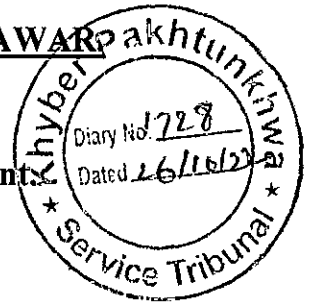


BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.7503 /2021.

Sub Inspector Bilal Hussain of CCP Peshawar..... **Appellant.**



VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. **Respondents.**

REPLY BY RESPONDENTS NO. 1, 2&3.

Respectfully Sheweth:-

PRELIMINARY OBJECTIONS:-

1. That the appeal is badly barred by law & limitation.
2. That the appeal is bad for mis-joinder and non-joinder of necessary and proper parties.
3. That the appellant has not come to Hon'ble Tribunal with clean hands.
4. That the appellant has no cause of action and locus standi to file the instant appeal.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from Hon'ble Tribunal.
7. That the appeal is not maintainable being devoid of any merit.

REPLY ON FACTS:-

1. Para pertains to record, hence no comments.
2. Para pertains to record, hence no comments.
3. Incorrect. a cultus car bearing Registration No.LEF/643 was taken into possession by the local Police of PS Badaber after recovery of huge cache of unlicensed Arms & Ammunition hence case FIR No.513 dated 02.06.2020 u/s 15/17 Khyber Pakhtunkhwa Arms Act 2013 (amended 2015) was registered. Later on the said case property i.e cultus car was given to constable computer operator Bilal Ahmad of CPO for personal use by station clerk/ Muhrar Jameel Shah as per direction of the appellant/ the then SHO Badaber.
4. Correct to the extent that the appellant was suspended and closed to Police lines, CCP Peshawar after finding that the appellant being SHO PS Badaber gave case property (i.e cultus motor car apprehended after recovery of huge cache of unlicensed sophisticated Arms & Ammunition) to one Bilal Ahmad constable computer operator of CPO for personal use without order of court and the said car driven by Bilal Ahmad was intercepted at Malakand by the Malakand Levies. During searching sufficient quantity of contraband charas was recovered. Resultantly, criminal case vide FIR No. 84 dated 12.09.2020 u/s 9-D KP CNSA PS Hassan Khan Shaheed Ala dhand, District Malakand was registered against constable Bilal Ahmad.
5. Correct to the extent that the said constable computer operator Bilal Ahmad was arrested by the local Police of PS Hassan Khan Shaheed Ala Dand District Malakand while

- smuggling 6-KG narcotics (Chars) in the said case property cultus Motor Car hence a criminal case vide FIR No.84 dated 12.09.2020 u/s 9D-CNSA was registered against the accused Bilal Ahmad and his other accomplice Shakeel Ahmad.
6. Incorrect. After receipt of information from Malakand Levies Police that constable computer operator Bilal Ahmad alongwith case property car was detained by the Levies of local Levies Post police Station Hassan Khan shaheed, Ala dhand after recovery of huge quantity of contraband charas , SI Khaild Khan of PS Badaber registered criminal case against constable Bilal Ahmad for committing criminal breach of trust by taking case property car vide FIR No.924 dated 13.09.2020 u/s 409 PPC PS Badaber, Peshawar however during investigation appelland and Station clerk/ muharrir Jameel Shah was also held responsible by the OII and added Section 408 PPC and arrested both in the said case.
 7. Para pertains to record, hence no comments.
 8. Incorrect, the appelland was rightly issued charge sheet with summary of allegations for giving illegally case property car to accused constable Bilal Ahmad, which he received and also submitted his written reply however his reply was found unsatisfactory.
 9. Incorrect, during the course of interrogation accused constable computer operator Bilal Ahmad disclosed that the case property Motor Car was given to him by the then Moharrar ASI Jameel Shah on the direction of appelland which is an illegal act.
 10. Para pertains to record, hence no comments.
 11. Incorrect, Para already explained in detail in the preceding paras. The appelland being Incharge/SHO of Police Station Badaber was bound to keep the case property cultus Motor car in safe custody however he misused his authority and give illegally motor car in question to accused constable Bilal Ahmad for personal use whom started smuggling narcotics through it and finally apprehended by Malakand Police.
 12. Pertains to record, hence no comments.
 13. Incorrect. Proper departmental enquiry under KP Police Rules (amended 2014) was conducted against them wherein the enquiry officer concluded that the charges leveled against them got proved and found them guilty. Rest, the enquiry officer provided full opportunity of defense to them, but the appelland failed to defend the charges despite enquiry was conducted against him on merit.
 14. Incorrect. As per Khyber Pakhtunkhwa ESTA code the defaulter officer shall be reprimanded as per quantum of misconduct committed by him and he was rightly punished as per his guilt.
 15. Incorrect, after completion of the enquiry proceedings, he was issued final show cause notice however he deliberately failed to submit his written reply, hence after observing all codal formalities he was awarded the Major Punishment of dismissal from service which commensurate with the quantum of his misconduct.

16. Correct to the extent that the appellant filed departmental appeal which was partially accepted by the appellate authority by converting his Major Punishment into minor punishment and reinstated in service.

17. Para pertains to court record, hence no comments.

18. Correct to the extent that the appellant filed departmental appeal which was thoroughly processed and sufficient opportunity of hearing was provided to him. The competent authority took a lenient view and partially accepted his appeal and the major punishment of dismissal from service was converted into minor penalty of forfeiture of one year approved service.

That appeal of the appellant being devoid of merit and limitation may be dismissed on the following grounds:-

REPLY ON GROUNDS:-

- a. Para pertains to record.
- b. Incorrect. The appellant being SHO of Police Station transgressed his authority by giving illegally the case property car to accused constable Bilal Ahmad.
- c. Incorrect, after completion of the enquiry proceedings as per spirit of KP Police Rules 1975 (amended 2014), he was issued final show cause notice but he failed to submit his written reply in stipulated period. On observing all the codal formalities, he was awarded the Major punishment of dismissal from service.
- d. Incorrect. Proper departmental enquiry under Rules ibid was conducted against him by issuing him proper charge sheet and statement of allegations wherein he was held guilty of committing misconduct within the meaning of Rules and then reprimanded.
- e. Incorrect. The appellant was associated with the enquiry proceedings and ample opportunity of self defense was provided to him however failed to defend the charges hence condemned as per gravity of his guilt.
- f. Incorrect, as per KP ESTA code and Rules the Competent Authority is not bound to follow the recommendations of the enquiry officer and was awarded an appropriate punishment under rules ibid. later on, his major punishment was modified to the extent of Minor punishment by taking lenient view.
- g. Incorrect. Statement recorded under Section 161 Crpc is having legal weightage and recognized by the august Supreme Court of Pakistan in various dictas.
- h. Incorrect. The appellant was rightly awarded the punishment as per law/rules.
- i. Incorrect. According to dictas of apex court, court proceedings and departmental proceedings are two different entities which can run side by side and it is not mandatory to pend departmental proceedings for decision in criminal case.
- j. Incorrect, the appellant being SHO of Police Station transgressed his authority and gave illegally case property car to accused constable Bilal Ahmad which ultimately brought bad name to the KP Police department.

PRAYER.

It is therefore most humbly prayed that in light of above facts and submissions, the appeal of the appellant being devoid of merit and legal footing, may kindly be dismissed with costs please.



**Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.**



**Capital City Police Officer,
Peshawar**



**Senior Superintendent of Police,
Operations Peshawar.**

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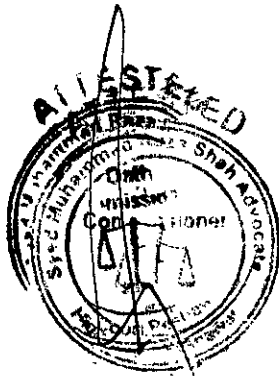
AFFIDAVIT

We respondents No. 1 , 2 & 3 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Hon'ble Tribunal.

**Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.**

**Capital City Police Officer,
Peshawar.**

**Senior Superintendent of Police,
Operations Peshawar.**



19 SEP 2022

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VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. **Respondents.**

AUTHORITY.

I, **Capital City Police Officer, Peshawar**, hereby authorize **Mr.Ahmad Jan** SI legal of Capital City Police, Peshawar to attend the Hon'ble Court and submit written reply, statement and affidavit required for the defense of above service appeal on behalf of respondent department.

**Capital City Police Officer,
Peshawar.**

