# BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

## Service Appeal No. 1351/2022.

Waseem Abbas Ex-FC No. 74...... Appellant

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VERSUS

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# BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

### Service Appeal No. 1351/2022.

Waseem Abbas Ex-FC No. 74...... Appellant

#### VERSUS

## WRITTEN REPLY ON BEHALF OF RESPONDENTS.

#### 1. <u>Preliminary Objections.</u>

- 1. That the appellant has got no Cause of action and locus standi to file the present appeal.
- 2. That the appeal is bad due to misjoinder and nonjoinder of necessary parties.
- 3. That the appeal is time barred.
- 4. That the appellant has not come to the Tribunal with clean hands.
- 5. That this Hon'ble Tribunal has got no jurisdiction to entertain the present appeal.
- 6. That the instant appeal is not maintainable in its present form.
- 7. That the appellant concealed the material facts from this Hon'ble Tribunal.
- 8. That the appellant has been estopped by his own conduct to file the appeal.

### 2. <u>REPLY ON FACTS.</u>

- 1. Para No. 01 of appeal pertains to record, hence no comments.
- 2. In reply to para 2, it is submitted that both the FIRs registered in Police Stations Kalu Khan & Yar Hussain are based on facts in which appellant was nominated and later on arrested and challaned to Court.
- 3. Appellant on account of involvement in criminal cases of moral turpitude was suspended and proceeded against departmentally through DSP/Topi in accordance with the rules.
- 4. Para No. 04 of appeal is incorrect. The appellant was proceeded against departmentally in accordance with rules during which appellant was found guilty and Enquiry Officer has recommended him for major punishment.

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- 5. Para No. 05 of appeal pertains to judgment dated 14.12.2021 of Hon'ble Tribunal passed in Service Appeal No. 741/2021, which was implemented by the respondents.
- 6. Para No. 06 of appeal is incorrect. In compliance of judgment passed in Service Appeal No. 741/2021 dated 14.12.2021, proper denovo enquiry was conducted, wherein appellant was associated and consequent upon recommendations of Enquiry Officer, appellant was dismissed from service vide order dated 13.05.2022 in accordance with rules, the copy of which was communicated to appellant (Copy of Charge Sheet/Summary of Allegations, Enquiry report, Final Show Cause Notice alongwith reply and order are attached as Annexure "A,B,C,D&E").
- 7. Para No. 07 of appeal is correct to the extent of filing of departmental appeal which was rightly rejected by respondent No. 2 being devoid of merit (**Copy attached as Annexure "F"**).
- 8. The orders of respondents are quite legal in accordance with law & rules and the instant appeal is liable to be dismissed being devoid of merit.

#### GROUNDS.

- A. Incorrect. The orders of respondents are in accordance with law/rules.
- B. Incorrect. Appellant was treated in accordance with law/rules and no right of appellant has been violated by the respondents.
- C. Incorrect. After denovo departmental proceedings appellant was dismissed from service in accordance with law/rules.
- D. Incorrect. Appellant was associated during denovo departmental enquiry wherein his statement was recorded by the Enquiry Officer and found him guilty. On recommendation of Enquiry Officer, he was served with Final Show Cause Notice and after receipt of reply of appellant he was dismissed from service in accordance with rules.
- E. Incorrect. Reply already given vide paras above.
- F. Incorrect. Reply already given vide paras above.
- G. Incorrect. According to the dictum of Superior Courts, the criminal proceedings has no effect upon the departmental proceedings, both are distinct in nature.
- H. Incorrect. Reply already given vide para above.
- I. Incorrect. Appellant being member of Police Force was supposed to protect the life and property of citizen but he himself looted the property of citizens and proved himself an inefficient official. The orders of respondents are quite legal in accordance with law/rules.
- J. Incorrect. Appellant being member of Police Force involved himself in offence of moral turpitude thus proved himself unfit for Police service.

K. That respondents also seek: permission to rely on additional grounds at the time of hearing of appeal.

### PRAYERS

It is therefore prayed that the appeal of appellant may kindly be dismissed with cost being devoid of merits and without any legal substance.

Inspector General of Police; Khyber Pakhtunkhwa, Peshawar (Respondent No. 1) **Deputy Inspector General of Police,** Mardan Region-I Mardan. (Respondent No. 2) District Police Officer, Swabi. (Respondent No. 3)

# BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No. 1351/2022.

Waseem Abbas Ex-FC No. 74..... Appellant

#### VERSUS

#### AFFIDAVIT:-

We the respondent No. 1 to 3 do hereby solemnly affirm and declare on oath that the contents of the written reply are correct/true to the best of our knowledge / belief and nothing has been concealed from the honorable Tribunal.

Inspector General Police, Khyber Pakhtunkhwa/Peshawar (Respondent Nb. 1) Deputy Inspector General of Police, Mardan Region-I Mardan. (Respondent No. 2) District Police Officer, Swabi. (Respondent No. 3)



OFFICE OF THE DISTRICT POLICE OFFICER SWABI PHONE# 0938-920050 FAX# 0938-920054 EMAIL: <u>dpo\_swabi@yahoo.com</u>

# CHARGE SHEET UNDER KPK POLICE RULES-1975

Whereas I am satisfied that formal enquiry as contemplated by Khyber Pakhtunkhwa Police Rules 1975 is necessary and expedient.

And whereas I am of the view that the allegations if established would call for Major/Minor penalty as defined in Rules 4 (b) a & b of the aforesaid Rules.

Now therefore as required by Rules 6(1) of the aforesaid Rules I **Muhammad Shoaib Khan, PSP**, District Police Officer Swabi charge you **Constable Waseem Abbas No.74**, on the basis of statement of allegations attached to this charge sheet.

In case your reply is not received within seven days without sufficient cause it will be presumed that you have no defence to offer and ex-parte action will be taken against you.

T I MUHAMMAD SHOAIB KHAN (PSP)

DISTRICT POLICE OFFICER, SWABI

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Attested Job.

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#### OFFICE OF THE DISTRICT POLICE OFFICER SWABI PHONE# 0938-920050 FAX# 0938-920054 EMAIL: <u>dpo\_swabi@yahoo.com</u>

### DISCIPLINARY ACTION UNDER KPK POLICE RULES-1975

I, Muhammad Shoaib Khan, District Police Officer, Swabi as competent authority am of the opinion that Constable Waseem Abbas No.74 has rendered himself liable to be proceeded against as he has committed the following acts/omission within the meaning of section 02 (iii) of KPK Police Rules-1975.

#### STATEMENT OF ALLEGATIONS

It is alleged that Constable Waseem Abbas No.74 involved himself in the following cases.

1. Case FIR No.583 dated 14.09.2014 U/s 392 PPC PS Kalu Khan.

2. Case FIR No.414 dated 14.09.2014 U/s 392 PPC PS Kalu Khan.

This amounts to grave misconduct on his part, warranting departmental action against him.

For the purpose of scrutinizing the conduct of the said official, Syed Muhammad Bilal PSP, AIG/Human Rights, CPO Peshawar is nominated as enquiry officer vide AIG Enquires Internal Accountability Branch, Khyber Pakhtunkhwa Peshawar Memo No.296-98/CPO/IAB dated 03.03.2022 to conduct proper denovo departmental enquiry against the aforesaid official, as contained in section 6 (I) (a) of the afore mentioned rules. The enquiry officer after completing all proceedings shall submit recommendations as early as possible. Constable Waseem Abbas No.74 is directed to appear before the enquiry officer on the date, time and place fixed by the enquiry officer. A statement of charge sheet is attached herewith.

MUHAMMAD SHOAIB KHAN (PSP) DISTRICT POLICE OFFICER SWABI

No. /CC/PA

Dated: 07/03 /2022

### DE-NOVO DEPARTMENTAL ENQUIRY AGAINST CONSTABLE WASEEM ABBAS NO.74 OF DISTRICT SWABI.

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This is with reference to DIG/IAB, CPO, Peshawar office letter No.296-98/CPO/IAB, dated 03.03.2022.

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#### **1-BRIEF OF PREVIOUS FACTS**

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The alleged constable was nominated / involved in the following criminal cases:-

1. Case FIR No.583, dated 14.09.2014 u/s 392-PPC PS Yar Hussain.

2. Case FIR No.414, dated 14.09.2014 u/s 392-PPC PS Kalu Khan.

In this connection he was served charge sheet and statement of allegations by DPO Swabi and DSP/Topi was appointed as enquiry officer. During the course of enquiry, the enquiry officer pointed out that in the afore mentioned cases, complainants of the cases directly nominated / accused the alleged constable for the commission of offence. On the other side during the interrogation, the snatched property was also recovered at his instance which clearly manifest his guilt and involvement in the cases.

During the course of enquiry, the enquiry officer recommended him (alleged constable) for major punishment. Final Show Cause notice was served upon him by the DPO Swabi on dated 13.02.2015. During the course of enquiry, he was found guilty and dismissed from the service by the DPO Swabi vide his office order No.425-28/PA, dated 05.03.2015 and OB No.273, dated 05.03.2015.

Constable Waseem Abbas No.74 was re-instated in service vide Order No.1988-90/EC, dated 08.3.2022 on the direction of honorable Service Tribunal vide Judgment dated 14.12.2021 in service appeal No.741/2017 for the purpose of de-novo enquery. The undersigned was nominated as enquiry officer by the office of DIG/IAB, CPO, Peshawar vide his office letter No.296-98/CPO/IAB, dated 03.03.2022.

The competent authority issued proper charge sheet along with statement of allegations to the alleged constable on the following allegations.

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AIG Human Rights knyber palchtunkhwa

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DTO

"It is the alleged constable Waseem Abbas No.74 involved himself in thefollowing case.

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1. Case FIR No.583, dated 14.09.2014 u/s 392-PPC PS Yar Hussain.

2. Case FIR No.414, dated 14.09.2014 u/s 392-PPC PS Kalu Khan."

The undersigned was nominated as enquiry officer to dig out the real facts by the office of DIG/IAB, CPO, Peshawar vide his office letter No.296-98/CPO/IAB, dated 03.03.2022.

#### 2- PROCEEDINGS: -

With reference to the allegations leveled against him, he was summoned to the office of the undersigned. His written statement was recorded and he was heard in person and cross examined.

# **3- STATEMENT OF CONSTABLE WASEEM ABBAS:-**

The alleged constable stated in his defense that in the year 2014 FIR/Cases were registered against him and in this regard SHO concerned called him through his cell phone and told him to come Police Station Kalu Khan. As per the direction of SHO Kalu Khan he went to the said Police Station and when he reached, the said SHO directed his gunners to put him in the lockup. His gunmen suddenly locked him in the lockup. After then he was remained locked in the judicial lockup for two years. When he was released from the judicial lockup, he submitted appeal in Service Tribunal while the concerned courts acquitted him in the above-mentioned cases and the Service Tribunal reinstated him. He further stated that he is a dutiful and honest police officer how can he think of committing a crime and also want to curb/control the crime.

#### 4- FINDINGS: -

During the course of enquiry, he was examined and was given ample opportunity and timeyet he failed to put forward any cogent & justifiable reason as to why he was nominated but the complainants or what enmity the then SHOs had against him?

17/03/2022

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. فود د ال Phere are two ethers beinous, criminal, cases, i.e., EIR, No.666, dated 15.09.2014 u/s 392/411-PPC PS Swabi and FIR No.668, dated 15.09.2014 u/s 392/411-PPC PS Swabi registered against him in the different Police Stations of District Swabi showing that he is a habitual offender.

°C/2 "

- iii. During the course of investigation, case / stolen property was also recovered at hisinstance which clearly manifesthis guilt and involvement in the said crimes(s).
- iv. Although, the honorable trail court acquitted him from these charges, however, police department being custodian of life and properties of the general public, can not afford to have such a person in the force whose character and conduct is doubtful and of criminal nature.
- v. Furthermore, his accomplice in the nominated FIRs, constable Ibad.Khan No.568, vide case FIR No.583, dated 14.09.2014 u/s 392-PPC PS Kalu Khan and FIR No.414, dated 14.09.2014 u/s 392-PPC PS Yar Hussain was reinstated in the service. It is strongly recommended that he must also be again verified / enquired whether he is fit to be retained in the service or otherwise.

# **5- CONCLUSIONS/RECOMMENDATION:-**

<sup>°</sup> Keeping in view the fore-mentioned circumstances, the alleged constable was found guilty and his defense was not found satisfactory. Hence, the alleged constable Waseem Abbas No. 74 of district Swabi is recommended for major punishment i.e. dismissal from service, please.

BILAL (PSP) MÜÌ SYED AIG<sup>/</sup>Human Rights, Pakhtunkhwa, Peshawar

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#### FINAL SHOW CAUSE NOTICE

I, Muhammad Shoaib Khan, District Police Officer, Swabi as competent authority under Police Disciplinary Rules 1975, hereby serves upon you, Constable Waseem Abbas No.74 as follow:

Whereas you Constable Waseem Abbas No.74, while serving in district Police Swabi involved yourself in the following cases.

1. Case FIR No.583 dated 14.09.2014 U/s 392 PPC PS Kalu Khan.

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2. Case FIR No.414 dated 14.09.2014 U/s 392 PPC PS Kalu Khan.

This amounts to grave misconduct on your part, warranting departmental action against you.

In this connection you were issued charge sheet and served with summary of allegations and Syed Muhammad Iqbal (PSP), AIG Human Rights, Khyber Pakhtunkhwa Peshawar was appointed to conduct proper departmental enquiry. The enquiry officer held enquiry, recorded statements of all concerned and submitted his findings, wherein he found you guilty for the mis-conduct and recommended for major punishment i.e dismissal from service.

You are hereby directed to Show Cause Finally of your irresponsible acts towards performance of your professional responsibilities within 07 days, as to why you will not be punished as defined by Police rules.

In case of none submission of your reply within 07 days of its delivery in the normal course of circumstances, it shall be presumed that you have no defense to offer, and ex-parte action will be taken against you.

9 MUHAMMAD SHOAIB KHAN (PSP) DISTRICT POLICE OFFICER, SWABI

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PA Ø D/1 " . 5 مین، بی ایک عدد وز قر کاری شو کا و حدل کما کما المليد الحدز ومول قسيز V 16202-0564617-5 nul Mob. 0341-9588535 26.09 2022 Jinto لرمان كست متى ويم ساس كم تعرواع ديد كالرخان تما متى وسم ساس من خان مور حكر آنك مد وزوكان بال متوكاز بور فاد كرت حدد المل تم وحدث ك دسخط 26-P-15- 101 - 26-P-15- 101 طاعاد الورث المحمام مقل المر اليون ١٢٢ ماي - ي الرمانية اليورشي هن بح الرمانية بحر اليورشي من بح الرمانية بحر اليورشي بحر اليورشي بحر الرمانية بحر اليورشي بحر اليورشي بحر اليورشي بحر اليورشي بحر اليورشي بحر المانية بحر اليورشي بحر اليورلي بحر اليورشي بحر اليورشي بحر اليورشي بحر اليورلي بحر ال

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#### ORDER

This Order will dispose of the departmental enquiry against **Constable Waseem Abbas No.74**, who charged in the following cases.

- 1. Case FIR No.583 dated 14.09.2014 U/s 392 PPC PS Yar Hussain.
- 2. Case FIR No.414 dated 14.09.2014 U/s 392 PS Kalu Khan.

Therefore, he was issued with charge sheet alongwith summary of allegations and Syed Muhammad Bilal PSP, AIG/Human Rights, CPO Peshawar was nominated as enquiry officer vide AIG Enquiries Internal Accountability Branch Khyber Pakhtunkhwa Peshawar Memo No.296-98/CPO/IAB dated 03.03.2022. The enquiry officer conducted proper departmental enquiry, recorded statements of all concerned, collected evidence and submitted his findings, wherein he found Constable Waseem Abbas No.74 guilty for the mis-conduct and recommended for Major Punishment of dismissal from service.

The undersigned gone through the enquiry papers and findings of the enquiry officer and by agreeing with the recommendations of the enquiry officer issued him with Final Show Cause Notice for Major punishment. The Final Show Cause Notice was served upon him through local Police. The defaulter Constable submitted his reply to the Final Show Cause Notice, which was perused and found un-satisfactory.

Therefore, I, **Muhammad Shoaib Khan, PSP**, District Police Officer, Swabi, in exercise of the powers vested in me under Khyber Pakhtunkhwa Police Rules 1975, hereby award **Constable Waseem Abbas No.74**, Major Punishment of Dismissal from service, with immediate effect.

O.B No. 462 Dated 13/05/2022.

MUHAMMAD SHOAIB KHAN (PSP) DISTRICT POLICE OFFICER, SWABI

## OFFICE OF THE DISTRICT POLICE OFFICER, SWABI.

No **277/-77**/PA, dated Swabi, the <u>/3/05</u> /2022. Copies to the: -

- 1. Regional Police Officer Mardan for favor of information, please.
- 2. AIG enquires Internal Accountability Branch Khyber Pakhtunkhwa Peshawar Memo No.296-98/CPO/IAB dated 03.03.2022.
- 3. AIG Human Rights CPO Peshawar.
- 4. Pay Officer, Swabi
- 5. Establishment Clerk.
- 6. I/C PAL.
- 7. Fauji Missal Clerk.

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### ORDER.

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This order will dispose off the departmental appeal preferred by Ex- Constable Waseem Abbas No. 74 of Swabi District Police against the order of District Police Officer, Swabi, whereby he was awarded major punishment of dismissal from service vide OB: No. 462 dated 13.05.2022. The appellant was proceeded against departmentally on the allegations that during service, he was found involved in case vide FIR No.583 dated 14.09.2014 U/S 392 PPC Police Station, Kalu Khan, District Swabi and FIR No.414 dated 14.09.2014 U/S 392 PPC Police Station Yar Hussain, District Swabi. On account of involvement in criminal cases, he was proceeded against departmentally and awarded major punishment of dismissal from service vide OB No. 273 dated 05.03.2015 by the then District Police Officer, Swabi.

Feeling aggrieved from such order, he filed departmental appeal which was also rejected by the then Regional Police Officer Mardan order endorsement No. 3357/ES; dated 25.04.2016.

He also filed revision petition which was rejected vide CPO order endorsement No. 7196/16, dated 10.11.2016.

Feeling aggrieved from the orders of department, he filed Service Appeal No. 741/2017 before Khyber Pakhtunkhwa Service Tribunal Peshawar which was contested by the department. The Tribunal after hearing both the parties, partially accepted the Service Appeal by setting aside the orders of department with the directions to conduct de-nove enquiry against the delinquent Officer vide judgment dated 14.12.2021 In compliance o judgment dated 14.12.2021 passed in Service Appeal No. 741/2017, delinquent Officer wa reinstated into service for the purpose of de-novo .quiry.

Appellant was served with Charge Sheet/Summary of Allegations and Sye Muhammad Bilal (PSP), Assistant Inspector General of Police, Human Rights, CP Peshawar was appointed as Enquiry Officer to conduct de novo proceedings vide Assista Inspector General of Police Enquiries & Internal Accountability Branch, Khyber Pakhtunkhy Peshawar Memo: No. 296-98/CPO/IAB, dated 03.03.2022. The Enquiry Officer after prop departmental enquiry, submitted his findings, wherein he found the delinquent Officer gui for the misconduct and recommended him for major punishment of dismissal from service.

The District Police Officer, Swabi perused the findings and by agreeing with t recommendations of Enquiry Officer, issued Final Show Cause Notice to the delinquir , Officer. His reply to Final Show Cause Notice was received and perused, but was for unsatisfactory. Therefore, he was awarded major punishment of dismissal from service the District Police Officer, Swabi vide OB No. 462 dated 13.05.2022.

Feeling aggrieved from the order of District Police Officer, Swabi, the appel preferred the instant appeal. He was summoned and heard in person in Orderly Room I in this office on 05.08.2022.

From the perusal of the enquiry file and service record of the appellant, it has been found that allegations leveled against the appellant have been proved beyond any shadow of doubt. As during de-novo enquiry proceedings he failed to produce even a single iota of evidence in his defense, therefore, on the basis of which he was again dismissed from service. Moreover, the perusal of judgments/orders passed by the trial Courts in the above mentioned cases revealed that the appellant has affected compromise with the complainant party. It is added that there are two heinous criminal cases vide mentioned above registered against him in different Police Stations of District Swabi showing that he is a habitual offender. During the course of investigation stolen property was also recovered at his instance which clearly manifests his guilt and involvement in the said cases. The involvement of appellant in these heinous criminal cases is clearly a stigma on his conduct as Police Department being custodian of life and properties of the general public, cannot afford to have such a person in the force whose character and conduct is doubtful and of criminal nature. Hence, the retention of appellant in Police Department will stigmetize the prestige of affure Police Force as instead of fighting crime, he has indulged himself in criminal activities Moreover, he could not present any cogent justification to warrant interference in the orde passed by the competent authority.

Keeping in view the above, I, Yaseen Faroog, PSP Regional Police Office Mardan, being the appellate authority, find no substance in the appeal, therefore, the sam is rejected and filed, being devoid of merit.

Order Announced.

Regional Police Officer, Mardan.

No. 5239 IES,

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IOB 12022. OB. Dated Mardan the\_

Copy forwarded to District Police Officer, Swabi for information and necessa w/r to his office Memo: No. 94/Insp: Legal dated 07.07.2022. His service record is return herewith.

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