

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.7873/2021.

Ex- Constable Adil Hussain No.1937 of CCP Peshawar..... **Appellant.**

VERSUS

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

Index

S.NO	DOCUMENTS	ANNEXURE	PAGES
1	REPLY		1 TO 03
2	AFFIDAVIT		04
3	Charge sheet	A	05
4	Statement of allegation	B	06
5	Enquiry report	C	07
	FSCN	D	08

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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 personal information of appellant.
2. Para pertains to record.
3. Para pertains to record however the performance of the appellant during service is not satisfactory. Worth mentioning here that the present service appeal is badly time barred.
4. Para is correct to the extent that FIR mentioned in the Para was registered against the brother of appellant as he claimed but it's not his business while he willfully absented himself from lawful duty without leave or permission from his seniors.
5. Para is totally incorrect. In fact the appellant deliberately absented from his lawful duty for long period. Proper departmental enquiry was conducted against appellant under Rules 1975 amended 2014. The appellant was contacted on his cell phone No.03149190458 with the direction to appear before the enquiry officer, but the appellant did not bother to attend the enquiry proceedings. After fulfilling all the codal formalities, he was awarded the major punishment of dismissal from service.
6. Incorrect. As the appellant has personally admitted that due to killing of his another brother by the accused (Akhtar Hussain) and also mentioned an agreement in which he claimed that his family member will have not nexuses to the accused in future so how he took the plea that he had made himself hidden due to case against his brother (accused). The appellant was willfully absented from his lawful duty for a long period without any leave or permission from seniors.

7. Incorrect. The appellant while posted at Police Line, Peshawar absented himself from official and lawful duty w. e. from 10.02.2021 till of his dismissal from service i.e 29.06.2021 without prior permission or leave from the competent authority. In this regard he was issued charge sheet with statement of allegations and SDPO Regi was appointed as enquiry officer. The enquiry officers finalized the enquiry and submitted findings report, wherein the allegations were proved against him. After the receipt of findings report, Final Show Cause Notice was issued to him, but he avoided his appearance to defend himself. After observing all codal formalities, he was awarded major punishment of dismissal from service.(copy of charge sheet, statement of allegations, enquiry report, Final Show Cause Notice are annexure as A,B,C,D)
8. Incorrect. Being a member of a disciplined force, the appellant was well aware about the departmental proceedings and its consequences. However he deliberately absented from his lawful duty without leave /permission. Therefore, the punishment order was passed by competent authority in pursuance of his long absence period which can't be tolerated in the disciplined force.
9. Incorrect. As per record, the appellant did not filed departmental appeal before the appellate authority. Legally, the appellant was required to file departmental appeal before the appellate authority, but having no defendable grounds and legal footage he has filed time barred Service Appeal irrespectively before the Hon'ble Service Tribunal.
10. That appeal of the appellant being devoid of merits and limitation may be dismissed on the following grounds.

REPLY ON GROUNDS:-

- A. Incorrect. The punishment order passed by the competent authority is just legal and has been passed in accordance with rules ibid and liable to be upheld.
- B. Incorrect. The competent authority before imposing the major punishment had completed all codal formalities and an ample opportunity of self defense was provided, but he failed to defend himself. The punishment order passed by the competent authority is in accordance with rules ibid.
- C. Incorrect. Proper charge sheet with statement of allegations was issued to him. The appellant willfully absented himself from duty for a long period without any leave permission. The appellant was rightly awarded Major punishment under rules ibid.
- D. Incorrect. Charge sheet with statement of allegations was issued to appellant. Regular inquiry was conducted and thereafter he was issued a final show cause notice, besides given proper opportunity of personal hearing and defence, but he failed to defend himself, hence after fulfilling all the codal formalities he was awarded the Major punishment of dismissal from service under rules ibid.

- E. Incorrect. Proper departmental enquiry was conducted against him. The enquiry officer during the course of enquiry contacted on his personal cell phone, but to no avail. After fulfilling all the codal formalities he was awarded the Major punishment.
- F. Para already explained in detailed in the above paras. Further, the appellant was deliberately absented himself from his lawful duty without leave/ permission. Therefore, he was rightly awarded the Major punishment under rules ibid.
- G. Incorrect. The appellant was a habitual absentee and not interested in his official duty. The appellant deliberately absented himself from his lawful duty, hence he was awarded the Major punishment under rules ibid, therefore liable to be upheld.
- H. Incorrect. Para already explained in the preceding paras.
- I. Incorrect. The punishment orders are just, legal and have been passed in accordance with law/rules and liable to be upheld.
- J. Respondents also seek permission of this Honorable Tribunal to raise additional grounds at the time of arguments.

Prayers:-

Keeping in view the above stated facts & reasons it is, most humbly prayed that the appeal of the appellant being devoid of merits and limitation, may kindly be dismissed with costs please.


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


**Capital City Police Officer,
Peshawar.**


**Superintendent of Police,
HQrs. Peshawar.**

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Service Appeal No.7873/2021.

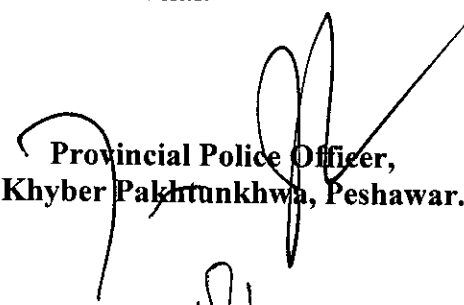
Ex- Constable Adil Hussain No.1937 of CCP Peshawar..... **Appellant.**

VERSUS

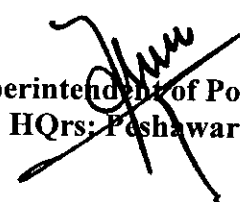
Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. **Respondents.**

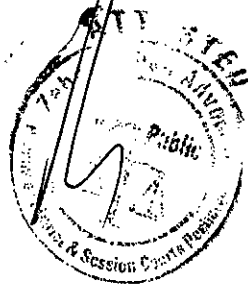
AFFIDAVIT

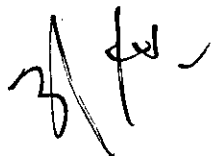
We respondents No. 1 ,2 & 3 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Hon'ble Tribunal.


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


**Capital City Police Officer,
Peshawar.**


**Superintendent of Police,
HQrs: Peshawar.**





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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.**



CHARGE SHEET

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge that Constable Adil Hussain No.1937 of Capital City Police Peshawar with the following irregularities. A

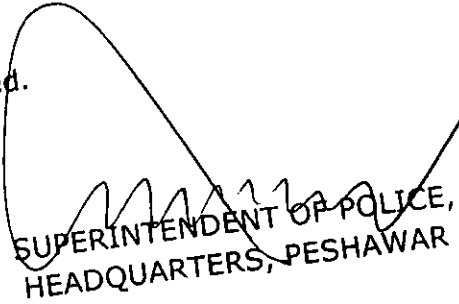
"That you Constable Adil Hussain No.1937 while posted at Police Lines, Peshawar were absent from duty w.e.f 10.02.2021 till date without taking permission or leave. This amounts to gross misconduct on your part and is against the discipline of the force."

You are, therefore, required to submit your written defence within seven days of the receipt of this charge sheet to the Enquiry Officer committee, as the case may be.

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

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

DISCIPLINARY ACTION

10

07-E
08 03 21

B

I, Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that Constable Adil Hussain No.1937 has rendered him-self liable to be proceeded against under the provision of Police Disciplinary Rules-1975

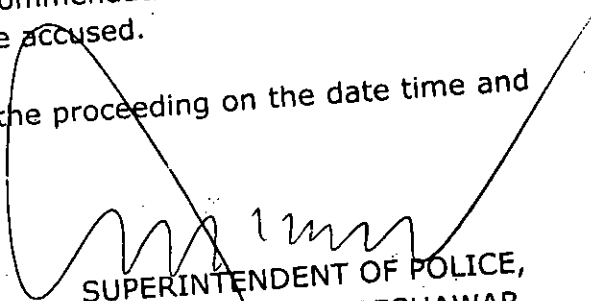
STATEMENT OF ALLEGATION

"That Constable Adil Hussain No.1937 while posted at Police Lines, Peshawar was absent from duty w.e.f 10.02.2021 till date without taking permission or leave. This amounts to gross misconduct on his part and is against the discipline of the force."

For the purpose of scrutinizing the conduct of said accused with reference to the above allegations an enquiry is ordered and SDPO Regi is appointed as Enquiry Officer.

2. The Enquiry Officer shall, in accordance with the provisions of the Police Disciplinary Rules, 1975, provide reasonable opportunity of hearing to the accused officer, record his finding within 30 days of the receipt of this order, make recommendations as to punishment or other appropriate action against the accused.

3. The accused shall join the proceeding on the date time and place fixed by the Enquiry Officer.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

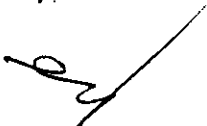
No. 58 /E/PA, dated Peshawar the 02/03/2021

1. SDPO Regi is directed to finalize the aforementioned departmental proceeding within stipulated period under the provision of Police Rules-1975.

2. Official concerned

Steno.

Call The F.C


M.D. Rani

OFFICE OF THE
DEPUTY SUPERINTENDENT OF POLICE,
REGI SUB-DIVISION PESHAWAR.

No. 07-E /St Dated 06/05/2020

(8)

To The Superintendent of Police,
Hqrs: Peshawar.

Subject DISCIPLINARY ACTION AGAINST CONSTABLE ADIL HUSSAIN NO.1937 OF
POLICE LINES PESHAWAR.

MEMO:

Please refer to your office Endorsement No.58-E/PA SP Hqrs: Peshawar dated 02.03.2021 on the subject noted above.

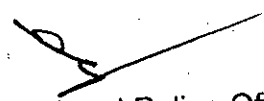
The instant enquiry was initiated against Constable Adil Hussain No.1937 on the order of SP/Hqrs: Peshawar vide his letter No.58-E/PA dated 02.03.2021 on the charge that while posted at Police Lines Peshawar, he absented himself from lawful duty with effect from 10.02.2021 till date vide D.D No.40 dated 10.02.2021 without leave or permission. The under-signed was appointed as Enquiry Officer to scrutinize the conduct of the accused official.

The under-enquiry official was contacted through his Mobile No.0314-9190458, wherein he verbally disclosed that he facing of enmity in his village and unable to appear for record of his statements.

CONCLUSION.

Not appearing for recording of his statement, in the light of above circumstance FC Adil Hussain No.1937 found guilty in the instent enquiry, hence recommended for **Suitable Punishment.**

Report is submitted please.


Sub-Divisional Police Officer,
Regi Circle Peshawar.

Issue F.S.C.M

✓

(4) D

FINAL SHOW CAUSE NOTICE


I Superintendent of Police, Headquarters, Capital City Police Peshawar, as competent authority, under the provision of Police Disciplinary Rules 1975 do hereby serve upon you Constable Adil Hussain No.1937 the final show cause notice.

The Enquiry Officer, SDPO Regi, after completion of departmental proceedings, has declared you guilty of misconduct & recommended you for **suitable punishment.**

And whereas, the undersigned is satisfied that you Constable Adil Hussain No.1937 deserve the punishment in the light of the above said enquiry report.

And as competent authority, has decided to impose upon you the penalty of minor/major punishment under Police Disciplinary Rules 1975.

1. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.
2. If no reply to this notice is received within 7 days of its receipt, in normal course of circumstances, it shall, be presumed that you have no defence to put in and in that case as ex-parte action shall be taken against you.


SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR

No. 584/PA, SP/HQrs: dated Peshawar the 19/5/2021.

Copy to official concerned