

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.157/2022.

Syed Sajid Ali Shah Junior Scale Stenographer of CCP Peshawar..... **Appellant.**

VERSUS

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

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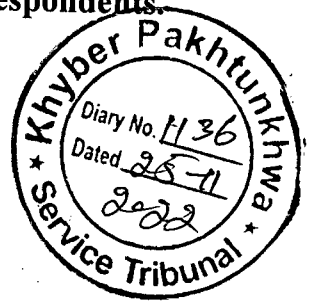
Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. . **Respondents.**

REPLY BY RESPONDENTS NO. 1 to 4.

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'ble Tribunal with clean hands.
4. That the appellant has no cause of action and locus standi to file instant appeal.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from this Hon'ble Tribunal.
7. That the appeal is not maintainable being devoid of any merit.



REPLY ON FACTS:-

1. Pertains to record.
2. First part of Para pertains to record while rest of Para denied on the grounds that the appellant was posted with DPO Khyber indulge himself in various corrupt practices and also found in grouping with convenience of another Senior Clerk. Both the officials were found interfering in affairs of everyone to extort gratification/money. The appellant also filed false/anonymous complaints against the staff in order to obtain desired posting which badly hampered the official work of the department.
3. Incorrect and based on concocted material, in fact the appellant had unique modes oprinde and was inhabit to file unfounded complaint against innocent staff of Khyber Police just to achieve his unlawful objectives. On exposing his evil act he was taken to task by conducting a Departmental Enquiry into the charges.
4. Incorrect. The appellant was issued charge sheet with statement of allegations to which he replied but his reply was found unsatisfactory.
5. Incorrect. The Enquiry Officer conducted inquiry into the charges, but without observing codal formalities and laid down rules of the enquiry, submitted findings not based on genuine grounds, therefore the Competent Authority after thorough probe into the enquiry did not agree and passed order for de-novo enquiry.
6. Incorrect. After submission of finding report by the enquiry officer, the competent authority has minutely gone through it, the material on record and other connected paper including the defense of appellant was examined and remarked that "not agree initiate de-novo enquiry". During the course of de-novo enquiry, the appellant failed to rebut

the charges and the enquiry officer conducted thorough probe into the matter and found the appellant guilty of the charges.

7. Incorrect. After completion of the enquiry proceedings he was issued final show cause notice, which he replied but his explanation was found unsatisfactory. After fulfillment of all codal formalities he was awarded Major punishment of removal from service. (Copy of charge sheet, statement of allegations, enquiry report, Final Show Cause Notice are annexure as A,B,C,D)
8. Incorrect. The competent authority before imposing the major punishment had completed all codal formalities and an ample opportunity of self defense was provided to appellant, but he failed to defend himself. Furthermore, the august apex court held number of dicta that accepting illegal gratification is a heinous offence for a civil servant, who is found guilty on the offence, cannot be retained in the civil service.
9. Correct to the extent that the appellant filed departmental appeal which was thoroughly processed and sufficient opportunity of hearing was provided to him. The competent authority took a lenient view and partially accepted his appeal and the Major punishment of removal from service was converted into minor penalty of forfeiture of two years approved service.
10. Incorrect. Order passed by the competent authority is legal and lawful hence is liable to be maintained. Moreover, appeal of the appellant being devoid of merits and limitation may be dismissed on the following grounds.

REPLY ON GROUNDS:-

- A. Incorrect. The order passed by the competent authority is legal and lawful liable to be upheld.
- B. Incorrect. The appellant was treated as per law/rules and no article of Constitution of Pakistan 1973 has been violated by the replying respondents.
- C. Incorrect. The punishment awarded by the competent authority as per law/rules.
- D. Incorrect. After completion of the enquiry proceedings, mentioning of Police Rules 1975 in the Final Show Cause Notice is a clerical mistake, however final show cause notice was issued which prima facie suggest that all legal formalities were fulfilled while awarding punishment.
- E. Incorrect. De-novo enquiry was conducted against him. During the course of enquiry, the appellant failed to rebut the charges and the enquiry officer conducted thorough probe into the matter and found the appellant guilty of the charges.
- F. Incorrect. The appellant was associated with the enquiry proceedings and proper opportunity of defense was provided to appellant. He failed to defend the charges leveled against him. The enquiry officer after detail probe reported that the charges were proved.
- G. Incorrect. The charges leveled against the appellant were proved, hence the punishment order was passed in accordance with facts and rules.


- H. Incorrect. As per Apex Court judgment and law, the Competent Authority is not bound to follow the recommendation of the enquiry officer rather the Competent Authority should apply his own independent mind and to decide the issue in accordance with the material available.
- I. Incorrect. The allegations were proved against the appellant hence was reprimanded as per law/rules. Therefore liable to be upheld.
- J. Incorrect. The appellant availed the opportunity of defense and was also heard in person to explain his innocence but failed.
- K. Incorrect. However the performance of appellant during service was not upto the mark being involved in grouping and gratification.
- L. Respondents also seek permission of this Hon'ble Tribunal to raise additional grounds at the time of arguments.

PRAYER.

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


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


**Capital City Police Officer,
Peshawar.**


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


**District Police Officer,
Khyber.**

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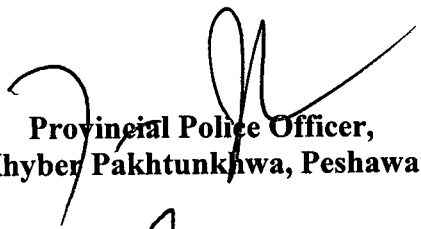
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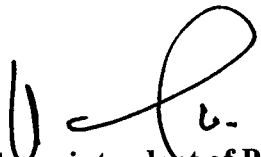
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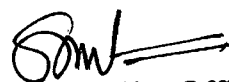
AFFIDAVIT

We respondents No. 1 ,2 , 3& 4 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Hon'ble Tribunal.


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


**Capital City Police Officer,
Peshawar.**


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


**District Police Officer,
Khyber.**

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AUTHORITY.

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

**Capital City Police Officer,
Peshawar.**



Annexure A

CHARGE SHEET

I, Sr: Superintendent of Police, Coordination, Capital City Police Peshawar, as a competent authority, hereby, charge Steno Typist Sajid for the following irregularities.

DPO Khyber reported vide his office letter No. 1050/PSO dated 02.04.2021 that you while posted in the office of DPO Khyber (now in CPC), was found indulged in grouping with the convenience of SC Sibghatullah, making interference in the affairs of everyone to extort gratification/money. You also filed anonymous complaints against the staff of DPO/Khyber in order to obtain desired posting. Due to your malicious practice staff of DPO & official work has badly suffered and the complaints filed through PMDU brought bad name for police.


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.


SENIOR SUPERINTENDED OF POLICE,
COORDINATION, PESHAWAR

DISCIPLINARY ACTION

Annexure B (36)

I, Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that Steno Tapest Sajid has rendered him-self liable to be proceeded against under the provision of ED Disciplinary Rules-1975

STATEMENT OF ALLEGATION.

DPO Khyber reported vide his office letter No. 1050/PSO dated 02.04.2021 that he (Steno Tapest) while posted in the office of DPO Khyber (now in CPC), was found indulged in grouping with the convenience of SC Sibghatullah, making interference in the affairs of everyone to extort gratification/money. He also filed anonymous complaints against the staff of DPO/Khyber in order to obtain desired posting. Due to his malicious practice, staff of DPO Khyber & official work has badly suffered and the complaints filed through PMDU brought bad name for police.

This amounts to gross misconduct on your 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 H.R. is appointed as Enquiry Officer.

2. The Enquiry Officer shall, in accordance with the provisions of the ED 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.

Bani
SENIOR SUPERINTENDED OF POLICE,
COORDINATION, PESHAWAR

No. 129 /PA/Coord: dated Peshawar the 19-04 /2021.

1. Tayyab Jan DSP/H.R. is directed to finalize the aforementioned departmental proceeding within stipulated period under the provision of Police Rules-1975.

2. Official concerned

Annexure C

No. 1402 IST
Dated 16.06.2021.
Enclosures (8).

R/Sir,

ENQUIRY REPORT ON COMPLAINT AGAINST STENO SAJID ALI SHAH.

Please refer to your Office No.129 /PA/Coord: dated 19.04.2021.

The instant enquiry has been initiated against Steno Typist Sajid Ali Shah on the allegation that he while posted at the office of DPO Khyber committed the following misconducts:-

- That he was found indulged in grouping with the convenience of S/Clerk Sibghatullah.
- He makes interference in the affairs of everyone to extort gratification.
- He filed anonymous complaints against the staff of DPO Khyber in order to desired posting.
- He bought a bad name to Police for filing complaint against the staff of DPO Khyber through PMDU.

For completion of departmental enquiry, the defaulter was called to the office and his statement has been recorded (F/A):-

The defaulter Steno Typist spurned the allegations in his statement. He further deposed that actually all the allegations have been fixed by Constable Adnan who is posted in the office of DPO Khyber, running all the office affairs of DPO Khyber. He miss-led the DPO Khyber to continue his duty as Incharge. Moreover, the allegations leveled against him are due to professional jealousy and there is no fact in the allegations.

To scrutinize the statement of alleged Steno Typist (Sajid Ali Shah), FC Adnan was called time and again but he did not bother to attend the enquiry proceedings. Therefore the DPO Khyber was approached but with no result.

Keeping in view the above, star witness Adnan (PSO) to DPO Khyber deliberately avoiding to appear before the undersigned to record his statement.

Furthermore, both the officials have already been closed to Police Lines upon the under discussion complaint. Therefore, if agreed the inquiry in hand may be filed without further proceedings.

PA 83

Dy: Superintendent of Police
HQrs: CCP Peshawar.

W / SSP Coordination:

Not agreed
initiate De-novo
enq.

APW



11.02.2021

Annexure C

CAPITAL CITY POLICE PESHAWAR
SENIOR SUPERINTENDENT OF POLICE INVESTIGATION PESHAWAR.

No. 2030 /PA, Dated Peshawar the 02 / 07 /2021

Office Phone No. 091-9210642

Reference attached

Kindly refer to your office Dy No. 162/PA/Coord: dated 25.06.2021.

It is submitted that I have gone through the file & found that Steno Syed Sajjid Ali Shah and S/Clerk Sibghat Ullah was subjected to departmental proceedings on the following serious allegations leveled against them by their senior officer i.e DPO Khyber.

- That steno typist Sajjid Ali Shah was found indulged in grouping with the connivance of Senior Clerk Sibghat Ullah and vice versa.
- Both makes interference in the affairs of everyone to extort gratification.
- Both filed anonymous complaints against the staff of DPO, Khyber in order to get desired posting.
- Both bought a bad name to Police for filling complaint against the staff of DPO Khyber through PMDU.

DSP Hqrs was appointed enquiry officer. During the course of enquiry, the delinquent officers miserably failed to defend themselves rather attempted to shift responsibility on the shoulders of others and mentioned few of them for the misconduct although they have no concern with the matter. They were also called but didn't appear and the incomplete enquiry ended dramatically with the recommendations that the accused officers may be exonerated.


I am at loss to understand as to how and why the enquiry officer turned so kind with above recommendations without an iota of evidence in support of his findings & recommendation.

It is therefore submitted that the enquiry file either may be returned to the enquiry officer for its completion & after proper proceedings revisit his recommendations against the serious charges leveled by a senior officer against the accused's. OR

The competent authority may like to go against the recommendations of the Enquiry officer (which is otherwise not a binding factor) keeping in view the failure of defense by the delinquent officer may award Major or Minor punishment as the case may be.

Submitted, please.

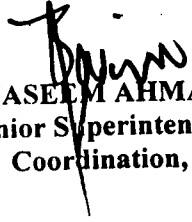
(Enclosed 52 pages)


**Senior Superintendent of Police,
Investigation
Capital City Police, Peshawar.**



FINAL SHOW CAUSE NOTICE
(Under Police Disciplinary Rules, 1975)

1. I, Waseem Ahmad Khalil, Senior Superintendent of Police (Coordination) Peshawar as competent authority, under the Police Disciplinary Rules 1975, do hereby serve you Stenotypist Sajid Ali Shah Estate as follows:-
 2. (i) That consequent upon completion of the departmental enquiry conducted against you by SSP Investigation, Peshawar who found you guilty of the charges for which you were given opportunity of personal hearing;
 - (ii) Ongoing through the findings and recommendations of the inquiry officer, the material on record and other connected papers including your defense before the said officer; I am satisfied that you have committed the following misconducts;
- 2). "It has been reported by DPO Khyber vide his letter No. 1050/PSO dated 02.04.2021 that you (Stenotypist) while posted in the office of DPO Khyber, was found indulged in grouping with the convenience of SC Sibghat Ullah, making interference in the affairs of everyone to extort gratification/money. You also filed anonymous complaints against the staff of DPO Khyber in order to obtain desired posting. Due to your malicious practice, staff of DPO Khyber & official work has badly suffered and the complaints filed through PMDU brought bad name for police."
- 3 As a result thereof I, Waseem Ahmad Khalil, Senior Superintendent of Police (Coordination) Peshawar as Competent Authority decided to impose upon you major/minor penalty including dismissal from service under the said Rules.
4. You are, therefore, require to Show.Cause as to why the aforesaid penalty should not be imposed upon you.
5. If no reply to this notice is received within 7-days of its delivery, it shall be presumed that you have no defense to put in and in that case an ex-parte action shall be taken against you.
6. You are at liberty to be heard in person, if so wished.


(WASEEM AHMAD KHALIL)
Senior Superintendent of Police,
Coordination, Peshawar

No 166 /PA dated Peshawar the 7 / 7 /2021