Form- A

FORM OF ORDER SHEET

Lourt of			
		1161/2022	
Case No	· · · · · · · · · · · · · · · · · · ·	1101/2022	

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1.	2	3
1.	27/07/2022	The appeal of Mr. Khairul Bashar presented today by Mr. Mir Zaman
	-	Safi Advocate. It is fixed for preliminary hearing before touring Single Bench
		at Swat on 9-9-Motices be issued to appellant and his counsel for the
		date fixed.
		,
		By the order of Chairman
		Less - MILL
		REGISTRAR
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	09.09.2022	Learned counsel for the appellant present.
		Preliminary arguments heard.
		Points raised need consideration, hence the
	·	appeal in hand is admitted to regular hearing subject
,		to all legal and valid objections. The appellant is
K	3-100/	directed to deposit security and process fee within 10
pellant	Deposited Process Fee	days. Out district respondent be summoned through
Curry C		TCS, the expenses of which be deposited by the
4) unff uch	appellant within three days. To come up for
70	14/9/22	submission of written reply/comments on 07.11.2022
	,	before the S.B at Camp Court Swat.
	1	
		J -/-
		(Salah-Ud-Din)
ند		Member (J) Camp Court Swat

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. //6//2022

KHAIR UL BASHAR

VS

POLICE DEPTT:

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Khair-ul-Bashar 0345-2856053

APPELLANT

THROUGH:

MIR ZAMAN SAFI

ADVOCĂTE

Office: Room No. 6-E, 5th Floor, Rahim Medical Centre, Hashtnagri, Peshawar.

Cell: 0333-9991564

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

	APPEAL NO/2021
Mr. I	Khair-Ul-Bashar, Ex-Constable No. 1657,
Polic	e Lines, Dir UpperAPPELLANT
	VERSUS
1-	The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2-	The Regional Police Officer Malakand Region at Saidu Sharif, Swat.
3	The District Police Officer, District Dir Upper.
•	

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRUBUNAL ACT-1974 AGAINST THE IMPUGNED ORDER DATED 30.12.2021 WHEREBY MAJOR PENALTY OF DISMISSAL FROM SERVICE HAS BEEN IMPOSED ON THE APPELLANT AND AGAINST THE IMPUGNED APPELLATE ORDERS DATED 30.03.2022 AND 29.06.2022 WHEREBY DEPARTMENTAL APPEAL AND REVISION PETITON OF THE APPELANT HAS BEEN REJECTED ON NO GOOD GROUNDS

PRAYER:

That on acceptance of this appeal the impugned orders dated 30.12.2021, 30.03.2022 and 29.06.2022 may vey kindly be set aside and the appellant be re-instated into service with all back benefits. Any other remedy which this August Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

Brief facts giving rise to the present appeal are as under:-

- 1- That appellant was the employee of respondent Department and performed his duties in the respondent Department as Constable for quite considerable period quiet efficiently and up to the entire satisfaction of his superiors.
- 3- That the local police arrested the appellant and sent to the judicial lock up. That the appellant was behind the bar and at the meantime the respondent

Department conducted departmental inquiry in the matter without associating the appellant in the said inquiry. That on the conclusion of said inquiry the appellant has been dismissed vide impugned order dated 30.12.2021 without waiting to the outcome of trial in the aforementioned criminal case. Copies of the impugned order is attached as annexure.

B.

- 6- That appellant feeling aggrieved and having no other remedy but to file the instant service appeal on the following grounds amongst others.

GROUNDS:

- A- That impugned orders dated 30.12.2021, 30.03.2022 & 29.06.2022 issued by the respondents are against the law, facts, norms of natural justice and material on record, hence not tenable and liable to be set aside.
- B- That the appellant has not been treated in accordance with law and rules by the respondent department on the subject noted above and as such violated Article 4 and 25 of the Constitution Of Islamic Republic of Pakistan.
- C- That no charge sheet and statement of allegation has been issued to the appellant before issuing the impugned order dated 30.12.2021.
- D- That no regular inquiry has been conducted before issuing the impugned order dated 30.12.2021 which is necessary as per judgment of Apex Court before taking punitive action against the civil servants.
- E- That no final show cause notice has been served upon the appellant before issuing the impugned order dated 30.12.2021.
- F- That no chance of personal hearing/defense has been provided to the appellant before issuing the impugned order dated 30.12.2021.

- G-That no chance of cross examination has been provided to the appellant which is necessary as per rule and judgment of the Apex Court, therefore the impugned order dated 30.12.2021 is not tenable in the eye of law, hence the same is liable to be set aside.
- H- That the appellant cannot be declared guilty by the respondent department unless declared guilty by the court of law and thus issuing the impugned order dated 30.12.2021 is not tenable and liable to be set aside.
- I- That the appellant seeks permission to advance any other ground and proof at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may very kindly be accepted as prayed for.

Dated: 25.07.2022

APPELLANT Sash

KHAIR UL BASHAR

THROUGH:

MIR ZAMAN SAFI

ADVOCATE

CERTIFICATE:

It is certified that no other earlier appeal was filed between the parties.

DEPONENT

LIST OF BOOKS:

- 1- CONSTITUTION OF PAKISTAN, 1973
- 2- SERVICES LAWS BOOKS
- 3- ANY OTHER CASE LAW AS PER NEED

CINC115702-7856503-0 مدادم نبراء مستعيت 20.06.201 في در (فاريسور مايز) منى قارم (يوليس) رونت پرلی دارد در 2286 دارم نوروک برادید برادید در دو 110 ۱۳۷۰ - 1834 کا 285 - 1834 کا 285 - 185 فارم نمبر۲۳_۵(۱) ابتدائي اطلاعي ربورك ابتدائي اطلاع تسبت جرم قابل دست اندازي يوليس ريورث شده زير دفعة ١٥١م مجموعه ضابط فوجداري و وت وقوع رازا/د و ور تھانہ ہے روائگی کی تاریخ وونت المروو الموروا مع . كانت الدا فار الحالية إلى الأالولي الموسي الماليون فحون توتت شب دافل محمرسنودات فاع ادرد تقراف داو ركا ع لعرف فالوى كارول عاطر صافرى اولو who is a factor of the مدوارا والورعالموس كتركى وكوف بداس الدي مرت اور مدولف و حوف وين مد مدم ور

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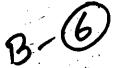
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اطلاع کے نیچاطلاع دہندہ کادستھ ہوگایا اس کی مہریانشان لگایا جائے گا۔ اورانسرتحریرکندہ ابتدائی اطلاع کادستھ بطورتقد بتی ہوگا۔ حروف الف یاب سرخ روشائی سے بالقاتا ایک ملزم یاشتہ علی التر تبیب واسطے باشندگان علاقہ غیریا دسطِ الثیامیا افغان جہال موزوں ہوں باکھتا جا ہے۔

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OFFICE OF THE DISTRICT POLICE OFFICER, UPPER DIR



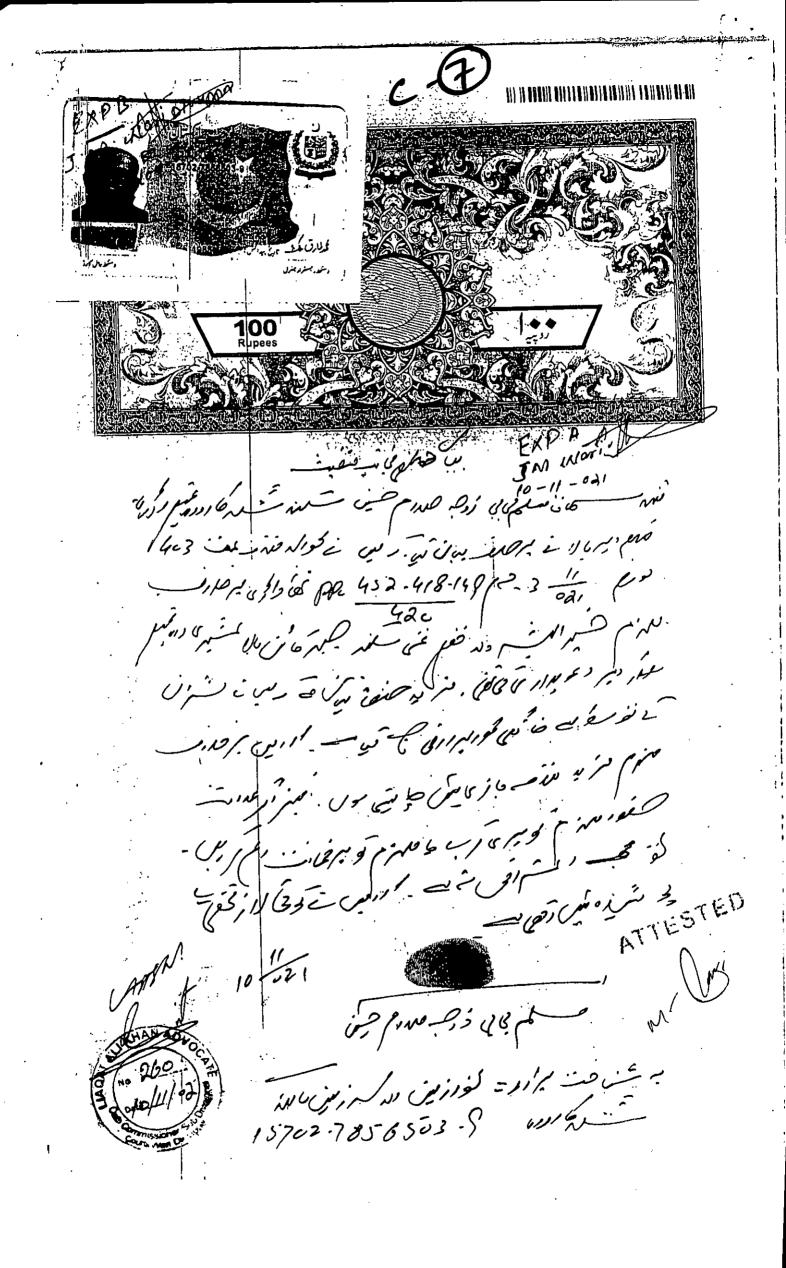
ORDER

This order is plassed on the Departmental Enquiry conducted against Constable Khair Ul Bashar No. 1657 in Police Lines, involved in case FIR No. 403 dated 03.11.2021 u/s 452/458/419/420 PPC PS Wari. This act of the defaulter official amounts to gross misconduct, therefore he was issued Charge Sheet with Statement of allegations and Mr. Ghulam Sadiq, SDPO Kohistan was appointed as Enquiry Officer. During the course of departmental enquiry the Enquiry Officer recorded the statements of the defaulter official. The Enquiry Officer submitted in his finding report that he is guilty of the charges leveled against him and the allegations were proved behind any shadow of doubt. On perusal of the finding report, the defaulter official was issued a Final Show Cause Notice vide No. 1837/SB, dated 30.11.2021 and reply to the same was perused and found unsatisfactory, therefore, he was called in Orderly Room and he was also heard in person, but the defaulter official could not produce any plausible evidence in his defense or satisfy the undersigned in this regard. Keeping in view of the recommendation of Enquiry Officer and materials on record, I Atiq Ullah Khan Wazir, District Police Officer, Dir Upper (competent authority) in exercise of powers vested under Police Rules, 1975 amended 2014 and (Police Act 2017) hereby dismiss the defaulter official Constable Khair Ul Bashar No. 1657 from Police service with immediate effect.

Order announced.

OB No. 87/

District Police Officer Dir Upper.



بان رطف ساند سان المه معکم کا دوره و تصل داری درال برطف ميان كرتي سي كرمين 03 1/ 03403 CS X FIR NIS رم روالار814 د 63 ، 100 كي من واري س سے مطرف طرح میں صرح الدور برد کرماری کی بھی، و تدین ع نبی ان علاقت کی وسیوں ہے راح رامہ کمنا ہے اور مل و میں ایم سیلی دملہ معاد کیا ہے، ور در سیا 51. 05 grad 5 dus 500 18 عرالت صنور قلن مزکوره کوسری ک ضایت میرره کری، نو فیج وز ایستراص لبی ہے۔ س میں اسا کیس ضر ででで、-のからから

و فقط و فل المسرا المنظم الله و المراسية المسوات 30. 12.2021 pg plips 1657 16 3 16 30 on only soprit in 1/10%. وراوس المان والقارات و المان موال النوم الموالية المرال gue for John FIR is per for Just John John Jeler en es evil- (8 - 14 de po (1, 12 20), ما مع من فرام المور من الما من الما المور من الما المور من الما المور من ال المعام على المعالم المعارين وي المعامل (4,1°22) Je of 100 (1,000) 100 (1,000) 100 (1,000) (1,000) المعراس المراق ا المرام الرد الدين المرين عن المرين عن المرين المراع الرام المراع الم مری - سرای نام ده و مرا کار برا کار برا مری ایر مرا کار برا کار برا کار برا کار برا کار مرد دی و از مرد و از مرد و المناز و مامان المسلم و فران مرسال و المران مرسال المسالم Khairu Bashar





POLICE OFFICER, MALAKAND AT SAIDU SHARIF SWAT.

Ph: 0946-9240388 & Fax No. 0946-9240390 Email: chmalakandregion(a gmail.com

<u>ORDER</u>

This order will dispose of appeal of Ex-Constable Khair-ul-Bashar No.1657 of Dir Upper District for re-instatement in service, who is dismissed from service by the then District Police Officer, Upper Dir vide OB No.871, dated 30-12-2021.

Brief facts of the case are that Ex-Constable Khair-ul-Bashar No.1657 while posted at Police Lines was found involved in case vide FIR No.403, dated 03-11-2021 U/S 452,458,419,420 PPC PS Wari, suspended by the then District Police Officer, Dir Upper vide OB No.769, dated 09-11-2021 and closed to Police Lines. The above act of the defaulter Ex-Constable was amounts to gross misconduct, therefore the Charge Sheet coupled with statement of allegation issued to him and SDPO Kohistan was appointed as Enquiry Officer.

During the course of departmental enquiry, the Enquiry Officer recorded statement of the defaulter Ex-official. The Enquiry Officer submitted in his finding report that he is guilty of the charges leveled against him and the allegations were proved beyond any shadow of doubt. On perusal of the finding report, the defaulter Ex-Official/applicant was issued a Final Show Cause Notice vide No.1837/SB, dated 30-11-2021, and reply to the same was perused by the then District Police Officer, Dir Upper and found unsatisfactory. Therefore, he was called in orderly room and heard him in person, but he could not produce any plausible evidence in his self-defense in this regard. Keeping in view of the recommendation of the E-O and material of the record, subsequently the then District Police Officer. Dir Upper being a competent authority and in exercise of power vested under Police Efficiency and disciplinary rules 1975 amended 2014 dismissed the defaulter official from service with immediate effect vide OB No.871, dated 30-12-2021 in this regard the following grounds were also observed:-

- 1. The case of the defaulter is heinous.
- 2. The case is pending in trial court and has not been decided till now. The defaulter is a garble (Double-dealer) and directly charged in commenting lurking house-trespass by night
- The defaulter has been arrested from inside the house of the complainant.
- The matter is grievous which is not only affects as individual but also spoiled the whole society and the department.
- 5. The defaulter caused a bad impact upon society and upon the department. Moreover, in this application the applicant has misrepresenting that

"the case against him has been dismissed by the court vide dated 06'11:2021" while the judgment of the concerned Court on the above reference/dated are as under:-

"In the light of above discussion, I am not inclined to release the accused/petitioner on bail; hence, the instant ball application is hereby dismissed".

He was called in Orderly Room on 09-03-2022 and heard him in person, but he did not produced any cogent reason to defend the charges leveled against him, therefore, his appeal is hereby rejected.

Z. Aschm_ Regional Police Officer,

No. 3603 E Dated 30-3-12022

Copy for information and necessary action to the District Police Officer, Dir Upper with reference to his office Memo: No. 485/EB, dated 31-01-2022. His Service Roll and Fuji Missal containing enquiry file received with your memo: under reference are returned herewith for record in your office.

Enels-Sirkelli

معنوره - الى الراسي المريم و الى المريم و المريم مر فرو و المار عمر فراد ۱۱۶ در ال فروق ال ماد الم فق من ملوت من علی مال من مالی من المرس نور از کرف من ما مورد. المرادان وی ارس مرا در می فرخ قدا ک بیار در افع بزاری مراه ما و جن الله مغرره الا فوهار موساس مع رشيم راس عن المعام فقرم سراسرا و الورسي مرسى عن من من الول تعور بيرسي عير المعلى المنظمة والمعالمة المعالمة المعالمة المعالم الم 18 - 100,1005 - in - Of a 2 6/100 (Posting Of و من الم دار الرس من وه و رود ده و ۵۰ و ۵ و ۱ و الرس س - سر کا Julian 1960 - 18 1/0/18/1/2019/19/ 1657 1 1 20 Chair W Bashar



<u>MALAKAND</u> AT SAIDU SHARIF SWAT. h: 0946-9240381 & <u>Fax No. 0946-9240390</u>

: 0946-9240381 & Fax No. 11946-92403 Email: digmalakanda yahoo.com

No. 6857-58/E, dated Saidu Sharif the

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Ţψ,

The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar,

Subject

REVISION PETITION

Memorandum

Kindly refer to CPO, Peshawar Memor No. 1054/22, dated 23/05/2022.

The requisite comments as intimated by District Police Officer. Dir Upper vide his office Memo: No. 2386/EB, dated 22/06/2022 are submitted as under

Brief facts of the case are that appellant Ex-Constable Khair Ul Bashar No. 1657 while posted in Police Lines was found involved in case FIR No. 403, dated 03/11/2021 u/s 452/418/419/420 PPC PS Wari. Therefore, he was suspended vide OB No. 769, dated 09/11/2021

The above act of the Ex-Constable was amounts to gross misconduct, therefore Charge Sheet coupled with statement of allegation were served upon him and SDPO Kohistan was appointed as Enquiry Officer. During the course of departmental enquiry, the Enquiry Officer recorded his statement and submitted his finding wherein he stated that he is guilty of the charges level against him and the allegation were proved beyond any shadow of doubt. On the perusal of finding report he was issued Final Show Cause Notice No. 1837/SB, dated 30/11/2021. The reply of the same was perused by the then SDPO Dir Upper and unsatisfactory. Therefore, he was called in orderly room and heard him in person, but could not produce any plausible evidence in his defense to the competent authority in this regard. Keeping in view of the recommendation of the Enquiry Officer and other materials on the record, subsequently, he was dismissed from service with immediate effect vide OB No. 871, dated 30/12/2021, In this regard the following grounds were also observed:-

- 1. The case of the defaulter is heinous.
- 2. The case is under trial in the court and has not been decided.
- 3. The defaulter is a garble and directly charged in commenting lurking house-trespass by night.
- The defaulter has been arrested from inside the house of the complainant.
- 5. The act is grievous which are not only effects as individual but also effect badly the whole society and the department.
- 6. The defaulter caused a bad name for police department.

Later on he was submitted an application before this office for re-instatement into service. Which was examined and rejected vide this office order Endst: No. 3603/E, dated 30/03/2022.

According to Inspector Legal. Dir Upper the above named official has not instituted any service appeal in service tribunal so far.

His Service Roll, Fuji Missal and enquiry file is submitted herewith as desired and returned to this office when no longer required for record of office concerned please.

Enclosed: S. Rell + F. missel

Copy to District Police Officer, Dir Lower with reference to his office memo: No.

quoted above.

ATTESTED

Regional Police Officer, Malakand, at Saidu Sharif Swat

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