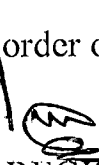


Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1468 /2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	12/10/2022	<p>The appeal of Mr. Khanwada presented today by Mr. Ashraf Ali Khattak Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____</p> <p>Notices be issued to appellant and his counsel for the date fixed.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1468/2022

Ex-Head Constable,
Khanwada No.550,
Police Force, Kohat.....Appellant.

Versus

The Regional Police Officer,
Kohat Region, Kohat & other.....Respondents.

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Service Appeal with affidavit.			1-8
2.	Copy of the Course Report Certificate.		A	0-9
3.	Copy of FIR No. 87 dated 14-05-2022 U/S 9 D CNSA at Police Station Excise, Peshawar.	14-05-2022	B	10-11
4.	Copies of charge sheet and stamen of allegations.		C	12-13
5.	Copy of reply to the charge sheet.		D	0-14
6.	Copy of inquiry report.		E	0-15
7.	Copy of Reply to Final Show Cause.		F	0-16
8.	Copy of impugned order passed by respondent No.2.	28-07-2022	G	17-18
9.	Copy of departmental appeal.	11-08-2022	H	19- 23
10.	Copy of impugned final rejection order.	14-09-2022	I	0-24
11.	Wakalatnama			0-25-27

Through

Ali Bakht Mughal
Appellant
Ali Bakht Mughal
Advocate,
District Courts, Peshawar

Dated: 08/10/2022

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1468/2022

Ex-Head Constable,
Khanwada No.550,
Police Force, Kohat.....**Appellant.**

Versus

1. The Regional Police Officer,
Kohat Region, Kohat.
2. The District Police Officer,
District, Kohat**Respondents.**

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED FINAL ORDER NO.13468/EC DATED THE KOHAT THE 14-09-2022 OF RESPONDENT NO.1 THEREBY HE REJECTED DEPARTMENTAL APPEAL OF THE APPELLANT PREFERRED AGAINST THE IMPUGNED ORDER NO 8482-84/PA DATED THE KOHAT THE 28-07-2022, WHEREIN HE IMPOSED MAJOR PENALTY OF COMPULSORY RETIRMENT FROM SERVICE UNDER RULE 4 (b) (ii) OF THE KHYBER PAKHTUNKHWA POLICE RULES, 1975 (AMENDMENTS 2014).

PRAYER: .

On acceptance of the instant service appeal, this Hon'ble Tribunal may graciously be pleased to:-

- i. **Declare** impugned final order no.13468/EC dated the Kohat the 14-09-2022 passed by Respondent No.1 thereby he rejected departmental appeal of the appellant preferred against the impugned order no 8482-84/PA dated the Kohat the 28-07-2022, wherein he

imposed Major Penalty of Compulsory Retirement from service under rule 4 (b) (ii) of the Khyber Pakhtunkhwa Police Rules, 1975 (amendments 2014) and set aside the same.

- ii. **Direct** the respondents to re-instate the appellant into service with all back benefits.
- iii. **Any other relief** as deemed appropriate under the circumstances of the case may also graciously be allowed to the appellant.

Respectfully Sheweth,

The facts given rise to the present service appeal are as under;

1. That appellant was serving as Head Constable with long standing service at his credit and was eligible and qualified to be promoted to the rank of ASI in the schedule DPS meeting as he was senior member with qualified ACRs.
2. That appellant was nominated for undergoing Lower Elite Tactical Course-09 on the score of his best performance, which was scheduled from 14-03-2022 to 22-05-2022 at Elite Police Training Centre, Nowshera, which he successfully completed and got Course Report Certificate with high rank. Copy of the Course Report Certificate is attached as **Annexure-A**.
3. That during the course of training one Mushraff Khan S/o Azad Gul Head Constable of FRP fled away a motor car No.LXJ 4117-Lahore, which was case property in case FIR No.454 dated 29-02-2021 under section 419, 420, 471 PPC P/S Jarma.
4. That the said Mushraff Khan Head Constable FRP was arrested by Excise Department, while he was trafficking a huge quantity of charas in the said case property (Vehicle) and therefore an FIR No.87 dated

14-05-2022 U/S 9 D CNSA at Police Station Excise, Peshawar. Copy of FIR is attached as **Annexure-B**.

5. That appellant was served with charge sheet and statement of allegations vide dated 26-05-2022 to which he submitted reply and denied the allegations leveled against him. Copies of charge sheet and stamen of allegations are attached as **Annexure-C** and whereas reply to the charge sheet is attached as **Annexure-D**.
6. That a slipshod inquiry was conducted in the absence and at the back of appellant. The inquiry officer was under legal obligation to record evidence of all relevant officials, who had the custody or had any connection directly or indirectly with the case property and to provide the appellant to scrutinize their statement under the scrutiny of cross-examination but the inquiry officer failed to adhere and comply with legal required procedure. Copy of inquiry report is attached as **Annexure-E**.
7. That appellant was served with Final Show Cause without attaching or otherwise providing copy of the inquiry report. Appellant in absence of inquiry report submitted reply to the Final Show Cause and denied the allegations. Copy of Reply to Final Show Cause is attached as **Annexure-F**.
8. That respondent No.2 without observing as to whether the prescribed procedure has been adopted by the inquiry officer and also without noticing as to whether appellant was present at the relevant time of the occurrence as it was an established fact that appellant was at Nowshera in connection with his Lower Elite Tactical Course-09 at the relevant time; imposed upon the appellant major penalty of compulsory retirement vide Notification / Order No.8482-84/PA dated Kohat the 28-07-2022. Copy of the impugned order is attached as **Annexure-G**.

9. That appellant being aggrieved from the impugned penal order of respondent No.2, preferred departmental appeal before respondent No.1 who vide impugned order No.13468/EC dated Kohat the 14-09-2022 rejected the departmental appeal of the appellant without assigning any legal reason. Copy of the departmental appeal is attached as **Annexure-H** and whereas copy of impugned final rejection order is attached as **Annexure-I**.

Hence appellant being aggrieved of the above mentioned impugned orders and finding no adequate and efficacious remedy is constrained to file this service appeal on the following amongst other grounds:

GROUND S

- A. That the respondents have not treated the appellant in accordance with law, rules and policy on the subjected and acted in violation of Article 4 and 10A of the Constitution of Pakistan, 1973. Moreover the act of the respondents amounts to exploitations, which is the violation of Article 3 of the Constitution, 1973. Mere allegation of commission of offence/misconduct and initiation of departmental disciplinary proceedings against a person would not ipso facto make him guilty. rather he would be presumed to be innocent and would have right to enjoy the presumption of innocence until proved through impartial inquiry proceedings with opportunity to defend himself against the allegation leveled against him. The impugned order has been passed without scrutiny of the available record, without any sort of evidence and without opportunity of defense therefore, cannot be clothed with validity and is liable to be interfered with by this Honorable Tribunal.
- B. That it is an established fact that appellant was not present at Kohat at the relevant time when one Musharraf, who was Member of KP Reserve Police, Kohat, fled away case property (vehicle) for the purpose of trafficking narcotics. Appellant has / had neither any connection whatsoever, with the said Musharraf nor had any link with his illegal act; rather appellant was present at Elite Police Training

Center, Nowshera in connection with his Lower Elite Tactical Course-09. No evidence whatsoever, is available with the prosecution to prove the charges leveled against the appellant.

- C. That section 16 of the Civil Servant Act, 1973 provide that a civil servant is liable for prescribed disciplinary actions and penalties only through prescribed procedure. In instant case prescribed procedure has not been followed.
- D. That so called slipshod inquiry has been conducted in the absence and at the back of the appellant. Appellant active participation during inquiry proceeding has been willfully and deliberately ignored. Inquiry proceedings are of judicial in nature in which participation of accused civil servant as per law condition sine qua non. On this ground the impugned orders are coarm non judice and liable to be set back.
- E. That the well-known principle of law "Audi altram Partem" has been violated. This principle of law was always deemed to have embedded in every statute even though there was no express specific or express provision in this regard.

...An adverse order passed against a person without affording him an opportunity of personal hearing was to be treated as void order. Reliance is placed on 2006 PLC(CS) 1140. As no proper personal hearing has been afforded to the appellant before the issuing of the impugned order, therefore, on this ground as well the impugned order is liable to be set aside.

- F. That the non provision of the inquiry report amounts to deprive a civil servant from confronting and defending himself from evidence that may go against him, which is against the provision of Article 10A of the Constitution of Pakistan, 1973. In the instant case copy inquiry report has been denied to the appellant, which fact is evident from the perusal of the final show cause notice.

- 15
- G. That under the provision of Rule 14 of E & D Rule, 2011, the competent authority was under legal obligations to peruse the inquiry report and determine as to whether the inquiry has been conducted in accordance with prescribed procedure and whether the charge are proved or otherwise. The competent authority has made no such efforts and dismissed the appellant with a single stroke of pen, which is nullity in the eyes of law and liable to be interfered with by this Honorable Tribunal.
- H. Accused is stated to be a favorite child of law and he is presumed to be innocent unless proved otherwise and the benefit of doubt always goes to the accused and not to the prosecution as it is for the prosecution to stand on its own legs by proving all allegations to the hilt against the accused. Mere conjectures and presumption, however strong, could not be made a ground for penalizing a civil servant [1999 PLC (CS) 1332 (FST)]..... Unless and until prosecution proves accused guilty beyond any shadow of doubt, he would be considered innocent [1983 PLC (CS) 152 (FST)].
- I. That Re-instated employee would be entitled to back benefits as a matter of course unless employer is able to establish by cogent evidence that concerned employee had been gainfully employed elsewhere. In this respect, initial burden would lie upon the employer and not upon the employee to prove that such employee was gainfully employed during period of termination from his service. 2010 TD (Labour) 41.
- J. That Civil servant who was dismissed or otherwise compulsory retired from service through arbitrary and whimsical action of the government functionaries and re instated through judicial order of Service Tribunal would have every right to recover arrears of salaries by way of back benefits due to them during the period of their dismissal and re instatement. It would be very unjust and harsh to deprive them of back benefits for the period for which they remained out of job without any

fault on their part and were not gainfully employed during that period.....Supreme Court allowing their appeal and directing payment of back benefits to the appellant. 2006 T D (SERVICE) 551 (a).


K. That the penal order is not a speaking order for the reason that no solid and legal grounds have been given by the penal authority in support of his penal order. On this score the impugned order is liable to be set aside.

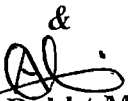
L. That appellant would like to seek the permission of Your Kind Honoure for award of personal hearing. Appellant may kindly be granted the opportunity of personal hearing.

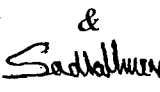
In view of the above explained positions, it is humbly prayed that the instant service appeal may be allowed as prayed for above. -

Through


Appellant


Ashraf Ali Khattak
Advocate,
Supreme Court of Pakistan

&

Ali Bakht Mughal
Advocate,
District Courts, Peshawar

&

Sadia Umar,
Advocate,
District Courts, Peshawar

Dated: 08/10/2022

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____ /2022

Ex-Head Constable,
Khanwada No.550,
Police Force, Kohat.....Appellant.

Versus

The Regional Police Officer,
Kohat Region, Kohat & other.....Respondents.

Affidavit

I, Khanwada No.550, Ex-Head Constable, Police Force, Kohat, do hereby solemnly affirm and declare on oath that the contents of this service appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from the notice of this Hon'ble Tribunal.

B. M. A.

DEPONENT



Ser:169

Anx-A

9



Elite Police Training Center

★ COURSE REPORT ★

Belt No:	550	Rank:	IHC	Name:	Khan Wada
District:	Kohat			Course:	Lower Elite Tactical Course-09
From:	14-03-2022			To:	22-05-2022


Physical:	Acquired	14.75/20	Marks in physical efficiency tests, Chin-ups, Sit-ups, push-ups, squat thrust, 1 mile & 2 miles Run.
Practical :	Acquired	17.1/30	Marks in Weapon, VIP Protection, Shoot house, Rappelling, Judo, Unarmed Combat and Tactics.
Fire:	Acquired	14.33/25	Marks in firing of rifle G-3, SMG, Pistols, MP-5, LMG, HMG, Sniper, Grenade throw, and various modern firing techniques.
Written:	Acquired	09/20	Marks in tactics, weapon, urban tactics and first aid.
Discipline:	Acquired	3.17/05	Marks in dress, class attendance, class participation and conduct.

General Remarks: IHC Khan Wada Imparted small and heavy weapon Training, physical endurance and unarmed combat training along with planning and executing small team actions in urban and rural environments. He proved well familiar with the skills.

Overall Result: 58.35

Grading :- BA




PRINCIPAL
 Elite Police Training Centre,
 Nowshera

ATTESTED



۱۱
 گزشتہ روزی علیحدہ جاری کر کے حوالہ فرمایا۔ غرضہ یہ کہ جو کچھ کامیابیوں سے منہ
 گزشتہ روزی - جو ملاحظہ سمیت گزشتہ روزی سے ۱۱ سہ ماہہ خالی گزشتہ روزی
 کی طرف سے گزشتہ روزی سے ۱۱ سہ ماہہ خالی گزشتہ روزی سے ۱۱ سہ ماہہ خالی
 گزشتہ روزی سے ۱۱ سہ ماہہ خالی گزشتہ روزی سے ۱۱ سہ ماہہ خالی
 گزشتہ روزی سے ۱۱ سہ ماہہ خالی گزشتہ روزی سے ۱۱ سہ ماہہ خالی
 گزشتہ روزی سے ۱۱ سہ ماہہ خالی گزشتہ روزی سے ۱۱ سہ ماہہ خالی

سرور طالب خان
 ۸۱

۱۴-۰۵-۰۲۲

THE NATIONAL ARCHIVES
 ISLAMABAD

[Handwritten signature or mark]

Anx-C



No 3333-34/PA

Office of the
District Police Officer,
Kohat

Dated 26-5-2022

12

CHARGE SHEET

I, **MUHAMMAD SULEMAN, DISTRICT POLICE OFFICER, KOHAT**, as competent authority under Khyber Pakhtunkhwa Police Rules (amendments 2014) 1975, am of the opinion that you **IHC Khanwada No. 550** rendered yourself liable to be proceeded against, as you have omitted the following act/omissions within the meaning of Rule 3 of the Police Rules 1975.

- i. ***That it has been reported vide daily diary report No. 08 dated 16.05.2022, Police station Jarma, that you were in possession of a case property motor car No. LXJ 417 / Lahore seized in case FIR No. 454 dated 29.09.2021 u/ss 419, 420, 471 PPC PS Jarma parked in Police station.***
- ii. ***That you illegally used the above vehicle for your personal used, while W/IGP Khyber Pakhtunkhwa had already taken a serious notice of case property vehicles / seized vehicles in illegal usage, which was circulated to all concerned. Thus you willfully violated the lawful orders, misused your authority.***
- iii. ***That as per daily diary mentioned above you have further handed over the vehicle to one HC Musharaf of FRP (who changed number plate as LED No. 2056) and while trafficking narcotics in the said case property vehicle is arrested by Excise, control of narcotics department at Peshawar vide FIR No. 87 dated 14.05.2022 u/ss 9 D-KP CNSA PS Excise district Peshawar.***

2. By reasons of the above, you appear to be guilty of misconduct under Rule 3 of the Rules ibid and have rendered yourself liable to all or any of the penalties specified in the Rule 4 of the Rules ibid.

3. You are, therefore, required to submit your written statement within 07 days of the receipt of this Charge Sheet to the enquiry officer.

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

4. A statement of allegation is enclosed.

DISTRICT POLICE OFFICER,
KOHAT

ATTES



Office of the
District Police Officer,
Kohat

No. 3333-34/PA

Dated 26-5-2022

DISCIPLINARY ACTION

I, **MUHAMMAD SULEMAN, DISTRICT POLICE OFFICER, KOHAT** as competent authority, am of the opinion that you **IHC Khanwada No. 550** have rendered yourself liable to be proceeded against departmentally under Khyber Pakhtunkhwa Police Rule 1975 (Amendment 2014) as you have committed the following acts/omissions.

STATEMENT OF ALLEGATIONS

- i. *That it has been reported vide daily diary report No. 08 dated 16.05.2022, Police station Jarma, that you were in possession of a case property motor car No. LXJ 417 / Lahore seized in case FIR No. 454 dated 29.09.2021 u/ss 419, 420, 471 PPC PS Jarma parked in Police station.*
- ii. *That you illegally used the above vehicle for your personal used, while W/IGP Khyber Pakhtunkhwa had already taken a serious notice of case property vehicles / seized vehicles in illegal usage, which was circulated to all concerned. Thus you willfully violated the lawful orders, misused your authority.*
- iii. *That as per daily diary mentioned above you have further handed over the vehicle to one HC Musharaf of FRP (who changed number plate as LED No. 2056) and while trafficking narcotics in the said case property vehicle is arrested by Excise, control of narcotics department at Peshawar vide FIR No. 87 dated 14.05.2022 u/ss 9 D-KP CNSA PS Excise district Peshawar.*

2. For the purpose of scrutinizing the conduct of said accused with reference to the above allegations SDPO/Itan. KI is appointed as enquiry officer. The enquiry officer shall in accordance with provision of the Police Rule-1975, provide reasonable opportunity of hearing to the accused official, record his findings and make, within twenty five days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused official.

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

DISTRICT POLICE OFFICER,
KOHAT

No. 3333-34/PA, dated 26-5-2022.

Copy of above to:-

1. SDPO/Itan. KI :- The Enquiry Officer for initiating proceedings against the accused under the provisions of Police Rule-1975.
2. The **Accused official**:- with the directions to appear before the Enquiry Officer, on the date, time and place fixed by him, for the purpose of enquiry proceedings.

ATTESTED

16

حوالہ مشمولہ جارج شیٹ نمبر PA/34-3333 مورخہ 26/05/22

بماز جناب DPO صاحب کو ہاٹ معروضی ہوں کہ جارج شیٹ میں من سائلے پر جو الزامات عائد کئے گئے ہیں بالکلے من گھرت اور بے بنیاد ہیں من سائلے کا نوٹر کار نمبری LX1417-248

جو FIR نمبر 454 مورخہ 29/09/21 جرم APC 419,420,471

کی مال مقدم ہے کیا تو کسی قسم کا کوئی تعلق نہیں

مذکورہ نوٹر کار مشرف سے Excise والوں

چرس سٹولے کرتے ہوئے پکڑی ہے اور اس پر

FIR نمبر 87 مورخہ 14/05/22 جرم KP-CNSA 9-D تھانہ ایکسائز

میں درج ہے۔ من سائلے کا نام نہ لگو مذکورہ FIR

میں درج ہے اور نہ بدوران تفتیش ملزم مشرف

نے بیان وغیرہ دیا ہے کہ نوٹر کار متذکرہ بالا من

سائلے کا دیا ہوا ہے۔ اور نہ کوئی اور شہادت

موجود ہے جس سے ثابت ہو کہ نوٹر کار کے من

سائلے کا کوئی تعلق موجود ہے۔

من سائلے بسلسلہ ایسٹ کمانڈ کورس کے سلسلے

میں نوٹشمرہ سنٹر میں موجود تھا۔ جسکا ثبوت متعلقہ

سنٹر سے لگایا جاسکتا ہے

لہذا من سائلے کے خلاف تادیبی کاروائی خارج

فرمائے جائیں۔ عینے نوازشت ہوگے

مستاد
خالق والدہ
تھانہ 50

مستاد

Anx-E

FINDING REPORT

DEPARTMENTAL ENQUIRY AGAINST IHC KHANWADA NO. 550

15

The Undersigned was appointed as enquiry officer in the above enquiry bearing No. 3333-34/PA dated 26.05.2022 issued from the office of the worthy District Police Officer, Kohat against the above named with the following allegations:-

1. That it has been reported vide daily diary report no. 08 dated 16.05.2022, police station Jarma, that you were in possession of a case property motor car No. LXJ-417/Lahore seized in case FIR No. 454 dated 29.09.2021 u/s 419,420,471 PPC PS Jarma parked in Police station.
2. That you illegally use the above vehicle for your personal used, while W/IGP Khyber Pakhtunkhwa had already taken a serious notice of case property vehicles / seized vehicles in illegal used, which was circulated to all concerned. Thus you wilfully violated the lawful orders, misused your authority.
3. That as per daily diary mentioned above you have further handed over the vehicle to one HC Musharaf of FRP (who changed number plate as LED No. 2056) and while trafficking narcotics in the said case property vehicle is arrested by Excise, control of narcotics department at Peshawar vide FIR No. 87 dated 14.05.2022 u/s 9D-CNSA PS Excise district Peshawar.

ENQUIRY PROCEEDINGS:-

In connection with the enquiry defaulter, Khan Wadda IHC was summoned and heard in person, necessary cross-questions were carried out by the undersigned but he couldn't submit any plausible reply regarding the allegations framed against him.

During the course of the enquiry hearing he revealed that he was deputed at police station Jarma and he has been using seized case property car bearing registration No. 417. LX J in case FIR No.454 dated 29.9.2021 u/s 419,420 for long ago due to illness of his wife. In the meantime, he was selected for Common course Nawshera and he parked the case property car in his home. The same car was handed over to his nephew namely Afsar Khan who is also in FRP police and was living in my home for caring of my wife and kids. On 13.05.2022 Musharaf HC FRP police went towards his nephew and wished to take the same car in connection with an emergency. Upon this Afsar Khan handed over the case property car to Musharaf HC but later on, he was arrested by the excise department because he was carrying narcotics in the same car while FIR No.87 dated 14.05.2022 u/s 9D-CNSA PS Excise District Peshawar was registered. He also disclosed that his nephew didn't know regarding the car that it is a case property of PS Jarma.

CONCLUSION:-

Khan Wadda IHC made a self-concocted story because it's impossible if someone takes a case property car and he doesn't know about it. He also disclosed that he has been using the same case property since long ago but IHC Dildar revealed that, IHC Khan Wadda had taken the same case property on 14.05.2022, due to this contradiction was found in their statements. It is clear that IHC Khan Wadda was in possession of case property and he allowed its misuse.

RECOMMENDATIONS:-

In view of above arguments, it has been observed that IHC Khan Wadda misused his authority and tried to defame the name of police department it is therefore requested that he is recommended for major punishment.

Submitted please.

(Usama Amin Cheema)
Assistant Superintendent of Police,
HQrs, Kohat.

11/05/2022

جناب عالی ! بحوالہ مشمول سرکار نوٹس نمبری 3777-PA جناب DPO 29-6-22

Anx-F

(16)

صاحب کوہٹ معروفہ ہونے کے من ۱۴۷ نے جو بیان جارج شیٹ میں دیا تھا وہی میرا بیان ہے جس میں اس بیان میں رد بدلہ نہیں کرنا چاہتا ہوں من ۱۴۷ کا نام جبراً میں تعینات تھا اور وہ من سے من سائلے کو کمانڈر کورس کبلاٹ

منتخب کر دیا گیا۔ من سائلے نے مورخہ 13-3-22 کو ایڈیٹڈ منسٹر نوٹس میں حاضری دی۔ متذکرہ بالہ کورس مورخہ 22-5-22

کو اختتام پزیر ہوا اور اس دوران من سائلے نے کسی اور جگہ پر کوئی دبیوٹی نہیں کی ہے۔ جبکہ وقوعہ 14-5-22

کو ہوا ہے جب میں منسٹر نوٹس میں تھا۔ وقوعہ کے ساتھ میرا کوئی تعلق نہیں۔ من FIR میں میرا ذکر ہے اور نہ ہی دوران تفتیش کسی طرح

میرا نام آیا ہے۔ من سائلے نے پولیس فورس میں کی بہت خدمت کی ہے۔ من سائلے کی بطور ASI

پروموشن کے فوری چانسس ہے۔ من سائلے کو پروموشن سے محروم نہ کیا جاوے

عینے نوٹس ہوگی اور جاریس کاروائی ختم کی جاوے۔ جواب عرض نہیں ہے

Bhalla

خانے وادہ 550

۱۴۷

کمانڈر جبراً

ATTESTED

Anx - G

17



OFFICE OF THE
DISTRICT POLICE OFFICER,
KOHAT

Tel: 0922-9260116 Fax 9260125

ORDER

This order will dispose of departmental enquiry initiated against IHC Khanwada No. 550 (herein after called accused) under the Khyber Pakhtunkhwa, Police Rules, 1975 (amendments 2014).

2. In essence, the local Police of Police station Jarma had seized a motor car No. LXJ 417 - Lahore in case FIR No. 454 dated 29.09.2021 u/ss 419, 420, 471 PPC and safe parked in PS as, case property.

3. As report vide DD No. 08 dated 16.05.2022, the said motor car / case property is illegally taken away by accused and handed over to one FRP official named Musharaf. The later replaced the original number plate of the vehicle with No. LED - 2056, and arrested by Excise department Peshawar, while he (Musharaf) was trafficking a huge quantity of charas in the said case property vehicle. Therefore, a case FIR No. 87 dated 14.05.2022 u/ss 9 D CNSA PS Excise, Peshawar is registered against Musharaf with seizing of the said motor car.

4. For the above, the accused is served with charge sheet alongwith statement of allegations and a regular enquiry is initiated in aid of inquiry officer under the rules ibid.

5. In reply to charge sheet, accused stated that he is in possession of case property while he was posted as Moharir PS Jarma and the car was in his use. On conclusion, the enquiry officer has established the charges leveled against accused, held him guilty and recommended for major punishment.

6. In pursuance of enquiry report, final show cause notice is issued / served upon the accused and in reply he again admitted illegal taken away and misuse of case property.

7. In order to legitimate defense, the accused is heard in O.R held on 15.07.2022, wherein he stated the above and again admitted misuse of his authority and grave misconduct.

8. I have gone through the record, which indicates that time and again strict directions have been issued to all concerned for safe custody of all kind of case properties in respective police stations and no one is allowed for personal use of case property. Despite, clear directions by high-ups, the accused willfully violated the lawful orders of his seniors, misused his authority which amounts to his grave misconduct and established against him. Besides, above in these circumstances, involvement and joining hands of accused with arrested accused Musharaf in trafficking of narcotics can not be ruled out.

ATTES

9. Therefore, in view of above, I reached to the conclusion that the charges leveled against accused have been established beyond any shadow of doubt. In addition, accused caused embarrassing situation to the entire department and his retention in a disciplined department is not warranted under the rules and accused deserves for an exemplary punishment. His service record is also in different. However, in view of his length of service, I, Muhammad Suleman, District Police Officer, Kohat in exercise of the powers conferred upon me, punishment of compulsory retirement from service under rule 4 (b) (ii) of the rules ibid is imposed on accused IHC Khanwada No. 550 with immediate effect. Kit etc issued to accused be collected.

Announced
15.07.2022

(MUHAMMAD SULEMAN) PSP
DISTRICT POLICE OFFICER,
KOHAT

OB No. 221

Date 27-7-2022

No 8482-84 PA dated Kohat the 28-07-2022.

Copy of above is submitted for favor of information to the:-

1. Regional Police Officer, Kohat, please
2. Reader/SRC/OHC/Pay officer for necessary action.

(MUHAMMAD SULEMAN) PSP
DISTRICT POLICE OFFICER,
KOHAT

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To

The Worthy,
Regional Police Officer,
Kohat Region, Kohat.

DEPARTMENTAL APPEAL AGAINST ORDER NO 8482-84/PA DATED THE KOHAT THE 28-07-2022 OF THE WORTHY DPO, KOHAT WHEREIN HE IMPOSED MAJOR PENALTY OF COMPULSORY RETIRMENT FROM SERVICE UNDER RULE 4 (b) (ii) OF THE KHYBER PAKHTUNKHWA POLICE RULES, 1975 (AMENDMENTS 2014).

Respected Sir,

With due respect, appellant humbly submits as under:-

1. That appellant was serving as Head Constable with long standing service at his credit and was eligible and qualified to be promoted to the rank of ASI in the schedule DPS meeting as he was senior member with qualified ACRs.
2. That appellant was selected for undergoing Lower Elite Tactical Course-09 on the score of his best performance, which was scheduled from 14-03-2022 to 22-05-2022 at Elite Police Training Centre, Nowshera and he reported for joining the same on 13-03-2022. Appellant successfully completed the same and was honoured with course completion certificate.
3. That during the course of training one Mushraff Khan S/o Azad Gul Head Constable of FRP fled away a motor car No.LXJ 4117-Lahore, which was case property in case FIR No.454 dated 29-02-2021 under section 419, 420, 471 PPC P/S Jarra.
4. That the said Mushraff Khan Head Constable FRP was arrested by Excise Department, while he was trafficking a huge quantity of charas in the said case property (Vehicle) and therefore an FIR No.87 dated 14-05-2022 U/S 9 D CNSA at Police Station Excise, Peshawar was lodged against him.
5. That it is pertinent to bring into the notice of Your Kind Honour that appellant is neither nominated in the FIR nor there any incriminating evidence against him in the whole investigation carried out by the

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19/3/22

investigating Officer. Appellant has no connection whatsoever with the trafficking of narcotics or with the case property (Vehicle).

6. That appellant was served with charge sheet and statement of allegations vides dated 26-05-2022 to which he submitted reply and denied the allegations leveled against him.
7. That a slipshod inquiry was conducted in the absence and at the back of appellant. The inquiry officer was under legal obligation to record evidence of all relevant officials, who had the custody of seized vehicle or had any connection directly or indirectly with the same and to provide the appellant to scrutinize their statement under the scrutiny of cross-examination but the inquiry officer failed to adhere and comply with mandatory legal procedure.
8. That appellant was served with Final Show Cause without attaching or otherwise providing copy of the inquiry report. Appellant in absence of inquiry report submitted reply to the Final Show Cause and denied the allegations.
9. That worthy DPO without observing as to whether the prescribed procedure has been adopted by the inquiry officer and also without noticing as to whether appellant was present at the relevant time or not and without consulting the record as to whether appellant was at training centre Nowshera in connection with his Lower Elite Tactical Course-09 at the relevant time; imposed upon the appellant major penalty of compulsory retirement vide Notification / Order No.8482-84/PA dated Kohat the 28-07-2022.

That appellant now being aggrieved from the impugned penal order No.8482-84/PA dated Kohat the 28-07-2022 of the worthy DPO prefers this departmental appeal before Your Kind Hon'our on the following grounds.

GROUND S

- A. That the worth DPO have not treated the appellant in accordance with law, rules and policy on the subjected and acted in violation of Article 4 and 10A of the Constitution of Pakistan, 1973. Mere allegation of commission of misconduct and initiation of departmental disciplinary proceedings against an employee would not ispo facto make him

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10/10/2022

guilty, rather he would be presumed to be innocent and would have right to enjoy the presumption of innocence until proved through impartial inquiry proceedings with opportunity to defend himself against the allegation leveled against him. The impugned order has been passed without scrutiny of the available record, without any sort of evidence and without opportunity of defense therefore, cannot be clothed with validity and is liable to be interfered with by Your Kind Honour.

- B. That it is an established fact that appellant was not present at Kohat at the relevant time when one Musharraf, who was also member of KP Reserve Police, Kohat, fled away case property (vehicle) for the purpose of trafficking narcotics. Appellant has / had neither any connection whatsoever, with the said Musharraf nor had any link with his illegal act; rather appellant was present at Elite Police Training Center, Nowshera in connection with his Lower Elite Tactical Course-09. No evidence whatsoever, is available on record to prove the charges leveled against the appellant.
- C. That section 16 of the, Civil Servant Act, 1973 provide that a civil servant is liable for prescribed disciplinary actions and penalties only through prescribed procedure. In instant case prescribed procedure has not been followed.
- D. That so called slipshod inquiry has been conducted in the absence and at the back of the appellant. Appellant active participation during inquiry proceeding has been willfully and deliberately ignored. Inquiry proceedings are of judicial in nature in which participation of accused civil servant as per law condition sine qua non. On this ground the impugned orders are coarm non judice and liable to be set back.
- E. That the well-known principle of law " Audi altram Partem" has been violated. This principle of law was always deemed to have embedded in every statute even though there was no express specific or express provision in this regard.

....An adverse order passed against a person without affording him an opportunity of personal hearing was to be treated as void order. Reliance is placed on 2006 PLC(CS) 1140. As no proper personal

ATTESTED

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hearing has been afforded to the appellant before the issuing of the impugned order, therefore, on this ground as well the impugned order is liable to be set aside.

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- F. That the non provision of the inquiry report amounts to deprive a civil servant from confronting and defending himself from evidence that may go against him, which is against the provision of Article 10A of the Constitution of Pakistan, 1973. In the instant case copy inquiry report has been denied to the appellant, which fact is evident from the perusal of the final show cause notice.
- G. That under the provision of Rule 14 of E & D Rule, 2011, the competent authority was under legal obligations to peruse the inquiry report and determine as to whether the inquiry has been conducted in accordance with prescribed procedure and whether the charge are proved or otherwise. The competent authority has made no such efforts and penalized the appellant with a single stroke of pen, which is nullity in the eyes of law and liable to be interfered with by this Honorable Tribunal.
- H. Accused is stated to be a favorite child of law and he is presumed to be innocent unless proved otherwise and the benefit of doubt always goes to the accused and not to the prosecution as it is for the prosecution to stand on its own legs by proving all allegations to the hilt against the accused. Mere conjectures and presumption, however strong, could not be made a ground for penalizing a civil servant [1999 PLC (CS) 1332 (FST)]..... Unless and until prosecution proves accused guilty beyond any shadow of doubt, he would be considered innocent [1983 PLC (CS) 152 (FST)].
- I. That Re-instated employee would be entitled to back benefits as a matter of course unless employer is able to establish by cogent evidence that concerned employee had been gainfully employed elsewhere. In this respect, initial burden would lie upon the employer and not upon the employee to prove that such employee was gainfully employed during period of termination from his service. 2010 TD (Labour) 41.
- J. That Civil servant who was dismissed or otherwise compulsory retired from service through arbitrary and whimsical action of the government

ATTESTED

functionaries and re instated through judicial order of Service Tribunal would have every right to recover arrears of salaries by way of back benefits due to them during the period of their dismissal and re instatement. It would be very unjust and harsh to deprive them of back benefits for the period for which they remained out of job without any fault on their part and were not gainfully employed during that period.....Supreme Court allowing their appeal and directing payment of back benefits to the appellant. 2006 T-D (SERVICE) 551 (a).

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In view of the above explained positions, it is humbly prayed that the instant departmental appeal may be kindly be allowed and appellant may kindly be re-instated in his service with all back benefits.

No. 11737 / EC
dt 11/08 / 2022
DPO Kohat

For Comments & Provision
of S/Recrd. along with
enquiry Rile Pl.

[Signature]
DIG POL
KOHAT
10/8/22

[Signature]

11/8/22

Ex-Head Constable,
Khanwada No.550,
Police Force, Kohat

Call: 0333-9679693

[Signature]

Anx-1

POLICE DEPTT:

KOHAT REGION

ORDER.


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This order will dispose of a departmental appeal, moved by the Ex-IHC Khan Wada No. 550 of district Kohat against the punishment order, passed by DPO Kohat vide OB No. 221, dated 27.07.2022 whereby he was awarded major punishment of **compulsory retirement from service** on the allegations of misusing case property i.e. Motorcar and its further delivering to one Musharaf (FRP official) before attending course at Nowshera. The said official while trafficking huge quantity of Chars in aforesaid Motorcar was caught red-handed by the Excise & Narcotics Control Department Peshawar.

He preferred appeal to the undersigned, upon which comments were obtained from DPO Kohat and his service record was perused. He was also heard in person in Orderly Room held in this office on 13.09.2022. During hearing the appellant did not advance any plausible explanation in his defense to prove his innocence.


I have gone through the available record which indicates that the allegations leveled against the appellant have been proved and the same have also been established by the E.O in his findings. Despite of issuing clear cut directives by the high ups not to use case property for personal use but the appellant violated the law / rules and thus tantamount to gross professional misconduct which has earned bad name for whole of the department. Therefore, in exercise of the powers conferred upon the undersigned, his appeal being devoid of merits is hereby rejected.

**Order Announced
13.09.2022**


(TAHIR AYUB KHAN) PSP
Region Police Officer,
Kohat Region.

No. 13468 /EC, dated Kohat the 14/09 /2022.

Copy to District Police Officer, Kohat for information and necessary action w/r to his office Letter No. 7943/LB, dated 29.08.2022. His Service Record is returned herewith.


(TAHIR AYUB KHAN) PSP
Region Police Officer,
Kohat Region.

WAKALAT NAMA

IN THE COURT OF KP Service Tribunal

Ex-Head Constable,

Khanawada No. 550 Appellant(s)/Petitioner(s)

VERSUS

The Regional Police

Officers and others

Respondent(s)

I/We Khanawada do hereby appoint
Mr. Ashraf Ali Khattak, Advocate Supreme Court of Pakistan 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 02-10-2022

Attested & Accepted by

Ashraf Ali Khattak

Ashraf Ali Khattak,
Advocate,
Supreme Court of Pakistan

(Signature)
Signature of Executants

WAKALAT NAMA

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IN THE COURT OF KP Service Tribunal

Ex-Head Constable,

Khanawada No. 550 Appellant(s)/Petitioner(s)

VERSUS

The Regional Police

Officers and others

Respondent(s)

I/We Khanawada do hereby appoint
Mr. Ali Bakht Mughal Advocate, District Courts, Peshawar 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 08-10-2022

Attested & Accepted by

K Mughal
Signature of Executants

Ali Bakht Mughal
Advocate,
District Courts, Peshawar

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WAKALAT NAMA

IN THE COURT OF KP Service Tribunal

Ex-Head Constable,

Khanawada No. 550 Appellant(s)/Petitioner(s)

VERSUS

The Regional Police

Officers and others.

Respondent(s)

I/We Khanawada do hereby appoint
Miss. Sadia Umar Advocate, District Courts, Peshawar 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 08-10-2022

Attested & Accepted by

Sadia Umar

Sadia Umar

Advocate,

District Courts, Peshawar

B. Umar
Signature of Executants