

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 4396

Dated 16/3/2023

Service Appeal No. 1901/2022
Fazal Rabi

..... Appellant

Ex-LHC No.838
Village Asat Khel Korona City
Karak, Post office Tehsil & District Karak

VERSUS


Inspector General of Police,

Khyber Pakhtunkhwa & others

..... Respondents

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Respondents
Through
Representative

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
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Service Appeal No. 1901/2022

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Ex-LHC No.838

Village Asat Khel Korona City

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..... Appellant

VERSUS

Inspector General of Police,
Khyber Pakhtunkhwa & others

..... Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO.1, 2 & 3.

Respectfully Sheweth:-

Preliminary Objections:-

- i. That the appellant has got no cause of action to file the instant appeal.
- ii. The appellant has got no locus standi to file the instant appeal.
- iii. That the appellant is stopped by his own conduct to file the instant appeal.
- iv. That the appeal is bad in eyes of law and not maintainable.
- v. That the appellant has not approached the honorable Tribunal with clean hands.
- vi. That the appeal is barred by law and limitation.

REPLY ON FACTS


S.NO	Para of the Facts/Grounds	Reply with Annexure
1.	That the appellant is appointed vide order dated 12.02.2002 in Police department is Constable and was performing his duties passionately and wholeheartedly. Copy of the appointment order is attached as annexure..... A.	Correct to the extent of appointment of the appellant.
2.	That appellant due to some urgency moved an application vide dated 17.09.2020 & 21.09.2020 to the respondent for grant of leave and the reason for moving applications was ailment of appellant aged father while in that period mother appellant died. Copy of applications and medical reports are attached as annexure are attached as annexure..... B & C.	Incorrect and misleading hence denied. The appellant has not moved any leave application to senior Police officer nor produced medical documents during course of enquiry. The appellant was transferred from Special Branch to this district Police, failed to report at his new place of posting and remained absent from his lawful duties without any leave or prior permission.
3.	That the respondents without looking into the genuine cause of the appellant issued impugned order dated 12.04.2020 whereby the appellant was awarded major penalty of compulsory retirement from service. Copy of the impugned order dated 12.04.2021 is attached as annexure..... D.	Incorrect, hence denied. Proper departmental enquiry was initiated against the appellant vide charge sheet No.328-329 dated 28.10.2020, and SDPO Hqrs, Karak was appointed as enquiry officer. According to the finding report of enquiry officer vide

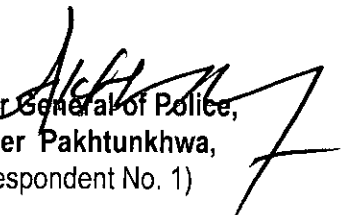
		No.130/PA/HQ dated 24.02.2021, the appellant was recommended for major punishment. Upon the recommendations of the enquiry officer, the appellant was issued Final Show Cause Notice vide No. 125/EC(Enq) dated 25.01.2021 and awarded him major punishment of compulsory retirement from service vide OB No.115 dated 12.04.2021. Copy of Charge Sheet, finding report and order of compulsory retirement as annexure A,B&C .
4.	That the appellant feeling aggrieved from aforementioned impugned order, moved representation to the appellate authority which was rejected on no good grounds vide dated 23.11.2022. Copy of departmental appeal and appellate order dated 23.11.2022 are attached as annexure..... E & F .	Incorrect, the appellant's departmental appeal to respondent No.2 was rejected being devoid of merit and time barred. Copy of order of RPO Kohat as annexure-D .
5.	That the appellant further feeling aggrieved preferred revision petition to respondent No.1 which is still pending. Copy of the revision petition is attached as annexure..... G .	Incorrect, the appellant's revision petition was filed by respondent No.1 being badly time barred, copy as annexure-E .
6.	That the appellant further feeling aggrieved and having no other remedy but to file this instant appeal on following grounds inter alia.	The appellant plea is not maintainable in law, liable to be dismissed on the following ground.
REPLY ON GROUNDS:		
A.	That the issuance of impugned order dated 12.04.2021 & 23.11.2022 by the respondents is against law, rules and norms of natural justice and hence liable to be set aside.	Incorrect, the appellant was dealt in accordance with law & rules.
B.	That the appellant has not been treated in accordance with law and violated article 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973.	Incorrect, the appellant was treated in accordance with rules in vogue and no constitutional provision has been violated.
C.	That the action of the respondents is arbitrary in nature by issuing the impugned order dated 12.04.2021 & 23.11.2022 is against the norms of natural justice.	Incorrect, already explained vide para A & B above.
D.	That no show causes notice or statement of allegation was served upon the appellant beforehand.	Incorrect, reply as para 3 of the fact above.
E.	That no final show causes notice is served upon the appellant beforehand.	Incorrect, reply as para 3 of the fact above.
F.	That the no rule.9 of the efficiency and discipline rules 2011 is followed by the respondents.	Incorrect, the appellant was dealt in accordance with the relevant provision of Efficiency & Disciplinary Rules-1975, applicable to uniform Police personnel.

G.	That the no opportunity of chance of personal hearing/defense has been granted to the appellant beforehand.	Incorrect, the appellant was provided an opportunity of personal hearing and self-defence but he failed to advance any plausible reply to the enquiry officer.
H.	That the appellant seeks permission to advance any other ground and proof at the time of regular hearing.	The respondents may also be allowed to advance an additional ground during the course of arguments.

Prayer:-

In view of the above, it is humbly prayed that the appeal contrary to facts, law & rules, devoid of merits and not maintainable may graciously be dismissed with costs, please.


Regional Police Officer,
Kohat
(Respondent No. 2)


Inspector General of Police,
Khyber Pakhtunkhwa,
(Respondent No. 1)


District Police Officer,
Karak
(Respondent No. 3)

No. 328-29 /EC(Enq)

Dated 28/10/2020

CHARGE SHEET

I, **IRFAN ULLAH KHAN**, District Police Officer, Karak as a competent authority, hereby charge you **LHC Fazal Rabi No. Police Lines Karak** as follows:-

"You LHC Fazal Rabi transferred from the Special Branch to this district Police vide the W/IGP KP Peshawar order No. 11254-55/E-IV dated 25.09.2020 but you LHC Fazal Rabi failed to report at your new place of posting and absented yourself from lawful duty w.e.from 09.10.2020 to till date without any leave or prior permission. Your pay has been stopped to this effect. This state of affair is quite adverse on your part and shows your negligence, carelessness and irresponsibility in the discharge of your official obligations. This act on your part is against service discipline and amounts to gross misconduct."

1. By the reason of your commission/omission, constitute miss-conduct under Police disciplinary Rule-1975 (amendment Notification No. 3859/Legal, dated 27.08.2014) Govt: of Khyber Pakhtunkhwa, Police Department, you have rendered your-self liable to all or any of the penalties specified in Police Rule-1975 ibid.

2. You are, therefore, required to submit your written defense within 07-days of the receipt of this charge sheet to the enquiry Officer DSP-HQ is hereby appointed for the purpose of conducting enquiry.

Your written defense if any should reach to the Enquiry Officer within a stipulated period, failing which shall be presumed that you have no defense to put in and in that case ex-parte action shall be taken against you.

3. Intimate whether you desire to be heard in person.
4. A statement of allegation is enclosed.

Seen
Dy. Supt. Of Police
Karak
29/10/20

[Signature]
District Police Officer, Karak



از دفتر

ڈپٹی سپرنٹنڈنٹ آف پولیس ہیڈ کوارٹرز ضلع کرک

ای میل: dsphqrskarak@gmail.com فون نمبر 0927-291127

Dated: 24/02/2021

No. 135 /HQ/PA

جناب ڈسٹرکٹ پولیس آفیسر صاحب کرک

بجانب:-

محکمہ انکوائری بر خلاف LHC فضل ربی نمبر 122

عنوان:-

جناب عالی

الزامات:

بحوالہ مشمولہ چارج شیٹ نمبر (Enq) 328-29/EC مورخہ 28.10.2020 جاریہ جناب ڈسٹرکٹ پولیس آفیسر صاحب کرک میں الزامات لگائے ہیں کہ آپ LHC فضل ربی کا تبادلہ بحوالہ آرڈر نمبر 11254-55/E-IV مورخہ 25.09.2020 جاریہ جناب IGP صاحب خیبر پختونخواہ پشاور سیشن برانچ سے ضلع ہڈا ہو گیا تھا لیکن آپ نے اپنے نئے جگہ تعیناتی میں غاضبی نہیں کی اور اپنے سینئر افسران سے اجازت / چھٹی لئے بغیر مورخہ 09.10.2020 سے لیکر 30.01.2021 تک (کل غیر غاضبی 19 ماہ 03 اپنی ڈیوٹی سے غیر حاضر ہے۔ اس بابت زبردستی کو انکوائری افسر مقرر کیا گیا ہے۔

الزام علیہ کا

موقف: اطلاع ملی کے والد صاحب کی طبیعت انتہائی ناساز ہے گھر آ جائے۔ سائل نے رخصت کی بابت اس سے قبل درخواست بابت منظوری رخصت AGO سیشن برانچ کو تحریر کی گئی۔ سائل نے اپنے والد کو علاج معالجے کی خاطر KDA ہسپتال کرک لجا کر ڈاکٹر ظمن سعید ہارٹ سپیشلیٹ سے چیک اپ کروا کر کچھ دوایاں تحریر کر کے گھر لیجانے کی ہدایت کر کے اگلے صبح دوبارہ لانے کی ہدایت کی۔ دوبارہ والد صاحب کی چیک اپ کروا کر داخل ہسپتال کیا گیا۔ سائل والد صاحب کا ہسپتال میں خدمت کرتا رہا۔ سائل کے سوا گھر میں کوئی دوسرا مزیدہ شخص موجود نہیں تھا سائل نے اپنے رخصت کے بارے میں سیشن برانچ دفتر سے معلومات کر کے گھر رخصت منظور نہ تھا۔ چونکہ والد کا رشتہ زیادہ قریب ہے سائل نے قصداً عداً غیر غاضبی نہیں کی ہے بلکہ والد صاحب کی بیماری کی وجہ سے غیر حاضر ہوا ہوں۔ تمام میڈیکل کاغذات مہراہ لاف ہے۔

نتیجہ

انکوائری: دوران انکوائری جملہ بیانات اور خفیہ معلومات کے بعد زبردستی اس نتیجے پر پہنچا کہ الزام علیہ LHC کا تبادلہ بخوالہ تذکرہ بالا آرڈر سیشن برانچ خیبر پختونخواہ سے ضلع ہڈا ہو کر جان بوجھ کر غیر حاضر رہے اور ضلع ہڈا میں اپنی غاضبی کی رپورٹ نہیں کی۔ LHC مذکورہ نے بعد از اشتہار اظہار وجوہ بخوالہ پی آئی ڈی نمبر INFP257/20 روز نامہ ایکسپریس اخبار پشاور مورخہ 16.01.2012 میں شائع ہونے کے بعد ضلع ہڈا میں غاضبی کی رپورٹ کی اور اپنے والد کے بیماری کا بہانہ بنا کر مختلف ڈاکٹروں اور ہسپتال سے علاج معالجے کی کاغذات زبردستی کو پیش کئے۔ LHC مذکورہ نے چونکہ اپنے والد کی بیماری کے میڈیکل کاغذات اور اپنی درخواستیں بابت چھٹی اپنی غیر غاضبی کے دوران یا بعد از غیر غاضبی اپنے متعلقہ افسران کو پیش نہیں کئے ہے بلکہ ضلع ہڈا میں غاضبی کرنے اور بعد از اشتہار اظہار وجوہ نوش دوران انکوائری زبردستی کو پیش کئے ہے۔ LHC مذکورہ پہلے غیر حاضر ہو گیا تھا اور بعد میں اپنے والد کے بیماری کے میڈیکل کاغذات پیش کئے ہے۔ مذکورہ LHC چونکہ ایک خواندہ پولیس اہلکار ہے اور ذمہ دار پوسٹ پر تعینات رہا ہے، جان بوجھ کر سرکاری ڈیوٹی سرانجام دینے میں غفلت اور سست روی کا مظاہر کیا ہے۔ افسران بالا کی احکامات کو بیکسر نظر انداز کئے ہے، بار بار طبی کے باوجود نہ تو افسران بالا اور نہ زبردستی کے سامنے پیش نہیں ہوتا تھا۔ LHC مذکورہ اپنی غیر غاضبی کی کوئی معقول وجہ یا اپنے دفاع میں کوئی مدلل جواب یا دستاویز پیش نہ کر سکا۔ لہذا مذکورہ اہلکار کا پولیس ڈیپارٹمنٹ موجود رہنا مناسب نہیں، بدین وجہ Major-Punishment/Compulsory-Retirement دینے کی سفارش کی جاتی ہے۔ مزید تحقیقات بالا آفسر آپ صاحب کی رائے افضل ہے۔ رپورٹ مرتب ہو کر گزارش ہے۔

ڈپٹی سپرنٹنڈنٹ آف پولیس ہیڈ کوارٹرز،

ORDER

My this Order will dispose off the departmental enquiry against LHC Fazal Rabi No. 838 of this district Police.

Facts are that LHC Fazal Rabi transferred from the Special Branch to this district Police vide the W/IGP KP Peshawar order No. 11254-55/E-IV dated 25.09.2020 but LHC Fazal Rabi failed to report at his new place of posting and absented himself from lawful duty w.e. from 09.10.2020 to till date without any leave or prior permission. His pay has been stopped to this effect. This state of affair is quite adverse on his part and shows his negligence, carelessness and irresponsibility in the discharge of his official obligations. This act on his part is against service discipline and amounts to gross misconduct.

He was issued with Charge Sheet and Statement of allegations. Mr. Muhammad Irfan, the then SDPO Karak was appointed as an Enquiry Officer to conduct proper departmental enquiry against him and to submit his findings within the stipulated time.

The Enquiry Officer reported that accused LHC was transferred from the Special branch but intentionally failed to report in the district. Later on, he was issued with Show Cause Notice in the daily Express newspaper on 16.01.2021 but the accused LHC made reasoning for not reporting to his official duty in shape of treatment of his father and failed to produce cogent reason in his defense. Accused official intentionally shows carelessness and negligence in the discharge of official obligations. Therefore, the E.O recommended him for award of major punishment of compulsory retirement from service.

Keeping in view of the available record and facts on file, perusal of enquiry papers and the recommendations of the Enquiry Officer, he is found guilty of the charges. He did not take interest in his official obligations. However, putting lenient view on his family, I, Tariq Habib, District Police Officer as competent authority under the Police Rules 1975 (amended in 2014) hereby impose major punishment of compulsory retirement with immediate effect and his absence period of 157 days is treated as leave without pay.

OB No. 115
Dated 12/10/2021

[Signature]
District Police Officer, Karak

OFFICE OF THE DISTRICT POLICE OFFICER KARAK

No. 3001 /EC(Enq) dated the Karak 13/04 /2020

Copy of above is forwarded to the District Police Officer Kohat w/r to his office letter No. 381/OHC dated 02.12.2021 and No. 967/PA dated 01.03.2021 for favour of information, please.

[Signature]

[Signature]
District Police Officer, Karak

POLICE DEPTT:

District Police Officer Karak
Diary No. 5998 R/K
Dated: 29/11/2022

KOHAT REGION

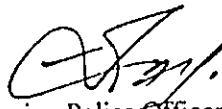
ORDER.

This order will dispose of a departmental appeal, moved by Ex-LHC Fazal Rabi No. 838 of district Karak against the punishment order, passed by DPO Karak vide OB No. 115, dated 12.04.2021 whereby he was awarded major punishment of compulsory retirement from service on the allegations of his long and deliberate absence from lawful duties without any leave or prior permission from his seniors and remained absent for about 06-months.

He preferred appeal to the undersigned, upon which comments were obtained from DPO Karak and his service record was perused. He was also heard in person in Orderly Room held in this office on 22.11.2022. During hearing the appellant did not advance any plausible explanation in his defense to prove his innocence.


I have gone through the available record which indicates that the allegations leveled against the appellant are proved and the same have also been established by the E.O in his findings. Moreover, the competent authority has already taken a lenient view while awarding him punishment. He is enjoying pension benefits from the date of compulsory retirement vide PPO No. 6939 issued by DAO Karak. Therefore, in exercise of the powers conferred upon the undersigned, his appeal being devoid of merits and badly time-barred about more than a year is hereby rejected.

Order Announced
22.11.2022


Region Police Officer,
Kohat Region.

No. 16759 /EC, dated Kohat the 23/11 /2022.

Copy to District Police Officer, Karak for information and necessary action w/r to his office Letter No. 4725/LB, dated 18.10.2022. His Service Record is returned herewith.


Region Police Officer,
Kohat Region.

*ORIGINAL
punishment order
signed the applicant accordingly*


District Police Officer
Karak



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

No. S/ 3119 /22, dated Peshawar the 22/12/2022.

To : The Regional Police Officer,
Kohat.

District Police Officer Karak
Diary...S.S.34.....R/K
Dated:30-12-2022.....

Subject: REVISION PETITION.

Memo:

The Competent Authority has examined and filed the revision petition submitted by Ex- LHC Fazal Rabi No. 838 of district Karak against the punishment of dismissal from service awarded by DPO/Karak vide OB No. 115 dated 15.04.2021, being badly time barred.

The applicant may please be informed accordingly

[Signature]
22/12
(AFSAR JAN)
Registrar,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar

EL
26/12

11206
26/12/22

in

No 18514 / Ec
26/12/2022

DPO Karak
For no action is Dismissed.

0781
informed the applicant
accordingly

[Signature]
26/12/22

District Police Officer
Karak

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1901/2022

Fazal Rabi

..... Appellant

Ex-LHC No.838

Village Asat Khel Korona City

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VERSUS

Inspector General of Police,
Khyber Pakhtunkhwa & others

..... Respondents

AFFIDAVIT

I, Zafran Din ASI Legal Branch do hereby solemnly affirm and declare on oath that the para wise comments are true and correct to the best of my knowledge and belief, and nothing has been concealed from this Honorable Court.

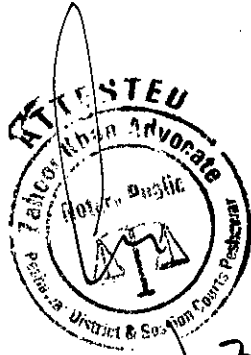


(Deponent)

CNIC.14102-0370820-3

Mobile No.0333-8582260

Identified by



16/3/22