

175/2014

11.3.2015

Appellant with counsel and Addl. AG with Khawas Khan, SI (Legal) for the respondents present. The case need further clarification. Therefore, representative of the respondents is directed to produce enquiry reports alongwith other relevant record. To come up for order on 16.3.2015.



MEMBER

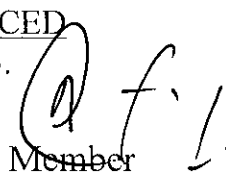


MEMBER

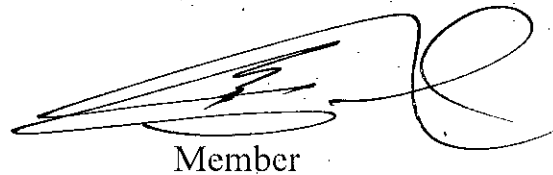
19.3.2015

Appellant with counsel and Mr. Muhammad Adeel Butt, Addl. AG with Khawas Khan, SI (Legal) for the respondents present. Arguments heard. Record perused. Vide our detailed judgment of to-day in connected Service Appeal No. 172/2014, titled "Khair-ur-Rahman Versus Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar etc.", This appeal is disposed of as per detailed judgment. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
19.03.2015.



Member



Member

21.01.2015

Since 20th January has been declared as public holiday by the provincial government, therefore, case to come up for the same on 2.2.2015.


READER

2.2.2015

Appellant with counsel and Mr. Muhammad Adeel Butt, AAG with Khawas Khan, SI (Legal) for the respondents present. Arguments heard. To come up for order on 26.2.2015.


MEMBER


MEMBER

26.2.2015

Appellant with counsel and Add. AG with Khawas Khan, SI (Legal) for the respondents present. Case is adjourned to 09.3.2015 for order.


MEMBER


MEMBER

09.3.2015

Counsel for the appellant and Addl. AG with Khawas Khan, SI (Legal) for the respondents present. The learned Member-II of the bench is on leave, therefore, case to come up for order on 11.3.2015.


MEMBER

06.08.2014

Counsel for the appellant and AAG with Khawas Khan, SI (Legal) for the respondents present. Due to retirement of learned executive Member, the bench is incomplete. To come up for ~~ex-parte~~ arguments on 15.09.2014.


MEMBER

15.09.2014

Counsel for the appellant and Mr. Muhammad Adeel Butt, AAG with Khawas Khan, SI (Legal) for the respondents present. The learned Member (Judicial) is not working due to a recent order of the Hon'ble Peshawar High Court affecting his status as District & Sessions Judge. To come up as before on 25.11.2014.


READER

25.11.2014

Clerk to counsel for the appellant, and Mr. Muhammad Jan, GP with Khawas Khan, SI (Legal) for the respondents present. The Tribunal is incomplete. To come up for the same on 22.12.2014 alongwith connected appeals.


READER

22.12.2014

Counsel for the appellant and Mr Muhammad Jan, GP for the official respondents present. The Tribunal is incomplete. To come up for the same on 20.01.2015.


READER

28.3.2014.

Counsel for the appellant and Mr. Muhammad Jan, GP with Khawas Khan, SI (Legal) for the respondents present. Respondents need further time. To come up for reply/arguments on stay application on 14.4.2014.

MEMBER

MEMBER

14.4.2014.

Clerk to counsel for the appellant and AAG with Khawas Khan, SI (Legal) for the respondents present. Written reply on main appeal received. Copy handed over to clerk to counsel for the appellant. Representative of the respondents need time to file reply on stay application. Reply on stay application in the meantime. To come up for rejoinder and arguments on stay application on 8.5.2014.

MEMBER

8.5.2014.

Clerk to counsel for the appellant and Mr. Muhammad Jan, GP with Khawas Khan, SI (Legal) for the respondents present. Rejoinder received and copy handed over to the learned GP. To come up for arguments on 4.6.2014.

MEMBER

MEMBER

4.6.2014

Counsel for the appellant and AAG present. The learned AAG stated that he is not in possession of departmental record and representative of the respondents is absent to-day. To come up for arguments on 06.8.2014.

MEMBER

MEMBER

3.

21.02.2014

Counsel for the appellant present and submitted an application for fixing an early dated of hearing instead of 13.03.2014. Application is accepted. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. Against the order dated 23.12.2013, the appellant filed departmental appeal on 24.12.2013, which has been rejected on 06.02.2014, hence the present appeal on 14.02.2014. That the appellant has been treated under Police Rules-1975 for awarding the major punishment of compulsory retirement which is wrong law. He further contended that the impugned final order has been issued in violation of Rule-5 of the Civil Servant (Appeal) Rules-1986. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents. Appellant has also filed an application for suspending the operation of the impugned orders dated 06.02.2014 of respondent No.2 and dated 23.12.2013 of respondent No.3. Notice of application should also be issued to the respondents for reply/arguments. To come up for written reply on main appeal on 13.05.2014 as well as reply/arguments on application on 07.03.2014.

Member

21.02.2014

This case be put before the Final Bench for further proceedings.

Chairman

7.3.2014

Counsel for the appellant and AAG present. Fresh notices be issued to the respondents for reply/arguments on stay application on 28.3.2014.

MEMBER


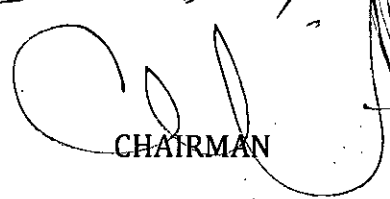
MEMBER

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 175/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	14/02/2014	<p>The appeal of Mr. Sher Muhammad Khan presented today by Mr. Khaled Rehman Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	18-3-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>13-3-2014</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 175 /2014

Sher Muhammad Khan,
Ex-SI

.....Appellant

Versus

The PPO and others

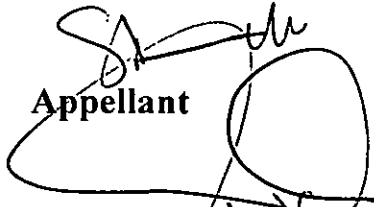
.....Respondents

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal			1-6
2.	Application for interim relief			7-8
3.	Charge sheet and statement of allegations	24.10.2013	A	9-10
4.	Reply to the charge sheet and statement of allegations		B	11
5.	Statements recorded by enquiry officer		C	12-13
6.	Report of enquiry Officer		D	14
7.	Impugned order	10.12.2013	E	15
8.	Departmental appeal	12.12.2003	F	16-17
9.	Impugned appellate order	06.02.2014	G	18
10.	Wakalat Nama			19

Through

Appellant


Khaled Rahman
Advocate, Peshawar
Cell # 0345-9337312

Dated: 14 / 02 / 2014

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 175 /2014

Sher Muhammad Khan, Ex-SI,
District Police, Swat DistrictAppellant

Versus

1. The Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police,
Malakand Region at Saidu Sharif Swat.
3. The District Police Officer,
District Swat.....Respondents

187
14-2-14

**SERVICE APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE TRIBUNALS
ACT, 1974 AGAINST THE IMPUGNED APPELLATE
ORDER DATED 06.02.2014 VIDE WHICH THE
DEPARTMENTAL APPEAL OF THE APPELLANT
AGAINST THE IMPUGNED ORDER DATED
10.12.2013 ISSUED BY RESPONDENT NO.3
WHEREBY THE APPELLANT WAS IMPOSED UPON
THE MAJOR PENALTY OF COMPULSORY
RETIREMENT WAS REJECTED.**

PRAYER:

On acceptance of the instant appeal, the impugned appellate order dated 06.02.2014 passed by Respondent No.2 and the impugned order dated 10.12.2013 passed by Respondent No.3 may graciously be set aside and appellant be re-instated into service with all back benefits.

14/2/14

Respectfully Sheweth,

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

1. That appellant joined the service of Police Force in the year 1976 as a Constable and later on promoted as Assistant Sub-Inspector and then Sub-Inspector by dint of his efficient performance of duties. Since his appointment, appellant has been performing his duties to the entire satisfaction of his high-ups.
2. That on 24.10.2013 appellant was issued a Charge Sheet and Statement of Allegations (*Annex:-A*) alleging therein involvement of the appellant in corruption. Since the charges were unfounded and baseless, therefore, appellant submitted his reply (*Annex:-B*) to Charge Sheet and Statement of Allegations thereby denying the allegations and explaining his position. The reply may kindly be considered an integral part of this appeal.
3. That thereafter a summary and fact finding enquiry was conducted, statements (*Annex:-C*) were recorded by the enquiry officer and at the conclusion it was found that the charges were not proved but there was only rumor that appellant was involved in malpractice. The Enquiry Officer recommended suitable punishment for the appellant, vide Enquiry Report (*Annex:-D*).
4. That on the basis of the illegal and incorrect findings, the competent authority vide impugned

order dated 10.12.2013 (*Annex:-E*) imposed the major penalty of compulsory retirement upon the appellant with immediate effect even without issuing final show cause notice.

5. That being aggrieved of the impugned order *ibid*, appellant preferred departmental appeal (*Annex:-F*) to Respondent No.2 but the same was also summarily rejected vide impugned appellate order dated 06.02.2014 (*Annex:-G*). Hence this appeal *inter-alia* on the following grounds:-

Grounds:

- A. That Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned orders, which are unjust, unfair and hence not sustainable in the eye of law.
- B. That appellant has been imposed upon the major penalty on the basis of no evidence. Not an iota of evidence/material has been brought to prove the allegations leveled against the appellant which fact has been admitted by the enquiry Officer himself in his enquiry report. Moreover, he has mainly relied upon the heresy evidence which cannot be the basis for imposing penalty muchless major one, therefore, the impugned order is arbitrary, unlawful and hence not sustainable in the eye of

law.

- C. That instead of a regular enquiry, an irregular, fact finding enquiry was conducted in a highly prejudicial manner and without any evidence the conclusion was jumped upon suddenly on the basis mere surmises and conjectures declaring the appellant as corrupt in utter deviation of the procedure and Rules on the subject.
- D. That it is a settled legal principle that where major penalty is proposed then only a regular enquiry is to be conducted wherein the accused must be associated with all stages of the enquiry including the collecting of oral and documentary evidence in his presence and he must be confronted to the same and must be afforded an opportunity of cross-examining the witnesses. In the case in hand a summary enquiry was concluded in an irregular manner and appellant was illegally found guilty without any evidence. Thus the impugned enquiry being irregular and the impugned orders based thereupon are nullity in the eye of law and hence liable to be set aside.
- E. That the controversy was indeed factual in nature and the same could only be resolved by holding a regular enquiry. It is also a settled legal principle that in such eventuality where factual controversy is involved then only alternative left with the competent authority is to hold a regular enquiry into the allegations. Since no such enquiry had been contemplated, therefore, the direct and abrupt

conclusion arrived at by the Enquiry Officer is ill-founded and therefore not maintainable.

- F. That no meaningful opportunity of personal hearing was afforded to the appellant neither by the competent authority, nor by the Enquiry Officer nor even by the appellate authority which are the mandatory requirements of law. Thus appellant was condemned unheard as the action has been taken at the back of the appellant which is against the principle of natural justice.
- G. That appellant was not served with final show cause notice which is also the mandatory requirement of law hence the impugned order imposing the major penalty without show cause notice is void, coram-non-judice and as such not maintainable.
- H. That the appellant has served the Department for about 37 years and has consumed his precious life in the service and keeping in view his longstanding unblemished service the imposition of the major penalty in peculiar facts and circumstances of the case is harsh, excessive and does not commensurate with the guilt of the appellant.
- I. That the allegations leveled against the appellant are general and sweeping in nature and moreover fabricated without any legal and tangible footings nor the same have been substantiated by any solid evidence.

J. That appellant would like to offer some other additional grounds during the course of arguments when the stance of the Respondents is known to the appellant.

It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.

Through


Appellant

Khaleel Rahman,
Advocate, Peshawar

Dated: 0 / 02 / 2014

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. _____/2014

Sher Muhammad KhanApplicant/Appellant

Versus

The PPO & others.....Respondents

Application for suspending the operation of the impugned orders dated 06.02.2014 of Respondent No.2 and dated 10.12.2013 of Respondent No.3 till the final disposal of the instant appeal.

Respectfully Sheweth,

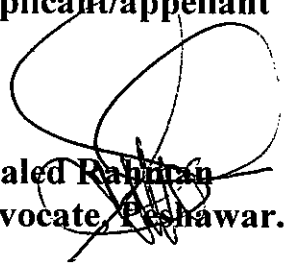
1. That the titled appeal is being filed today which is yet to fixed for hearing.
2. That the facts alleged and grounds taken in the body of appeal which may also be considered as an integral part of this application, make out an excellent prima facie case in favour of appellant who is quite sanguine of its success.
3. That in case the impugned orders are not suspended appellant will suffer irreparable loss moreover, the balance of convenience and inconvenience also lie in favour of the appellant.

It is therefore, humbly prayed that on acceptance of this application, the operation of the impugned orders dated 06.02.2014 of Respondent No.2 and dated

10.12.2013 of Respondent No.3 may graciously be suspended till the final disposal of the instant appeal.


Applicant/appellant

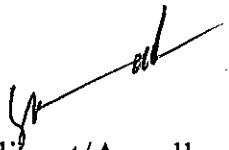
Through

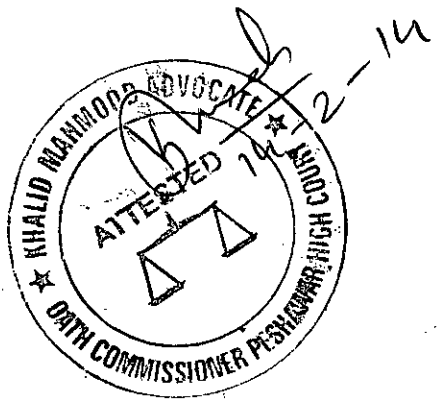

Khaled Rabih
Advocate, Peshawar.

Dated: 10 / 02 / 2014

AFFIDAVITE

Stated on oath that the contents of the application, are true and correct and nothing has been concealed from the Hon'ble tribunal.


Applicant/Appellant



CHARGE SHEET

ANNEX A (9)

I Mr. Sher Akbar S.St. P.S.P. District Police Officer, Swat as competent authority, hereby charge you, S.I. Sher Muhammad Khan while posted as ASHO Police Station Kokarai as follows:-

It has been reported that you committed the following act / acts, which is / are gross misconduct on your part as defined in Rules 2 (iii) of Police Disciplinary Rules 1975.

You S.I. Sher Muhammad Khan while posted as ASHO Police Station Kokarai have been reported to be allegedly involved in corruption, which is a gross misconduct on your part.


2. By reasons of the above, you appear to be guilty of misconduct and rendered yourself liable to all or any of penalties specified in Rule-4 of the Disciplinary Rules 1975.

3. You are, therefore, required to submit your written reply within seven (7) days of the receipt of this Charge Sheet to the Enquiry officer.

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

5. Intimate as to whether you desire to be heard in person or not.

6. A statement of allegations is enclosed.


District Police Officer, Swat

No. 199 /E,

Dated: 24/10 /2013



DISCIPLINARY ACTION

10

I Mr. Sher Akbar S.St. P.S.P. District Police Officer, Swat as competent authority, is of the opinion that he S.I. Sher Muhammad Khan while posted as ASHO Police Station Kokarai has rendered himself liable to be proceeded against departmentally as he has committed the following acts/omissions as defined in Rule 2 (iii) of Police Rules 1975, as per Provincial Assembly of Khyber Pakhtunkhwa Notification No. PA/Khyber Pakhtunkhwa/ Bills/ 2011/ 44905 dated 16/09/2011 and C.P.O, K.P.K Peshawar Memo: No. 3037-62/Legal, dated 19/11/2011.

STATEMENT OF ALLEGATIONS

It has been reported that he while posted as ASHO Police Station Kokarai committed the following act / acts, which is / are gross misconduct on his part as defined in Rules 2 (iii) of Police Rules 1975.

That he S.I. Sher Muhammad Khan while posted as ASHO Police Station Kokarai has been reported to be allegedly involved in corruption, which is a gross misconduct on his part.

2. For the purpose of scrutinizing the conduct of the said officer with reference to the above allegations, DSP/City, Swat is appointed as Enquiry Officer.

3. The enquiry officer shall conduct proceedings in accordance with provisions of Police Rules 1975 and shall provide reasonable opportunity of defense and hearing to the accused officer, record its findings and make within twenty five (25) days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused officer.

4. The accused officer shall join the proceedings on the date, time and place fixed by the enquiry officer.

District Police Officer, Swat

No. 199 /EB, Dated Gulkada the, 24/10 2013.

Copy of above is forwarded to the:-

1. DSP/City, Swat for initiating proceeding against the accused Officer / Official namely S.I. Sher Muhammad Khan under Police Rules, 1975.
2. S.I. Sher Muhammad Khan ASHO Police Station Kokarai:-
With the direction to appear before the enquiry officer on the date, time and place fixed by the enquiry officer for the purpose of enquiry proceeding.

11 Annex B
حساب عالی

عوام فوڈنگ چارج ٹرسٹ عرف 1994 فورم 24

2013
صرف حدت بیوں کے مسائل کے تعلق سے یاد دہانی

رہنما کے نام ہے

مسائل سال 1976 کے مسائل کے تعلق سے یاد دہانی

زیادہ تر لوگوں اور درجہ اولیہ کے مسائل اور سوال

مسئلے کے ساتھ ساتھ مسائل کے تعلق سے یاد دہانی

دعا کے مسائل کے تعلق سے یاد دہانی

دیگر مسائل کے تعلق سے یاد دہانی

روپیہ اور حساب DP کے تعلق سے یاد دہانی

العام کے تعلق سے یاد دہانی

فوائد کے تعلق سے یاد دہانی

اور بے بنیاد کے تعلق سے یاد دہانی

بے ماملین

silpki

7-11-2013

Attested

Handwritten signature and stamp

13

~~13~~

حوالہ فادیم جارج ٹرسٹ 1994 مورم 24

حساب عالی

مردودہ مدت بیوں بم سائیل بم لودف جارج ٹرسٹ 2013

رہیں گا آرام ہے

سائیل سال 1976 سے لے کر 1977 تک کے سائیل نے

زیادہ ٹورنگ لوس اور دیر میں لیا ہے اور سوال

میں لکھا جا رہا ہے کہ فادیم ٹرسٹ میں جیت 50% لیا ہے

دعا ہے سائیل نے فادیم ٹرسٹ میں دوران د لوس

اصحی فادیم د لوس لیا ہے جو حساب Dig د لوس کے فادیم

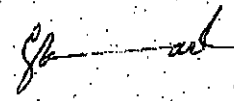
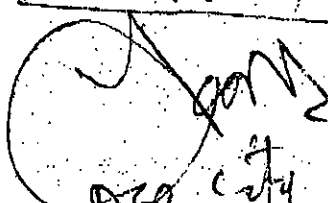
رویم اور حساب 50% حاصل ہے وہی مقام و مقام

العام لیا ہے میں نے لوس رہیں ہیں لیا ہے

حوالہ فادیم رہیں گا آرام ہے سائیل

اور دیر سے لیا ہے میں پر فادیم لیا ہے لیا ہے

اسٹڈ فادیم جارج ٹرسٹ فادیم لیا ہے فادیم


 فادیم
 7-11-2013
 Alleged

 7-11-2013

Ammy D' 14

FINDING REPORT

ENQUIRY AGAINST SI SHER MUHAMMAD KHAN ASHO P.S KOKARAI NOW POLICE LINE SWAT.

It is an enquiry initiated against SI Sher Muhammad entrusted to the undersigned for enquiry and report by competent authority vide order No.199/E, dated:24/10/2013.

ALLEGATIONS:

It is alleged that the SI Sher Muhammad while posted to Police Station Kokarai have been reported to be allegedly involved in corruption.

PROCEDURE:

In this regard the relevant statement were taken (recorded), perused and placed on file and beside this the alleged SI also presents some certificates and ACR's during recording their statement.

FINDINGS:

Being an enquiry officer from the perusal of record and statements I have come to the conclusion that the charges of corruption against the alleged SI Sher Muhammad Khan have not been proved through documentary evidence, which is clear from statements and their ACR's.

But however, there are numerous spreading here and there that SI Sher, Muhammad Khan is a corrupt one and involved in mal practice of corruption. No one is ready to come forward and give statement against him in this regard.

Keeping in view of the above circumstances, it is clear that the alleged SI Sher Muhammad is not involved directly the charges leveled against him. But due to his past activities and hearsay evidence, he is a corrupt police officer and held responsible.

RECOMMENDATION :

From the above facts and circumstances the alleged SI Sher Muhammad is recommended for suitable punishment and may be kept under watch for a period of six months, if approved.

Submitted pl.

[Handwritten signature]

OK

Comptroller
DPO / Swat
[Handwritten notes]

[Handwritten signature]

YOUSAF ALI KHAN DSP

SDPO CITY, SWAT.

21/11/2013

ORDER

Ammy E


15

This order will dispose off the departmental enquiry proceedings against Sub-Inspector Sher Muhammad Khan that he while posted as SHO Police Station Banr has been reported to be allegedly involved in corruption which amounts to gross misconduct on his part.

He was issued Charge Sheet alongwith Statement of Allegations and DSP/City, Swat was deputed as Enquiry Officer. The Enquiry Officer conducted proper departmental enquiry against the delinquent Officer and recorded the statements of all concerned officers. He provided ample opportunity to the delinquent officer to defense the charges leveled against him. After conducting proper departmental enquiry, the Enquiry Officer submitted his findings wherein he recommended the delinquent officer for suitable punishment. He was heard in Orderly Room. However, he could not present any plausible defense against the charges leveled against him.

Therefore, in exercise of the powers vested in the undersigned under Rules 2 (iii) of Police Disciplinary Rules-1975, 1, Sher Akbar, S.St, P.S.P, District Police Officer, Swat as a competent authority, am constrained to award him the punishment of Compulsory retirement from service with immediate effect.

Order announced.


District Police Officer, Swat.

O.B. No. 202

Dated 10/12 /2013.



To

The Deputy Inspector General of Police

Malakand Range at

Saidu Sharif, District Swat

16

Amx F

Subject: Departmental appeal against the order O.B. No. 202 dated 10-12-2013 vide which major penalty of compulsory retirement was imposed on the appellant.

Respected Sir,

The appellant submits as under:

That the appellant was regular member of the police force was performing his duty as Sub-Inspector to the satisfaction of his authorities and the public as well.

That recently the appellant was issued charge sheet and statement of allegations, wherein, vague charges of corruption were alleged. This charge sheet and statement of allegation was replied and the charges specifically denied, being baseless and frivolous.

That shame inquiry was conducted in violation of the law and rules and as a result of which major penalty of compulsory retirement was imposed on the appellant, despite the fact that the appellant was never given the chance to be heard in person.

That the order mentioned above is passed in a very hush hush manner and in violation of the law and rules, hence liable to be set aside.

DI

17

It is, therefore, very respectfully prayed that on acceptance of this appeal the order impugned may be set aside and the appellant reinstated into service with all back benefits.

Appellant


Sher Muhammad Khan

12.12.2013



Annex G (18)

OFFICE OF THE REGIONAL POLICE OFFICER, MALAKAND
REGION, AT SAIDU SHARIF SWAT

ORDER:


This order will dispose off the appeal preferred by Ex-SI Sher Muhammad of Swat District for reinstatement in service.

Brief facts are that the above named Ex-SI while posted as SHO Police Station Bunn was involved in corruption. DSP City Swat conducted proper departmental enquiry against him. During enquiry the Enquiry Officer recorded statements of concerned officer / official. The Enquiry Officer provided ample opportunity to the appellant to defend the charges leveled against him. The Enquiry Officer in his finding report held him responsible and recommended for punishment.

The applicant was called in Orderly Room by District Police Officer, Swat but he could not present any plausible defense. After completion of codal formalities of the enquiry he was found guilty of misconduct. Hence he was awarded major punishment of compulsory retirement from service under Police Rules 1975 by District Police Officer, Swat vide his office OB No. 202 dated 10/12/2013.

The appellant was called in Orderly Room on 06/02/2014 and heard in person, but he did not produce any substantive materials in his defense. Therefore I uphold the order of District Police Officer, Swat, whereby the appellant has been awarded major punishment for compulsory retirement from service.

Order announced.


(ABDULLAH KHAN) PSP
Regional Police Officer,
Malakand, at Saidu Sharif Swat
Naqi

No. 1110-11 /E,

Dated 6/2 /2013

Copy for information and necessary action to the:-

1. District Police Officer, Swat with reference to his office Memo: No. 19072/E, dated 24/12/2013.
2. Ex-SI Sher Muhammad of Swat District.

WAKALAT NAMA

IN THE COURT OF

K.P.K Service Tribunal

Sher Mohammad

Appellant(s)/Petitioner(s)

VERSUS

Gaur

Respondent(s)

I/We _____ do hereby appoint
Mr. Khaled Rehman, Advocate in the above mentioned case, to do all or
any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

AND hereby agree:-

- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this _____

Attested & Accepted by

Khaled Rehman,
Advocate, Peshawar.

Signature of Executants

Gaur

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No. 175 /2014.

Sher Muhammad Khan Ex-SI District Police, Swat District Swat.

Appellant

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Inspector General of Police, Malakand Region, Saidu Sharif Swat.
3. The District Police Officer, Swat.

Respondents.

WRITTEN REPLY ON BEHALF OF RESPONDENTS.

1. Preliminary Objections.

1. That the appellant has got no Cause of action and locus standi to file the present appeal.
2. That the appeal is bad due to misjoinder and nonjoinder of necessary parties.
3. That the appeal is time barred.
4. That the appellant is estopped by his own conduct to file the instant appeal.
5. That the appellant has not come to the Tribunal with clean hands.
6. That this Hon'ble Tribunal has got no jurisdiction to entertain the present appeal.
7. That the instant appeal is not maintainable in its present form.
8. That the appellant concealed the material facts from this Hon'ble Tribunal.
9. That the appellant has been estopped by his own conduct to file the appeal.

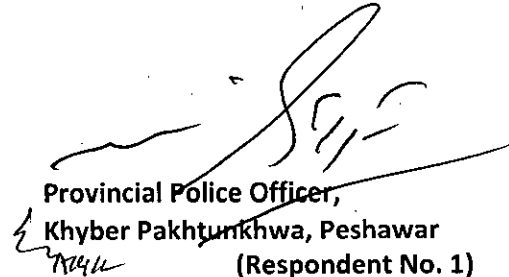
2. REPLY ON FACTS.

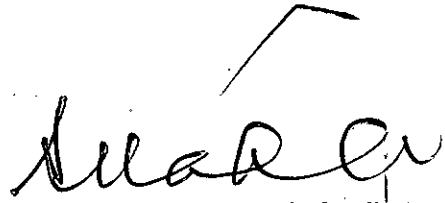
1. Para No. 1 of appeal, pertain to service record, hence needs no comments.
2. Para No. 2 of appeal is correct, to the extent that appellant has been served with charge sheet and summary of allegation, but the same were based on facts and for the purpose of securitizing the conduct of appellant proper departmental enquiry was conducted through DSP/City Circle, Swat. After the receipt of recommendations from Enquiry Officer the competent authority keeping in view the nature of charges, awarded the punishment of compulsory retirement from the service, which is according to law and rules.
3. Para No. 3 of appeal is incorrect DSP/city conducted proper departmental enquiry and after conclusion of enquiry recommends the appellant for suitable punishment, consequently the competent authority awarded proper punishment in accordance with rules which commensurate with the charges.
4. Para No 4 of appeal is correct to the extent of imposition of major punishment of compulsory retirement, however after receipt of enquiry report the competent authority gone through the enquiry report and also heard the appellant in person in Orderly room but could not produce any cogent evidence in his defense to prove his innocence.
5. Para No. 5 of appeal is correct to the extent that appellant filed departmental appeal but the same was entertained by the respondent No. 2 and rejected the same being devoid of merits.

GROUND.

- a. Incorrect, appellant was treated in accordance with Law and Rules.
- b. Incorrect, the charges against the appellant were of serious in nature and the respondent has taken a lenient view by awarding major punishment of compulsory retirement.
- c. Incorrect, after proper departmental enquiry and receipt of recommendations, the competent authority has satisfied himself and after personal hearing of appellant major penalty was imposed.
- d. Incorrect, proper departmental enquiry was conducted against the appellant and proper opportunity of defence was provided but the appellant could not prove himself as innocent.
- e. Incorrect, reply already given in para above.
- f. Incorrect, reply already given in para above.
- g. Incorrect, proper opportunity of personal hearing was provided to the appellant and all codel formalities were fulfilled.
- h. Incorrect, the respondents by keeping in view the long service of appellant had already taken lenient view and thereby awarded major punishment of compulsory retirement.
- i. Incorrect, the charges against appellant has been proved during departmental enquiry.
- j. The respondents also offered some additional grounds during the course of arrangement.

It is therefore prayed that the appeal of appellant may kindly be dismissed with cost being devoid of merits and without any legal substance.

1) 
 Provincial Police Officer,
 Khyber Pakhtunkhwa, Peshawar
 (Respondent No. 1)

2) 
 Deputy Inspector General of Police,
 Malakand Region Saidu Sharif Swat
 (Respondent No. 2)

3) 
 District Police Officer, Swat.
 (Respondent No. 3)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No. 175 /2014.

Sher Muhammad Khan Ex-SI District Police, Swat District Swat.

Appellant


VERSUS

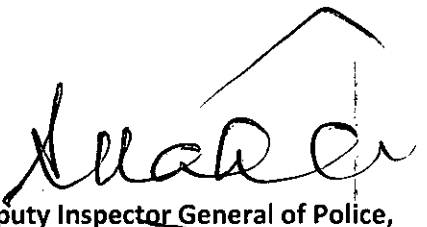
- 1) Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
- 2) The Deputy Inspector General of Police, Malakand Region, Saidu Sharif Swat
- 3) The District Police Officer, Swat

Respondents.

POWER OF ATTORNEY.

We, the undersigned No. 1 to 3 do hereby appoint Muhammad Ayaz DSP Legal Swat as special representative on our behalf in the above noted appeal. He is authorized to represent us before the Tribunal on each and every date fixed and to assist the Govt: Pleader attach to Tribunal in Submission of record.

1) 
 Provincial Police Officer,
 Khyber Pakhtunkhwa, Peshawar
 (Respondent No. 1)

2) 
 Deputy Inspector General of Police,
 Malakand Region Saidu Sharif Swat
 (Respondent No. 2)

3) 
 District Police Officer, Swat.
 (Respondent No. 3)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No. 175 /2014.

Sher Muhammad Khan Ex-SI District Police, Swat District Swat.

Appellant


VERSUS

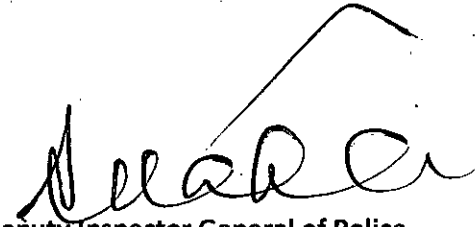
- 1) Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
- 2) The Deputy Inspector General of Police, Malakand Region, Saidu Sharif Swat.
- 3) The District Police Officer, Swat.

Respondents.

AFFIDAVIT:-

We the above respondents do hereby solemnly affirm on oath and declare that the contents of the appeal are correct/true to the best of our knowledge / belief and nothing has been kept secrete from the honourable Service Tribunal Khyber Pakhtunkhwa, Peshawar.

1) 
 Provincial Police Officer,
 Khyber Pakhtunkhwa, Peshawar
 (Respondent No. 1)

2) 
 Deputy Inspector General of Police,
 Malakand Region Saidu Sharif Swat
 (Respondent No. 2)

3) 
 District Police Officer, Swat.
 (Respondent No. 3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**Service Appeal No. 174 /2014**

Sher Muhammad Khan.....Appellant

Versus

The PPO and others.....Respondents

**REJOINDER ON BEHALF OF APPELLANT IN
RESPONSE TO REPLY FILED BY
RESPONDENTS.**

Respectfully Sheweth,

Preliminary Objections:

Preliminary objections raised by answering respondents are erroneous and frivolous, the detailed replies thereof are as under:-

- I. That valuable rights of the appellant have been infringed through the impugned orders which have been challenged through the instant appeal under the law, therefore, appellant has got a strong cause of action and for that matter locus standi to file the instant appeal.
- II. That all necessary and proper parties have been arrayed as Respondents in the instant appeal, hence the question of mis-joinder and non-joinder is misconceived.
- III. That the appeal is within time.

- IV&IX. That appellant has challenged the impugned order within the meaning of Section-4 of the Khyber Pakhtunkhwa Service Tribunal Acts, 1974. It is a settled principle that estoppel does not operate against the law.
- V. That appellant has approached the Hon'ble Tribunal with a bonafide claim inas much as he has been treated in violation of the law.
- VI. That being a matter relatable to the terms and conditions of service, the Service Tribunal has got exclusive jurisdiction in the matter.
- VII. That all codal formalities as per the Khyber Pakhtunkhwa Service Tribunal Act, 1974 have been complied with and therefore the appeal is in its correct form and shape.
- VIII. That all the facts relevant for the disposal of the instant appeal concisely have been incorporated in the appeal and nothing has been concealed from the Hon'ble Tribunal.

Facts:

1. Being not replied hence admitted.
2. Incorrect. The allegations were altogether ill-founded. Moreover, the departmental enquiry was also conducted in an improper manner. No material was available in support of the allegations, therefore, the Enquiry Officer declared that the charges were not established but he held

that there was a rumor that the appellant was involved in malpractice. Thus the appellant was only recommended for punishment on the basis of hearsay evidence which is no justification for imposition of awarding major penalty.

3. Incorrect. No proper enquiry has been conducted in the case in hand, therefore, legally no punishment muchless major can be imposed upon the appellant.
4. Misconceived. Without Show Cause Notice and personal hearing, the impugned orders were passed in a highly illegal manner which has resulted in serious miscarriage of justice.
5. Incorrect.

Grounds:

- A. Incorrect. The appellant was not treated in accordance with law and rules on the subject.
- B. Incorrect. The allegations were without any legal basis nor the same were established, therefore, the imposition of major penalty is without lawful authority and hence not maintainable.
- C. Misconceived. Neither opportunity of personal hearing has been provided to the appellant nor the enquiry was conducted according to the rules.
- D. Misconceived. The Departmental enquiry has been conducted irregularly and in violation of the rules, therefore, no punishment can be based upon the same.

E&F. Being not replied hence admitted.

G. Incorrect. No opportunity of personal hearing as well as defence was given to the appellant nor other formalities have been complied with.

H. Misconceived. No leniency has been shown to the appellant inas much as major penalty of compulsory retirement has been imposed upon the appellant.

I&J. Incorrect hence denied.

It is, therefore, humbly prayed that the reply of answering Respondents may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

Through

Appellant

Khaled Rahman
Advocate, Peshawar

Dated: 18/04/2014

Affidavit

I, Khaled Rahman, Advocate, as per instructions of my client, do hereby affirm and declare on oath that the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Deponent



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 174/2014

Sher Muhammad Khan.....Appellant

Versus

The PPO and others.....Respondents

**REJOINDER ON BEHALF OF APPELLANT IN
RESPONSE TO REPLY FILED BY
RESPONDENTS.**

Respectfully Sheweth,

Preliminary Objections:

Preliminary objections raised by answering respondents are erroneous and frivolous, the detailed replies thereof are as under:-

- I. That valuable rights of the appellant have been infringed through the impugned orders which have been challenged through the instant appeal under the law, therefore, appellant has got a strong cause of action and for that matter locus standi to file the instant appeal.
- II. That all necessary and proper parties have been arrayed as Respondents in the instant appeal, hence the question of mis-joinder and non-joinder is misconceived.
- III. That the appeal is within time.

IV&IX. That appellant has challenged the impugned order within the meaning of Section-4 of the Khyber Pakhtunkhwa Service Tribunal Acts, 1974. It is a settled principle that estoppel does not operate against the law.

V. That appellant has approached the Hon'ble Tribunal with a bonafide claim inas much as he has been treated in violation of the law.

VI. That being a matter relatable to the terms and conditions of service, the Service Tribunal has got exclusive jurisdiction in the matter.

VII. That all codal formalities as per the Khyber Pakhtunkhwa Service Tribunal Act, 1974 have been complied with and therefore the appeal is in its correct form and shape.

VIII. That all the facts relevant for the disposal of the instant appeal concisely have been incorporated in the appeal and nothing has been concealed from the Hon'ble Tribunal.

Facts:

1. Being not replied hence admitted.
2. Incorrect. The allegations were altogether ill-founded. Moreover, the departmental enquiry was also conducted in an improper manner. No material was available in support of the allegations, therefore, the Enquiry Officer declared that the charges were not established but he held

that there was a rumor that the appellant was involved in malpractice. Thus the appellant was only recommended for punishment on the basis of hearsay evidence which is no justification for imposition of a warding major penalty.

3. Incorrect. No proper enquiry has been conducted in the case in hand, therefore, legally no punishment much less major can be imposed upon the appellant.

A. Misconceived. Without Show Cause Notice and personal hearing, the impugned orders were passed in a highly illegal manner which has resulted in serious miscarriage of justice.

3. Incorrect.

Grounds:

A. Incorrect. The appellant was not treated in accordance with law and rules on the subject.

B. Incorrect. The allegations were without any legal basis nor the same were established, therefore, the imposition of major penalty is without lawful authority and hence not maintainable.

C. Misconceived. Neither opportunity of personal hearing has been provided to the appellant nor the enquiry was conducted according to the rules.

D. Misconceived. The Departmental enquiry has been conducted irregularly and in violation of the rules, therefore, no punishment can be based upon the

same.

E&F. Being not replied hence admitted.

G. Incorrect. No opportunity of personal hearing as well as defence was given to the appellant nor other formalities have been complied with.

H. Misconceived. No leniency has been shown to the appellant inas much as major penalty of compulsory retirement has been imposed upon the appellant.

I&J. Incorrect hence denied.

It is, therefore, humbly prayed that the reply of answering Respondents may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

Through

Appellant

Khaled Rahman
Advocate, Peshawar

Dated: 18/04/2014

Affidavit

I, Khaled Rahman, Advocate, as per instructions of my client, do hereby affirm and declare on oath that the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Deponent

Service Appeal No. 174 /2014

Sher Muhammad Khan.....Appellant

Versus

The PPO and others.....Respondents

**REJOINDER ON BEHALF OF APPELLANT IN
RESPONSE TO REPLY FILED BY
RESPONDENTS.**

Respectfully Sheweth,

Preliminary Objections:

Preliminary objections raised by answering respondents are erroneous and frivolous, the detailed replies thereof are as under:-

- I. That valuable rights of the appellant have been infringed through the impugned orders which have been challenged through the instant appeal under the law, therefore, appellant has got a strong cause of action and for that matter locus standi to file the instant appeal.
- II. That all necessary and proper parties have been arrayed as Respondents in the instant appeal, hence the question of mis-joinder and non-joinder is misconceived.
- III. That the appeal is within time.

- IV&IX. That appellant has challenged the impugned order within the meaning of Section-4 of the Khyber Pakhtunkhwa Service Tribunal Acts, 1974. It is a settled principle that estoppel does not operate against the law.
- V. That appellant has approached the Hon'ble Tribunal with a bonafide claim inas much as he has been treated in violation of the law.
- VI. That being a matter relatable to the terms and conditions of service, the Service Tribunal has got exclusive jurisdiction in the matter.
- VII. That all codal formalities as per the Khyber Pakhtunkhwa Service Tribunal Act, 1974 have been complied with and therefore the appeal is in its correct form and shape.
- VIII. That all the facts relevant for the disposal of the instant appeal concisely have been incorporated in the appeal and nothing has been concealed from the Hon'ble Tribunal.

Facts:

1. Being not replied hence admitted.
2. Incorrect. The allegations were altogether ill-founded. Moreover, the departmental enquiry was also conducted in an improper manner. No material was available in support of the allegations, therefore, the Enquiry Officer declared that the charges were not established but he held

that there was a rumor that the appellant was involved in malpractice. Thus the appellant was only recommended for punishment on the basis of hearsay evidence which is no justification for imposition of awarding major penalty.

3. Incorrect. No proper enquiry has been conducted in the case in hand, therefore, legally no punishment muchless major can be imposed upon the appellant.
4. Misconceived. Without Show Cause Notice and personal hearing, the impugned orders were passed in a highly illegal manner which has resulted in serious miscarriage of justice.
5. Incorrect.

Grounds:

- A. Incorrect. The appellant was not treated in accordance with law and rules on the subject.
- B. Incorrect. The allegations were without any legal basis nor the same were established, therefore, the imposition of major penalty is without lawful authority and hence not maintainable.
- C. Misconceived. Neither opportunity of personal hearing has been provided to the appellant nor the enquiry was conducted according to the rules.
- D. Misconceived. The Departmental enquiry has been conducted irregularly and in violation of the rules, therefore, no punishment can be based upon the same.

E&F. Being not replied hence admitted.

G. Incorrect. No opportunity of personal hearing as well as defence was given to the appellant nor other formalities have been complied with.

H. Misconceived. No leniency has been shown to the appellant inas much as major penalty of compulsory retirement has been imposed upon the appellant.

I&J. Incorrect hence denied.

It is, therefore, humbly prayed that the reply of answering Respondents may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

Through

Appellant

Khaled Rahman
Advocate, Peshawar

Dated: 18 /04/2014

Affidavit

I, Khaled Rahman, Advocate, as per instructions of my client, do hereby affirm and declare on oath that the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Deponent