

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

Service Appeal No. 1285/2022

Muhammad Kamal Khan.Appellant.

Versus

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar etc

.....Respondents.

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Respondents through



MASOOD KHAN
SI/LEGAL: SSU/CPEC,
PESHAWAR.
CNIC: 17101-0392555-1
MOBILE: 0314-9823269

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

Service Appeal No. 1285/ 2022

Muhammad Kamal Khan (Appellant)

VERSUS

Inspector General of Police Khyber Pakhtunkhwa, Peshawar etc(Respondents)

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1679

Dated 24/10/22

REPLY BY RESPONDENTS NO. 1 TO 4

RESPECTFULLY SHEWETH:

PRELIMINARY OBJECTIONS:-

- a) That the appeal is not based on facts.
- b) That the appeal is not maintainable in the present form.
- c) That the appeal is bad for mis-joinder and non-joinder of necessary and proper parties.
- d) That the appeal is barred by law & limitation.
- e) That the appellant is stopped to file the instant Service Appeal by his own conduct.
- f) That the appellant has not come to this Honorable Tribunal with clean hands.
- g) That the appellant has got no cause of action and locus standi to file the instant Service Appeal.

FACTS:-

1. Pertains to service record of the appellant hence no comments.
2. Incorrect. The appellant deliberately absented himself from lawful duty without taking any permission from his superiors which showed his lack of interest while performing official duty. Further added that appellant was under probation so he did not follow the discipline of Police Force.
3. Incorrect. The appellant placed under suspension and served with Show Cause notice vide this office Letter No. 172-76/OHC/HQrs dated 13.01.2021, (Annexure "A") which was received by the appellant himself. He was summoned time and again but he did not feel bother to submit his reply.

4. Incorrect. The appellant was served with charge sheet vide office Letter No. 932-33 dated 31.03.2020 (Annexure “B”) and Fazle Mabood Khan was appointed as Enquiry Officer. During the course of enquiry it was reported that he made his arrival vide DD report No. 28 dated 17.03.2021 and absented himself once again w.e.f 29.03.2021. The appellant collected charge sheet by his own and submitted his reply on 13.04.2021, the appellant also produced 06 medical prescriptions from a private Herbal Doctor. The appellant was enquired thoroughly by the Enquiry Officer and made cross questions and after proper proceedings the Enquiry Officer submitted his findings report wherein the appellant was found guilty of misconduct. Further added that the appellant badly failed to provide any plausible reason in his self defense. After fulfillment of all codal formalities he was discharge from service vide order dated 06.08.2021. (Copy of order is enclosed as Annexure “C”).
5. Incorrect. The revision petition of the appellant was rejected being badly time barred vide order dated 01.08.2022 (Annexure “D”). It is worth to add here that when appeal before departmental authority is time barred, service appeal before the Service Tribunal is incompetent. Reliance has already been placed on 2017 SCMR 965, 2006 SCMR 453, 2007 SCMR 513, 2011 SCMR 1429 & 2021 SCMR 144. Furthermore, the instant service appeal is not maintainable on the following Grounds.

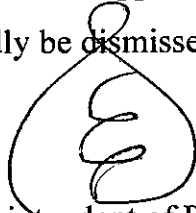
GROUND:-

- A. Incorrect. The orders passed by the Competent Authority and Appellate Authority are quite legally justified therefore no need to be set aside.
- B. Incorrect. The orders passed by the respondents are maintainable in accordance with law/ rules.
- C. Incorrect. The departmental proceedings were conducted in accordance with Law.
- D. Incorrect. As already explained in Para No. 4 of Facts.
- E. Incorrect. The appellant has been treated in accordance with law/ rules.
- F. Incorrect and misleading. The departmental appeal was rejected on cogent reasons and under the mode of competency.
- G. Incorrect. As already explained above in Para No. 4 of Facts.

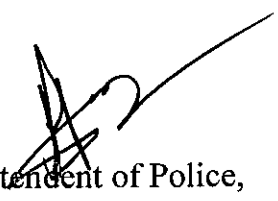
- H. Incorrect. As already explained above. The appellant has been treated in accordance with law/ rules.
- I. Incorrect and misleading. The appellant badly failed to prove his innocence during departmental proceedings.
- J. The orders passed by the authorities are quite in accordance with law/ rules.
- K. The respondents may also be allowed to raise additional Grounds at the time of hearing of the instant service appeal.

PRAYER:-

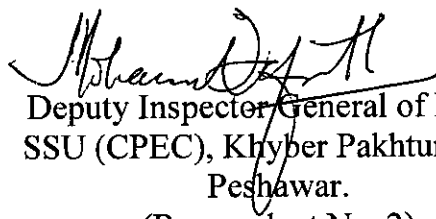
Keeping in view the above stated facts and rules it is therefore humbly prayed that the appeal is not maintainable being devoid of merits hence, may kindly be dismissed with costs, please.



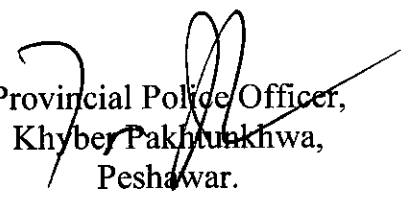
Superintendent of Police,
HQrs: Peshawar.
(Respondent No. 4)



Superintendent of Police,
Admn, SSU (CPEC), Khyber
Pakhtunkhwa, Peshawar.
(Respondent No. 3)



Deputy Inspector General of Police,
SSU (CPEC), Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 2)



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

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

Service Appeal No. 1285/2022

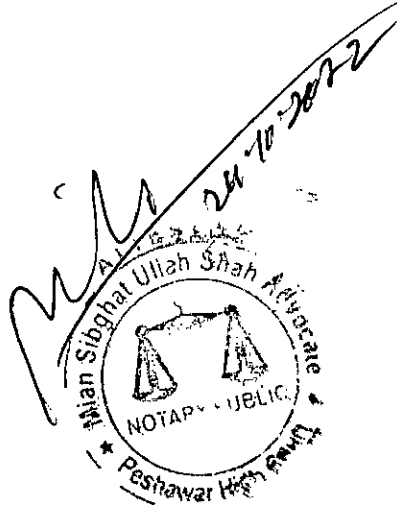
Provincial Police Officer, Khyber Pakhtunkhwa,
Peshawar..... (Petitioner)

VERSUS

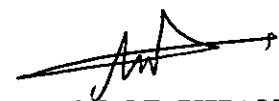
Muhammad Kamal Khan.....(Respondents)

AFFIDAVIT

I, Masood Khan SI/Legal, SSU/CPEC do hereby solemnly affirm on oath that the contents of writ petition on behalf of Inspector General of Police, Khyber Pakhtunkhwa, Peshawar are correct to the best my knowledge and belief. Nothing has been concealed from this Honorable Court.



DEPONENT


(MASOOD KHAN)
SI/ Legal,
SSU/CPEC, PESHAWAR.
17101-0392555-1
0314-9823269

AUTHORITY LETTER

Mr. Masood Khan SI/Legal, SSU/CPEC, Peshawar Focal Person is authorized to pursue the cases pertaining to SSU/CPEC, Peshawar in Honorable Khyber Pakhtunkhwa, Service Tribunal, Peshawar submission of Para-wise comments/ reply in Honorable Tribunal on behalf of undersigned, please.



**MUHAMMAD ZAFAR ALI KHAN
COMMANDANT,
SSU/CPEC, PESHAWAR.**



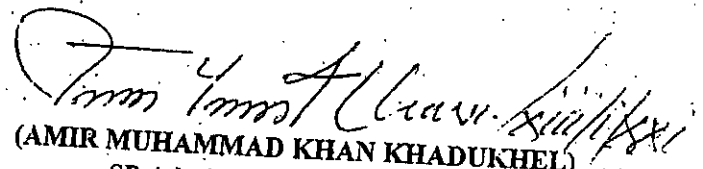
OFFICE OF THE
SPECIAL SECURITY UNIT (CPEC)
KHYBER PAKHTUNKHWA POLICE,
PESHAWAR

Ph: 091-9211067 Fax 091-9213165, Email: ssu.cpec@gmail.com

No. 172-76/OHC/HQrs. dated Peshawar the 13/01/2021

ORDER

Constable Kamal No. 6429 of SSU (CPEC), CCP Peshawar absented himself from his lawful duty w.e.f 18.11.2020 till date without taking any leave or permission from competent authority, received vide SP Hqrs. CCP Peshawar letter No. 255/PA dated 01.01.2021. Therefore, he is placed under suspension, pay stopped & direct him to collect his SCN from this office.


(AMIR MUHAMMAD KHAN KHADUKHEL)
SP Admin & HQrs. SSU (CPEC)
For Deputy Inspector General, of Police,
Operations & SSU (CPEC)
Khyber Pakhtunkhwa

Copy for information to the:

1. Worthy DIG Ops & SSU (CPEC), Khyber Pakhtunkhwa Peshawar.
2. SP Hqrs. CCP Peshawar.
3. Accountant HQrs. SSU (CPEC), Khyber Pakhtunkhwa Peshawar.
4. RI HQrs: SSU (CPEC), Khyber Pakhtunkhwa Peshawar.
5. SRC HQrs. SSU (CPEC), Khyber Pakhtunkhwa Peshawar.

41
13 01 2021

**ORDER OF INQUIRY AGAINST CONSTABLE KAMAL NO. 6429 CONTAINED
UNDER SUB, RULE 4, OF RULE 5 OF NWFP (NOW KHYBER PAKHTUNKHWA)
(E&D) RULES 1975.**

It has been made to appear before me that accused Constable Kamal No. 6429 is primes-face guilty of the following charges to be dealt with under General Police proceedings contained u/r 5(4) of NWFP Rules (E&D) 1975.

Constable Kamal No. 6429, of SSU (CPEC), District CCP, Peshawar, being remained absented himself from lawful duty w.e.f 18.11.2020 till to date received CCP, Peshawar vide letter No.255/PA dated 01.01.2021 without taking any leave/permission from competent authority.

In this regard a show cause has been issued to you with the letter No.171 dated 13.01.2021, but you failed to submit your reply. Therefore, you are hereby issued with a charge sheet, and called upon to submit your written defence statement against the above charged before the enquiry officer.

The act of accused official falls within the ambit of misconduct within the meaning of rules 2 (iii) rules 1975 and is liable to be proceeded with under the General police proceedings, contained in Police Rules 1975.

From the above charge, I am convinced that the said official has ceased to become efficient and it accused of gross misconduct therefore, I Superintendent of Police Special Security Unit (CPEC) HQrs. Peshawar being authorized officer within the meaning of 2(ii) of the said rules nominate Inquiry Officer. Inspector Fazle Mabood Khan to inquiry into the charge, levelled against him.

The Inquiry officer after completing all inquiry proceedings, shall forward the verdict/Findings to the undersigned within due dated period of 10-days contained U/S 6 (5) of the rules.

Charge sheet and summary of allegations against the accused officer, are being issued separately, reply where of shall be submitted before the enquiry officer within the period of 07.days from date of receipt.



(AMIR MUHAMMAD KHAN KHADUKHEL)

SP Admin/HQrs, SSU (CPEC)

Khyber Pakhtunkhwa Peshawar

No. 932-33 /HQrs/SSU dated Peshawar the 31/03 /2020.

Enquiry Officer. INSPECTOR FAZLE MABOOD KHAN

OFFICE OF THE
SPECIAL SECURITY UNIT (CPEC)
KHYBER PAKHTUNKHWA POLICE,
PESHAWAR

Ph: 091-9211067 Fax 091-9213165, Email: ssu.cpec@gmail.com

3043-48 HQrs/SSU/

dated Peshawar the 06/08 /2021

ORDER


This office order will dispose the formal departmental enquiry against Recruit Constable Muhammad Kamal No. 6429 of Special Security Unit (CPEC), CCP Peshawar.

Brief facts of the case are that the Recruit Constable Muhammad Kamal No. ³¹¹6429 absented himself from his lawful duty w.e.f (i) 18.11.2020 till to date received vide SP HQrs: CCP Peshawar letter No. 255/PA, dated 01.01.2021.

In this regard, a Note Sheet was presented before DIG Ops and SSU (CPEC), where he passed the remarks pay stopped, suspended and for departmentally inquiry. The accused Constable placed under suspension, pay stopped and issued SCN vide this office order No. 172-76/OHC/HQrs dated 13.01.2021, which was received by the Constable himself. He was summoned again and again but he did not feel bother to submit his reply. An enquiry file consisting 11 pages received from SP HQr CCP Peshawar vide letter No. 661/PA, dated 28.01.2021, (where the constable had repatriated unqualified from PTC Hangu for 27 days absence without taking any prior permission or leave from competent authority, requesting for further necessary action. Therefore, he was issued with a Charge Sheet vide this office order No. 932-33, dated 31.03.2021 and Fazle Mabood Khan was nominated as Enquiry Officer. During the course of inquiry it was reported that he made his arrival vide DD report No. 28 dated 17.03.2021 and absented himself once again w.e.f. 29.03.2021 till to date vide DD report No. 2 received from LO CCP Peshawar. Charge Sheet was received by the constable himself on date 12.04.2021 and submitted his reply on dated 13.04.2021 of his illness and produced 06 medical prescriptions from a private Herbal doctor. The constable was enquired thoroughly by the EO and made some cross questions and after proper proceedings the EO submitted his findings report that the accused constable remained absented for 27 days from PTC Hangu, 03 months and 29 days from CCP Lines and absented once again w.e.f. 29.03.2021 till to date and recommended him for discharge from service for his deliberately absence because the accused Constable could not submit any cogent reason, therefore he was issued with a final Show Cause Notice vide this office order No. 1799/OHC/HQrs, dated 26.05.202, served upon him on 23.06.2021, summoned for statement time and again but he did not take any part in the enquiry proceeding.

Therefore, keeping in view the above facts, recommendation of the EO, I, Superintendent of Police Admin and HQrs SSU (CPEC) in exercise of the powers vested in me under police rule 197 (amended 2014) hereby awarded him a major punishment of "Discharge him from Service" with immediate effect. The period he remained absent treated as without pay and the accountant must reckon and recover the amount if paid during the absence.

Order announced.


(AMIR MUHAMMAD KHAN KHADUKHEL)
SP Admin & HQrs. SSU (CPEC)
Khyber Pakhtunkhwa, Peshawar

Copy for information to the:

1. Worthy DIG Ops & SSU (CPEC), Khyber Pakhtunkhwa Peshawar.
2. SP HQrs CCP Peshawar.
3. Accountant HQrs. SSU (CPEC), Khyber Pakhtunkhwa Peshawar.
4. RI/LO/OHC HQrs. SSU (CPEC), Khyber Pakhtunkhwa Peshawar.
5. SRC SSU (CPEC), Khyber Pakhtunkhwa Peshawar.

OB No. 418

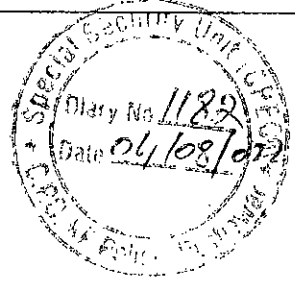
Dated 06/08/2021

OFFICE OF THE
INSPECTOR GENERAL OF

KHYBER PAKHTUNKHWA
Central Police Office, Peshawar.

No. S/ 1684 /22, dated Peshawar the 04/08/2022.

To : The Commandant,
Special Security Unit (CPEC),
Khyber Pakhtunkhwa, Peshawar.



Subject:- **REVISION PETITION.**

Memo:

Please refer to your office Memo: No. 4549-51/EC/HQrs/SSU, dated 20.07.2022.

The Competent Authority has examined and filed the revision petition submitted by Ex-FC Muhammad Kamal No. 6429 of CPEC Unit against the punishment of discharge from service awarded by SP/Admin & HQrs: SSU (CPEC), Khyber Pakhtunkhwa, Peshawar vide order No. 3043-48/HQrs/SSU, dated 06.08.2021, being time barred.

The applicant may please be informed accordingly.

(NOOR AFGHAN)

Registrar,

For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

SP/Admin:

04/08/2022
Commandant SSU

OASi
for further action
and report please

SP/A
04/08/22