

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.**Service Appeal No.4979 /2021.**Ex- Constable Saadat Ali Khan No.352 of CCP Peshawar..... **Appellant.****VERSUS**Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. **Respondents.****REPLY BY RESPONDENTS NO. 1, 2&3.****Respectfully Sheweth:-****SCANNED
KPST
Peshawar****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.
2. Incorrect, pertains to record however the performance of the appellant during service is not satisfactory.
2. Incorrect, the appellant was proceeded against departmentally on the charges of his involvement in two(02) criminal cases vide FIR No.1383 dated 19.09.2016 u/s 382/155-C/411 PPC and FIR No.1133 dated 06.10.2017 u/s 381-A/411 PPC, PS Chamkani Peshawar. He also absented from his lawful duty without proper leave/permission it is well settled principle of law that Court proceedings and departmental proceedings are two different entities which can run parallel to each other. (copy of FIRs are annexure as A)
3. Incorrect, two separate regular departmental enquires were conducted against him wherein he failed to rebut the charges. The enquiry officers after thorough probe found the appellant guilty of the charges thus he was awarded major Punishment of dismissal from Service under Khyber Pakhtunkhwa Police Rules 1975 (amended 2014).(copy of charge sheet, summary of allegation, enquires report and FSCN are annexure as B)
4. Incorrect, being member of a disciplined force he got involved committing thievery/vehicle lifting cases amounting to moral turpitude besides getting wilfully absent from duty. During the course of enquiries, the charges leveled against him were proved, hence he was awarded penalty commensurate with his guilt/misconduct.

However acquittal in a criminal case would not lead to exoneration of a civil servant in departmental proceedings as per dicta of apex Supreme court of Pakistan.

5. Incorrect, the appellant had preferred time barred departmental appeal on 15.02.2021 after inordinate delay of about 03 years 01 month and 05 days which is not sustainable.
6. Incorrect, his departmental appeal was processed and heard in person by the appellate authority however failed to defend himself with plausible/justifiable grounds, hence the appeal was rejected/ filed having no substance in it besides badly time barred.
7. That appeal of the appellant being devoid of merit and limitation may be dismissed on the following grounds.

REPLY ON GROUNDS:-

- a) Incorrect, the penalty was imposed by the competent authority after his involvement in heinous criminal cases as per law/rules and no violation of the Constitution of Pakistan 1973 has been done by the respondent department.
- b) Incorrect. Involvement in a criminal case of committing theft is a heinous offence comes under the ambit of moral turpitude therefore proceeded departmentally hence after establishment of charges, he was awarded penalty commensurate with his guilt/misconduct. Further, acquittal in a criminal case would not ipso facto lead to exonerate Civil Servant from departmental proceedings/punishment.
- c) Incorrect, two separate departmental enquires were conducted against him to dig out the real facts and the allegations got proved beyond any shadow of doubt, hence he was awarded major punishment under the rules ibid.
- d) Incorrect, departmental proceedings were conducted against him under Rules ibid and ample opportunity for self defense was provided to him but he failed to defend himself hence reprimanded accordingly.
- e) Incorrect, the prime duty of police is to protect life, property and liberty of citizens, preserve and promote public peace instead he committed gross misconduct by indulging himself in moral turpitude offences which speaks volume of his immoral personality and unlikely of becoming a good police officer.
- f) Incorrect, pertains to record, however the performance of appellant during service was not upto the mark being involved in criminal offences of stealing/snatching.
- g) Incorrect, the appellant availed the opportunities of defense and was also called and heard in person but failed to prove himself an innocent.
- h) No violation of the Constitution of Islamic republic of Pakistan 1973 has been made by the replying respondents however the appellant committed gross misconduct within the meaning of Rules ibid hence reprimanded accordingly.
- i) Incorrect, the competent authority before imposing the major punishment had completed all codal formalities and sufficient opportunity of self defense was

provided to him but failed to defend himself. Therefore the punishment order was passed.

- j) Incorrect, the appellant committed gross misconduct by doing heinous crime of burglary which tarnished the image of police department in the eyes of general public.
- k) Incorrect, the appellant is giving wrong picture just to save his skin from commission of misconduct as charges leveled against him are proved therefore he was awarded the major punishment.
- l) Incorrect. Charge sheet with statement of allegations was issued to appellant. Regular inquiries were conducted and thereafter he was issued a final show cause notice hence after fulfilling all the codal formalities he was awarded Major punishment of dismissal from service.
- m) Incorrect, as per Khyber Pakhtunkhwa ESTA code, appellant shall be reprimanded as per quantum of misconduct committed by him and he was rightly punished as per his guilt.
- n) Incorrect, his act brought a bad name for the entire police force hence he was awarded major punishment. The appellant was treated as per the spirit of KP Police Rules 1975 (amended 2014) and allegations against him got proved.
- o) Incorrect, the appellant was treated as per law/rules and no violation of the Constitution of Pakistan 1973 has been done by the respondent department.
- p) Respondents also seek permission of this Hon'ble Tribunal to raise additional grounds at the time of arguments.

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.


Superintendent of Police,
H.O.s Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.4979 /2021.


Ex- Constable Saadat Ali Khan No.352 of CCP Peshawar..... **Appellant.**


VERSUS

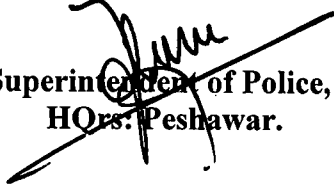
Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. **Respondents.**

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,
HQs: Peshawar.**



05 SEP 2022

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.4979 /2021.

Ex- Constable Saadat Ali Khan No.352 of CCP Peshawar **Appellant.**

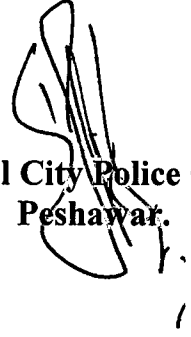
VERSUS

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.**



Annexure 'A'

6

لعنسی افسر: عنایت خان ASI

ابتدائی اطلاع ریپورٹ کی تاریخ: 15/10/2011
گورنمنٹ ہسپتال لاہور، 2286113
فائل نمبر: 4656/2011

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس ریپورٹ شدہ زبردستی 15/10/2011 مجموعہ ضابطہ فوجداری

ضلع: لاہور

محکمہ: جلی

تاریخ: 26/10/2011 وقت: 11 بجنا 12 صحت

تاریخ وقت ریپورٹ: 27/10/2011

نام و سکونت اطلاع دہندہ مستغنیہ
مختصر کیفیت جرم (مردودہ) حال اگر کچھ لیا گیا ہو۔

تعمیراتی نام و سکونت مازہ
تعمیراتی نام و سکونت مازہ

کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہو اور تو وجہ بیان کر دو
تعمیراتی نام و سکونت مازہ

ابتدائی اطلاع نیچے درج کروغنیہ مازہ خانہ نمبر 101 و 102 و 103
خانہ چکی میں رہتی جو نمبر 101 و 102 و 103 کے ہیں
مذکورہ خانوں میں رہتی ہیں جو نمبر 101 و 102 و 103 کے ہیں
مذکورہ خانوں میں رہتی ہیں جو نمبر 101 و 102 و 103 کے ہیں
مذکورہ خانوں میں رہتی ہیں جو نمبر 101 و 102 و 103 کے ہیں

20/10/2011 کو مازہ خانہ نمبر 101 و 102 و 103
مذکورہ خانوں میں رہتی ہیں جو نمبر 101 و 102 و 103 کے ہیں
مذکورہ خانوں میں رہتی ہیں جو نمبر 101 و 102 و 103 کے ہیں
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مذکورہ خانوں میں رہتی ہیں جو نمبر 101 و 102 و 103 کے ہیں
مذکورہ خانوں میں رہتی ہیں جو نمبر 101 و 102 و 103 کے ہیں

(28)

(8)

Annexure "B"

CHARGE SHEET

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge that Constable Sadat No.352 of Capital City Police Peshawar with the following irregularities.

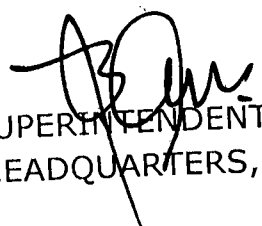
"That you Constable Sadat No.352 while posted at Police Lines, Peshawar were absent from duty w.e.f 27.03.2017 till date without taking permission or leave. This amounts to gross misconduct on your part and is against the discipline of the force."

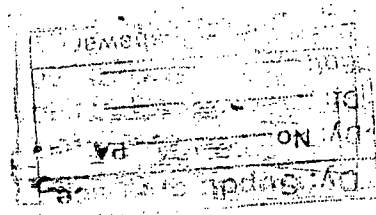
You are, therefore, required to submit your written defence within seven days of the receipt of this charge sheet to the Enquiry Officer committee, as the case may be.

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



(27)

(9)

Dy: Supdt of Police
Dy: No. 3264 PA
Dt: 31-6-17
Ent: Peshawar
Cantt Circle Peshawar

DISCIPLINARY ACTION

I, Superintendent of Police, Headquarters, Capital City Police as a competent authority, am of the opinion that Constable Sadat No.352 has rendered him-self liable to be proceeded against under the provision of Police Disciplinary Rules-1975

STATEMENT OF ALLEGATION

"That Constable Sadat No.352 while posted at Police Lines, Peshawar absented himself from duty w.e.f 27.03.2017 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 Cantt 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. 169 /E/PA, dated Peshawar the 30/06 /2017

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

PA to process

Dy: Supdt of Police
Cantt Circle Peshawar



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**OFFICE OF THE
DEPUTY SUPERINTENDENT OF POLICE,
CANTT: SUB-DIVISION, PESHAWAR.**

No. 3264/E/Steno, dated Pesh: the 18/10/2018.

To

The Superintendent of Police,
Head Quarters, Peshawar.

**FINDING U/R 6(5) OF POLICE RULES 1975, AGAINST CONSTABLE
SADAT No. 352**

The subject enquiry was referred to this office to ascertain the misconduct, committed by the subject police Constable vide order of enquiry No. 169/E/PA, dated 30.06.2017.

Short facts are that accused Constable SADAT No.352 while posted at Police Lines, Peshawar remained absent from official duty w.e.f. 27.03.2017 to till date without approval and prior permission from the competent authority. Hence he was charge sheeted and summary of allegation was issued to him by the W/SP-HQrs, Peshawar.

The accused Constable did not submit his reply within stipulated period and as well as he was contacted by his Cell Number 0313-9752197 repeatedly but he not attend it despite the fact that he was summoned to join the enquiry proceedings. Taking Ex-parte decision, he is, therefore recommended for punishment after the issuance of final show cause notice.

Submitted for further approval please.

All relevant documents are attached herewith.

Kamal H.
KAMAL HUSSAIN
Enquiry Officer,

Deputy Superintendent of Police,
Cantt: Sub-Division, Peshawar.

(90) (1)

CHARGE SHEET

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge that Constable Sahadat Ali No.352 of Capital City Police Peshawar with the following irregularities.

"That you Constable Sahadat Ali No.352 while posted at Police Lines, Peshawar were involved in a criminal case vide FIR No.1133 dated 06.10.2017 U/S 381-A/411-PPC PS Chamkani. 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.

Baser
SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

(18) (12)

DISCIPLINARY ACTION

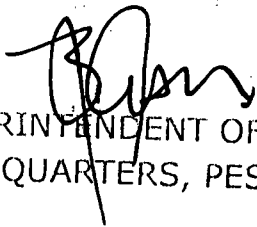
I, Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that Constable Sahadat Ali No.352 has rendered him-self liable to be proceeded against under the provision of Police Disciplinary Rules-1975

STATEMENT OF ALLEGATION

"That Constable Sahadat Ali No.352 while posted at Police Lines, Peshawar was involved in a criminal case vide FIR No.1133 dated 06.10.2017 U/S 381-A/411-PPC PS Chamkani. This amounts to gross misconduct on his part and 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 Asp. Yousaf Jan. 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. 243 /E/PA, dated Peshawar the 17/10 /2017

1. _____ is directed to finalize the aforementioned departmental proceeding within stipulated period under the provision of Police Rules-1975.
2. Official concerned

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(4) (13)

REFERENCE ATTACHED

Subject: ENQUIRY AGAINST FC SADAT NO.352

Please refer to the attached enquiry papers received from your good office vide: No.243/PA, dated 17.10.2017 against FC Sadat No.352 on the allegations;

ALLEGATION

"That he while posted in Police Lines, Peshawar was involved in a criminal case vide FIR No.1133 dated 06.10.2017 u/s 381/411-PPC PS Chamkani which amounts to gross-misconduct on his part & against the discipline of the force.

PROCEEDINGS

In order to dig-out the real facts, he was called time & again to deliver charge sheet & summary of allegation upon him but he did not turned up as yet.

In this regard, statement of Investigation officer was recorded he stated that the alleged official was charged by the complainant for the commission of offence. The stolen property was recovered from the possession of the alleged official. Therefore, section 411-PPC added with other section of law.

From perusal of his previous service record it came to light that he has been enlisted in the year 2008 and remained posted at various Police Stations. He has also been charged in another criminal case vide FIR No.1383 dated 19.09.2016 u/s 382/155-C PPC PS Chamkani & he put to departmental enquiry which is under process with DSP Civil Secretariat vide No.266/E/PA dated 14.11.2016.

Apart from the above, he remained absent w.e.f 27.03.2017 from Police Lines & still continued absent for unknown reason. In the same absence, DSP Cantt: conducted the enquiry proceedings who recommended him for ex-parte decision vide No.3364/Steno dated 18.10.2017.

RECOMMENDATIONS

After perusal of his previous record & indulgence in two separate thefts criminal cases as well as prolong & deliberate absence, I am of the opinion that the alleged official FC Sadat No.352 is not deserve an iota of leniency in view of the above factors in mind. Therefore, he may be awarded major punishment of dismissal from service in the above mentioned charges by taking ex-parte decision, if agreed, please.

W/SP-HQrs

DA (2)
issue
FSN.
Bm

(YOUSAF JAN)
INSPECTOR POLICE LINES
CCP PESHAWAR

(3)

14

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 Sadat No.352 the final show cause notice.

The Enquiry Officer, Inspector Yousaf Jan, after completion of departmental proceedings, has recommended you for major punishment for you Constable Sadat No.352 as the charges/allegations leveled against you in the charge sheet/statement of allegations.

And whereas, the undersigned is satisfied that you Constable Sadat No.352 deserve the punishment in the light of the above said enquiry reports.

I, competent authority, have 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. 243/E/PA, SP/HQrs: dated Peshawar the 1-1-/2018.

Copy to official concerned