

BEFORE THE HONOURABLE, KHYBER PAKHTUNKHWA, SERVICE
TRIBUNAL PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No. 213/2022

Diary No. 3487

Saeed Ullah No. 635, Ex-Constable District Police, Nowshera)

Dated 9-2-2023

S/O Abdullah Jan r/o Khudrezi, Tehsil Pabbi, District Nowshera.

.....Appellant


V E R S U S

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others.

.....Respondents

I N D E X

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Inspector Legal,
Nowshera

(1)

**BEFORE THE HONOURABLE, KHYBER PAKHTUNKHWA, SERVICE
TRIBUNAL PESHAWAR**

Service Appeal No. 213/2022

Saeed Ullah No. 635, Ex-Constable District Police, Nowshera)
S/O Abdullah Jan r/o Khudrezi, Tehsil Pabbi, District Nowshera.

.....Appellant

V E R S U S

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

.....Respondents

REPLY ON BEHALF OF RESPONDENTS

Respectfully Sheweth: -

PRELIMINARY OBJECTIONS: -

1. That the appellant has got no cause of action and locus standi to file the instant appeal.
2. That the appeal is badly barred by law and limitation.
3. That the appellant is estopped by his own conduct to file the instant appeal.
4. That the appeal is not maintainable in its present form.
5. That the appellant has not come to the Honourable Tribunal with clean hands.
6. That the appeal is bad for mis-joinder and non-joinder of necessary and proper parties.

Reply on Facts: -

1. Para pertains to record.
2. Incorrect. Appellant was directly charged by complainant in case registered vide FIR No. 158 dated 23-02-2019 u/s 302/324/34 PPC, Police Station, Pabbi.
3. Incorrect. Appellant after commission of offence went into hiding in order to avoid his lawful arrest. (Copy of FIR is annexure "A").
4. Incorrect. Mere grant of bail does not mean acquittal from the charges.
5. Incorrect. Proper departmental enquiry against appellant was conducted through the then ASP Nowshera Cantt.: Enquiry officer, in his report highlighted that the appellant was nominated accused in the aforementioned FIR and was evading his lawful arrest.

Moreover, as per report of SDPO Pabbi, after completion of proclamation proceedings, challan in respect of appellant, u/s 512 Cr.P.C was submitted before the court. (Copy of enquiry report is annexure "B" and copy of report of SDPO Pabbi is annexure "C").

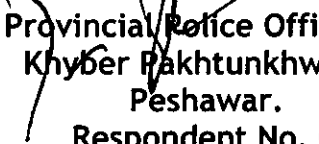
6. Para correct to the extent that against punishment order, appellant moved departmental appeal before respondent No. 02, however, the same was filed being badly time barred. Appellant was dismissed on 02-07-2019 while he moved departmental appeal on 13-07-2021 which was time barred by 02 years. (Copy of departmental appeal is annexure "D").
7. Para correct to the extent that appellant moved revision petition before respondent No. 03 however, the same was also filed being badly time barred. (Copies of revision petition and rejection order are annexure "E").
It is worth to mention here that departmental appeal of the appellant was filed on 24-11-2021 while he moved revision petition on 22-01-2022.
8. Appeal of the appellant is liable to be dismissed inter-alia on the following grounds: -

Reply on Grounds


- A. Incorrect. Orders passed by respondent No. 01 & 02 are in accordance with law and rules hence, are liable to be maintained.
- B. Incorrect. Before passing punishment order against the appellant, proper departmental enquiry was conducted through the then ASP Nowshera Cantt:.
- C. Incorrect. Mere length of service does not exonerate any official from any misconduct committed by him.
- D. Para already explained above.
- E. Para not related.
- F. Para not related.
- G. Para already explained above.
- H. Incorrect. As explained in the preceding paras, appellant after commission of offence had gone into hiding and was evading his lawful arrest.
- I. Para already explained above.
- J. Incorrect. Delay in filing of departmental appeal was due to the conduct of the appellant, as he after commission of offence went into hiding.
- K. Para not related.
- L. The respondents also seek permission of this Honourable Tribunal to advance additional grounds at the time of arguments.

Prayers

It is, therefore, most humbly prayed that on acceptance of above submissions, the appeal of the appellant may very kindly be dismissed with costs, please.


Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.
Respondent No. 03


Regional Police Officer,
Mardan.
Respondent No. 02


District Police Officer,
Nowshera.
Respondent No.01

(4)

**BEFORE THE HONOURABLE, KHYBER PAKHTUNKHWA, SERVICE
TRIBUNAL PESHAWAR**

Service Appeal No. 213/2022

Saeed Ullah No. 635, Ex-Constable District Police, Nowshera)
S/O Abdullah Jan r/o Khudrezi, Tehsil Pabbi, District Nowshera.

.....Appellant

V E R S U S

District Police Officer, Nowshera and others.

.....Respondents

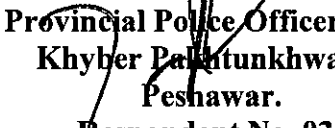
REPLY TO THE APPLICATION FOR CONDONATION OF DELAY

Respectfully Sheweth: -


1. Para not related.
2. Incorrect. The same cannot be considered as integral part of the petition.
3. Incorrect. Delay in filing of appeal is due to the own conduct of the appellant, as he had gone into hiding after charged in the criminal case.
4. Incorrect. Application for delay of condonation is barred by law, as limitation runs against the same.
5. There are plethora of judgments of the superior court, that in case of delay of appeal, proper explanation for each day is required to be given, while appellant has failed to explain any reason for such delay. Moreover, case of the appellant has been decided on merit not on technicalities.

Prayers

It is, therefore, most humbly prayed that on acceptance of above submissions, the instant application for condonation of delay may very kindly be dismissed/filed, please.


Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.
Respondent No. 03


Regional Police Officer,
Mardan.
Respondent No. 02


District Police Officer,
Nowshera.
Respondent No.01

BEFORE THE HONOURABLE, KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 213/2022

Saeed Ullah No. 635, Ex-Constable District Police, Nowshera)
S/O Abdullah Jan r/o Khudrezi, Tehsil Pabbi, District Nowshera.

.....Appellant

V E R S U S

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

.....Respondents

AFFIDAVIT

We the respondents No. 1, 2 & 3 do hereby solemnly affirm and declare on Oath that the contents of reply to the appeal are true and correct to the best of our knowledge and belief and nothing has been concealed from the Honourable tribunal.



19 FEB 2023

[Signature]
 Provincial Police Officer,
 Khyber Pakhtunkhwa,
 Peshawar.
 Respondent No. 03

[Signature]
 Regional Police Officer,
 Mardan.
 Respondent No. 02

[Signature]
 District Police Officer,
 Nowshera.
 Respondent No.01

491/111
29/11/11

Handwritten text in Urdu, likely a letter or report, containing various details and possibly a signature at the bottom.

| | | |
|---|-------|----------|
| 7 | تاریخ | 15-05-11 |
| 6 | مقام | لاہور |
| 5 | موضوع | ... |
| 4 | ... | ... |
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| 2 | ... | ... |
| 1 | ... | ... |

Handwritten notes and signatures at the bottom of the page, including a date '12-05-11' and a signature 'A'.

Annex: B₃
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ENQUIRY REPORT FC SAEED ULLAH NO.635 POSTED POLICE POST BARA BANDA

ALLEGATION:

Whereas, Constable Saeed Ullah No. 635, while posted at PS Nowshera Kalan, is reportedly involved vide case FIR No. 158 dated 23.02.2019 u/s 302/324/34-PPC, PS Pabbi, which amounts to gross misconduct on his part and rendered him liable for Minor/Major punishment under Khyber Pakhtunkhwa Police Rules 1975.

PROCEEDINGS:

The delinquent police official has been contacted through his mobile number 0310-9832941 time and again but he refuses to attend the office of the undersigned and also through office of DSB Incharge FC Saeed Ullah has been declared PO on record by police station Pabbi and avoid arrest.

FINDINGS:

The undersigned after enquiry has arrived at conclusion that the respondent police official is a nominated accused in the given FIR and deliberately avoids joining instant enquiry as well as investigation of the case. Therefore, it is recommended that the delinquent police official may be kept under suspension and his pay may be stopped till conclusion of investigation and trial of the case. The proceeding of the departmental enquiry may also be differed till that.

Assistant Superintendent of Police,
Circle Cantt Nowshera

No. 345 / St:

Dated 05/04/2019.

DSP Pabbi
complete all code
formalities of Proclamation
for the purpose of
enquiry.

By no. 721
D.A. D.P. L. NBR
a 10/04/2019
EOD



**OFFICE OF THE
DEPUTY SUPERINTENDENT OF POLICE,
PABBI CIRCLE**

2019

Cell No. 0923-527289, Email dsp_pabbi@yahoo.com

C-8

To The District Police of Officer,
Nowshera.
No. 295 /S. Dated Pabbi 18/4 /2019

Subject: ENQUIRY REPORT FC SAEED ULLAH NO. 635 POSTED BARA BANDA.

Memo: Kindly refer to your office Diary No.721/PA Dated 10.04.2019.

It is submitted that the subject enquiry was marked by W/DPO Nowshera with remarks that "complete all coddle formalities of proclamation for the purpose of enquiry". In this regard a report was obtained from OII PS Pabbi. According to the report of OII Pabbi that the subject FC Saeed Ullah was charged vide case FIR No. 158 dated 23.02.2019 u/s 302/324/34 PPC PS Pabbi. He avoids his legal arrest. Proceeding u/s 204 CrPC (warrant), hue and cry u/s 87 CrPC, as well as, all the proclamation proceedings were completed against him. The case was challaned to court u/s 512 CrPC. Efforts are underway for the arrest of accused.

Report Submitted please.

Encl=(5)Sheets

Venish H
Deputy Superintendent of Police,
Pabbi Circle.

Sir,
For 10nd perusal
and order please
PA

W-DPO

Discepu

Issue Final
Show cause
notice

BEFORE THE WORTHY DEPUTY INSPECTOR OF POLICE
(DIG), REGION MARDAN

Annex D, (9)

Subject: DEPARTMENTAL APPEAL AGAINST THE
IMPUGNED ORDER BEARING NO.3066-69
DATED 02.07.2019 VIDE WHICH THE
APPELLANT HAVE BEEN DISMISSED FROM
SERVICE.

Respected Sir;

1. That the appellant was initially appointed as Police Constable on 02.12.1996 in the Police Department District Nowshera and had served the department with full zeal and zest and there is/ was no any complaint whatsoever been pending against the appellant.
2. That the appellant always preferred the honor and dignity of service and never remained absent nor having any adverse entry in the entire service/ service book.
3. That unfortunately, the appellant was implicated with malafide intentions in a criminal case FIR No.158 dated 23.02.2019 u/s 302/ 324/ 34 PPC of P.S Pabbi, District Nowshera.
4. That due to compelling situation as well as receiving the life threats from the opponents, the appellant was unable to keep and continue his duties, thus having no other option except to side from the scene.
5. That the appellant then surrendered himself being innocent before the competent Court of law and the pre-arrest bail was confirmed vide order dated 28.06.2021.

6. That the appellant was stunned when came into know about the impugned order passed by the worthy District Police Officer, without holding any proper inquiry into the matter, thus approaches this hon'ble authority.
7. That no any show cause notice issued to the appellant nor served upon the appellant in a proper manner, hence the impugned order is amounts to abuse of law.
8. That it is settled law for the competent authorities that while passing any major punishment/ penalty, the authorities are required to hold proper inquiry into the matter, but in the present case, the competent authority has badly failed to follow the law, rules and regulation governing the subject matter.
9. That it is also settled law that, no person should be condemned unheard, but in the present case no opportunity of fair trial alongwith charge sheet, statement of allegation etc have been ignored, thus the impugned order is based on "malafide as well as MIGHT IS RIGHT"
10. That the DPO concerned with a single stroke of sign, dismissed the appellant, knowingly the fact that the volume of about 24 years of unblemished service.
11. That the delay in filing of the departmental appeal if any is not intentional, rather due to continuous life threats, the appellant was unable to join his duties.
12. That gallantry performance of the appellant is even established from the awarding of C-1 Certificate from the worthy I.G, appreciation certificate from the then worthy Chief Minister and also got appreciation certificates upon

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outstanding performance from the concerned DIGs. It is also worth mention here that, the appellant continuously received appreciation certificates in shape of cash amount from the concerned DPOs time and again.

(11)

It is, therefore, humbly prayed that, on acceptance of the instant departmental appeal, the impugned order dated 02.07.2019 may graciously be set-aside/ withdrawn and the appellant may kindly be reinstated into his service with all back benefits and further to allow to keep and continue his service/duties.

Any other relief deemed fit, may also be graciously granted in favour of the appellant.

Enclosed: All necessary documents

Dated: 13.07.2021

Applicant

Saeed

Saeed Ullah Jan
S/o Abdullah Jan
Ex-Constable 635
District Police Office, Nowshera.
Cell: 0333-9724355

BEFORE THE WORTHY INSPECTOR OF POLICE (IG),
KHYBER PAKHTUNKHWA

Annex E
12

Subject: DEPARTMENTAL APPEAL AGAINST THE
IMPUGNED ORDER BEARING NO.3066-69
DATED 02.07.2019 VIDE WHICH THE
APPELLANT HAVE BEEN DISMISSED FROM
SERVICE.

Respected Sir;

1. That the appellant was initially appointed as Police Constable on 02.12.1996 in the Police Department District Nowshera and had served the department with full zeal and zest and there is/ was no any complaint whatsoever been pending against the appellant.
2. That the appellant always preferred the honor and dignity of service and never remained absent nor having any adverse entry in the entire service/ service book.
3. That unfortunately, the appellant was implicated with malafide intentions in a criminal case FIR No.158 dated 23.02.2019 u/s 302/ 324/ 34 PPC of P.S Pabbi, District Nowshera.
4. That due to compelling situation as well as receiving the life threats from the opponents, the appellant was unable to keep and continue his duties, thus having no other option except to side from the scene.
5. That the appellant then surrendered himself being innocent before the competent Court of law and the pre-arrest bail was confirmed vide order dated 28.06.2021.

- 13
6. That the appellant was stunned when came to know about the impugned order passed by the worthy District Police Officer, without holding any proper inquiry into the matter, thus approaches this hon'ble authority.
 7. That no any show cause notice issued to the appellant nor served upon the appellant in a proper manner, hence the impugned order is amounts to abuse of law.
 8. That it is settled law for the competent authorities that while passing any major punishment/ penalty, the authorities are required to hold proper inquiry into the matter, but in the present case, the competent authority has badly failed to follow the law, rules and regulation governing the subject matter.
 9. That it is also settled law that, no person should be condemned unheard, but in the present case no opportunity of fair trial alongwith charge sheet, statement of allegation etc have been ignored, thus the impugned order is based on "malafide as well as MIGHT IS RIGHT".
 10. That the DPO concerned with a single stroke of sign, dismissed the appellant, knowingly the fact that the volume of about 24 years of unblemished service.
 11. That the delay in filing of the departmental appeal if any is not intentional, rather due to continuous life threats, the appellant was unable to join his duties.
 12. That it is pertinent to mention that an inquiry was conducted by the Inquiry Officer of Case FIR No.158 which was completed and appellant was declared innocent because the appellant had a strong alibi in

Shape of testimony of Paish e Imam Molana Sami ur Rehman along with other peoples (Moqtadis) (Mohtamim of Madrassa/ Masjid Tafhimul Quran) that appellant was performing Nimaz e Maghrib at the relevant time in the Masjid mentioned above situated at Pabbi Station, hence appellant was declared innocent in the inquiry report.

13. That gallantry performance of the appellant is even established from the awarding of C-1 Certificate from your worthy office, appreciation certificate from the then worthy Chief Minister and also got appreciation certificates upon outstanding performance from the concerned DIGs. It is also worth mention here that, the appellant continuously received appreciation certificates in shape of cash amount from the concerned DPOs time and again.

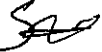
It is, therefore, humbly prayed that, on acceptance of the instant departmental appeal, the impugned order dated 02.07.2019 may graciously be set-aside/ withdrawn and the appellant may kindly be reinstated into his service with all back benefits and further to allow to keep and continue his service/duties.

Any other relief deemed fit may also be graciously granted in favour of the appellant.

Enclosed: All necessary documents

Dated: 01.22.2022

Applicant


Saeed Ullah Jan
S/o Abdullah Jan
Ex-Constable 635
District Police Office, Nowshera.
Cell: 0333-9724355

635
DA



OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar.

No. S/ 417 /22, dated Peshawar the 09/03/2022.

15

To : The Regional Police Officer,
Mardan.

919
11/3/22

Subject:- REVISION PETITION.

Memo:

The Competent Authority has examined and filed the revision petition submitted by Ex-FC Saeed Ullah No. 635 of Nowshera district Police against the punishment of dismissal from service awarded by District Police Officer, Nowshera vide OB No. 701, dated 02.07.2019, being time barred.

The applicant may please be informed accordingly.

No. 1962/EJ
dt 11-3-22

(NOOR AFGHAN)

Registrar,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

EC DPO Nowshera

For Compliance

RPO
10-3-

No. 657/PA
dt 15/3/2022

EC/FMC

for action

DPONSA
15/3/2022