BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 4055/2020

Date of Institution ... 05.05.2020
Date of Decision ... 30.03.2021

Mr. Nihad Ali, Traffic Officer/Head Constable No.2942, Police Lines, Mardan ... (Appellant)

VERSUS

The Inspector General of Police Khyber Pakhtunkhwa Peshawar and two others.

... (Respondents)

Noor Muhammad Khattak, Advocate ... For appellant.

Riaz Khan Paindakheil , Assistant Advocate General ... For respondents.

ROZINA REHMAN ... MEMBER (J)
ATIQ UR REHMAN WAZIR ... MEMBER (E)

JUDGMENT

ROZINA REHMAN, MEMBER: Appellant is a Constable. He was awarded penalty vide order dated 10.10.2019. He preferred departmental appeal which was rejected on 17.03.2020. It is the legality and validity of these two orders which have been challenged by him in the instant service appeal filed U/S 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

2. The relevant facts leading to the instant appeal are that appellant is serving as Constable now. An oral complaint was received to the high-ups against the appellant while he was serving as Head Constable/Traffic Officer. He was, therefore, suspended. Charge sheet and statement of allegations were accordingly issued with allegation of embezzlement of Rs.2200/- in Traffic Challan. He submitted reply accordingly and denied all the allegations. He was awarded major penalty of reduction to lower rank. He filed departmental appeal which was rejected. He then filed revision but the same was also rejected, hence, the instant service appeal.

3. We have heard Mr. Noor Muhammad Khattak Advocate and Mr. Riaz Khan Paindakheil learned Assistant Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Mr. Noor Muhammad Khattak Advocate learned counsel appearing on behalf of appellant, inter-alia, argued that the impugned orders are against law, facts and norms of natural justice, therefore, not tenable in the eye of law. He submitted that the appellant was not treated in accordance with law and rules on the subject as the respondents violated Article-4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. He argued that no show cause notice was served upon appellant before issuing the impugned order and he was condemned unheard.

5. Conversely, learned A.A.G argued that appellant while posted as Ticketing Officer had challaned one Bashir Hussain resident of

Rawalpindi by imposing Fine to the tune of Rs. 2520 but when the said Challan was checked in the concerned bank, it was found that just Rs. 300/- were deposited while the rest of the amount was embezzled, therefore, report was entered in the daily diary. The appellant was issued charge sheet with statement of allegations regarding embezzlement and inquiry was entrusted to S.P Operation Mardan. He argued that proper inquiry was conducted and in view of the inquiry report, he was awarded major punishment in accordance with law. He submitted that departmental appeal was decided on merits and he was given full opportunity of defending himself but he failed to produce any cogent evidence in his defense and lastly, it was argued that the revisionary authority by taking lenient view, partially accepted appeal of the appellant and his punishment was modified to the extent of reduction in rank by one step i.e. Head Constable to Constable for two years.

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

7. It is a well-settled legal proposition that while imposing major penalty, regular inquiry is must, so, as to provide appropriate opportunity of defense. In the instant case, S.P Operations Mardan was appointed as inquiry officer who after fulfilling legal and codal formalities, held the appellant responsible of misconduct. The appellant was issued charge sheet and statement of allegations in accordance with law. He was given full opportunity of defending himself. In the light of recommendations of inquiry officer, final show

cause notice was also issued by the authority to which reply was also submitted by the present appellant and the same is available on record. He was also summoned in Orderly Room but he failed to justify his innocence. As per statement of appellant, he had submitted a detailed reply during the departmental proceedings which was requested to be considered as a reply to the final show cause notice. From the inquiry proceedings as well as inquiry report, it is crystal clear that the deposit of Rs.300/- in the Government Treasury is not denied whereas one Bashir Hussain was Challaned by imposing fine to the tune of Rs. 2520/-. The appellant could not justify the deposit of the remaining amount. He misused his official powers which is tantamount to gross misconduct besides bringing a bad name to the entire Police Force in the eyes of general public.

8. In view of the foregoing reasons, instant appeal stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
30.03.2021

(ATIQ UR REHMAN WAZIR)
MEMBER (E)

(ROZINA REHMAN)
MEMBER (J)

Service Appeal No. 4055/2020

S.No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	30.03.2021	Present. Noor Muhammad Khattak, Advocate ... For appellant Riaz Khan Paindakheil, Assistant Advocate General ... For respondents Vide our detailed judgment of today of this Tribunal placed on file, instant appeal stands dismissed. No order as to costs. File be consigned to the record room. ANNOUNCED. 30.03.2021 (ATIQ UR REHMAN WAZIR) MEMBER (E) (ROZINA REHMAN) MEMBER (J)

28.10.2020 Appellant in person present.

Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Zaheer Muhammad PASI for respondents present.

Written reply on behalf of respondents is still awaited. Representative of respondents made a request for adjournment in order to submit reply/comments; granted. To come up for written reply/comments on 23.12.2020 before S.B.

(Rozina Rehman)
Member (J)

23.12.2020 Appellant with counsel present.

Kabir Ullah Khattak learned Additional Advocate General alongwith Khyal Roz Inspector for respondents present.

Representative of respondents submitted reply/comments, placed on file. To come up for rejoinder, if any, and arguments on 30.03.2021 before D.B.

(Rozina Rehman)
Member (J)

13.08.2020 Counsel for the appellant present.

Contends that the appellant was awarded major punishment of reduction in rank by one step through impugned order dated 10.10.2019. He was though reinstated in service through the said order but the time period of continuation of punishment of reduction in rank was not provided in the order. It was in blatant violation of F.R- 29, therefore, the impugned order is not sustainable under the law.

Subject to all just expectations, 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 06.10.2020 before S.B.

Appellant Deposited
Security & Process Fee
19/8/20

Chairman

06.10.2020 Junior to counsel for the appellant and Addl. AG alongwith Attaur Rahman, Inspector for the respondents present.

Representative of the respondents seeks time. Adjourned to 28.10.2020 on which date the requisite reply/comments shall positively be furnished.

Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 4055 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	05/05/2020	The appeal of Mr. Nihad Ali presented today by Mr. Noor Mohammad Khattak, Advocate, may be entered in the Institution Register and put up to the Learned Member for proper order please. REGISTRAR 5/5/2020
2-		This case is entrusted to S. Bench for preliminary hearing to be put up on 13/08/2020 MEMBER

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 4055 /2020s

NIHAD ALI **VS** **POLICE DEPARTMENT**

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APPELLANT

THROUGH:
NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 4055 /2020

Mr. Nihad Ali, Traffic Officer/Head Constable No. 2942, Police Lines, Mardan.

..... **APPELLANT**

VERSUS

1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2- The Regional Police Officer, Mardan Region, Mardan.
3- The District Police Officer, District Mardan.

..... **RESPONDENTS**

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 10.10.2019 WHEREBY MAJOR PENALTY OF REDUCTION TO LOWER RANK HAS BEEN IMPOSED ON THE APPELLANT AND AGAINST THE APPELLATE ORDER DATED 17.03.2020 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS.

PRAYER:

That on acceptance of this appeal the impugned orders dated 10.10.2019 and 17.03.2020 may very kindly be set aside and the appellant be restored on his original Rank i.e. Head Constable with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:
ON FACTS:

1. That appellant is the employee of respondent Department and is presently serving as constable No.2942 quite efficiently and upto the entire satisfaction of his superiors.

2. That appellant while serving as Head Constable/Traffic Officer an oral complaint was received to the high ups against the appellant and due to the aforementioned complaint the high ups suspended the appellant vide order dated 26.06.2019. Copy of the suspension order is attached as annexure.....**A.**

3. That on 03.07.2019 charge sheet and statement of allegation has been issued to the appellant with the allegation of embezzlement of Rs.2200/- in Traffic Challan. That appellant submitted a detail reply of the charge sheet and statement of allegation and denied all the allegations leveled against the appellant. Copies of the charge sheet/statement of allegation & reply are attached as annexure .....**B & C.**

4. That astonishingly the respondent No.3 without fulfilling the codal formalities issued the impugned order dated 10.10.2019 whereby major penalty of reduction to lower rank has been imposed on the appellant. Copy of the impugned order is attached as **Annexure..... D.**

5. That appellant feeling aggrieved from the impugned order dated 10.10.2019 preferred Departmental appeal before the respondent No. 2 but the same was rejected vide order dated 05.12.2019 against which the appellant filed revision petition before the respondent No.1 but the same was also rejected vide appellate order dated 17.03.2020. Copies of the Departmental appeal, rejection, revision petition & appellate order are attached as annexure.....**E, F, G & H.**

6. That appellant feeling aggrieved and having no other remedy filed the instant appeal on the following grounds amongst the others.

GROUNDS:

A- That impugned orders dated 10.10.2019 & 17.03.2020 are against the law, facts, material on record and norms of natural justice hence not tenable in the eye of law and liable to be set aside.

B- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.

C- That no show cause notice has been served on the appellant by the respondents before issuing the impugned order dated 10.10.2019.

D- That no chance of personal hearing/defense has been provided to the appellant before issuing the impugned order dated 10.10.2019.

E- That no chance of cross examination has provided to the appellant which is necessary as per rule.

F- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated: 05.05.2020

APPELLANT

NIHAD ALI

THROUGH:

NOOR MOHAMMAD KHATTAK

&

MIR ZAMAN KHAN SAFI,

ADVOCATES

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN.

Tel No. 0937-9230109 & Fax No. 0937-9230111
Email dpo_mardan@yahoo.com
Facebook: District Police Mardan
Twitter: @dpomardan

A-(4) 2019

ORDER

Consequent upon the complaint report vide DD No. 10 dated 25.06.2019 Traffic Office, Head Constable Nihad Ali No. 2942 is hereby placed under suspension with immediate effect, for his negligence and inefficiency.

OB No. 1264

Dated 26/06/2019.

District Police Officer
Mardan

OFFICE OF THE DISTRICT POLICE OFFICER MARDAN.

No. 3916-20/OSI, dated Mardan the 27/06/2019

Copies are forwarded to the:-

1. DSP Traffic, Mardan
2. DSP HQrs: Mardan.
3. Pay Officer to Stop Pay.
4. EC.
5. PA to issue Charge Sheet & Summary of allegation to the defaulter Head Constable.

ATTESTED

26/6

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

Tel No. 0937-9230109 & Fax No. 0937-9230111
Email: dpo_mardan@yahoo.com

(7) B-(5)

2019

CHARGE SHEET

I, SAJJAD KHAN (PSP), District Police Officer Mardan, as competent authority, hereby charge HC Nihad Ali No.2942, while posted as T.O (now under suspension Police Lines), as per attached Statement of Allegations.

1. By reasons of above, you appear to be guilty of misconduct under Police Rules, 1975 and have rendered yourself liable to all or any of the penalties specified in Police Rules, 1975.

2. You are, therefore, required to submit your written defense within 07 days of the receipt of this Charge Sheet to the Enquiry Officer, as the case may be.

3. Your written defense, if any, should reach the Enquiry Officers within the specified period, failing which, it shall be presumed that you have no defense to put-in and in that case, ex-parte action shall follow against you.

4. Intimate whether you desired to be heard in person.

(SAJJAD KHAN) PSP
District Police Officer
Mardan

ATTESTED

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

Tel No. 0937-9230109 & Fax No. 0937-9230111
Email: dpo_mardan@yahoo.com

(6)

No. 257 /PA Dated 3 / 7 /2019

DISCIPLINARY ACTION

I, SAJJAD KHAN (PSP), District Police Officer Mardan, as competent authority am of the opinion that **HC Nihad Ali No.2942,** himself liable to be proceeded against, as he committed the following acts/omissions within the meaning of Police Rules 1975.

STATEMENT OF ALLEGATIONS

Whereas, HC Nihad Ali No.2942, while posted as T.O (now under suspension Police Lines), challaned one Bashir Hussain Shah Son of Syed Latif Shah Resident of Rawalpindi by fining Rs.2520/-, but when the said challan was checked at concerned Bank, it was found that out of total fine/amount, only Rs.300/- was deposited at Bank and the rest of Rs.2200/- was embezzled/taken by T.O Nihad Ali vide Naqal Mad No.10 dated 25-06-2019 Traffic Office Mardan, lodged by TI Amjid Khan.

For the purpose of scrutinizing the conduct of the said accused official with reference to the above allegations, **Mr. Mushtaq Ahmed SP/Operations Mardan is nominated as Enquiry Officer**.

The Enquiry Officer shall, in accordance with the provision of Police Rules 1975, provides reasonable opportunity of hearing to the accused Police Officer, record/submit his findings and make within (30) days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused Official.

HC Nihad Ali is directed to appear before the Enquiry Officer on the date + time and place fixed by the Enquiry Officer.

(SAJJAD KHAN) PSP
District Police Officer
Mardan

4/7/2019
Last date 11/7/2019

ATTESTED

C-(7)

To

The District Police Officer,
Marden.

Sub:- DEFENCE REPLY IN RESPECT OF CHARGE SHEET DATED 03.07.2019.

Sir,

With reference to the charge sheet vide Endosrsement No. 257/PA dated 03.07.2019.

It is submitted that I had not committed the said act willfully or malfidely.

In fact, the complainent was correctly charged for Rupees 2520/- in the light of the voilation of numurous traffic offence committed by him.

On checking of the Challan Book, I noted that all the three copies of tickets No. 4 and 6 were missing therefrom. Since, in routine I charge fine between Rs.300/00 and Rs.500/00 Ordinarily except in certain cases in which numerous offence of voilation of the traffic Rules. Hence I deposited Rs.300/- in the relevant case also. Yet, on disclosure of the case in hand, I

ATTESTED

(8)

was deposited with the Reader of the Incharge Traffic Inspector.

I apprehend that the two missing Tickets might have been given to the relevant Offender due to rush of vehicles and acute best i.e. at about 1100/1200 O.Clock.

I had not misappropriated the amount malafidely.

I am innocent in the connection.

My 10/11 years long standing services is clean through-out.

I have to support old parents and other family Members including a kid also.

I assure yourself that I shall remain more vigilant in future.

It is requested that I may kindly be exonerate from the alleged offences and oblige.

Yours Obediently,

(H.C. NIHAD ALI)
No. 2942
Mardan Police.

Dated: 05.07.2019.

ATTESTED

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

Tel No. 0937-9230109 & Fax No. 0937-9230111
Email: dpo_mardan@yahoo.com

No. 7588-84/PA Dated 10/10/2019

ORDER ON ENQUIRY OF HC NIHAD ALI NO.2942

This order will dispose-off a Departmental Enquiry under Police Rules 1975, initiated against the subject official, under the allegations that while posted as T.O (Now under suspension Police Lines Mardan), was placed under suspension and closed to Police Lines vide this office OB No.1364 dated 26-06-2019, issued vide order/endorsement No.3916-20/OSI dated 27-06-2019, on account of challaning one Bashir Hussain Shah Son of Syed Latif Shah Resident of Rawalpindi by fining Rs.2520/-, but when the said challan was checked at concerned Bank, it was found that out of total fine/amount, only Rs.300/- was deposited at Bank and the rest of Rs.2200/- was embezzled/taken by T.O Nihad Ali vide Naqal Mad No.10 dated 25-06-2019 Traffic Office Mardan, lodged by T.I Amjid Khan, therefore, he was proceeded against departmentally through Mr. Mushtaq Ahmad SP Operations Mardan vide this office Statement of Disciplinary Action/Charge Sheet No.257/PA dated 03-07-2019, who (E.O) after fulfilling necessary process, submitted his Finding Report to this office vide his office letter No.346/PA (Ops) dated 16-07-2019, recommending the alleged official for suitable punishment.

In this connection, the alleged official was served with a Final Show Cause Notice, under K.P Police Rules-1975, issued vide this office No.231/PA dated 06-08-2019, to which, his reply was received & found unsatisfactory.

Final Order

HC Nihad Ali was heard in O.R on 08-10-2019, who failed to present any plausible reasons in his defense, therefore, awarded him **major punishment of reducing in rank by one step** & is reinstated in service from the date of suspension with counting his suspension's period as duty with immediate effect, in exercise of the power vested in me under Police Rules-1975.

OB No. 1174
Dated 9/10/2019.

(SAJJAD KHAN) PSP
District Police Officer
Mardan

Copy forwarded for information & n/action to:-

1) The DSP/HQrs: Mardan.
2) The PO & E.C (Police Office) Mardan.
3) The OSI (Police Office) Mardan with ( ) Sheets.

ATTESTED

To

The Regional Police Officer,
Mardan Region, Mardan

E-10

Subject:-Representation against the order of the D.P.O Mardan vide order dated 10.10.2019, awarding the punishment of "Reduction in rank by one step".

Sir,

Reference to the captioned order, whereby I am awarded the punishment of "reduction in rank by one Step", by the D.P.O Mardan.

It is Submitted that the impugned order is unjustified, illegal and too harsh in the circumstances of the case. Hence, the same is liable to be set-aside on the grounds mentioned below:-

1. That the inquiry inquestion was not conducted under the provisions of the relevant disciplinary rules, unto the relevant persons were not examined in the presence of appellant, during the inquiry proceedings and thus, the Appellant was not provided the opportunity of cross-examination.

2. That the copies of the relevant documents, were not provided to appellant with the charge-sheet.

3. That the suspension period was illegally prolonged beyond the requisite period of three months, which is in violation of the relevant rules.

4. That my previous service

ATTESTED

(11)

records prevailing over eleven (11) years is clean through-out.

5. That defence points, as mentioned, in my defence reply dated 05.07.2019 to the charge -sheet are not taken into consideration.

6. That I have been jobless after the impugned order.

Copy attached herewith.

It is requested that on acceptance of this Appeal, the impugned order may be set-aside and I may kindly be exonerated from the charges as leveled against me.

Dated. 19-10-2019

Your's obediently

(Nihad Ali/Ex.HC)
No.2942 Mardan
Police.

ATTESTED

(1)

F-(2)

ORDER.

This order will dispose-off the departmental appeal preferred by **Ex-Head Constable Nihad Ali No. 2942** of Mardan District Police against the order of District Police Officer, Mardan, whereby he was awarded major punishment of Reduction in rank by one step i.e from the rank of Head Constable to his substantive rank of Constable vide OB No. 2174 dated 09.10.2019.

Brief facts of the case are that, the appellant, while posted as Ticketing Officer was placed under suspension and closed to Police Lines, on account of challaning one Bashir Hussain Shah Son of Syed Latif Shah resident of Rawalpindi by fining him Rs.2520/-, but when the said challan was checked at concerned Bank, it was found that out of total fine/amount, only Rs.300/- had been deposited at Bank and the rest of Rs.2200/- had been allegedly embezzled/taken by Ticketing Officer Nihad Ali. A report to this effect was lodged vide DD No.10 dated 25-06-2019 at Traffic Office Mardan by Traffic Incharge Amjid Khan. Consequently, proper departmental enquiry proceedings were initiated against him. He was issued charge sheet alongwith statement of allegations and enquiry was entrusted to Mr. Mushtaq Ahmad, Superintendent of Police Operations Mardan. The Enquiry Officer after fulfilling necessary formalities, submitted his finding report and recommended the delinquent official for suitable punishment.

He was served with a Final Show Cause Notice, to which, his reply was received and found unsatisfactory. He was also provided opportunity of self defence by summoning him in the orderly Room, by the competent authority. But he failed to advance any cogent reasons in his defence, therefore he was awarded the aforementioned punishment.

Feeling aggrieved from the order of District Police Officer, Mardan, the appellant preferred the instant appeal. He was summoned and heard in person in Orderly Room held in this office on 03.12.2019.

From the perusal of Enquiry file and material available on record the charges against the appellant have been proved beyond any shadow of doubt. Besides, the appellant failed to present any cogent reasons in his defence to justify his innocence. Moreover, the competent authority has already treated the appellant leniently.

Keeping in view the above, **I, Sher Akbar, PSP S.St Regional Police Officer, Mardan,** being the appellate authority, finds no substance in the appeal, therefore, the same is rejected and filed, being, devoid of merit.

Order Announced.

ATTESTED

Regional Police Officer,
Mardan.

No. 13805 **/ES, Dated Mardan the** 05 - 12 - **/2019.**

Copy forwarded to District Police Officer, Mardan for information and necessary w/r to his office Memo: No. 449/LB dated 14.11.2019. His Service Record is returned herewith.

(*****)

G-(13)

To

The Police Chief/The I.G.P, Peshawar.

Subject:- Revision Petition against the Appellate Order Passed by the R.P.O Mardan vide Endst;No.13805/Es dated 05-12-2019.

Sir,

Reference to the captioned order, of The R.P.O, Mardan dated 05-12-2019, whereby rejecting the Appeal of Petitioner, maintaining the order of The D.P.O Mardan vide Endst; No.7583-84/PA dated 10-10-2019 awarding to the Petitioner the punishment of "reduction in rank by one Step", by the D.P.O Mardan.

It is Submitted:-

1). that the Petitioner, while, posted as Token Officer, was charged for alleged for the alleged offence of embezzlement;

2). that the Petitioner refuted the said charges. **(Copies of charged sheet and the reply are attached herewith.**

3). That the inquiry inquestion was not conducted under the provisions of the relevant disciplinary rules, unto the relevant persons were not examined in the presence of appellant, during the inquiry proceedings and thus, the Petitioner was not provided the opportunity of cross-examination.

4). That the copies of the relevant documents, were not provided to Petitioner with the charge-sheet.

5). That the suspension period was illegally prolonged beyond the requisite period of three months, which is in violation of the relevant rules.

6). That the previous service records of Petitioner prevailing over eleven (11) years is clean through-out.

ATTESTED

(14)

7). That defence points, as mentioned, in defence reply dated 05.07.2019 to the charge-sheet are not taken into consideration.

8). that no witness was examined in presence of Petitioner.

9). that my defence points are not considered at the Appellate stage, also.

10). That the Petitioner has been jobless after the impugned order.

Copy attached herewith.

It is requested that on acceptance of this Petition, the impugned orders may be set-aside and I may kindly be exonerated from the charges as leveled against me, restoring me to the original post with back benefits.

Dated. 11-12-2019

Your's obediently

(Nihad Ali/Ex.HC)
No.2942 Mardan
Police.

ATTESTED

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
PESHAWAR.

No. S/ 1394 /20, dated Peshawar the 17/03/2020.

H-15

ORDER

This order is hereby passed to dispose of Revision Petition under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 (amended 2014) submitted by **Constable Nihad Ali No. 2942 (the then HC)** The petitioner was awarded punishment of reduction in rank by one step i.e. from Head Constable to Constable by District Police Officer, Mardan vide OB No. 2174, dated 09.10.2019 on the allegations that he while posted as Ticketing Officer challaned one Bashir Hussain Shah r/o Rawalpindi by fining of Rs. 2520/- but when the said challan was checked at concerned bank, it was found that out of total fine/amount only Rs. 300/- was deposited at bank and the rest of Rs. 2200/- was embezzled/taken by Ticketing Officer Nihad Ali. His appeal was rejected by Regional Police Officer, Mardan vide order Endst: No. 13805/ES, dated 05.12.2019.

Meeting of Appellate Board was held on 13.02.2020 wherein petitioner was present. The petitioner was heard in person in the Appellate Board meeting wherein petitioner denied the allegations leveled against him. The petitioner has long service of 10 years and 05 months at his credit.

Keeping in view his long service, the Board decided that penalty of reduction in rank by one step i.e. from Head Constable to Constable is hereby modified to the extent of reduction in rank by one step i.e. from Head Constable to Constable for two (02) years.

This order is issued with the approval by the Competent Authority.

Sd/-
DR. ISHTIAQ AHMED, PSP/PPM
Additional Inspector General of Police,
HQrs: Khyber Pakhtunkhwa, Peshawar.

No. S/ 1395-1403 /20,

Copy of the above is forwarded to the:

1. Regional Police Officer, Mardan. One Service Roll and one Fauji Missal of the above named appellant received vide your office Memo: No. 817-18/ES, dated 22.01.2020 is returned herewith for your office record.
2. District Police Officer, Mardan.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. PA to AIG/Legal, Khyber Pakhtunkhwa, Peshawar.
7. Office Supdt: E-IV CPO Peshawar.

ATTESTED

(DR. ZAHID ULLAH) PSP
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

_____ OF 2020

Nihad Ali (APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Police Deptt. (RESPONDENT)
(DEFENDANT)

I/We Nihad Ali

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated._____/_____/2020

CLIENT

ACCEPTED
NOOR MOHAMMAD KHATTAK
SHAHZULLAH YOUSAFZAI
MIR ZAMAN SAFI
&
AFRASIAB KHAN WAZIR
ADVOCATES

OFFICE:
Flat No.4, 2nd Floor, Juma Khan Plaza, near FATA Secretariat, Warsak Road, Peshawar.
Mobile No.0345-9383141

C

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR.

Service Appeal No. 4055/2020

Nihad Ali, Traffic Officer/Head Constable No.2942, Police Lines, Mardan.....Appellant

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar
2. Regional Police Officer, Mardan
3. District Police Officer, Mardan Region, Mardan

.....Respondents

Para-wise comments by respondents:-

Respectfully Sheweth,

PRELIMINARY OBJECTIONS

1. That the appellant has not approached this Hon'ble Tribunal with clean hands.
2. That the appellant has concealed the actual facts from this Hon'ble Tribunal.
3. That the appellant has got no cause of action or locus standi to file the instant appeal.
4. That the appellant is estopped by his own conduct to file the instant Service Appeal.
5. That the appeal is unjustifiable, baseless, false, flawless and vexatious and the same is liable to be dismissed with special compensatory cost in favour of respondents.
6. That the Hon'ble Tribunal has no jurisdiction to adjudicate the matter.
7. That the appeal is bad for miss joinder and non joinder of necessary parties.
8. That the appeal is barred by law and limitation.

REPLY ON FACTS

1. Correct to the extent that the appellant is performing his duty in Police Department as Constable. His performance during service was not satisfactory (List of Bad entries/punishment enclosed as Annexure "A")
2. Correct to the extent that the appellant while posted as Ticketing Officer had challaned one Bashir Hussain Shah s/o Syed Latif Shah r/o Rawalpindi by imposing fine to the tune of Rs. 2520/-, while rest of Para is not plausible because when the said challan was checked in the concerned bank it was found that only Rs. 300/- were deposited and the rest amount was embezzled hence, in this regard report was entered into Daily Diary Serial No. 10 dated 25.06.2019 Traffic Office Mardan (Copy of Daily Diary is attached as Annexure-"B").
3. Correct to the extent that the appellant was issued Charge Sheet with Statement of Allegations regarding embezzlement amounts and enquiry was entrusted to the then SP/Operations, Mardan. The Enquiry Officer after fulfilling

all legal and codal formalities, held the appellant responsible of misconduct (Copies of Charge Sheet & Statement of allegations are annexed as "C" & "D").

4. Incorrect. Stance of the appellant is totally ill-founded because after issuance of charge sheet and statement of allegations proper departmental enquiry was conducted during the course of which he has been provided full-fledged opportunity of defending himself but he failed to produce even a single iota of evidence in his defense. The Enquiry Officer after fulfilling all legal and codal formalities, held the appellant responsible of misconduct. Therefore, in light of recommendation of Enquiry Officer, the competent authority issued Final Show Cause Notice to which his reply was received and the same was paid due consideration but found unsatisfactory. Besides, after providing right of self defense by summoning the appellant in Orderly Room but this time too, the appellant failed to justify his innocence. Hence, the appellant was awarded major punishment of reduction in rank by one step, which does commensurate with the gravity of misconduct of the appellant (Copy of punishment order is attached as Annexure-"E").
5. Correct to the extent that the appellant preferred departmental appeal to the respondent No. 02, which was decided on merit because he was provided full-fledged opportunity of defending himself by the appellate authority but he bitterly failed to produce any cogent reason in his defense. Therefore, the same was rejected/filed being devoid of any merit (Copy of rejection order is attached as Annexure-"F"). The appellant also preferred revision petition to the Inspector General of Police Khyber Pakhtunkhwa Peshawar i.e respondent No.01. The revisionary authority by taking a lenient view partially accepted appeal of the appellant and his punishment of reduction in rank by one step i.e from Head Constable to Constable was modified to the extent of reduction in rank by one step i.e Head Constable to Constable for tow (02) years. (Copy of order is attached as Annexure-"G").
6. That appeal of the appellant is liable to be dismissed on the following grounds amongst the others.

REPLY ON GROUNDS:

A. Incorrect. Orders passed by the respondent No. 01 & 03 are legal, lawful, based on facts hence, liable to be maintained.
B. Incorrect. Stance taken by the appellant is totally ill-based because he has properly been proceeded against departmentally by issuing him charge sheet with statement of allegations and appointment of enquiry office the then SP/Operations Mardan.
C. Incorrect. Plea taken by the appellant is not plausible because he was issued Final Show Cause Notice to which his reply was received and found unsatisfactory.
D. Incorrect. All the opportunities of self defence and hearing were provided to appellant by the authority during course of probe.

E. Incorrect. As explained in preceding Paras.

F. The respondents also seek permission of this honorable tribunal to adduce additional grounds at the time of arguments.

PRAYER:-

Keeping in view the above stated facts and rules, it is most humbly prayed that the appeal of the appellant being barred by law and limitation, may very kindly be dismissed with costs please.

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar
(Respondent No. 01)

Regional Police Officer, Mardan.
(Respondent No. 02)

District Police Officer, Mardan.
(Respondent No. 03)

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR.

Service Appeal No. 4055/2020

Nihad Ali, Traffic Officer/Head Constable No.2942, Police Lines, Mardan.....Appellant

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar
2. Regional Police Officer, Mardan
3. District Police Officer, Mardan Region, Mardan

.....Respondents

COUNTER AFFIDAVIT.

We, the respondents do hereby declare and solemnly affirm on oath that the contents of the Para-wise comments in the service appeal cited as subject are true and correct to the best of our knowledge and belief and nothing has been concealed from this Honourable Tribunal.

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar
(Respondent No. 01)

Regional Police Officer, Mardan.
(Respondent No. 02)

District Police Officer, Mardan.
(Respondent No. 03)

Serial No.

14. COMMENDATORY ENTRIES — Concld.

ORDER:

The board decided that penalty of reduction in rank by one step i.e from Head Constable to Constable is hereby modified to the extent of reduction in rank by one step i.e from Head Constable to constable for two (2) years. and pay fixed Rs: 17090 (PPP) in BPS-7.

OB No. 584

25/03/2020

District Officer
& Magistrate

ORDER:

The appeal is rejected and filed being devoid of Merit by DIG Mardan vide Endst No 13805/ES, dated 05/12/2019

DPO/Mardan

DSP, Lega
EC ✓
For info
n/action

CHARACTER ROLL OF

Serial No.

15. CENSURES AND PUNISHMENTS. --- Contd.

ORDER

Being Involved in Ca
FIR No. 844 dated:- 03-06-2017. U/s
PPC Peshawar. He is hereby suspended a
Closed to P. Lines with immediate ef
OB No. 1309
Dt 5-6-17.

District Police Officer
Mardan

ORDER

He is hereby Re-Instated in
Service from the date of Suspensio
with counting his Suspension Period a
duty with immediate effect unde
Police Rules-1975.

OB No. 1980
29/8/17

District Police Officer
Mardan

LL OF

15. CENSURES AND

ORDE

He
and closed to P
and negligence
OB No. 1364
Dt. 26.6.19

ORDER

He a
failed to preser
therefore, awa
reducing in
service from
this suspensio
in exercise
and pay
OB No. 2174
Dt 9.10.19

15. CENSURES AND PUNISHMENTS. --- Contd. (Continued)

Cas

ORDER

He is hereby placed under Suspension and closed to P. Lines for his Inefficiency and negligence.

OB No. 1364

Dt. 26.6.19

DPO/Mardan

ORDER

He was heard in OR on 8-10-19 who failed to present any Plausible Reasons in his defence, therefore, awarded him major punishment of Reducing in Rank by one Step and Re-instated in Service from the date of Suspension with Counting his suspension's Period as duty with Immediate effect, in exercise of Power vested in me under PR-1975 and Pay fixed Rs:- 16480/Pm. in BPS-7.

OB No. 2174

Dt. 9.10.19.

District Police Officer
Mardan

16. LEAVE, ABSENCE AND BREAKS IN SERVICE.

All Periods not counting as "approved service" to be entered in red ink.

1.		2.			3.	4.
Date		Extent			No. Of District Order	Description of leave i.e privilege hospital sick leave or of absence, or forfeiture of approved service.
	To	Years	Months	Days		
				(1)	733 24.3.16	Leave W/o Pay — DPO/MR
				(30)	726 16-3-17	E/Leave — DPO/MR
				(01)	1667 19/7/017	leave w/o pay - DPO/MRD
				(01)	45 8/1/018	DO - DPO/MRD
				(01)	176 24/1/19	DO - DPO/MRD

دفتر ٹریفک　　نقلمد 10 روزنامچہ 25/06/2019　　ضلع مری

مد10 رپورٹ/روانگی امجد خان Ti وقت 11:00 بجے مورخہ 25/06/19 درج ھیکہ بحوالہ کمپلینٹ PMDU نمبری 200619 kp3215902 جس میں مسمی بشیر حسین شاہ ولد سید لطیف شاہ سکنہ ضلع راولپنڈی نے کمپلینٹ میں ٹکٹ نمبری 25186206 کے متعلق شکایت کی ہے کہ ٹریفک پولیس نے مجھ سے -/2520 روپے جرمانہ کر کے وصول کیے ہیں جس کو بعد میں بذریعہ بینک چیک کر کے جو کہ -/300 روپے جمع تھے۔ اور بقایا رقم -/2200 روپے جیب میں ڈالے ہیں، ٹکٹ بالا کو بذریعہ کمپیوٹر چیک کے جس کا چالان بک نمبری 251863 To نہاد علی 2942 پر تقسیم کیا گیا تھا۔
آج مورخہ 25/06/019 کو کمپلینٹ کنندہ شخص اور To نہاد علی بالا کو دفتر ٹریفک طلب کر کے کمپلینٹ کے بارے میں جناب DSP ٹریفک صاحب کے نوٹس میں لا کر جس پر جناب DSP ٹریفک صاحب دفتر ٹریفک تشریف فرما ہو کر کمپلینٹ کنندہ کی زبانی کمپلینٹ سن کر To نہاد کو بھی پیش کر کے بعد سرسری انکوائری جناب DSP صاحب نے To مذکورہ کو فوری طور پر پولیس لائن کلوز کرنے کا حکم صادر فرما کر اسی بابت رپورٹ درج روزنامچہ ہو کر To نہاد کو پولیس لائن روانہ کر کے روانگی کی اطلاع ان ڈیوٹی مد محرر کو دی گئی جبکہ نقلمد علحیدہ مرتب ہو کر بغرض اطلاعیابی افسران بالا صاحبان کو ارسال کی جاتی ہے۔

جناب عالی
نقل بمطابق اصل ہے۔

جناب عالی!
حوالہ OB 2336 مورخہ 23/6/19
کو پولیس لائن تبدیل ہو چکا ہے

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

Tel No. 0937-9230109 & Fax No. 0937-9230111
Email: dpo_mardan@yahoo.com

2019

No. 957 /PA Dated 3/7/2019

DISCIPLINARY ACTION

I, SAJJAD KHAN (PSP), District Police Officer Mardan, as competent authority am of the opinion that **HC Nihad Ali No.2942,** himself liable to be proceeded against, as he committed the following acts/omissions within the meaning of Police Rules 1975.

STATEMENT OF ALLEGATIONS

Whereas, **HC Nihad Ali No.2942,** while posted as T.O (now under suspension Police Lines), challaned one Bashir Hussain Shah Son of Syed Latif Shah Resident of Rawalpindi by fining Rs.2520/-, but when the said challan was checked at concerned Bank, it was found that out of total fine/amount, only Rs.300/- was deposited at Bank and the rest of Rs.2200/- was embezzled/taken by T.O Nihad Ali vide Naqal Mad No.10 dated 25-06-2019 Traffic Office Mardan, lodged by TI Amjid Khan.

For the purpose of scrutinizing the conduct of the said accused official with reference to the above allegations, **Mr. Mushtaq Ahmed SP/Operations Mardan is nominated as Enquiry Officer**.

The Enquiry Officer shall, in accordance with the provision of Police Rules 1975, provides reasonable opportunity of hearing to the accused Police Officer, record/submit his findings and make within (30) days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused Official.

HC Nihad Ali is directed to appear before the Enquiry Officer on the date + time and place fixed by the Enquiry Officer.

(SAJJAD KHAN) PSP
District Police Officer
Mardan

St
pl. proceed

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

Tel No. 0937-9230109 & Fax No. 0937-9230111
Email: dpo_mardan@yahoo.com

2016

CHARGE SHEET

I, **SAJJAD KHAN (PSP),** District Police Officer Mardan, as competent authority, hereby charge **HC Nihad Ali No.2942,** while posted as T.O (now under suspension Police Lines), as per attached Statement of Allegations.

1. By reasons of above, you appear to be guilty of misconduct under Police Rules, 1975 and have rendered yourself liable to all or any of the penalties specified in Police Rules, 1975.

2. You are, therefore, required to submit your written defense within **07 days** of the receipt of this Charge Sheet to the Enquiry Officer, as the case may be.

3. Your written defense, if any, should reach the Enquiry Officers within the specified period, failing which, it shall be presumed that you have no defense to put-in and in that case, ex-parte action shall follow against you.

4. Intimate whether you desired to be heard in person.

(SAJJAD KHAN) PSP
District Police Officer
Mardan

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

Tel No. 0937-9230109 & Fax No. 0937-9230111
Email: dpo_mardan@yahoo.com

No. 2431 /PA Dated 6 / 08 /2019

FINAL SHOW CAUSE NOTICE

Whereas, you **LHC Nihad Ali No.2942**, while posted as T.O (Now under suspension Police Lines), challaned one Bashir Hussain Shah Son of Syed Latif Shah Resident of Rawalpindi by fining Rs.2520/-, but when the said challan was checked at concerned Bank, it was found that out of total fine/amount, only Rs.300/- was deposited at Bank and the rest of Rs.2200/- was embezzled/taken by you vide Naqal Mad No.10 dated 25-06-2019 Traffic Office Mardan, lodged by TI Amjid Khan.

In this connection, during the course of Departmental Enquiry, conducted by Mr. Mushtaq Ahmed SP/Operations Mardan vide his office letter No.346/PA (Ops) dated 16-07-2019, in pursuance of this office Statement of Disciplinary Action/Charge Sheet No.257/PA dated 03-07-2019, holding responsible you of gross misconduct and recommended for suitable punishment.

Therefore, it is proposed to impose Major/Minor penalty as envisaged under Rules 4 (b) of the Khyber Pakhtunkhwa Police Rules 1975.

Hence, I Sajjad Khan (PSP) District Police Officer Mardan, in exercise of the power vested in me under Rules 5 (3) (a) & (b) of the Khyber Pakhtunkhwa Police Rules 1975 call upon you to Show Cause Finally as to why the proposed punishment should not be awarded to you.

Your reply shall reach this office within 07 days of receipt of this Notice, failing which; it will be presumed that you have no explanation to offer.

You are liberty to appear for personal hearing before the undersigned.

Received by_____

Dated:____/____/2019

(SAJJAD KHAN) PSP
District Police Officer
Mardan

Copy to RI Police Lines to deliver this Notice upon LHC Nihad Ali No.2942 & the receipt thereof shall be returned to this office within (05) days positively for onward necessary action.

GENERAL OF POLICE
KHYBER PAKHTUNKHWA
PESHAWAR.

No. S/ 1394 /20, dated Peshawar the 17/03/2020. 2145

ORDER

This order is hereby passed to dispose of Revision Petition under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 (amended 2014) submitted by **Constable Nihad Ali No. 2942 (the then HC).** The petitioner was awarded punishment of reduction in rank by one step i.e. from Head Constable to Constable by District Police Officer, Mardan vide OB No. 2174, dated 09.10.2019 on the allegations that he while posted as Ticketing Officer challaned one Bashir Hussain Shah r/o Rawalpindi by fining of Rs. 2520/- but when the said challan was checked at concerned bank, it was found that out of total fine/amount only Rs. 300/- was deposited at bank and the rest of Rs. 2200/- was embezzled/taken by Ticketing Officer Nihad Ali. His appeal was rejected by Regional Police Officer, Mardan vide order Endst: No. 13805/ES, dated 05.12.2019.

Meeting of Appellate Board was held on 13.02.2020 wherein petitioner was present. The petitioner was heard in person in the Appellate Board meeting wherein petitioner denied the allegations leveled against him. The petitioner has long service of 10 years and 05 months at his credit.

Keeping in view his long service, the Board decided that penalty of reduction in rank by one step i.e. from Head Constable to Constable is hereby modified to the extent of reduction in rank by one step i.e. from Head Constable to Constable for two (02) years.

This order is issued with the approval by the Competent Authority.

OB/EC/051/PO
Pm necessary action.

Sd/-
DR. ISHTIAQ AHMED, PSP/PPM
Additional Inspector General of Police,
HQrs: Khyber Pakhtunkhwa, Peshawar.

No. S/ 1395-1403 /20, DPO/Mardan 2-6-2020

Copy of the above is forwarded to the:

1. Regional Police Officer, Mardan. One Service Roll and one Fauji Missal of the above named appellant received vide your office Memo: No. 817-18/ES, dated 22.01.2020 is returned herewith for your office record.
2. District Police Officer, Mardan.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. PA to AIG/Legal, Khyber Pakhtunkhwa, Peshawar.
7. Office Supdt: E-IV CPO Peshawar.

No. 2973/ES
dt. 20-03-20

EC/DPO Mardan
For n/action

RPO/Mardan
20-03-2020

Office of The Superintendent of Police ★ Mardan ★ D. No. 2936 Date 3-6-20

(DR. ZAHID ULLAH) PSP
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.