits shall be granted to him as he felt victim to vendetta and suffered no sin of his own.

E. That Article 4 of the Constitution of Pakistan reveals that every person shall be treated in accordance with law and no action detrimental to his right, property and reputation shall be taken without due process of law.

F. That the impugned order is arbitrary, non sustainable in the eyes of law and void - *abi- initio* hence be set aside in the best interest of justice.

Therefore the Appeal may be accepted with the Prayers as above.

Through

Appellant
Nazir Ahmad
21.12.21

Nazir. Ahmad. Advocate .
High Court Peshawar .

Cell No -03328540783

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No _____/2021

Waqar Ahmad versus IGP Police and others.

APPLICATION FOR CONDONATION OF DELAY.

Respectfully Sheweth:-

That if this Honourable Court notice any delay in filing of this Appeal the same may kindly be condoned inter-alia on the following grounds:

Grounds:-

1. That the Appellant was in prison and has acted with reasonable diligence in filing a departmental Appeal to the concerned in time but was not acquitted by any court of law so was waiting for either accepting the Appeal of the Appellant by the High Court or decision otherwise.
2. That in granting condonation of delay provision of Section 5 and 14 of the Limitation Act which is applicable to Service Cases needs to be examined leniently, as the Appellant was at the mercy of others.
3. That the Appellant did his level best to file Appeal but due to unavoidable circumstances few days delay is caused for the prayer of existing relief.

It is therefore humbly prayed that on acceptance of this Application the delay if any in filing Appeal may kindly be condoned.


Appellant

Through


Nazir Ahmad. Advocate
High Court , Peshawar

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Ⓢ Ⓣ

Certificate

Certified that the appellant filed an Appeal No 1147/2019 but it was when the Appellant was not acquitted so prayed for suspension instead of dismissal.


Appellant

Affidavit

I the appellant hereby affirm and declare that the contents of the Appeal and accompanying application are correct and nothing is concealed from this Honourable Tribunal.

I further declare that my Departmental Appeal is rejected orally with a direction to seek remedy for Tribunal.


Deponent

*Identified by
Nepi
21/12/21*

ENLISTMENT ORDER

Annexure

(A)

(B)

Candidate/Recruit Waqar Ahmed
s/o Yas Muhammad r/o Zahi Qabistan
Police Station AKbar Pura Tehsil
MSR District Nowshera is hereby enlisted as

Constable time scale on three year probation in the B.P.S.No.5, i.e. Rs. 2415-115-5865
plus allowances W.F. From 26-7-07 and allotted Constabulary No. 1256.

His particulars are as under: -

Height 5 Feet 7 ¹/₄ Inch

Chest 33 ¹/₂ X 35

Date of Birth 10-4-1981

Age on enrolment years 26 Months 03

Days 16 Qualification 10th NIC # _____

His service is purely temporarily basis on would be liable to terminate at any time without notice.

Attested
10/7/07

Jamir

District Police Officer,
Nowshera.

OB No. 901

Dated: 26.7.2007

No. 278-423 /OHC, dated Nowshera the 3-8-2007

Copy of above I forwarded to the: -

- 1. District Accounts Officer, Nowshera.
- ✓ 2. E.C, Nowshera.
- 3. F.M.C, Nowshera.

Attested
10/7/07



Office of the Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar



No. 5406-12 /EF

Dated: 02/05/2014

ORDER

Constable Waqar No. 679 of Elite Force Khyber Pakhtunkhwa is hereby suspended as he is allegedly involved in case FIR No. 59, dated 24.04.2014 U/S 302/324/148/147 PPC Police Station Akbarpura District Nowshera.

He is hereby closed to Elite Headquarters with immediate effect.

(SAJID KHAN MOHMAND)

Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar.

Copy of above is forwarded to the:-

1. Acting Deputy Superintendent of Police, Elite Force Headquarters /Nowshera.
2. RI, Elite Force Khyber Pakhtunkhwa Peshawar.
3. Accountant, Elite Force, Khyber Pakhtunkhwa, Peshawar.
4. OASI, Elite Force, Khyber Pakhtunkhwa, Peshawar.
5. SRC/FMC, Elite Force, Khyber Pakhtunkhwa, Peshawar.

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Office of the Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar



(9)

No. 5388-95/EF

Dated 21/03/2017.

ORDER

This order will dispose of the departmental proceedings initiated against Constable Waqar Ahmad No. 679 of district Police Nowshera now on deputation to Elite Force Khyber Pakhtunkhwa.

He was involved in case FIR No. 59, dated 23.04.2014 under section 302,324-148,147 PPC Police Station Akbarpura district Nowshera. He was suspended and Charge Sheet & Summary of Allegations were issued to him by this office vide No. 5413-17/EF, dated 02.05.2014 and Mr. Javed Iqbal Acting DSP Elite Force Headquarters was appointed as Enquiry Officer. The enquiry officer submitted his findings and recommended his departmental enquiry may be keep pending till the decision of honorable court. A Final Show Cause Notice was issued to him but his reply was found unsatisfactory.

The trial court has recorded conviction rule dated 07.03.2016 in the above mentioned criminal case. The Death penalty with fine of Rs. 500000/- has been imposed on accused official.

In view of the conviction order recorded by the trial court, the undersigned see no other alternative but to dismiss the accused official from service, with immediate effect.

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(MUHAMMAD HUSSAIN)PSP
Deputy Commandant
Elite Force Khyber Pakhtunkhwa
Peshawar.

Copy of the above is forwarded to the:-

1. District Police Officer, Nowshera for information.
2. Acting Deputy Superintendent of Police, Elite Force Headquarters.
3. RI, Elite Force Khyber Pakhtunkhwa Peshawar.
4. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
5. Incharge Kot, Elite Force Khyber Pakhtunkhwa Peshawar.
6. OASI/SRC, Elite Force Khyber Pakhtunkhwa Peshawar.
7. FMC, Elite Force Khyber Pakhtunkhwa along with complete departmental enquiry file Encls: (62) pages.

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A question arose as to which date viz., the date of first conviction or the date of conviction on retrial should be taken as the date of termination of the first final. It has been decided that in such case the date of termination of the first final should be the date of issue of the orders on retrial.

(D.G.,P & T's letter No. Es. B-III 29/41, date the 25th September 1942.)

{CSR 194-A: A Government Servant who has been charged for a criminal offence or debt and is committed to prison shall be considered as under suspension from the date of his arrest. In case such a Government Servant is not arrested or is released on bail, the competent authority may suspen him, by specific order, if the charge againgt him is connected with his position as Governmetn Servant or is likely to embarrass him in the discharge of his duties or involve moral turpitude. During suspension period the Government servant shall be entitled to the subsistence grant as admissible under "FR-53"}
(CSR 194 subs and CSR 194-A omitted vide Finance Division S.R.O No.25(KE)/97, dated 4.2.1997)

Suspension of a Government servant accused of criminal offences.

Sl.No.4

In cases where Government servants are accused of criminal offences, frequent references are made to the Establishment Division on issues such as:

- (i) Whether, on their committal to prison, they are to be suspended by a specific order or their suspension is automatic;
- (ii) Whether or not on their release on bail after arrest, they can be reinstated in service;
- (iii) Whether their continued suspension requires approval of the authority after every three months.

2. The matter has been considered in the Establishment Division in consultation with the Law Division. It has been held that cases of the above nature are to be dealt with under Article 194 and 194-A of the Civil Service Regulations which are existing rules and which can not be over-ridden by administrative instructions contained in section IV of the Appendix-3 of Fundamental Rules and Supplementary Rules Vol.II.

Amexul

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3. In the context of the points mentioned in paragraph I, the position that emerges from Article 194 and 194-A of CSR is explained below:-

- (a) A Government servant committed to prison either for debt or on a criminal charge should be considered as under suspension from the date of his arrest and until the termination of the proceedings against him i.e his suspension is automatic from the date of arrest till termination of proceedings against him;
- (b) A Government servant against whom a criminal charge or proceeding for arrest for debt is pending should also be placed under suspension by the issue of specific orders to this effect during periods when he is not actually detained in custody or imprisoned (e.g whilst released on bail) if the charge made or proceedings taken against him is connected with his position as a Government servant or is likely to embarrass him in discharge of his duties as such or involves moral turpitude; and
- (c) the requirement of obtaining approval of authority for extension of suspension period after every 3 months laid down in Government Servants (Efficiency and Discipline), Rules, 1973 applies to suspension ordered under these rules. Articles 194 or 194-A do not mention any such requirement.

4. In view of the position stated above, the answers to the queries mentioned in Para I are as follows seriatim:-

- (i) suspension under Article 194 is automatic. Suspension under Article 194-A requires specific approval of the competent authority;
- (ii) in the light of what is stated in the preceding paragraph, the competent authority can, in case the accused official is no longer detained in custody, reinstate him in service unless it like him to continue to be under suspension on the consideration that the charges against him are connected with his position as a Government servant or is likely to embarrass him in the discharge of his duties as such or involve moral turpitude. From the date of reinstatement onwards, the Government servant will no doubt be paid full pay. However adjustment of allowances for the period he remained under suspension will be made as Article 194 and 194-A envisage after the termination of the proceedings;

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- (iii) approval of competent authority for suspension under Article 194 or 194-A is not required after every 3 months.

5. With reference to (i) and (ii) in the preceding paragraph, the following administrative instructions may also be followed:-

- (a) a report may be made immediately to the "competent authority" whenever a person is committed to prison and is considered to be under suspension under article 194 CSR in order to ensure that the competent authority remains in touch with the position of the official and his case; the fact of suspension may also be notified under advice to all concerned including the audit authorities in terms of Article 194 CSR, and
- (b) a report on the progress of the criminal case leading to the suspension of a Government servant under Article 194 or 194-A. CSR, as the case may be, be submitted to the authorized officer every three months for his information to ensure that he remains in touch with the position of the official and his case.

6. The O.M, issues with the concurrence of the Ministry of Finance.

[Authority:-O.M No.4/12/74-DI, dated the 10th March,1980]

Detention of Government Servants under the Public Safety Acts.

Sl.No.5

A question has arisen whether an employee of the Federal Government who is detained in prison for a period of time under the provisions of the Sind Maintenance of Public Safety Act, 1948 or a similar enactment and is released without any trial loses his service under the Government and whether such a person is entitled to any leave salary or subsistence allowance for the period he remained under detention. As some doubts seemed to exist in the matter, the question has been fully considered in consultation with the Law Division and it has been decided that the following procedure should be adopted to regulate cases of detention in prison and subsequent acquittal or conviction:-

- (i) As soon as it comes to notice that an employee has been detained in prison, action should be taken to place him under suspension, the period of the employee's detention *[should be treated as period spent under] committal to prison within the meaning of

Article 194 C.S.R. and the pay and allowances during suspension should be regulated under F.R.53;

- (ii) If the employee is subsequently acquitted honourably he should be reinstated forthwith. He will be entitled to receive full salary for the entire period of his absence from duty under F.R.54(a);
- (iii) If on the other hand the acquittal is not honourable, then the provision of F.R.54 (b) will apply;
- (iv) If the employee is released from detention without any trial, it is open to the competent authority to take disciplinary action against him if good and sufficient reasons exist from such action. In that case the procedure prescribed in the Efficiency and Discipline Rules must be observed;
- (iv) If the employee is convicted, he may be dismissed from service if his retention in service is not desirable. In that case the procedure prescribed in the Efficiency and Discipline Rules, need not be observed. He will be entitled to nothing more than the subsistence allowance up to the date of his dismissal from which date the pay and allowance will cease under F.R.52.

(Authority:-Office Memorandum No.F/19/11/49-Ests(SE), dated the 20th December,1949)
*as amended vide Office Memorandum No.27/41/52-SE II, dated the 7th December,1954] Authority

Rules for the acceptance and disposal of gifts by Government servants

Sl.No.6

The Government of Pakistan has partially modified the existing Rules regarding the acceptance and disposal of gifts received by Government servants' etc. The decisions taken by the Government in this regard are given below:-

- (1) The responsibility for reporting the receipt of the gift shall continue to devolve on the individual recipient. All gifts received by a Government servant, irrespective of their prices must be reported to the Toshakhana in the Cabinet Division, Government of Pakistan.

Atal Singh
12/12/49

Q0374455 WAQAR AHMAD ✓ CNIC: 1700112426667 Desty: CONSTABLE ✓ (80252579) Grade: 05 NTK: Buckle No.: 1256 Gazetted/Non-Gazetted: N
 PAYMENTS AMOUNT DEDUCTIONS AMOUNT LOAN/FUND PRINCIPAL REPAIR BALANCE

PAYMENTS	AMOUNT	DEDUCTIONS	AMOUNT	LOAN/FUND	PRINCIPAL	REPAIR	BALANCE
0001 Basic Pay	12,370.00	3005 GPF Subscription - Rs	745.00-				45,334.00
0001 House Rent Allowance	1,503.00	3530 Police wel:Fud SS-1 t	247.00-				
1210 Convey Allowance 20	1,932.00	4004 R. Benefits & Feath C	450.00-				
1300 Medical Allowance	1,500.00						
1547 Ration Allowance	681.00						
1567 Washing Allowance	150.00						
1646 Constabulary R Allow	300.00						
1901 Risk Allowance (Poli	5,010.00						
1901 Special Incentive Al	775.00						
1938 Elite Force Allowanc	3,000.00						
2148 15% Adhoc Relief All	361.00						

(10)
 11/12/2016

Accounts Office AG KP Peshawar
 PAYROLL REGISTER
 For the month of December ,2016

Page : 10
 Date : 13.12.2016

DDO : PR5128 DIG/ Commandant Elite Force NWFP
 2168 Fixed Daily Allowanc 2,730.00
 2199 Adhoc Relief Allow @ 243.00
 2211 Adhoc Relief All 201 1,237.00
 PAYMENTS 31,792.00
 Branch Code:230824 TARU JABA

Payroll Section : 006 Payroll 6
 DEDUCTIONS 1,442.00-
 NATIONAL BANK OF PAKISTAN TARU JABA

NET PAY
 PESHAWAR

30,350.00 01.12.2016 31.12.2016
 Acct.No: 3805-9

13.12.2016.

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(2)

Amended
(E)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR.

Service Appeal No. 1147/2019

Date of Institution ... 24.07.2019

Date of Decision ... 11.11.2020

(13)

Waqar Ahmad S/O Yar Muhamamd Constable No.679 of Elite Force Khyber Pakhtunkhwa R/O Zakhi Qabristan Akbar Pura, District Nowshera. (Presently in prison). ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Inspector General of Police Khyber Pakhtunkhwa, Peshawar and one other. ... (Respondents)

MR. NAZIR AHMAD,
Advocate

--- For appellant

MR. MUHAMMAD RIAZ KHAN PAINDAKHEL,
Assistant Advocate General

--- For respondents.

MIAN MUHAMMAD
MUHAMMAD JAMAL KHAN

--- MEMBER(Executive).
--- MEMBER(Judicial)

JUDGEMENT:

MIAN MUHAMMAD, MEMBER (E):- The instant service appeal has been instituted under Section-4 of the Khyber Pakhtunkhwa Services Tribunal Act, 1974 against the impugned order of respondent No.2 (Deputy Commandant Elite Force) dated 21.03.2017 whereby the appellant was dismissed from service with immediate effect on the basis of his conviction by the Trial Court in criminal case No. 188-P of 2016. His departmental appeal submitted through Superintendent Judicial Lock up Nowshera on 09.04.2019, was not entertained as communicated to Superintendent Judicial Lock up Nowshera on 29.05.2019.

FACTS:

02. Brief facts and circumstances leading to the instant appeal are that the appellant was enlisted as constable on three years probation in Police Department as

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per endst of enlistment order dated 03.08.2007. During his service, he was nominated in FIR No.59 dated 24.04.2014 under Section 302/324/148/149 PS Akbar Pura, District Nowshera and he was placed under suspension on 02.05.2014. On trial of criminal/judicial case, he was convicted vide judgement of Additional Sessions Judge-III, Nowshera dated 07.03.2016 and awarded capital punishment of death sentence with fine of Rs. 500000/-. The respondent-department, therefore, dismissed him from service vide impugned order dated 21.03.2017.

03. The respondents were put on notice to submit relevant record with their replies. They submitted their replies and contested the case through learned Assistant AG. We have heard the pro and counter arguments put forth by the learned counsel for the parties and perused the available record.

ARGUMENTS:

04. Learned counsel for Appellant argued that the appellant had been placed under suspension on 02.05.2014 as stipulated in CSR 194 and was, therefore, in receipt of pay till 31.12.2016. The appellant had legal right to appeal before the Peshawar High Court, and august Supreme Court of Pakistan but the department while taking cognizance of the judgement of the Trial Court dated 07.03.2016 in haste and dismissed him from service though he had not yet exhausted his legal rights against his conviction. He referred to para-5 of the judgement of Peshawar High Court dated 18.10.2017 and contended that his appeal has been accepted by the Peshawar High Court when the sentence awarded by the Additional Session Judge-III Nowshera, was set aside and the case was remanded to the court for retrial. He therefore, prayed that keeping in view the provisions as contained under CSR-194, the appellant is required to be placed under suspension, instead of

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05. On the contrary, learned Assistant Advocate General objected and contended that conviction of the appellant has not been set aside by the Peshawar High Court in the judgement dated 18.10.2017. The case has rather been remanded to the Trial Court with identification of deficiencies to be considered by the learned Additional Session Judge-III, Nowshera and rewriting the judgement as elaborated and clarified by Peshawar High Court in criminal Revision No. 12-P/2018 dated 05.11.2018. Paragraph-5 of the judgement of Peshawar High Court dated 18.10.2017 has been of interest and point of discussion between the learned counsels for the parties with their respective interpretation thereof. Though it does not fall under jurisdiction, mandate and competency of this Tribunal yet for better understanding of the case it is appropriate to reproduce para-5 of the said judgment:-

“Moreover, the learned trial court also formally charged the accused facing trial/appellants under section 302 PPC on two counts for committing qatl-i-amd of Ibne-e-Amin complainant, then injured, and Sadiq Amin son of the complainant by firing at them; but the impugned judgement is silent whether the penalty/punishment of death awarded to the accused facing trial/appellants under section 302(b) PPC is on two counts or otherwise, which further renders the impugned judgment in contravention of the mandatory provision of section 367 Cr.P.C, thus making the impugned judgment liable to be set aside on these grounds, and the case remanded/sent back to the learned trial court for rewriting of the judgment strictly in accordance with the provision contained in section 367 Cr.P.C, by making decision and recording judgement on all the offences with which the appellants/accused facing trial were charged by the learned trial Court.

CONCLUSION:

06. While the case on judicial or criminal side has not reached its finality as yet, the question before us is whether the appellant can be placed under suspension instead of dismissal till culmination of the trial proceedings on judicial/criminal

appellant till he exhausts all available legal forums seeking redressal of grievances emanating from his conviction by the trial court?

07. On one hand it is evident from CSR 194 that a government servant committed to prison on criminal charge(s) is placed under suspension from the date of his arrest. Suspension under CSR 194 is therefore, automatic, while suspension under CSR 194-A requires specific approval of the competent authority. Similarly, the second question framed in the preceding para i.e to pend departmental proceedings till finalization of criminal proceedings, has been addressed and answered on page 231 of the "Khyber Pakhtunkhwa Esta code with Service Laws" (updated with all amendments till 2018) in the following manner:-

"That court and departmental proceedings may start from an identical charge(s) and can run parallel to each other. They can take place simultaneously against an accused on the same set of facts and yet may end differently without affecting their validity. Even departmental inquiry can be held subsequently on the same charges of which Government servants has been acquitted by a Court. The two proceedings are to be pursued independent of each other and it is not necessary to pend departmental proceedings till the finalization of judicial proceedings".

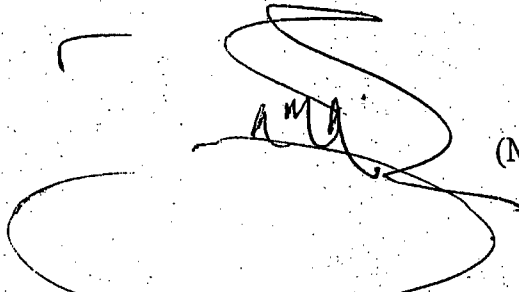
08. It is quite clear from the position narrated above that criminal and disciplinary proceedings on department level can take place on the same charge or charges, run simultaneously and yet may conclude differently with different outcome. So much so that a government servant acquitted of the charge(s) by a court of law, can be proceeded against later on, departmentally. The two set of proceedings i.e judicial/criminal and departmental are followed independently without waiting or pending departmental proceedings till culmination of the judicial/criminal proceedings.

09. As a sequel to scrutiny of the case in the preceding paras, we can safely

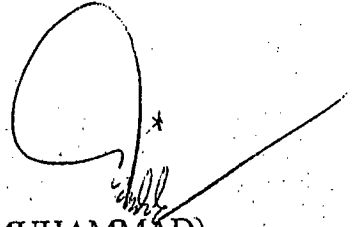
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passed by the respondents while exercising their mandated authority encompassing the touchstone of legal validity and vitality. The appeal being devoid of merit, having no substance to interfere with the said orders of respondents, is not tenable and therefore dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
11.11.2020

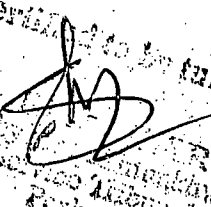


(MUHAMMAD JAMAL KHAN)
Member(J)



(MIAN MUHAMMAD)
Member(E)

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Mujib*

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Opening sheet for criminal Appeals

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)



Appellate side _____ Criminal Appeal No _____ /2020

District	Date of Filing Appeal	Whether filed by appellant in person or by pleader or agent	Stamp on petition or appeal
Nowshehra	19-10-2020	Shabbir Hussain Gigyani Advocate, Peshawar	Nil

1. Mukhtaj
2. Shafique
3. Waqar Ahmad
4. Mukhtiar Ahmad sons of Yar Muhammad
5. Aizaz S/O Mukhtiar Ahmad

R/O Zakhi Akbarpura District Nowshehra-----Appellants

Versus

1. Ebn-e-Amin S/O Rafique Muhammad (Now dead)
Through his Brother Muhammad Abbas (PW-11)
R/O Zakhi Akbarpura District Nowshehra

2. The State-----Respondents

Appeal U/S 410 Cr.P.C from the order of:

The learned
ASI/MCTC, Nowshehra

Dated:

17-10-2020

Charged U/S:

302/148/149 PPC

(FIR# 59 dated 23-04-2014 PS Akbar Pura)

Sentence:

U/S. 302(b)/149 PPC: Life Imprisonment on 02 counts with compensation of Rupees 05 lac to LRs of deceased within the meaning of section 544-A Cr.P.C. or in default 06 months S.I.

U/S. 148/149 PPC: 03 years R.I.

Both the sentences to run concurrently with benefit of section 382-B Cr.P.C.

Prayer-in-Appeal:

On acceptance of this appeal, the impugned judgment of the learned trial Court dated 17-10-2020 may graciously be set-aside and the appellant be acquitted.

Attested

GROUND OF APPEAL ARE ATTACHED

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GROUND:

- 1) **Because**, the impugned judgment of the learned trial Court convicting the appellants is against law and facts on the file; hence untenable.
- 2) **Because**, the learned trial Court has not vetted the prosecution evidence in its true, correct, legal and factual spectrum which has caused grave miscarriage of justice.
- 3) **Because**, the learned trial Court has made a complete departure from the well-settled principles relating to the safe administration of criminal justice and has taken into consideration irrelevant and inadmissible pieces of evidence, which is bad in law.
- 4) **Because**, the worthy trial Court has overlooked the golden principle of the Hon'ble Superior Courts regarding declaration of blood feud motive as double edged weapon which can easily be used as a tool for false implication as well as exaggeration of charge.
- 5) **Because**, all facts and circumstances of the case reveals that the incident has not been occurred in the mode and manner as depicted by the prosecution.
- 6) **Because**, the medical report as well as the record depicts that neither the deceased then injured was conscious, what to say about orientation in time & space, nor any report has been lodged by him, rather, at the behest of the complainant party the police had maneuvered a false report/case for showing the same as dying declaration
- 7) **Because**, un rebutted facts on the file, which too has been admitted by the PWs, speaks volume about non-presence of the alleged eye-witnesses on the spot and undisputedly are procured witnesses.
- 8) **Because**, the learned trial Court has altogether ignored the improved, contradictory and defective depositions of the prosecution witnesses and instead of its discarding, the same have been covered with golden wrapper.
- 9) **Because**, the glaring conflict of the medical evidence regarding timing, mood and manner of the alleged occurrence with the site-plan, FIR and other attending circumstances of the case has been overlooked by the learned trial Court.

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- 10) **Because**, admitted facts on file as well as documentary evidence, which has duly been investigated and confirmed by the investigation officer, firmly confirm plea of alibi of three appellants, which completely dismantle the entire case of the prosecution in light of the principle *falsus in uni falsus in omnibus*.
- 11) **Because**, the learned trial Court has placed its worthy reliance on the planted recoveries, which is evidently beguiled one coupled with non-compliance with the law, rules and procedure.
- 12) **Because**, no other independent, supportive or corroborative evidence has been produced by the prosecution.
- 13) **Because**, the medical evidence is in complete conflict with the FIR, site-plan and other attending circumstances of the case, even otherwise, the charge is highly exaggerated and the entire male members of the family have been roped falsely.
- 14) **Because**, the appellants had not absconded rather due to fear, false implication and harassment were avoiding their arrest and then surrendered before the law, even otherwise, mere abscondence does not cure the false charge of the prosecution.
- 15) **Because**, terming the alleged absconcion as a piece of evidence by the worthy trial Court is unwarranted, being neither prof of guilt nor substitute of evidence and cannot defeat the rights.
- 16) **Because**, at any rate, the prosecution has miserably failed to bring home charge against the appellants beyond shadow of reasonable doubt and the impugned judgment is untenable.

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It is, therefore, humbly prayed that on acceptance of this appeal, the impugned judgment of the learned trial Court dated 17-10-2020, convicting the appellants and sentencing him U/S. 302(b)/149 PPC Life with compensation of Rupees 05 lac to LRs of deceased within the meaning of section 544-A Cr.P.C. or in default 06 months S.I. and U/S. 148/149 PPC 03 years R.I., may graciously be set aside and they be acquitted.

Through

Mukhtaj etc (Appellants)

Shabbir Hussain Gigyani, Farman Ullah Sailab, Muhammad Waqar
 Dated: 19-10-2020
 Advocates, Peshawar

ENTITLED TO BE TRUE COPY
 Peshawar High Court, Peshawar
 Authorized Under Article 87 of
 the Constitution of Pakistan

25 OCT 2021

NOTE:

➤ Appeal in hand is 1st one against the impugned judgment.

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**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)**

Cr.A.No.852-P of 2020.

Date of hearing: 05.10.2021.

M/s Jalai-ud-Din Akbar-e-Azam Khan Gara
and Shabbir Hussain Gigyani, advocates for
the appellants.

Mr. Muhammad Inam Yousafzai, AAG for the
State.

Syed Abdul Fayaz, advocate for the
complainant.

JUDGMENT

LAL JAN KHATTAK, J.- Through this
judgment, we shall also decide the criminal
revision bearing No.129-P of 2020 as both
the matters have arisen from the same
judgment dated 17.10.2020 of the learned
Additional Sessions Judge-II/MCTC,
Nowshera delivered in case FIR No.59
dated 23.04.2014 under sections
302/148/149 PPC of Police Station Akbar
Pura, Nowshera, whereby the appellants
have been convicted and sentenced under
section 302(b) PPC to imprisonment for life
on two counts. They have also been
directed to pay compensation of
Rs.500,000/- to legal heirs of both the
deceased as envisaged under section 544-A

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Peshawar High Court

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Cr.P.C. or in default whereof same shall be recovered as arrears of land revenue. The appellants have also been convicted under section 148 PPC read with section 149 PPC and sentenced to rigorous imprisonment of three years. Benefit under section 382-B Cr.P.C. has been given to them. The appellants have assailed their convictions and sentences through their joint appeal whereas the complainant had filed Cr.R.No.129-P of 2020 for enhancement of the awarded sentence to the normal penalty of death.

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Giam

2. Brief facts of the case are that on 23.04.2014, deceased Ibn-e-Ameen, the then injured, reported to Karim Dad Khan, ASI in the casualty of civil hospital Pabbi to the effect that on the day of occurrence when he and his son Sadiq Ameen reached near Hujra Babu Salam Akbar Pura while riding motorbike, there Mukhtaj, Waqar, Mukhtiar, Shafiq and Aizaz, who were already present over there, started firing at them with lethal weapons due to which they i.e. the complainant and his son, were hit. According to the FIR (Ex.PW2/1), Sadiq Ameen died on the spot while the

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complainant got seriously wounded. Motive for the occurrence was stated to be previous blood feud. Per FIR, Muhammad Nazir and Muhammad Abbas Khan had witnessed the occurrence.

3. In order to establish its case, prosecution produced 12 witnesses whereafter statements of accused were recorded wherein they professed their innocence. After conclusion of the trial, the learned trial court found the appellants guilty of the charge and sentenced them as mentioned above. It is worth to mention that earlier appellants Waqar, Mukhtiar and Aizaz were tried and on conclusion were sentenced to death by the learned trial court vide judgment dated 07.03.2016, however, on appeal, their convictions were set aside by this court vide judgment dated 18.10.2017 and their case was remanded for trial afresh. During their trial, appellants Mukhtaj and Shafiq were arrested and put to face the trial alongwith the three already arrested accused.

4. Arguments heard and record gone through.

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5. The prosecution case against the appellants consists of the ocular account furnished by PW-11, dying declaration of deceased Ibn-e-Ameen, medical evidence of both the deceased, recoveries from the spot in the shape of crime empties and bloodstained earth, recovery of motorbike from the spot and site plan of the crime spot.

6. First of all we take up for appreciation the ocular account furnished by PW-11, namely, Muhammad Abbas Khan, who is step brother of deceased Ibn-e-Ameen. Though his name is mentioned in the FIR as an eyewitness to the occurrence but we doubt his presence on the spot at the time of occurrence for the reason that he had not accompanied with the victims when they left their house for Akbar Pura. According to his testimony, when both the deceased did not return home, he and his brother Muhammad Nazir (not produced) went after them to Akbar Pura and when they reached Akbar Pura bazar near the Hujra of Babu Salam, there all the five accused started firing at his brother and nephew with which they were hit and fell down from the motorbike. As per his deposition, both the deceased after hitting

Again

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M. Nazir*

M. Nazir
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Peshawar High Court

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entered into the Hujra of Babu Salam in order to save their lives where also they were fired at by the accused. The witness further deposed that with the fire shots Sadiq Ameen died on the spot whereas Ibn-e-Ameen sustained injuries and was taken to the hospital where he was examined by the doctor and in his presence, the injured reported about the occurrence.

7. Evidence of Muhammad Abbas Khan (PW-11) cannot be accepted for safe administration of justice on the ground that initially he was not with the victims when they left for Akbar Pura. He stated that he went behind his brother and nephew when they got late. In his evidence nowhere he has stated that he was aware of both the deceased going to Akbar Pura bazar and when he had no knowledge of the victims for their going to Akbar Pura bazar, then how he left for their search to the particular place i.e. the bazar. Also worth mentioning is the statement of PW-11 when he stated that "*it is correct that the wife of the deceased had not informed me about the specific places in Akbar Pura nor the name of the person with whom they had to meet.*"

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Peshawar High Court

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8. When neither the specific place was known to the witness nor the person whom the deceased had gone to meet, then his seeing the deceased and that too at the time of occurrence can only be termed an extraordinary happening and an extraordinary event has to be properly explained by the person who claims to have seen it which is not the case in hand. No doubt, sometime extraordinary events do take place but in the attending circumstances of the case, presence of PW-11 is not believable on the spot as neither he knew the person whom his brother and nephew had gone to meet nor the place of their visit anywhere (as mentioned earlier), therefore, arrival of the witness on the spot at the time of occurrence is doubtful, hence his evidence cannot be believed in.

9. Now we take up the FIR-cum-dying declaration of the then injured, namely, Ibn-e-Ameen, who while reporting to ASI Karim Dad in injured condition in the casualty of civil hospital Pabbi stated to the effect that on 23.04.2014 he and his son Sadiq Ameen were riding motorbike and when they reached near the crime spot

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Peshawar High Court

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there all the five accused already present over there started firing at them with *Aslaha-e-Atisheen* with which he and his son were hit. According to the contents of the FIR (Ex.PW2/1), with the fire shots the complainant was seriously injured while his son on hitting died on the spot. It is worth to add that PW-11, namely, Muhammad Abbas is rider of the FIR and on extreme left corner whereof there is entry by the doctor to the effect that the patient was alive and conscious.

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As per*

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10. No doubt, as stated earlier, on extreme right corner of the FIR, there is endorsement of the doctor showing that the patient at the time of lodging of the FIR was alive and conscious but such endorsement alone would not be enough to hold that the contents of the FIR were correct qua the assailants. Of course, declaration given by a person at the time of his death carries great importance as to its truthfulness but there are certain pre-requisites which must be there in order to believe such declaration as true and one of them is that the declaration must be made without the interference of any close relative of the dying man who is

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Peshawar High Court

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found present around the dier at the time of making the statement and second the declaration must be corroborated by the circumstances prevailing on the spot at the time of occurrence. Furthermore, it is also necessary to see, in order to believe a dying declaration, whether at the time of his death the dying person was capable to narrate the event occurred before his death.

11. On the touchstone of the above, if we look at the dying declaration of deceased Ibn-e-Ameen, it would appear that same was not free from foreign interference as his step brother, namely, Muhammad Abbas Khan (PW-11) was present around him at the time when such statement was being made. It is worth mentioning that in the preceding paragraph we have already disbelieved the testimony of Muhammad Abbas Khan and in such like situation interference on behalf of said witness in the statement of his brother, who was returning to his Creator to make an exaggerated account of the occurrence, cannot be ruled out.

12. Besides the above, physical condition of the declarant too was not such which

Ejaz

Abbas Khan

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could allow him to narrate the occurrence as has been narrated by him. His medical examination shows that he has received the following firearm injuries on his person:-

1. A single firearm entry wound 1 x 1 cm on right interior flank with exit wound 3 x 5 cm on left side of lower back just lateral to the lumbar spine.
2. A single firearm entry wound 1 x 1 cm on lateral side of left buttock with exit wound 2 x 4 cm on upper medical side of left buttock.
3. A single firearm entry wound 1 x 1 cm on left upper guardant (left hypochondrium) with exit wound 2 x 2 cm on right side of upper back.
4. One through and through firearm wound with entry wound 1 x 1.5 cm in epigastria region with exit wound 2 x 1 cm on upper middle back.

*Allyat
Syrni*

Gain

Moreover, the medical officer who had examined the declarant had found his condition very serious (Ex.PW2/1) whereafter referred him for further treatment to LRH. If we see the endorsement of the medical officer appearing at the corner of the FIR and the referral chit, it would appear that the deceased at the time of his death could not be in a position to narrate about

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Peshawar High Court

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the occurrence in detail as has been narrated in the FIR.

13. In addition, the dying declaration of the deceased has also not been supported by site plan of the case. It is in the FIR that the deceased were hit by the fire shots when they were riding on motorbike and after hitting they fell down. According to the site plan, both the victims were hit at points No.1 and 2 and the motorbike has been shown at point 'A'. As per the site plan (Ex.PW5/1), after falling on the ground at point No.1 and 2, both the deceased then went up to point 1A and 2A and the *inter se* distance between point 1, 2 and 1A and 2A is 17/18 paces. Keeping in view the serious conditions of both the victims, it was not possible for them to cover a distance of 17/18 paces and let assume that they were in a position to move and they did so, then there must have been some trail of blood from point where they were hit and fallen and the point 1A and 2A whereafter receiving firearm injuries they had reached which is not the case in hand. Therefore, the site plan does not corroborate the facts as narrated in the FIR.

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Peshawar High Court

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14. For the above stated reasons, we hold that the dying declaration of Ibn-e-Ameen cannot be believed in for conviction of the appellants for the safe administration of justice.

15. Another important aspect of the case is that there is no report of FSL that the 03 empties of 222 bore and 9 empties of 7.62 bore collected from the spot were fired from more than one weapons. In the instant case, five persons, four of whom are brothers and one is nephew, are charged for the murder of two persons. In such like situation, production of the FSL report showing that the empties were fired from five weapons was must which material piece of evidence the prosecution has not produced and it appeared to us that the charge was exaggerated one which lamentable trend is very common in the area.

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*Attest
M. J.*

16. Thorough and careful examination of the case record has led this court to believe that the prosecution has not proved its case against the appellants beyond any shadow of doubt, which is a hallmark of criminal jurisprudence. The prosecution case is full of doubts benefit of which must go to the

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EXAMINER
Peshawar High Court

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appellants being a century old principle of criminal law. It appears to us that the learned trial court has not appreciated the case evidence in its true perspective and has fallen in legal error to convict the appellants.

17. For what has been discussed above, we accept this appeal, set aside the impugned judgment of conviction and acquit the appellants of the charge leveled against them. They be set at liberty forthwith if not required to be detained or wanted in any other case.

Atul Mehta

18. Above are the reasons of our short order of even date.

19. So far as Cr.R.No.129-P of 2020 is concerned, as we have set aside the impugned judgment of conviction, therefore, the criminal revision has become infructuous which is hereby dismissed.

JUDGE

JUDGE

Announced.

05.10.2021/

Sadiq Saigal (P) (Hon'ble Mr. Justice Lal Jan Khattak & Hon'ble Justice Musarrat Hina)

No. 11524
 Date of Presentation of Application 27/10/21
 No of Pages 15
 Copying fee 160
 Total 160
 Date of Preparation of Copy 27/10/21
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 25 OCT 2021

124.5815 ER (1) Ammal (1)
1-11-21 (9)
Before the Honourable Commandant Elite Force KPK
Peshawar (33)

Departmental Appeal under Rule 3 of the K.P. Civil Servants Appeal Rules, 1986, read with Rule 16.29 of the Police Rules 1934, against the impugned Order No. 5388-95/EF dated 21.03.2017 of Deputy Commandant Elite Force KPK Peshawar (Muhammad Hussain) PSP, whereby the Appellant is dismissed from service with immediate effect due to his conviction by the Trial Court of Additional Session Judge Nowshera and the right of Appeal of the Appellant before the higher forum was not yet final.

Prayer:-

May your Honour be gracious, that on acceptance of this Appeal set aside the Order No---. 5388---95/EF dated 21.03.2017 and reinstate the Appellant with all back benefits on account of his honourable acquittal from charges level against him by the Peshawar High Court Peshawar Bench on 05.10.2021.

Respectfully Sheweth:- The need for the instant Departmental Appeal before your Honour arises due to the following facts:

Facts:

1. That the Appellant was enlisted as constable time scale on three year probation on the recommendation of the competent Authority on 26.7.2007 and was allotted constabulary No 1256. (The enlisting order is attached as Annexure A).
2. That the Appellant served with dedication and with all his fairness but was unlucky that due to strain relation of his family the opponent falsely involved him in **FIR No- 59 dated 24.4.2014 under Section 302/324/148/149 Police Station Akbar Pura District Nowshera** and the Deputy Commandant through order No 5406-12/EF dated 2.5.2014 suspended the Appellant from service as per CSR and closed him to Elite Head Quarter. (The Order dated 2.5.2014 is attached as Annexure B).

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3. That the Court of Additional Session judge Nowshera, convicted the Appellant on dated 7.3.2016 in the criminal case and awarded him death sentence with a fine of Rs 500000/. 34
4. That the Deputy Commandant through impugned Order No. 5388-95/EF dated 21.03.2017 dismissed the Appellant from service with immediate effect despite the fact that the Appellant right to appeal before the High Court and that of the Supreme Court of Pakistan was still intact. **(Copy of the impugned order is attached as Annexure C).**
5. That the Appellant was suspended was receiving a salary till 31.12.2016 and on his dismissal his salary is stopped from date onward. **(Copy of pay slip is attached as Annexure D).**
6. That the Appellant filed a criminal appeal against the judgment of the Session Judge Nowshera in the Peshawar High Court Peshawar and the Honourable High Court partially accepting his Appeal set aside the sentence granted by the Court of Session Judge and remanded the case to the court for retrial. Allied
10/10
7. That the Appellant filed an appeal on 11.4.2019 before the before the Deputy Commandant from prison but his appeal was not entertained as considered already dismissed.
8. That the trial Court again convicted him so the appellant filed an Appeal before the Peshawar High Court Peshawar which is accepted and the Appellant is acquitted with honour. **(Copy of the Judgment is attached as Annexure E).**
9. That the Appellant filed an Appeal before the Service tribunal but it was dismissed as the Appellant was convicted though it was against the law but the appellant waited for the justice .
10. That now the appellant is acquitted with honour therefore

Being aggrieved this Departmental Appeal before you is preferred on the following grounds:

Grounds:-

- 35
- A. That the impugned order is against the law and Article 194 of CSR as the criminal proceeding against the Appellant was not yet final and the Appellant has a right to Appeal and his right to appeal at two high forums was still intact and that the Honourable Peshawar High Court Peshawar decided that the Appellant was innocent and was falsely involved by the opponents which is a tradition in the entire Pakhtunkhwa, therefore, the impugned order requires your interference in the light of ESTACODE. Under the Code the accused is to be suspended so when acquitted shall be reinstated.
- B. That the Deputy Commandant has passed the impugned order in hurry without waiting for the final order of the last court of competent jurisdiction and has acted against the Police rules as the reasons given were not final.
- C. That the Appellant is dismissed from service on his conviction but the order of his conviction is not sustained in the eyes of law.
- D. The propriety and the Principle of law demand that Appellant is to be restored to that position i.e. where he was .
- E. That Article 4 of the Constitution of Pakistan reveals that every person shall be treated in accordance with law and no action detrimental to his right, property and reputation shall be taken without due process of law.
- F. That the impugned order is void ib- initio hence be set aside by your honour in the best interest of justice.

Therefore the Departmental appeal may be accepted with the Prayers as above. (Note FIR No 265, dated 30-7-2013 is also attached)

(Copy attached)
[Signature]
(Appellant)

Waqar Ahmad S/O Yar Muhammad
Constable No 679
Elite Force Khyber Pakhtunkhwa
R/O Zakhi Qabristan Akbar-Pura District Nowshera)

The Police Rules, 1975

(With Amendments-2014)

Amended
IA

(3)

Contents

1. Short title, commencement and application
2. Definitions
3. Grounds of punishment
4. Punishments
- 4.A -
5. Punishment proceeding
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7. Procedure of Departmental Inquiry
8. Powers of Inquiry Officer
9. Rules 5 and 6 not to apply in certain cases
10. Procedure of Inquiry against Officers lent to other Government or authority
11. -
12. Appeal
- 12 Revision (11-A)
- 13 -
- 14 Repeal

Police Rules, 1975

[Gazette of Khyber Pakhtunkhwa, Extraordinary, 27th January 1976]

No. SOS-III(S&GAD) 1-80/73-K ---.In exercise of the powers conferred under section 7 of Police Act 1861, the Government of Khyber Pakhtunkhwa, is pleased to make the following Rules, namely:-

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1. Short title, commencement and application:-

- (i) These rules may be called the Police Rules, 1975.
- (ii) They shall come into force at once and shall apply to all Police Officers of and below the rank of Deputy Superintendent of Police.

2. Definitions:-

In these rules, unless the context otherwise requires:-

- (i) 'Accused' means a Police Officer against whom action is taken under these rules;
- (ii) 'Authority' means authority competent to award punishment as per Schedule
- (iii) 'Misconduct' means conduct prejudicial to good order of discipline in the Police Force, or contrary to Government Servants (Conduct) Rules or unbecoming of a Police Officer and a gentleman, any commission or omission which violates any of the provisions of law and rules regulating the function and duty of Police Officer to bring or attempt to bring political or other outside influence directly or indirectly to bear on the Government or any

Government Officer in respect of any matter relating to the appointment, promotion, transfer, punishment, retirement or other conditions of service of a Police Officer.

- (iv) 'Punishment' means a punishment which may be imposed under these rules by authority as indicated in Schedule I.

3. Grounds of punishment.-

Where a Police Officer, in the opinion of the authority-

- a) Is inefficient or has ceased to be efficient: or
 b) Is guilty of misconduct; or
 c) Is corrupt or may reasonably be considered corrupt because-
- (i) He is or any of his dependents or any other person through him or on his behalf is, in possession (for which he cannot reasonably account) of pecuniary resources of property disproportionate to his known sources of income; or
 (ii) He has assumed a style of living beyond his ostensible means; or
 (iii) He has a persistent reputation of being corrupt; or
- (d) Is engaged Or is reasonably suspected of being engaged in subversive activities, or is reasonably suspected of being associated with others engaged in subversive activities or is guilty of disclosure of official secrets to any unauthorized person, and his retention in service is, therefore, prejudicial to national security, the authority may impose on him one or more punishments.

4. Punishments.-

1. The following are the minor and major punishments, namely:—

(a) Minor punishments-

- (i) Confinement of Constables and Head Constables for 15 days to Quarter Guards;
 (ii) Censure;
 (iii) Forfeiture of approved service up to 2 years;
 (iv) With holding of promotion up to one year;
 (v) Stoppage of increment for a period not exceeding 3 years with or without cumulative effect;

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- (iv) Fine up to Rs15000/- as per schedule-I.

(b) Major punishments-

- (i) Reduction in rank/pay;
 (ii) Compulsory retirement;
 (iii) Removal from service; and
 (iv) Dismissal from service.

2. (a) Removal from service does not but dismissal from service does, disqualify for future employment.
 (b) Reversion from an officiating rank is not a punishment.

3. In this rule, removal or dismissal from service does not include the discharge of a person.
- (a) Appointed on probation, during the period of probation, or in accordance with the probation or training rules applicable to him; or
 - (b) Appointed, otherwise than under a contract, to hold a temporary appointment on the expiration of the period of appointment; or
 - (c) Engaged under a contract, in accordance with the terms of the contract.

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In case a Police Officer is accused of subversion, corruption or misconduct the Competent Authority may require him to proceed on leave or suspend him.

5. Punishment proceedings.-

The punishment proceedings will be of two kinds. i.e. (a) Summary Police Proceedings and (b) General Police Proceedings and the following procedure shall be observed when a Police Officer is proceeded against under these rules:—

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- (1) When information of misconduct or any act of omission or commission on the part of a Police Officer liable for punishment provided in these rules is received by the authority, the authority, shall examine the information and may conduct or cause to be conducted quick brief inquiry if necessary, for proper evaluation of the information and shall decide whether the misconduct or the act of omission or commission referred to above should be dealt with in a Police Summary Proceedings in the Orderly Room or General Police Proceedings.
- (2) In case the authority decides that the misconduct is to be dealt with in Police Summary Proceedings, he shall proceed as under-
 - (i) The accused officer liable to be dealt with in the Police Summary Proceedings shall be brought before the authority in an Orderly room.
 - (ii) He shall be apprised by the authority orally the nature of the alleged misconduct, etc. The substance of his explanation for the same shall be recorded and if the same is found unsatisfactory, he will be awarded one of the minor punishments mentioned in these rules.
 - (iii) The authority conducting the Police Summary Proceedings may, if deemed necessary, adjourn them for a maximum period of 7 days to procure additional information.
- (3) If the authority decides that the misconduct or act of omission or commission referred to above should be dealt with in General Police Proceedings he shall proceed as under-
 - a) The authority shall determine if in the light of facts of the case or in the interests of justice, a departmental inquiry, through an Inquiry Officer if necessary. If he decides that is not necessary; he shall-
 - b) By order in writing inform the accused of the action proposed to be taken in regard to him and the grounds of the action: and
 - c) Give him a reasonable opportunity of showing cause against that action: Provided

that no such opportunity shall be given where the authority is satisfied that in the interest of security of Pakistan or any part thereof it is not expedient to give such opportunity.

(4) If the authority decides that it is necessary to have departmental inquiry conducted, through an Inquiry Officer, he shall appoint for this purpose an Inquiry Officer, who is senior in rank to the accused.

(5) On receipt of the findings of the Inquiry Officer or where no such officer is appointed, on receipt of the explanation of the accused, if any, the authority shall determine whether the charge has been proved or not. In case the charge is proved the authority shall award one or more of major or minor punishments as deemed necessary.

6. **Procedure of Departmental Inquiry:-**

- i. Where an Inquiry Officer is appointed the authority shall-
 - a. Frame a charge and communicate it to the accused together with statement of the allegations explaining the charge and of any other relevant circumstances which are proposed to be taken into consideration;
 - b. Require the accused within 7 days from the day the charge has been communicated to him to put in a written defence and to state at the same time whether he desires to be heard in person;
- ii. The Inquiry Officer shall inquire into the charge and may examine such oral or documentary evidence in support of the charge or in defence of the accused as may be considered necessary and the witnesses against him.
- iii. The Inquiry Officer shall hear the case from day to day and no adjournment shall be given except for reasons to be recorded in writing and where any adjournment is given,
 - a. It shall not be more than a week; and
 - b. The reasons therefore shall be reported forthwith to the authority.
- iv. Where the Inquiry Officer is satisfied that the accused is hampering, or attempting to hamper the progress of the inquiry he shall administer a warning and if thereafter he is satisfied that the accused is acting in disregard of the warning, he shall record a finding to that effect and proceed to complete the departmental inquiry ex parte.
- v. The Inquiry Officer shall within 10 days of the conclusion of the proceedings or such longer period as may be allowed by the authority, submit his findings and grounds thereof to the authority.

7. **Powers of Inquiry Officer:-**

- 1) For the purpose of departmental inquiry under these rules, the Inquiry Officer shall have the powers of a Civil Court trying a suit under Code of Civil Procedure, 1908 (Act V of 1908) in respect of the following matters, namely:--
 - (a) Summoning and enforcing the attendance of any person and examining him on oath;

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- (b) Requiring the discovery and production of documents;
- (c) Receiving evidence on affidavits;
- (d) Issuing commission for the examination of witnesses or documents.
- 2) The proceedings under these rules shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Pakistan Penal Code (Act XLV of 1860).
8. **Rules 5 and 6 not to apply in certain cases.-**
Nothing in rules 5 and 6 shall apply in a case-
- (a) where the accused is dismissed or removed from service or reduced in rank, on the ground of conduct which has led to a sentence of imprisonment; or
- (b) where the authority competent to dismiss or remove a person from service, or to reduce a person in rank, is satisfied that for reasons to be recorded in writing by that authority, it is not reasonably practicable to give the accused an opportunity of showing cause.
9. **Procedure of inquiry against officers lent to other Government or Authority.-**
- i. Where the services of Police Officer to whom these rules apply are lent to any other Government or to a local or other authority, in this rule referred to as the borrowing authority, the borrowing authority shall have the powers of the authority for the purpose of placing him under suspension or requiring him to proceed on leave and of initiating proceedings against him under these rules.
- ii. Provided that the borrowing authority shall forthwith inform the authority which has lent his services, hereinafter in this rule referred to as the lending authority, of the circumstances leading to the order of his suspension or the commencement of the proceedings, as the case may be.
- iii. If in the light of the findings in the proceedings taken against the Police Officer in terms of sub-rule (1) the borrowing authority is of opinion that any punishment should be imposed on him, it shall transmit to the lending authority the record of the proceedings and thereupon the lending authority shall take action as prescribed in these rules.
10. No party to any proceedings under the rules before the authority or Inquiry Officer shall be represented by an Advocate.
11. **Appeal.-**
For rule 11, the following shall be substituted, namely:
- ❖ "11. Appeal.—(1) An accused, who has been awarded any penalty under these rules except the penalty of confinement of constable and head constable for fifteen days to quarter guards, may, within thirty days from the date of communication of the order, prefer an appeal to the Appellate Authority as provided in sub-rule (2).
- (2) The appeal, against the orders of the officer, specified in Schedule-I, who passes it shall lie to the Appellate Authority as may be specified in the table below:

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S.No	Punishing Authorities	Appellate/Reviewing Authorities
1.	Provincial Police Officer	Provincial Police Officer (Review)
2.	Regional Police Officer/ Deputy Inspector General of Police/ Capital City Police Officer/ Additional Inspector General of Police.	Provincial Police Officer.
3.	District Police Officer/ Senior Superintendent of Police/ Superintendent of Police.	Regional Police Officer/Deputy Inspector General of Police/ Capital City Police Officer/ Additional Inspector General of Police.
4.	Assistant Superintendent of Police/ Deputy Superintendent of Police.	District Police Officer/ Senior Superintendent of Police/ Senior Superintendent of Police Operations.

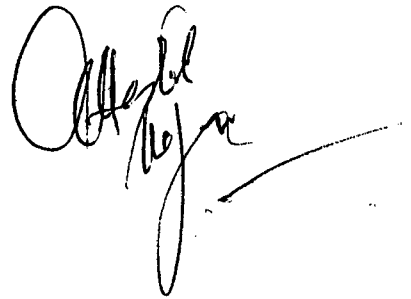
Provided that where the order has been passed by the Provincial Police Officer, the delinquent officer/official, may within a period of thirty days submit review Petition directly to the Provincial Police Officer.

(3) There shall be only one appeal from the original order and the order of the Appellate Authority, in appeal, shall be final.

(4) The Appellate Authority or Review Authority, as the case may be, may call for the record of the case and comments on the points raised in the appeal or review, as the case may be, from the concerned officer, and on consideration of the appeal or the review petition, as the case may be, by an order in writing-

- (a) uphold the order of penalty and reject the appeal or review petition; or
- (b) set aside the orders and exonerate the accused; or

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- (c) modify the orders and reduce or enhance the penalty; or
- (d) set aside the order of penalty and remand the case to the authority, where it is satisfied that the proceedings by the authority or the inquiry officer or inquiry committee, as the case may be, have not been conducted in accordance with the provisions of these rules, or the facts and merits of the case have been ignored, with the directions to either hold a de novo inquiry or to rectify the procedural lapses or irregularities in the proceedings:

Provided that where the Appellate Authority or Review Authority, as the case may be, proposes to enhance the penalty, it shall by an order in writing-

- (a) inform the accused of the action proposed to be taken against him and the grounds of such action; and
- (b) give him a reasonable opportunity to show cause against the action and afford him an opportunity of personal hearing.

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(5) An appeal or review preferred under this rule, shall be made in the form of a petition, in writing, and shall set forth concisely the grounds of objection to the impugned order in a proper and temperate language".

12. After rule 11, the following new rule shall be inserted, namely:

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"II-A Revision"..... (1) The Inspector General, Additional Inspector General, a Deputy Inspector General of Police or a Senior Superintendant of Police may call for the records of awards made by their subordinates and confirm, enhance, modify or annul the same, or make further investigation or direct such to be made before passing orders.

(2) If an award of dismissal is annulled, the officer annulling it shall state whether it is to be regarded as suspension followed by re-instatement, or not. The order should also state whether service prior to dismissal should count for pension or not.

(3) In all cases in which officers propose to enhance an award the officer shall, before passing final orders, give the defaulter concerned an opportunity of showing cause, either personally or in writing, why his punishment should not be enhanced.

(4) The revision petition shall lie or taken cognizance by the authorities under sub rule-(1) within thirty days of the order passed on original appeal.

Provided that the Provincial Police Officer, while acting as revisional authority, in certain cases, may constitute a Revision Board for the speedy disposal of revision petitions, before passing any orders." And

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No order passed under these rules shall be subject to review by any Court/Tribunal.

14. Repeal.-

Any Disciplinary Rules applicable to Police Officers to whom these rules apply are hereby repealed but the repeal thereof shall not affect any action taken or anything done or suffered there under.

NASIR KHAN DURRANI (PSP)
Inspector General of Police,
Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.

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❖ SCHEDULE-I

POWER OF PUNISHMENT TABLE							
S #	DEPARTMENTAL PUNISHMENTS	AUTHORITIES COMPETENT TO AWARD PUNISHMENT TO:					
		Deputy Superintendent of Police/Deputy Superintendent of Police (Legal)	Inspector/Inspector(Legal)	Sub Inspector/ Sub Inspector Legal	Assistant Sub Inspector	Head Constable	Constable
1.	A-Major Punishments:						
	(i) Dismissal, removal from service, compulsory retirement.	Provincial Police Officer	DPO/SSP	DPO/SSP	DPO/SSP/SP	DPO/SSP/SP	DPO/SSP/SP
	(ii) Reduction from substantive rank to lower rank or from higher stage to lower stage in the same time scale of pay.	Provincial Police Officer	DPO/SSP	DPO/SSP/SP	DPO/SSP/SP	DPO/SSP/SP	DPO/SSP/SP
2.	B-Minor Punishments: Withholding of promotion for one year or less.	PPO/Addl: IGP/CCPO/RPO/DIG	DPO/SSP/SP	DPO/SSP/SP	DPO/SSP/SP/ASP/DSP	DPO/SSP/SP/ASP/DSP	DPO/SSP/SP/ASP/DSP
3.	(i) Fine up to rupees Fifteen thousand (15000/-)	Provincial Police Officer	---	---	---	---	---
	(ii) Fine up to rupees Ten thousand (10000/-)	Addl: IGP/CCPO	---	---	---	---	---
	(iii) Fine up to rupees Ten thousand (10000/-)	RPO/DIG	---	---	---	---	---
	(iv) Fine up to rupees Five thousand (5000/-)	---	DPO/SSP/SP	DPO/SSP/SP	DPO/SSP/SP	DPO/SSP/SP	DPO/SSP/SP
	(v) Fine up to rupees one thousand (1000/-)	---	---	---	ASP/DSP	ASP/DSP	ASP/DSP
4.	Stoppage of increments for a period not exceeding three (3) years with or without cumulative effect.	PPO/Addl: IGP/CCPO/RPO/DIG	DPO/SSP/SP	DPO/SSP/SP	DPO/SSP/SP/ASP/DSP	DPO/SSP/SP/ASP/DSP	DPO/SSP/SP/ASP/DSP
5.	Censure	PPO/Addl: IGP/CCPO/RPO/DIG	DPO/SSP/SP	DPO/SSP/SP	DPO/SSP/SP/ASP/DSP	DPO/SSP/SP/ASP/DSP	DPO/SSP/SP/ASP/DSP
6.	Forfeiture of approved service up to two (2) years	PPO/Addl: IGP/CCPO/RPO/DIG	DPO/SSP/SP	DPO/SSP/SP	DPO/SSP/SP/ASP/DSP	DPO/SSP/SP/ASP/DSP	DPO/SSP/SP/ASP/DSP
7.	Confinement to quarters guard up to fifteen (15) days of Constables and Head constables.	---	---	---	---	DPO/SSP/SP/ASP/DSP	DPO/SSP/SP/ASP/DSP

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NASIR KHAN DURRANI (PSP)
Inspector General of Police,
Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.

Amended vide Notification No: 3859/Legal, dated 27/08/2014 issued by IGP, KPK





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

Rejection of Appeal
(47)

No. 11064 /Legal dated the 23 /11 /2021.

To: The Commandant,
Elite Force, Khyber Pakhtunkhwa,
Peshawar.

Subject: **LEGAL OPINION/ GUIDANCE.**
Memo:-

Please refer to your office Letter No. 12838/EF, dated 01.11.2021, on the subject cited above.

Applicant was enlisted as Constable in year 2007 and during service he was charged in FIR No. 59 dated 24.04.2014 u/s 302,324,148,149 PPC PS Akbar Pura District Nowshera. He was placed under suspension on 02.05.2014. Learned Additional Session Judge-III Nowshera awarded death sentence to applicant vide judgment dated 07.03.2016. On basis of conviction he was dismissed from service on 21.03.2017. His departmental appeal was rejected on 29.05.2019. It is worth to mention that departmental proceedings was kept pending till the decision of trial Court.

The Honorable Peshawar High Court vide judgment dated 05.10.2021, accepted the Criminal Appeal of applicant and acquitted on the basis of technical grounds from the charges of murder/ attempted murder. Reportedly complainant party has filed the CPLA against the judgment of Peshawar High Court, Peshawar before Apex Court of Pakistan which is still subjudice.

Applicant has already challenged his dismissal order before the Khyber Pakhtunkhwa Service Tribunal, Peshawar vide Service Appeal No. 1147/2019 wherein, respondents departmental submitted reply and on 11.11.2020 appeal was dismissed and respondent department order was declared legal and valid.

Now the Applicant has submitted departmental appeal dated 01.11.2021 to Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar which is misconceived and against the law/ rules as the dismissal order of the same authority has already been declared legal and valid by Khyber Pakhtunkhwa Service Tribunal, Peshawar vide its judgment dated 11.11.2020 in Service Appeal No. 1147/2019.

AIG/LEGAL
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.
22.11.2021