

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1439/2019

Date of Institution ... 30.10.2019

Date of Decision ... 19.01.2022

Tariq Mehmood Ex-Driver Constable No. 271 (Capital City Police Peshawar) R/o
Yousaf Abad, Tube Well Chowk, Street No. 5, Dalazak Road, Peshawar.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa, through Inspector General of Police Khyber
Pakhtunkhwa, Central Police Office, Peshawar and others.

... (Respondents)

Uzma Syed
Advocate

... For Appellant

Muhammad Riaz Khan Paindakhiel,
Assistant Advocate General

... For respondents

AHMAD SULTAN TAREEN
ATIQU-UR-REHMAN WAZIR

...
...

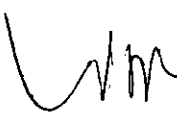
CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are

that the appellant while serving as Constable Driver, was charged in FIR U/S 9C
CNSA 15AA DATED 03-05-2019 and was arrested. The appellant was proceeded
against departmentally and was ultimately dismissed from service vide order
dated 03-07-2019. In the meanwhile, the appellant was released on bail; vide
judgment dated 09-05-2019. The appellant filed departmental appeal, which was
also rejected vide order dated 25-09-2019, hence the instant service appeal with
prayers that the impugned orders dated 03-07-2019 and 25-09-2019 may be set
aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the impugned orders are against law, facts and norms of natural justice, therefore not tenable and liable to be set aside; that the appellant has not been treated in accordance with law, hence his rights secured under the Constitution has badly been violated; that the appellant was dismissed from service in an arbitrary manner, it however was required to suspend the appellant and wait for conclusion of the criminal case but the respondents hastily proceeded the appellant and dismissed him from service; that trial in the criminal case is pending adjudication before the competent court of law and the appellant is yet to be proved guilty or innocent, however the respondents have condemned the appellant in the present case before conclusion of the criminal case, which is illegal and against the vested constitutional rights of the appellant.

03.  Learned Assistant Advocate General for the respondents has contended that the appellant while serving as driver in police department, was charged in FIR U/S 9C CNSA Dated 03-05-2019; that the appellant was proceeded departmentally by serving charge sheet/statement of allegation upon him and inquiry was also conducted; upon findings of the inquiry report, the appellant was served with final showcause notice; that the appellant responded to the charge sheet as well as to the showcause notice but his reply was not found convincing, hence he was awarded with major punishment of dismissal from service vide order dated 03-07-2019; that criminal case is still pending adjudication against the appellant but it is a well settled legal proposition that criminal and departmental proceedings can run side by side without affecting each other, hence the appellant was proceeded departmentally which culminated into his dismissal from service.

04. We have heard learned counsel for the parties and have perused the record.

05: Record reveals that the appellant was proceeded against on the charges of registration of FIR against him and was dismissed from service. Being involved in a criminal case, the respondents were required to suspend the appellants from service under section 16:19 of Police Rules, 1934, which specifically provides for cases of the nature. Provisions of Civil Service Regulations-194-A also supports the same stance, hence the respondents were required to wait for the conclusion of the criminal case, but the respondents hastily initiated departmental proceedings against the appellants and dismissed him from service before conclusion of the criminal case. It is a settled law that dismissal of civil servant from service due to pendency of criminal case against him would be bad unless such official was found guilty by competent court of law. Contents of FIR would remain unsubstantiated allegations, and based on the same, maximum penalty could not be imposed upon a civil servant. Reliance is placed on PLJ 2015 Tr.C. (Services) 197, PLJ 2015 Tr.C. (Services) 208 and PLJ 2015 Tr.C. (Services) 152.

06. The allegations so leveled against the appellants are registration of FIR against him, but it was responsibility of the inquiry officer to prove the charges leveled against him in the FIR, but the inquiry officer did not bother to conduct a proper inquiry and while sitting in his office, wrote a two page report, which is of no value in the eye of law. The authorized officer failed to frame proper charge and communicate it to the appellant alongwith statement of allegations explaining the charge and other relevant circumstances proposed to be taken into consideration. Framing of charge and its communication alongwith statement of allegations was not merely a formality but it was a mandatory pre-requisite, which was to be followed. Reliance is placed on 2000 SCMR 1743.

07. Report of the inquiry so conducted cannot be termed as a regular inquiry, as the same is replete with deficiencies. The inquiry officer did not bother to associate the appellants with the inquiry proceedings. No statement of any witness was recorded in presence of the appellant nor the appellant was afforded

opportunity to cross-examine such witnesses, thus the respondents skipped a mandatory step as provided in law, which clearly shows that neither the appellant was associated with proceedings of the inquiry nor was he afforded any opportunity to defend his cause. Such an act on part of the inquiry officer is a clear manifestation of professional dishonesty and shirking responsibility, which raises a question as to what would be the evidentiary value of the contents of the inquiry report. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 have held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice.

08. It is a cardinal principle of natural justice of universal application that no one should be condemned unheard and where there was likelihood of any adverse action against anyone, the principle of Audi Alteram Partem would require to be followed by providing the person concerned an opportunity of being heard. The inquiry officer mainly relied on FIR with no solid evidence against the appellant. Mere reliance on hearsay and that too without confronting the appellant with the same had no legal value and mere presumption does not form basis for imposition of major penalty, which is not allowable under the law.

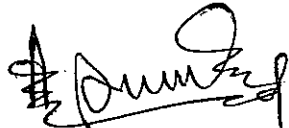
09. The criminal case is still pending against the appellant, which will be decided on its own merits in due course of time, but it is a well settled legal proposition that criminal and departmental proceedings can run side by side without affecting each other, but in the instant case, we are of the considered opinion that the departmental proceedings were not conducted in accordance with law. The authority, authorized officer and the inquiry officer badly failed to abide by the relevant rules in letter and spirit. The procedure as prescribed had

not been adhered to strictly. All the formalities had been completed in a haphazard manner, which depicted somewhat indecent haste. The allegations so leveled had not been proved. The appellant suffered for longer for a charge, which is not yet proved.

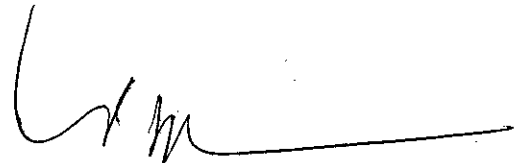
10. In circumstances, the instant appeal is accepted. The impugned orders dated 03-07-2019 and 25-09-2019 are set aside and the appellant is re-instated into service. The intervening period is treated as leave of the kind due. The respondents still have an option under the provisions contained in Rule 16:2(2) of Police Rules, 1934, if decision in the criminal case was found adverse. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

19.01.2022



(AHMAD SULTAN TAREEN)
CHAIRMAN



(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

ORDER

19.01.2022

Learned counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakheil, Assistant Advocate General for respondent present. Arguments heard and record perused.

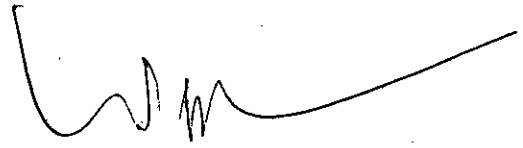
Vide our detailed judgment of today, separately placed on file, the instant appeal is accepted. The impugned orders dated 03-07-2019 and 25-09-2019 are set aside and the appellant is re-instated into service. The intervening period is treated as leave of the kind due. The respondents still have an option under the provisions contained in Rule 16:2(2) of Police Rules, 1934, if decision in the criminal case was found adverse. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

19.01.2022



(AHMAD SULTAN TAREEN)
CHAIRMAN



(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)




1439/19
01.06.2021

Appellant in person and Mr. Noor Zaman Khattak, District Attorney alongwith Muhammad Raziq, H.C for the respondents present.

9

Representative of the respondents seeks further time to furnish reply/comments. Respondents are required to furnish written reply/comments in office within 10 days. If the written reply/comments are not submitted within the stipulated time, the office is directed to submit the file with a report of non-compliance. File to come up for arguments on 29.09.2021 before the D.B.

Stipulated time has passed & reply has not been submitted.


Chairman

P.S

11.06.2021

Learned Addl. A.G be reminded about the omission and for submission of reply within extended time of 10 days.


Chairman

Reply submitted

29-9-21

*D.B is on Toud case to come up
For the same on Dated. 19-1-22*

Rader

01.02.2021

Appellant in person and Addl. AG the respondents present.

Learned AAG requests for time to contact the respondents and furnish reply/comments. Adjourned to 31.03.2021 on which date the requisite reply/comments shall positively be furnished.


Chairman


31.03.2021

Junior to counsel for the appellant present.

Addl: AG for respondents present.

Written reply/comments not submitted. Learned AAG seeks time to contact the respondents for submission of written reply/comments.

Adjourned to 01.06.2021 before S.B.


(Atiq Ur Rehman Wazir)
Member(E)

15.09.2020

Junior to counsel for the appellant present.

One again a request for adjournment is made due to non-availability of learned senior counsel for the appellant.

Instant matter has been adjourned many times earlier, therefore, as a last chance is posted for preliminary hearing to 18.11.2020 before S.B. ———


Chairman

18.11.2020

Counsel for the appellant present.

Contends that the appellant was dismissed from service solely on the ground of alleged involvement in a criminal case recorded through FIR No. 710 on 03.05.2019. No proper inquiry was held against the appellant before imposition of major penalty upon him. Further states that the appellant was released on Bail in the case on 09.05.2019. This fact was not kept in consideration by the departmental appellate authority while deciding the appeal on 25.09.2019.

In view of the arguments of learned counsel and the available record, instant appeal is admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 01.02.2021 before S.B.


Chairman

Appellant Deposited
Security Process Fee

18/11/20

21.01.2020

Appellant present in person.

Requests for adjournment due to general strike of the Bar. Adjourned to 02.03.2020 before S.B.



Chairman

02.03.2020

Junior counsel for the appellant present and seeks adjournment. Adjourned to 15.04.2020 for preliminary hearing before S.B.



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

15.04.2020

Due to public holiday on account of COVID-19, the case is adjourned to 13.07.2020 for the same. To come up for the same as before S.B.



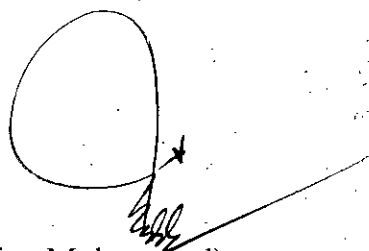
Reader

13.07.2020

Junior to counsel for the appellant present.

Former requests for adjournment as learned senior counsel is not available today.

Adjourned to 15.09.2020 before S.B.






(Mian Muhammad)
Member(E)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1439/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	30/10/2019	<p>The appeal of Mr. Tariq Mehmood presented today by Malik Misraf Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please</p> <p> REGISTRAR 30/10/19</p>
2-	31/10/19.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>12/12/19.</u></p> <p> CHAIRMAN</p>
	12.12.2019	<p>Appellant in person present.</p> <p>Appellant requests for adjournment due to non-availability of his learned counsel owing to the general strike of the bar.</p> <p>Adjourned to 21.01.2020 before S.B.</p> <p> Chairman</p>

**BEFORE THE HONOURABLE
SERVICE TRIBUNAL, KP PESHAWAR**

Service Appeal No. 1439 /2019

Tariq Mehmood

(Appellant)

V E R S U S

Govt. of KPK through IGP and others

(Respondents)

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Through Appellant


Malik Misraf
Munsif Saeed

Advocates High Court,
Peshawar

Dated: 30.10.2019

J

**BEFORE THE HONOURABLE
SERVICE TRIBUNAL, KP PESHAWAR**

Service Appeal No. 1439 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1527

Dated 30/10/2019

Tariq Mehmood

Ex- Driver/ Constable No. 271 (Capital City Police Peshawar)

R/o Yousaf Abad, Tube Well Chowk, Street No. 5, Dalazak Road,
Peshawar

(Appellant)

V E R S U S

- 1) Govt. of KPK through Inspector General of Police KP, Central Police Office, Peshawar
- 2) Deputy Superintendent of Police Coordination, Headquarter Central Police Lines, Peshawar
- 3) The Capital City Police Officer, Headquarter Central Police Lines, Peshawar
- 4) DSP City, Investigation, Headquarter Central Police Lines, Peshawar
- 5) SSP Investigation, Headquarter Central Police Lines, Peshawar

(Respondents)

Filed to-day

Registrar

30/10/19

**Appeal Under Section 4 of the Khyber
Pakhtunkhwa Service Tribunal Act 1974,
against the order dated 03.07.2019 whereby
imposing major penalty of dismissal from
service, the petitioner / appellant was
dismissed by respondent No. 1.**

2

Prayer:

On acceptance of the instant appeal, the order dated 03.07.2019 of respondent No. 1 may kindly be set aside, and the appellant be reinstated into service at the police department with all back benefits.

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:

- 1) That the petitioner was serving in the police department as Driver for the last 35 years. (Copy attached)
- 2) That during the course of service, unfortunately the appellant was nominated in a so called criminal case vide FIR No. 710 dated 03.05.2019 U/s 9C CNSA, 15AA, PS Pahari Pura, Peshawar.
- 3) That on the basis of so called nomination in the above FIR, the respondents initiated departmental proceedings against the appellant.
- 4) That after conclusion of inquiry, the appellant was dismissed from service vide order dated 03.07.2019.
- 5) That the appellant feeling aggrieved from the said order, preferred departmental appeal which was also dismissed vide order dated 25.09.2019 of respondent No. 3.

- 6) That the appellant feeling aggrieved from the above impugned orders, actions and enquiry, preferred the present appeal before this hon'ble tribunal.

GROUND

- a) That the impugned dismissal order is against the law facts material available on record, hence not tenable in the eyes of law.
- b) That the respondents has not treated appellant in accordance with law, rules, policy on subject and acted in violation of Article 4 and 25 of the Constitution of Islamic Republic of Pakistan and unlawfully issued impugned orders which are unjust, unfair and hence not sustainable in the eyes of law.
- c) That the respondents not made statement of allegation against the appellant and had not followed the required procedure due to which the dismissal order is liable to be set aside.
- d) That the discrimination has been made while issuing the impugned order by the respondents.
- e) That the trial in the above mentioned case is pending adjudication before the competent court of law and the petitioner is yet to be prove guilty in that case, however the respondents have condemned the present petitioner in the present case before trial of the above cited case and has dismissed from service which act of the respondents is against the vested constitutional rights of the petitioner.

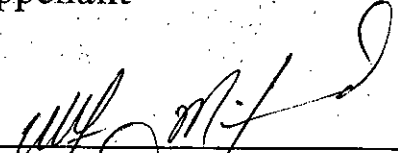
(4)

- f) That any other grounds will be raised with permission during the course of arguments.

It is, therefore, humbly requested that on acceptance of instant appeal, the order dated 03.07.2019 of respondent No. 1 may kindly be set aside, and the appellant be reinstated into service at the police department with all back benefits.

Appellant

Through


Malik Misraf
Munsif Saeed
Advocates High Court,
Peshawar

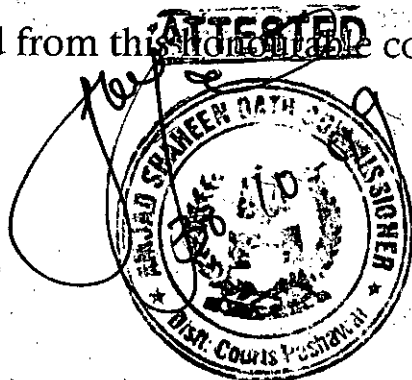
Dated: 30.10.2019

Note: No such service appeal on the same subject matter has earlier been filed before this honourable court.


ADVOCATE

AFFIDAVIT

I, **Tariq Mehmood** Ex- Driver/ Constable No. 271 (Capital City Police Peshawar) R/o Yousaf Abad, Tube Well Chowk, Street No. 5, Dalazak Road, Peshawar, do hereby solemnly affirm and declare on Oath that the contents of instant "SERVICE APPEAL" are true and correct to the best of my knowledge and belief and nothing has been concealed from this honourable court.




DEPONENT

(5)

**BEFORE THE HONOURABLE
SERVICE TRIBUNAL, KP PESHAWAR**

Service Appeal No. _____/2019

Tariq Mehmood

_____ (Appellant)

V E R S U S

Govt. of KPK through IGP and others

_____ (Respondents)

APPLICATION FOR CONDONATION OF DELAY

Respectfully Sheweth,

- 1) That the above titled Service Appeal is being filed before this hon'ble court in which no date of hearing has yet been fixed.
- 2) That the delaying occurred in filing the instant service appeal is not intentional or deliberate but due to the reasons that the petitioner being poor person was unable to arrange counsel within due period of time.
- 3) That the impugned order was also not received to the petitioner on the date mentioned on it while the petitioner himself received it from the department and thereafter filed the instant appeal.

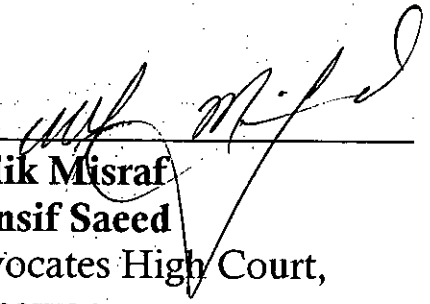
- (6)
- 4) That valuable rights of the petitioner are involved in the instant service appeal, and if the delay is not condoned the petitioner will suffer an irreparable loss.
 - 5) That any other ground will be taken and the time of arguments.

It is, therefore, most humbly prayed that on acceptance of instant application, the delay if any occurred in filing of the service appeal may kindly be condoned.

Any other relief which this hon'ble court deem proper and fit in the circumstances of the case may also be granted in favour of the appellant.

Appellant

Through



Malik Misraf
Munsif Saeed
Advocates High Court,
Peshawar

Dated: 30.10.2019

Attested to be true copy
Munsif Saqib Advocate

(12)

(7)

ORDER

Driver Constable Tariq Muhammad No.271 of Capital City Police Peshawar while posted at MT Police Lines Tatara, Peshawar is hereby placed under suspension & closed to Police Lines with immediate effect due to involvement in criminal case vide FIR No.710 dated 03.05.2019 u/s 9C CNSA PS Phari Pura Peshawar.

Charge sheet & summary of allegations is being issued to him separately.



**SUPERINTENDENT OF POLICE
HEADQUARTER PESHAWAR.**

O.B No 1767

Dated 27/5/2019

No. 1082-89/PA/SP/H.Qrs: dated Peshawar, the 27/5/2019

Copy to:

1. The Capital City Police Officer, Peshawar
2. The SSP Operations, Peshawar
3. DSP H.Qrs: Peshawar.
4. Pay Officer.
5. CRC 6. CASI.
7. FMC 8. Official concerned.

attested to be true copy

[Handwritten signature] (8)

DISCIPLINARY ACTION

I, Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that Driver Constable Tariq Muhammad No.271 has rendered him-self liable to be proceeded against under the provision of Police Disciplinary Rules-1975

STATEMENT OF ALLEGATION

"That Driver Constable Tariq Muhammad No.271 while posted at MT Police Lines, Peshawar was involved in a criminal case vide FIR No.710 dated 03.05.2019 u/s 9C CNSA PS Phari Pura Peshawar. 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 DSP - Coordination 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.

[Signature]
SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 108 /E/PA, dated Peshawar the 27/05 /2019

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

[Handwritten signature]
29/5/19

attested to be true copy
llf
(9)

CHARGE SHEET

I, Superintendent of Police, Headquarters, Peshawar, as a competent authority, hereby, charge that Driver Constable Tariq Muhammad No.271 of Capital City Police Peshawar with the following irregularities.

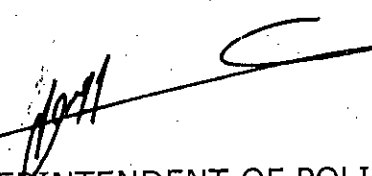
"That you Driver Constable Tariq Muhammad No.271 while posted at MT Police Lines, Peshawar were involved in a criminal case vide FIR No.710 dated 03.05.2019 u/s 9C CNSA PS Phari Pura Peshawar. This amounts to gross misconduct on your part and is against the discipline of the force."

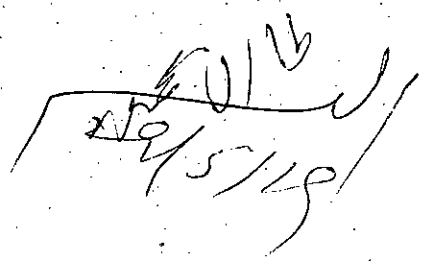
You are, therefore, required to submit your written defence within seven days of the receipt of this charge sheet to the Enquiry Officer committee, as the case may be.

Your written defence, if any, should reach the Enquiry Officer/Committee within the specified period, failing which it shall be presumed that 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


29/5/19

attested to be true copy

(10) (10)

REFERENCE ATTACHED

Subject: **ENQUIRY AGAINST DRIVER CONSTABLE TARIQ MUHAMMAD NO.271**

Please refer to the attached enquiry papers received from your good office vide: No.108/PA, dated 27.05.2019 against DFC Tariq Muhammad on the allegations;

ALLEGATION

"that he while posted at MT Police Lines, Peshawar was involved in criminal case vide FIR No.710 dated 03.05.2019 u/s 9C CNSA PS Phari Pura.

PROCEEDINGS

In order to dig-out the real facts, DFC Tariq Muhammad No.271 was called, charge sheet & summary of allegation served upon him. He was appeared and submitted his written reply.

He stated in his statement that he was baselessly involved in case FIR No.710 dated 03.05.2019 u/s 15-AA PS Pharipura. He further stated that nothing has been recovered from his possession. He has a lengthy service of 35-years & was innocent in the matter.

He was also cross examined. He could not accept the allegation & denied all the allegation. He was given an ample opportunity to defend himself but he could not produce any solid evidence in his defence.

The complainant of the case SI Malang Jan of PS Pharipura was summoned, who submit his detailed reply & stated that he received many complainants of narcotics selling against the accused driver constable Tariq Khan & strictly warned him to refrain from this act but in vain. He further stated a senior police officers contacted him on mobile & informed him about illegal activities of DFC Tariq. On the day of occurrence he was informed by informer that DFC Tariq was busy in selling narcotics. He along-with Police party stopped his car & recovered 02-packets of charras & 30 g ice from his car. The motor car & the charras & ice was took into possession arrested the accused & registered FIR against him. He also produced a special diary & a list of narcotics seller in which the name of accused official is present on the top.

Witness of the recovery memo FC Noor Islam No.1377 was summoned who submit his detail reply which support the statement of SI Malang Jan.

The second witness of recovery memo ASI Imtiaz Khan was called who submit his reply which also support the statement of FC Noor Islam NO.1377 & SI Malang Jan.

IO of the case SI Khalid Rahman of PS Pharipura was summoned & recorded his statement. He stated that after registration of the case FIR was handed over to him for further investigation. He stated that SI Malang Jan along-with other Police officials recovered 2000 gm charras & 30-gm ice from motor car No.211/WA/Islamabad which was drive by one Tariq Khan accused official. He produced the accused official for Police custody but the application was rejected by the concerned Judicial Magistrate & the accused was sent to Judicial lockup. He

attested to be true copy
04

(8) (11)

recorded the statement of the accused official. He also produce the recovery memo & FSL report which is attached with enquiry file.

RECOMMENDATIONS

After going through the enquiry papers & statements of Police officials & witness, the undersigned came to the conclusion that the accused official namely DFC Tariq is habitual narcotics & ice seller. The information of narcotics selling was communicated by the high-ups to SI Malang Jan who arrested the accused & registered proper case against him. As the accused official is serving in Police department & such act against the norms of disciplinary force.

In view of the statements recorded, source reports and other material available on record, the alleged DFC found guilty of gross misconduct and did not deserve an iota of leniency.

Therefore, he may be awarded major punishment of dismissal from service, if agreed so.

[Handwritten signature]

(NIAZ MUHAMMAD)
DY: SUPERINTEDENT OF POLICE
COORDINATION, CCP PESHAWAR

13/6/2019

W/SP-HQrs

issue Final
show Censure notice

[Handwritten signature]
Superintendent of Police
HQrs: CCP Peshawar
13/6/19

attested to be true Copy

[Handwritten signature]

(12)

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, Driver Constable Tariq Muhammad No.271 the final show cause notice.

The Enquiry Officer, DSP Coordination, after completion of departmental proceedings, has recommended you for major punishment for the charges/allegations leveled against you in the charge sheet/statement of allegations.

And whereas, the undersigned is satisfied that you Driver Constable Tariq Muhammad No.271 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.

[Handwritten signature]

SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR.

No. 108 /PA, SP/HQrs: dated Peshawar the _____/2019.

Copy to official concerned

To,

The Superintendent of Police
Headquarters, Peshawar.

attested to be true *CA*

(13)

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(1)

Subject: REPLY OF FINAL SHOW CAUSE NOTICE.

Respected Sir,

That applicant submit facts as under;

01. That the applicant was charged in a baseless criminal case vide FIR NO.710 dated 03.05.2019 u/s 15-AA PS Paharipura Peshawar.
02. That the instant criminal case was registered SI Malang Jan I/C PP Paharipura on the basis personal grudges as the applicant is also serving in Police department.
03. That the applicant was subsequently released on bail by the Hon'able Session Court.
04. That the instant criminal case is still pending/adjudication before the court of Mr. Shehzad Akhunzada learned ASJ-XII Peshawar.
05. That the applicant is innocent all in the instant criminal case and nothing has been recovered from my possession.
06. That the applicant has rendered more than 35 years' service with unblemished service.
07. That being innocent in the case the Hon'able Court of Session Judge-15 Peshawar has also released the vehicle on Superdari on 29.04.2019 being case property.

In view of the facts, it is requested that the applicant may kindly be hear in person and be reinstated in service.

Yours Sincerely,

طارق محمود
Tariq Mehmood,

Constable,
No.271,

CCD/Peshawar

attested to be true copy
[Signature]

108-2
19

(14)

ORDER

This order relates to the disposal of formal departmental enquiry against Driver Constable Tariq Muhammad No.271 on the allegations/charges that he while posted at MT Police Lines, Peshawar involved in criminal case vide FIR No.710 dated 03.05.2019 u/s 9C (NSA PS Paharipura).

In this regard, he was placed under suspension & issued charge sheet & summary of allegations. DSP Coordination was appointed as Enquiry Officer. He conducted the enquiry proceedings & submitted his report/finding that the alleged official is habitual narcotics peddler and guilty of this misconduct and did not deserve an iota of leniency. The E.O further recommended major punishment of dismissal from service for the defaulter official vide Enquiry Report dated 13.06.2019.

Upon the finding of E.O, he was issued final show cause notice to which he received & replied. He was also called & heard in person but his explanation found un-satisfactory.

In light of recommendation of E.O & other material available on record, the undersigned came to conclusion that alleged official found guilty of the misconduct as his illegal and immoral activities defame the image of police department in the eyes of general public. Therefore, he is hereby dismissed from service under Police & Disciplinary Rules-1975 with immediate effect.

Encl (36)

[Signature]
**SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR**

OB. NO. 2115 Dated 3/7/2019

No. 1380-86/PI/SP dated Peshawar on 3/12/2019

Copy of above is forwarded for information & n/action to:

- ✓ The Capital City Police Officer, Peshawar.
- ✓ DSP/HQrs, Peshawar.
- ✓ Pay Officer
- ✓ OASI, CRC & FM along-with complete departmental file.
- ✓ Official concerned

attached to be true copy
[Signature]

(15)

Dy: No.	918	PA-CCPO
Dt:	15.07.	
Encl:		

No 89 - LB
15-07-2018

To,

The Chief Capital Police,
Peshawar.

Subject:

DEPARTMENTAL APPEAL AGAINST THE ORDER NO. 2115 DATED 03.07.2019, WHEREBY THE APPELLANT WAS DISMISSED FROM THE SERVICE.

Respected Sir,

The appellant very earnestly submits as under:

- 1) That the appellant was working as Constable / Driver in Police Department. The appellant performed his duty upto the entire satisfaction of his superiors and no complaint has been filed against him.
- 2) That the charge sheet was issued to the appellant which was duly replied by the appellant and explain the reasons and denied the allegation.
- 3) That the inquiry was conducted against the appellant in which the appellant was not provided any opportunity to prove his innocence, and the inquiry officer conducted an ex-parte inquiry against the appellant without considering the stance / version of the appellant and not considering the documents furnished by the appellant.
- 4) That the appellant was issued Final Show Cause Notice to which he submitted written reply and once again denied all the allegations leveled against him.
- 5) That on the recommendations of Inquiry Officer the appellant was awarded MAJOR PUNISHMENT OF DISMISSAL from service. It is important to mention here that no dismissal order in black and white was provided to the appellant, hence for the

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Small handwritten mark or character on the right side.

Faint handwritten marks or characters on the right side.

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reason mentioned above the instant departmental is without the impugned dismissal order.

- 6) That now the appellant files the departmental appeal on the following grounds.

GROUNDS

- A) That the impugned order is against the law, rules and material on record, therefore liable to be set aside.
- B) That no regular inquiry was conducted against the appellant before imposing major penalty of dismissal from service which is not permissible in law.
- C) That no codal formalities were followed by the department before imposing the penalty which is violation of superior courts judgment.
- D) That no opportunity of personal hearing was provided to the appellant which is violation of law and rules.
- E) That the attitude and conduct of the department shows that they were bent upon to remove the appellant at any cost.
- F) That a frivolous case registered against the present appellant vide FIR No. 710 dated 03.05.2019 U/s 9C CNSA, 15AA at Police Station Pahari Pura, Peshawar wherein the present appellant was released on bail by the hon'ble Addl: Sessions Judge-XII Peshawar and after his release the appellant applied for the Superdari of vehicle bearing Registration No. WU-211 which was also accepted and the said vehicle was returned to the appellant, meaning thereby that case of prosecution in the above noted FIR was full of doubt, furthermore the said FIR was malafidely registered against the appellant by the complainant of

attested to be true copy

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(17)

that very FIR on personal grudges, as no recovery in shape of contraband was ever effected from the possession of the appellant.

G) That the appellant has been condemned unheard and has not been treated according to law and rules.

H) That the appellant has served in the police department for about 35 years and during the said period no complaint whatsoever has been registered again the appellant regarding his performance and character.

It is, therefore, most humbly requested that impugned order dated 03.07.2019 may be set aside and the appellant may be reinstated with all back and consequential benefits.

Appellant

[Handwritten signature]

Tariq Mehmood
Ex. Constable # 271
CCP Peshawar
Cell No. 0300-5850831
Cell No. 0315-9111864

Dated: 15.07.2019

DSP/L

for comments pl

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15/7

F M C

put up record pl

[Handwritten signature]
YDy. Supt: Police
15/7/19

attested to be true copy

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REFERENCE ATTACHED

[Handwritten signature]

Sir,

Applicant Ex-Constable Tariq Mehmood No. 271 has submitted departmental appeal against the punishment order of Dismissal from Service awarded by SP HQrs vide OB No. 2115 dated 03.07.2019.

Applicant was proceeded departmentally on the charges of being involved in criminal case vide FIR No. 710 dated 03.05.2019 u/s 9 CNSA PS Pharipura. Applicant was placed under suspension and DSP Co-Ordination was appointed as enquiry officer. Enquiry Officer after conducting proper departmental enquiry and completing all the codal formalities recommended the applicant for major punishment.

Final Show Cause Notice was issued by the competent authority to which he replied. Applicant was also heard in person but he could not defend himself. Therefore he was awarded major punishment of dismissal from service vide OB No. 2115 dated 03.07.2019.

Criminal and departmental proceedings can run side by side and there is no bar on award of punishment even if the criminal proceedings are pending adjudication in the court. Applicant remained involved in narcotics selling and the information to the police station was communicated by a senior police officer.

Appeal being meritless needs to be filed please.

[Handwritten signature]
**DSP/Legal,
CCP, Peshawar.**

2-9-19



Attested to be
true

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OFFICE OF THE
CAPITAL CITY POLICE OFFICER
PESHAWAR

Phone No. 091-9210989
Fax No. 091-9212597

(19)

ORDER.

This order will dispose of the departmental appeal preferred by Ex-Driver Constable Tariq Mehmood No.271 who was awarded the major punishment of "dismissal from service" under Police Rules-1975 by SP/HQrs Peshawar vide OB No.2115, dated 03-07-2019.

2- The allegations leveled against him were that he while posted at MT Staff Police Lines Peshawar was involved in criminal case vide FIR No.710, dated 03-05-2019 u/s 9C CNSA Police Stations Paharipura and subsequently was placed under suspension.

3- He was issued Charge Sheet and Summary of Allegations by SP/HQrs Peshawar and DSP Coordination was appointed as enquiry officer. The enquiry officer after conducting proper departmental enquiry submitted his finding recommended the delinquent official for major punishment. He was served with a Final Show Cause Notice for his reply but his reply was also found unsatisfactory, hence he was awarded the major punishment of Dismissal from Service by the competent authority.

4- He was heard in person in O.R. The relevant record perused along with his explanation. During personal hearing the appellant failed to produce any plausible explanation in his self defence. **Therefore, his appeal for reinstatement in service is hereby rejected /dismissed.**

(MUHAMMAD KARIM KHAN)PSP
CAPITAL CITY POLICE OFFICER,
PESHAWAR

No. 128/96 /PA dated Peshawar the 25/09/ 2019

Copies for information and n/a to the:-

1. SP/HQrs Peshawar.
2. CRC/OBC/OASI/FMC along with FM, PO
3. Officer concerned.

02/10
Recd by Hand.
19/09/19

3 - 15 (20)

IN THE COURT OF SHEHZAD AKHUNZADA
JUDGE SPECIAL COURT/ASJ-XII
PESHAWAR

attested to be
True Copy
[Signature]

BA No: 30/BA of 2019
Tariq Mehmood etc Vs State

Order
09/05/2019

APP for the State Miss Naveeda Naz present. APP
for the state and learned counsel for the accused/petitioners
argued the instant bail petition.

Accused/petitioners Tariq Mehmood s/o Naib Gul
and Rafi Ullah s/o Rehmat Ullah seeks his bail in case FIR
No. 710 Dated 03/05/2019 U/S 9-C, CNSA and 15-AA,
registered at Police Station Phari Pura, Peshawar.

[Signature]
09-05-2019

I have heard arguments and gone through the record.

Perusal of the record reveals that the
accused/petitioners have been shown to be in possession of
2000 grams of Chars recovered from the doors of motorcar
and 30 grams of Ice from the switch board of the said car
was recovered. Similarly, one 09 mm pistol No. 13008612
alongwith magazine was shown to be recovered from the
accused Tariq Mehmood while 26 live rounds were
recovered from the doors of the car.

ATTESTED

18 JUN 2019

(Examiner)

attested to be true copy

Page 2 of 3

Admittedly the recovered contrabands has not been recovered from the personal possession of the accused/petitioners rather shown to be recovered from the doors and switch board of the car.

Perusal of the record reveals that no FSL report is placed on file which could *prima facie* connects the accused/petitioners with the recovery of contrabands to be Chars and Ice. Moreover, the one license copy was produced in respect of 09 mm pistol which further negates stance of the prosecution and applicability of the section 15-AA.

Investigation in the present case has been completed and the accused/petitioners are no more required by the prosecution for further probe and investigation.

Moreover, accused/petitioners are not previous convict, hardened criminal and having no history of involvement in the past in such like cases. Case against the accused/petitioners is one of further inquiry within the ambit of Section 497(2) of Cr.PC.

In light of the above, the instant ~~bail petition is~~ ~~accepted and accused/petitioners~~ are directed to be released on bail provided they furnishes bail bonds to the tune of Rs. 1,00,000/- each with two local, reliable and resourceful sureties each in the like amount to the satisfaction of this Court.

ATTESTED

18 JUN 2019

(Examiner)
Session Court Peshawar

(4)

(14)

(21)



2-05-2013

attested to be True Copy

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It is pertinent to mention that my findings are tentative in nature and shall have no binding on the trial of accused/petitioners.

File of this Court be consigned to record room after its necessary completion and compilation while record be sent back to the quarters concerned along with copy of this order accordingly.

Announced in open Court:
09th Day of May, 2019




m.
Shehzad Akhonzada,
Judge Special Court/ASJ-XII
Peshawar

CERTIFIED TO BE TRUE COPY

18 JUN 2019

(Examiner)
Copyist Agency Session Court
Peshawar

No:	11561
Dated of Application	18-6-19
Name of Application	19/16
Word	2200 P-8
Fee	Urgent/Fee
Signature of Copyist & Date	18-6-19/19
Dated of Preparation	18-6-19/19
Date of Delivery	18-6-19

قیمت 50 روپے	28830	  
ایڈوکیٹ: <u>صاحب صاحبہ</u> بار کونسل ایسوسی ایشن نمبر: <u>611-1916</u> رابطہ نمبر: <u>0345-9429198</u>		

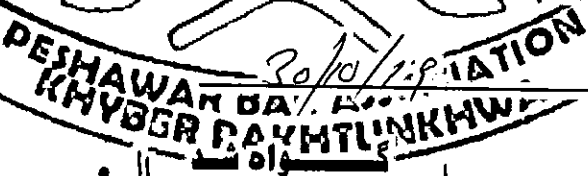
پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: سروس برائے سٹوڈنٹ

منجانب: <u>صاحب صاحبہ</u>	دعویٰ: <u>Service Appeal</u>
طریقہ <u>معلوم</u>	علت نمبر:
بنام	مورخہ:
<u>گورنمنٹ ہسپتال</u>	جرم:
	تھانہ:

باعت تحریر آئکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ گورنمنٹ ہسپتال کے آن مقام پر کیے گئے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کمال اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق و زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری کی طرف سے یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخست منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ اتوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے



المقام کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی فونو کاپی نام قابل قبول ہوگی۔

29/09

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.1439/2019.

Tariq Mehmood Ex- Driver constable No.271 of CCP, Peshawar.....Appellant.

VERSUS.

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

REPLY BY RESPONDENTS NO. 1, 2, 3,4&5.

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 parties.
3. That the appellant has not come to Hon'able Tribunal with clean hands.
4. That the appellant has no cause of action and locus standi.
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 Honorable Tribunal.
7. That the appeal is not maintainable being devoid of merit.

FACTS:-

- (1) Correct to the extent that the appellant was appointed as Deriver constable in the year 1986 in the respondents department.
- (2) Incorrect. The appellant while posted at MT staff in Police Line Peshawar, as involved himself in a criminal case vide FIR No.710 dated 03.05.2019 u/s 9C CNSA PS Paharipura. In this regard, he was issued charge sheet with statement of allegations. DSP Coordination was appointed as Enquiry Officer, who after conducting a departmental proceeding and probe into the matter submitted his findings report, wherein he held the appellant guilty. Upon the findings of enquiry officer he was issued final show cause notice, which he received but his reply was found unsatisfactory. After fulfilling all codal formalities, he was awarded major punishment of dismissal from service. (Copy of charge sheet, statement of allegations, enquiry report, and final show cause notice are annexed as annexure "A" "B" "C" "D")
- (3) Incorrect. Besides booking down in criminal case a proper departmental enquiry into the charges was also initiated by the competent authority, wherein he was found guilty of the charges as such he was awarded punishment as per gravity of his misconduct.

- (4) Incorrect. Charge sheet with statement of allegations was served upon him. Regular inquiry was conducted and thereafter he was issued a final show cause notice hence after fulfilling all the codal formalities he was awarded the major punishment of dismissal from service.
- (5) Correct to the extent, that the appellant filed departmental appeal which after due consideration was filed/rejected by the appellate authority because the charges leveled against him were proved.
- (6) Incorrect. The appellant was issued charge sheet with summary of allegations. Proper departmental enquiry was conducted against him in accordance with law/rules. The enquiry officer after conducting enquiry recommended that the charges leveled against him proved and found guilty of misconduct. After completion of the enquiry proceedings, the appellant was issued final show cause notice.


The appeal of the appellant being devoid of merits may kindly be dismissed.

GROUND:-


- A. Incorrect. The punishment orders passed by the competent authority are in accordance law/rules.
- B. Incorrect. The appellant was treated as per law/rules and no violation of the constitution of Pakistan 1973 has been done by the respondents department.
- C. Incorrect. Proper charge sheet with statement of allegation was issued to him. Detailed departmental enquiry was conducted as per law/rules and the enquiry officer reported that charges leveled against the appellant were proved. The whole enquiry was conducted purely on merit. The appellant was provided full opportunity of defense, but the appellant failed to defend himself. After fulfilling all the codal formalities he was awarded the major punishment.
- D. Incorrect and denied. The appellant committed a gross misconduct and he defamed the image of police department in the eyes of general public. After fulfilling all of codal formalities, the charges leveled against him were proved, hence he was awarded the major punishment.
- E. Incorrect. As already explained in detailed in the above para. Moreover, Court proceedings and departmental proceedings are two different entities which can run side by side. His act brought a bad name for the entire force, hence he was awarded major punishment.
- F. Respondents also seek permission of this Honorable Tribunal to raise additional grounds at the time of arguments.

PRAYER.

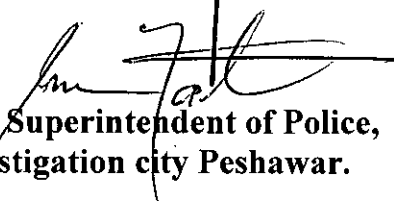
It is therefore most humbly prayed that in light of above facts and submissions, the appeal of the appellant being devoid of merits and legal footing, may kindly be dismissed with costs please.


Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar


Capital City Police Officer,
Peshawar.


Senior Superintendent of Police,
Investigation, Peshawar.


Deputy Superintendent of Police,
Coordination, Peshawar.


Deputy Superintendent of Police,
Investigation city Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.1439/2019.

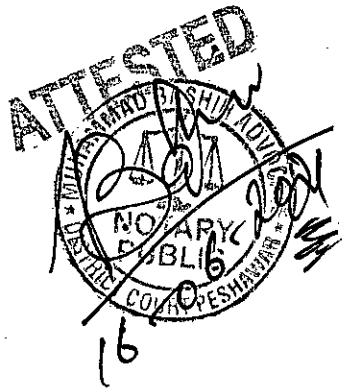
Tariq Mehmood Ex- Driver constable No.271 of CCP, Peshawar.....**Appellant.**


VERSUS.


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


AFFIDAVIT.

We respondents 1, 2,3,4 and 5 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 Honorable Tribunal.

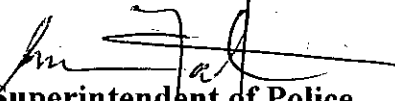



Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.


Capital City Police Officer,
Peshawar.


Senior Superintendent of Police,
Investigation, Peshawar.


Deputy Superintendent of Police,
Coordination: Peshawar.


Deputy Superintendent of Police,
Investigation city Peshawar.

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CHARGE SHEET

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge that Driver Constable Tariq Muhammad No.271 of Capital City Police Peshawar with the following irregularities.

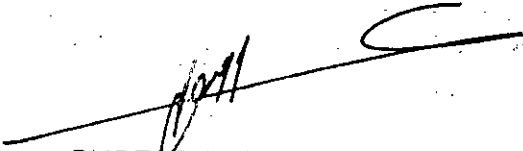
"That you Driver Constable Tariq Muhammad No.271 while posted at MT Police Lines, Peshawar were involved in a criminal case vide FIR No.710 dated 03.05.2019 u/s 9C CNSA PS Phari Pura Peshawar. This amounts to gross misconduct on your part and is against the discipline of the force."

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 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

B

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DISCIPLINARY ACTION

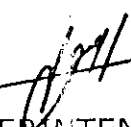
I, Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that Driver Constable Tariq Muhammad No.271 has rendered him-self liable to be proceeded against under the provision of Police Disciplinary Rules-1975

STATEMENT OF ALLEGATION

"That Driver Constable Tariq Muhammad No.271 while posted at MT Police Lines, Peshawar was involved in a criminal case vide FIR No.710 dated 03.05.2019 u/s 9C CNSA PS Phari Pura Peshawar. 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 DSP - Coordination 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. 108 E/PA, dated Peshawar the 27 /05 /2019

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

2. Official concerned

C
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REFERENCE ATTACHED

Subject: **ENQUIRY AGAINST DRIVER CONSTABLE TARIQ MUHAMMAD NO.271**

Please refer to the attached enquiry papers received from your good office vide: No.108/PA, dated 27.05.2019 against DFC Tariq Muhammad on the allegations;

ALLEGATION

"that he while posted at MT Police Lines, Peshawar was involved in criminal case vide FIR No.710 dated 03.05.2019 u/s 9C CNSA PS Phari Pura.

PROCEEDINGS

In order to dig-out the real facts, DFC Tariq Muhammad No.271 was called, charge sheet & summary of allegation served upon him. He was appeared and submitted his written reply.

He stated in his statement that he was baselessly involved in case FIR No.710 dated 03.05.2019 u/s 15-AA PS Pharipura. He further stated that nothing has been recovered from his possession. He has a lengthy service of 35-years & was innocent in the matter.

He was also cross examined. He could not accept the allegation & denied all the allegation. He was given an ample opportunity to defend himself but he could not produce any solid evidence in his defence.

The complainant of the case SI Malang Jan of PS Pharipura was summoned, who submit his detailed reply & stated that he received many complainants of narcotics selling against the accused driver constable Tariq Khan & strictly warned him to refrain from this act but in vain. He further stated a senior police officers contacted him on mobile & informed him about illegal activities of DFC Tariq. On the day of occurrence he was informed by informer that DFC Tariq was busy in selling narcotics. He along-with Police party stopped his car & recovered 02-packets of charras & 30 g ice from his car. The motor car & the charras & ice was took into possession arrested the accused & registered FIR against him. He also produced a special diary & a list of narcotics seller in which the name of accused official is present on the top.

Witness of the recovery memo FC Noor Islam No.1377 was summoned who submit his detail reply which support the statement of SI Malang Jan.

The second witness of recovery memo ASI Imtiaz Khan was called who submit his reply which also support the statement of FC Noor Islam NO.1377 & SI Malang Jan.

IO of the case SI Khalid Rahman of PS Pharipura was summoned & recorded his statement. He stated that after registration of the case FIR was handed over to him for further investigation. He stated that SI Malang Jan along-with other Police officials recovered 2000 gm charras & 30-gm ice from motor car No.211/WA/Islamabad which was drive by one Tariq Khan accused official. He produced the accused official for Police custody but the application was rejected by the concerned Judicial Magistrate & the accused was sent to Judicial lockup. He

recorded the statement of the accused official. He also produce the recovery memo & FSL report which is attached with enquiry file.

RECOMMENDATIONS

After going through the enquiry papers & statements of Police officials & witness, the undersigned came to the conclusion that the accused official namely DFC Tariq is habitual narcotics & ice seller. The information of narcotics selling was communicated by the high-ups to SI Malang Jan who arrested the accused & registered proper case against him. As the accused official is serving in Police department & such act against the norms of disciplinary force.

In view of the statements recorded, source reports and other material available on record, the alleged DFC found guilty of gross misconduct and did not deserve an iota of leniency.

Therefore, he may be awarded major punishment of dismissal from service, if agreed so.

(NIAZ MUHAMMAD)
DY: SUPERINTEDENT OF POLICE
COORDINATION, CCP PESHAWAR

13/6/2019

W/SP-HQrs

issue final
show cause notice

13/6/19
Superintendent of Police
HQrs: CCP Peshawar.

D
(2)

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, Driver Constable Tariq Muhammad No.271 the final show cause notice.

The Enquiry Officer, DSP Coordination, after completion of departmental proceedings, has recommended you for major punishment for the charges/allegations leveled against you in the charge sheet/statement of allegations.

And whereas, the undersigned is satisfied that you Driver Constable Tariq Muhammad No.271 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. 108 /PA, SP/HQrs: dated Peshawar the 15-6-2019.

Copy to official concerned

Accused

1980/6
17-6-19

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR

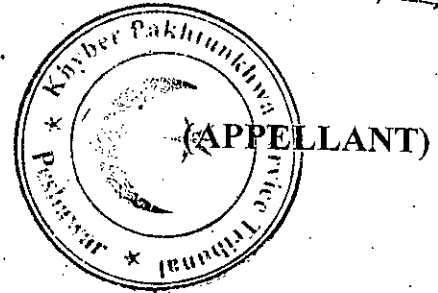
APPEAL NO. 6598 /2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 5250

Dated 19/5/2021

Imran-Ud-Din, Ex-S.I No. 1375/P,
Police Station Agha Mir Jani Shah, Peshawar.



VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Capital City Police Officer, Peshawar.
3. The Senior Superintendent of Police (Operation) Peshawar.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST
THE ORDER DATED 28.12.2020 WHEREBY THE
APPELLANT WAS DISMISSED FROM SERVICE AND
AGAINST THE ORDER DATED 20.04.2021 WHEREBY THE
DEPARTMENTAL APPEAL OF THE APPELLANT HAS
BEEN REJECTED FOR NO GOOD GROUNDS.

Filed to-day

Registrar

19/5/2021

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL, THE
IMPUGNED ORDER DATED 28.12.2020 AND 20.04.2021 MAY
KINDLY BE SET-ASIDE AND THE RESPONDENTS MAY BE
DIRECTED TO REINSTATE THE APPELLANT INTO HIS
SERVICE WITH ALL BACK AND CONSEQUENTIAL
BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST
TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY
ALSO BE AWARDED IN FAVOUR OF THE APPELLANT.

ATTESTED


REGISTRAR
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 6598/2021

Date of Institution 19.05.2021

Date of Decision ... 22.12.2021



Imran-Ud-Din, Ex-S.I No. 1375/P, Police Station Agha Mir Jani Shah, Peshawar
... (Appellant)

VERSUS

The Provincial Police Officer, Khyber-Pakhtunkhwa, Peshawar and two others.
... (Respondents)

Asif Yousafzai,
Advocate

For Appellant

Noor Zaman Khattak,
District Attorney

For respondents

AHMAD SULTAN TAREEN ...
ATIQU-UR-REHMAN WAZIR ...

CHAIRMAN
MEMBER (EXECUTIVE)

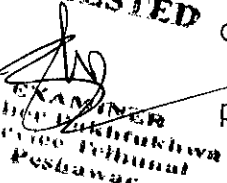
JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):-

This single judgment shall dispose of the instant service appeal as well as the connected Service Appeal bearing No. 6599/2021 "titled Sheryar Ahmed Versus Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and two others" as common question of law and facts are involved therein.

02. Brief facts of the case are that the appellants, while serving as SHOs in police stations, were charged in FIR Dated 24-06-2020 U/Ss 166/342/355PPC read with section 118 & 119 of Police Act, 2017 and section 20/21/22 and 24 of cyber crime Act, 2016. Consequently, the appellants were arrested and proper criminal procedure initiated against them. Simultaneously, departmental proceedings were also initiated against them and were ultimately awarded with

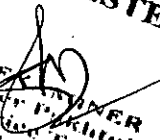
ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

major punishment of dismissal from service vide order dated 28-12-2020. Feeling aggrieved, the appellants filed separate departmental appeals, which were also rejected vide order dated 20-04-2021, hence the instant service appeals with prayers that the impugned orders dated 28-12-2020 and 20-04-2021 may be set aside and the appellants may be re-instated in service with all back benefits.

03. Learned counsel for the appellants has contended that the impugned orders are against law, facts and norms of natural justice, hence not tenable and liable to be set at naught; that the appellants has not been treated in accordance with law and their rights secured under the Constitution has badly been violated; that the appellants were not afforded appropriate opportunity of defense, as no regular inquiry was conducted against the appellants; that during the course of disciplinary proceedings, the appellants were behind the bars, inspite they were not associated with proceedings of the inquiry, as such the impugned orders are liable to be set aside on this score alone; that neither statements of the witnesses were recorded in presence of the appellants nor any opportunity was afforded to the appellants to cross-examine such witnesses; that the appellants were not directly charged in FIR, but upon the statement of the complainant u/s 164 CrPc, the appellants were nominated in that criminal case; that no statement of the complainant was recorded in presence of the appellants during the inquiry proceedings, which was a mandatory step in disciplinary proceedings; that no charge sheet was communicated to the appellants inspite of the fact that the appellants were in jail and it was very easy for the respondents to serve show cause notice through superintendent of Jail, which however was not done in case of the appellants; that show cause notice was issued to the appellants on 24-12-2020, which was received by Superintendent of Jails on 28-12-2020 and handed over to the appellants on the same day; that on the same day i.e. 28-12-2020, the appellants were dismissed from service, which shows malafide on part of the respondents; that the appellants were involved in a criminal case and as per CSR-

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 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

194-A, the appellants were required to be suspended from service till the conclusion of the criminal case pending against them, but the respondents without waiting for decision in the criminal case, dismissed the appellants from service in violation of CSR-194.

04. Learned District Attorney for the respondents has contended that the appellants were proceeded departmentally on the charges of subjecting one Radiullah alias Aimeray Tehkalay to inhuman and degrading treatment; that a criminal case was also registered against them u/s 166/342/355 PPC read with section 118 and 119 of KP Police Act, 2017 and sections 20/21/22 and 24 of cyber crime Act, 2016; that the appellants were proceeded against departmentally on the same very charges and they were served with charge sheet/statement of allegations and SP City was appointed as inquiry officer; that during the course of inquiry, the inquiry officer found them guilty of the charges leveled against them; that upon receipt of findings of the inquiry officer, the appellants were issued final show cause notices; that after observing all the codal formalities, the appellants were awarded with appropriate punishment of dismissal from service vide order dated 28-12-2020.

05. We have heard learned counsel for the parties and have perused the record.


06. In order to fully appreciate the issue in hand, it would be useful to have a glimpse of the background of the case. Record reveals that a video was made viral on social media by unknown persons, where one Mr. Ridiullah alias Amir Tehkalay can be seen drunken, abusing senior police officers, which attracted wrath of police in shape of an FIR lodged against him in police station Yakatut, thereafter another video of Amir was made viral, where he is seen apologizing for his abusive language in his first video. After few days, another video of the same person went viral, wherein police officials can be seen inflicting brutal torture on him and striping him naked. High-handedness of police in the video came to the

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

limelight, which was agitated and condemned from every corner including print and electronic media and which necessitated the senior police officials to take action against those involved in the issue. In the first place, an FIR U/Ss 166/342/355 PPC read with sections 118, 119 of Khyber Pakhtunkhwa Police Act, 2017 and sections 20/21/22/ & 24 of Cyber Crime Act, 2016 dated 24-06-2020 was registered against three police officials, namely ASI Zahir Ullah and constables Tauseef and Naeem, who can be clearly seen in the video. Amir, the victim, was produced before the court of judicial magistrate, who in his statement dated 01-07-2020 recorded U/S 164 CrPc; interalia had divulged that he was tortured by police on the directions of both the appellants, who at that time were SHO PS Yakatut and PS Tehkal, hence names of the appellants were also inserted in the FIR dated 24-06-2020 and both the appellants were arrested on 01-07-2020.

07. On the other hand, departmental proceedings were also initiated against the appellants. Being involved in a criminal case, the respondents were required to suspend the appellants from service under section 16:19 of Police Rules, 1934, which specifically provides for cases of the nature. Provisions of Civil Service Regulations-194-A also supports the same stance, hence the respondents were required to wait for the conclusion of the criminal case, but the respondents hastily initiated departmental proceedings against the appellants and dismissed them from service before conclusion of the criminal case. It is a settled law that dismissal of civil servant from service due to pendency of criminal case against him would be bad unless such official was found guilty by competent court of law. Contents of FIR would remain unsubstantiated allegations, and based on the same, maximum penalty could not be imposed upon a civil servant. Reliance is placed on PLJ 2015 Tr.C. (Services) 197, PLJ 2015 Tr.C. (Services) 208 and PLJ 2015 Tr.C. (Services) 152.

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 Khyber Pakhtunkhwa
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 Peshawar

08. Placed on record is charge sheet/statement of allegations dated 03-07-2020 containing the charges as discussed above and probable involvement of the appellants in the brutality and recording and making viral the videos of the victim. Record would suggest that such charge sheet/statement of allegations were not served upon the appellants, as the appellants at that particular time were in jail and it was very easy for the respondents to serve it upon the appellants through superintendent Jail, but the respondents confined its proceedings only to the extent of fulfillment of a formality, which shows malafide on part of the respondents. The allegations so leveled against the appellants are mainly based on the statement of the complainant, but it was responsibility of the inquiry officer to prove the charges leveled by the complainant, but the inquiry officer did not bother to conduct a proper inquiry and while sitting in his office, wrote a two page report, which is of no value in the eye of law. The authorized officer failed to frame the proper charge and communicate it to the appellant's alongwith statement of allegations explaining the charge and other relevant circumstances proposed to be taken into consideration. Framing of charge and its communication alongwith statement of allegations was not merely a formality but it was a mandatory pre-requisite, which was to be followed. Reliance is placed on 2000 SCMR 1743.

09. Report of the inquiry so conducted was submitted on 24-11-2020, but it cannot be termed as a regular inquiry, as the same is replete with deficiencies. The inquiry officer did not bother to associate the appellants with the inquiry proceedings knowing the fact that the appellants are behind the bars, rather he has observed in his report that the appellants were called through summons/parwanas to attend his office, but they did not appear before the inquiry officer. It is ridiculous on part of the inquiry officer summoning a person, who is behind the bars and not taking the pain to attend to them in jail, which clearly shows that neither the appellants were associated with proceedings of the


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[Signature]
 MINER
 Service Tribunal
 Islamabad

inquiry nor were they afforded any opportunity to defend their cause. Such an act on part of the inquiry officer is a clear manifestation of professional dishonesty and shirking responsibility, which raises a question as to what would be the evidentiary value of the contents of the inquiry report. The appellants were very clearly discriminated, which however was not warranted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice.

10. In the inquiry so conducted, no effort has been made to prove the charges leveled against them, nor statements of any witnesses were recorded. In absence of any solid proof, the inquiry officer only relied on his own wisdom. In a manner, the appellants were deprived of the right to cross-examine witnesses resulting in manifest injustice. Reliance is placed on 2008 SCMR 609 and 2010 SCMR 1554. Since the appellants were in jail, hence, they were unable to appear before the inquiry officer, but the inquiry officer was duty bound to associate them even in jail and to afford them opportunity of personal hearing, which however was not afforded by the respondents and which smacks malafide on part of the respondents. It is a cardinal principle of natural justice of universal application that no one should be condemned unheard and where there was likelihood of any adverse action against anyone, the principle of Audi Alteram Partem would require to be followed by providing the person concerned an opportunity of being heard. The inquiry officer mainly relied on hearsay with no solid evidence against the appellants. Mere reliance on hearsay and that too without confronting the appellants with the same had no legal value and mere


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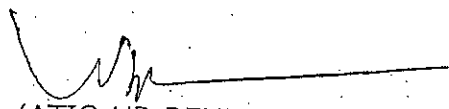

 Attestor
 District Judge
 District Court
 Peshawar

opinion that the departmental proceedings were not conducted in accordance with law. The authority, authorized officer and the inquiry officer badly failed to abide by the relevant rules in letter and spirit. The procedure as prescribed had not been adhered to strictly. All the formalities had been completed in a haphazard manner, which depicted somewhat indecent haste. The allegations so leveled had not been proved. The appellants suffered for longer for a charge, which is not yet proved.

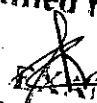
13. In circumstances, the instant appeal as well as connected Service Appeal bearing No. 6599/2021 "titled Sheryar Ahmed Versus Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and two others" are accepted. The impugned orders dated 28-12-2020 and 20-04-2021 are set aside and the appellants are re-instated into service. The intervening period is treated as leave of the kind due. The respondents still have an option under the provisions contained in Rule 16:2(2) of Police Rules, 1934, if decision in the criminal case was found adverse. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
22.12.2021


(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

Certified to be true copy


MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 19/01/22
Number of Words 3200
Copying Fee 34/-
Urgent 4/-
Total 38/-
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Date of Completion of Copy 19-01-22
Date of Delivery of Copy 19-01-22



**KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

No. 1144 /ST

Dated: 24/1 /2022

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262


To

The Inspector General of Police/ Central Police Office,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: JUDGMENT IN APPEAL NO. 1439/2019 MR. TARIQ MEHMOOD.

I am directed to forward herewith a certified copy of Judgement dated 19.01.2022 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR