

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA, SERVICE
TRIBUNAL PESHAWAR CAMP COURT ABBOTTABAD**

SERVICE APPEAL NO.1721/2022

Hashmat Khan Ex-Constable No.795 District Police Haripur r/o Village & Post Office
Kundi, Tehsil Ghazi, District Haripur.

..... (Appellant)

VERSUS

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

..... (Respondents)

Subject: Parawise/comments on behalf of respondents No.1, 2 & 3.

Respectfully Sheweth.

The respondents submit as under:-

PRELIMINARY OBJECTIONS:-

1. That the instant Service Appeal is not maintainable in the present form.
2. That the appellant is estopped by his own conduct.
3. That the appellant has not come to the Honorable Tribunal with clean hands.
4. That the appellant has suppressed material facts from the Honorable Tribunal.
5. That the instant Service Appeal is bad for mis-joinder and non-joinder of necessary and proper parties.
6. That the instant Service Appeal is badly barred by law and limitation.
7. That the appellant has filed the instant service appeal just to pressurize the respondents.
8. That the orders passed by the authorities are based on facts & rules, after fulfilling all the codal formalities, hence, the appeal is liable to be dismissed without any further proceeding.

OBJECTIONS ON FACTS:-

1. Subject to proof.
2. Incorrect, the appellant committed gross misconduct by absenting from mandatory training activities at PTS Swat w.e.f. 04.04.2022 to 22.06.2022. Therefore, the appellant was issued charge sheet and statement of allegations. However, the appellant could not prove his innocence in the departmental enquiry and he was held guilty of gross misconduct.
3. Incorrect, the appellant Ex-Constable Hashmat Khan No.795, was deputed to Police Training School (Swat) for police recruitment course. However he was found absent from training activities w.e.f. 04.04.2022 to 22.06.2022 without obtaining any permission or leave from competent authority. Therefore, he was dropped from the course and repatriated to parent district vide Director PTS Swat office letter No.556-57/Secrecy dated 21.04.2022. (Copy of letter is attached as annexure "A"). The acts and omissions of appellant were misconduct in term of the Khyber Pakhtunkhwa, Police Efficiency and Discipline Rules 1975 (amended 2014). Therefore, the appellant was issued charge sheet and statement of allegations by the then District

Police Officer, Haripur, vide this office Endst: No.159-60/HC dated 25.05.2022. (Copy of charge sheet with statement of allegations is attached as annexure "B"). Deputy Superintendent of Police, HQrs, Mr. Fida Muhammad was appointed as Enquiry Officer/ (E.O.), who conducted departmental enquiry and submitted his findings in which he recommended to treat the period of absence as leave without pay and the defaulter official be sent to training course in the next term. The competent authority i.e. the then District Police Officer, Haripur did not agree with the recommendations of the Enquiry Officer on the grounds that the recommendations (E.O.) did not meet the gravity of charges. Therefore, ASP Ghazi Dr. Khudija Omer was appointed as Enquiry Officer to re-inquire the allegations. The E.O. after conducting proper inquiry submitted her findings vide her office Memo No.372 dated 10.08.2022, in which she held the charges of misconduct proved and recommend the appellant for punishment. (Copy of enquiry finding is attached as annexure "C"). The appellant could not prove his innocence, therefore, being held guilty of gross misconduct he was awarded major punishment of dismissal from service vide OB.No.542 dated 23.08.2022. (Copy of order is attached as annexure "D"). Therefore, the appellant filed departmental appeal against the punishment to the Regional Police Officer, Hazara Region, Abbottabad, who filed/rejected departmental appeal of appellant, vide his office order No. 1677/PA dated 22.11.2022. (Copy of order is attached as annexure "E").

4. Incorrect, the appellant is deceiving the authorities. The enquiry officer held that the medical receipt provided by the appellant were not approved by the competent authority. He deserted from departmental training which is mandatory for police officers/officials on unjustified grounds. The fact is that the appellant was not willing to get training, so that, he absented from training activities. Neither he applied for any medical leave nor he was granted the same by the competent authority. It was a wilful absence of the appellant.
5. Incorrect, the appellant absented from training course and is adducing false stance. He did not join the mandatory training course. Therefore, he was proceeded against under the law/rules.
6. Incorrect, the appellant had committed gross misconduct, therefore, quite legal action was taken against the appellant on the charges of misconduct, consequently, he was awarded major punishment of dismissal from service by the then District Police Officer, Haripur.
7. Incorrect, proper departmental enquiry was conducted. The appellant was given right of personal hearing and self-defense. Having fulfilled all legal requirements, the appellant was awarded major punishment of dismissal from service.
8. Incorrect, the appellant filed departmental appeal against the punishment to the Regional Police Officer, Hazara Region, Abbottabad, who filed/rejected departmental appeal of appellant on lawful grounds, vide his office order No. 1677/PA dated 22.11.2022. The instant service appeal is not maintainable under the law/rules.

GROUNDS:-


- A) Incorrect, the orders of respondents dated 23.08.2022 and 22.11.2022, are quite legal, based on facts and justice, hence, the orders are lawful and maintainable.
- B) Incorrect, proper departmental enquiry was conducted. The appellant was given right of personal hearing and self-defense. Having fulfilled all legal requirements


were fulfilled the appellant was awarded major punishment of dismissal from service.


- C) Incorrect, the appellant has been dealt in accordance with law. He committed misconduct, and charges were thoroughly probed in the departmental enquiry Hence, the order of punishment is quite legal and maintainable under the law/rules.
- D) Incorrect, the appellate departmental authority abided by the law and rules and he filed/rejected departmental appeal of appellant on lawful grounds. The instant service appeal is not maintainable under the law/rules. So, the order of punishment is lawful and maintainable.
- E) Incorrect, proper departmental enquiry was conducted, the appellant join the enquiry proceedings. He was given right of personal hearing and self-defense. There was sufficient evidence which held the charges proved against the appellant.
- F) Incorrect, the service appeal is badly barred by law and limitation and not maintainable under the law/rules.

PRAYER:-

In view of above stated facts it is most humbly prayed that the instant service appeal does not hold any legal force, may kindly be dismissed with costs, please.


Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar
(Respondent No.1)


Regional Police Officer,
~~Haripur Region~~
~~Regional Police Officer~~
Hazarabagh
(Respondent No.2)


District Police Officer,
Haripur
(Respondent No.3)

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR CAMP COURT ABBOTTABAD

SERVICE APPEAL NO.1721/2022

Hashmat Khan Ex-Constable No.795 District Police Haripur r/o Village & Post Office
Kundi, Tehsil Ghazi, District Haripur.

..... (Appellant)

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others.


..... (Respondents)

COUNTER AFFIDAVIT

I, do hereby solemnly affirm and declare that the contents of comments/reply are true to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

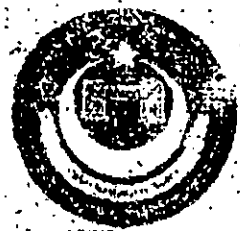
Deponent




District Police Officer,
Haripur
(Respondent No. 3)

(27)

Annex "A"



OFFICE OF THE DIRECTOR
POLICE TRAINING SCHOOL, SWAT

Phone No: 0946-811720 Fax: 0946-811721
Email: ptsswat2014@gmail.com



No. 556-57/Secrecy, Dated 21/04/2022

2014

To: The District Police Officers,
Haripur & Toorghar.

Subject: ABSENCE FORM RECRUIT SCHOOL COURSE

The following recruit Constables of your respective Districts
enrolled in 06 months recruit course have not yet reported their arrival for
the course as its course commenced from 04.04.2022.

Name & No	District	Detail reason of repatriation
Shan No 762	Haripur	Have not arrival - District
F. Khan No 793	Toorghar	

Therefore they may please be considered as drop from the
subject course please.

Endst: No and even

Copy of above is submitted for favour information to the
Deputy Inspector General of Police, Training, Khyber Pakhtunkhwa Peshawar.

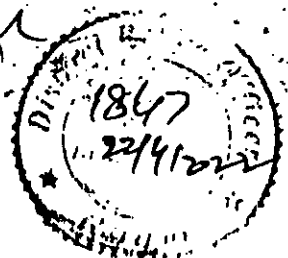
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(DIRECTOR)

Police Training School,
Swat.



صاف علی
کنسل رازوق خان 763
خبرستان خان 793 کو کہہ رکھو
کو بین کس پتس سوات کو
کو بین کس پتس سوات کو
اسماعیل خان کو
کو بین کس پتس سوات کو

(28)

Annex B

CHARGE SHEET

I, Lt. Cdr @ Kashif Aftab Ahmad Abbasi, PSP, District Police Officer, Haripur as competent authority, hereby charge you FC Hshmat Khan No. 795 as enclosed statement of allegations:

- (1) You appear to be guilty of misconduct under Police Efficiency & Discipline Rules 1975 and have rendered yourself liable to all or any of the penalties specified in the said Rules.
- (2) You are, therefore, required to submit your written defense within 07 days of the receipt of this charge sheet and statement of allegation to the Committee/Enquiry Officer as the case may be.
- (3) Your written defense, if any, should reach the Enquiry Officer/Committee 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 desire to be heard in person or otherwise.
- (5) A statement of allegations is enclosed.

Lt. Cdr @ Kashif Aftab Ahmad Abbasi, PSP
District Police Office
Haripur

Received
Hshmat Khan,
24/6/22

(24)

DISCIPLINARY ACTION

I, Lt. Cdr @ Kashif Aftab Ahmad Abbasi, PSP, District Police Officer, Haripur as competent authority of the opinion that you **FC Hshmat Khan No. 795** have rendered yourself liable to be proceeded against as you committed the following acts/omissions within the meaning of Police Efficiency & Discipline Rules 1975, (amended 2014).

STATEMENT OF ALLEGATION

"That you while posted at Police Training School Swat absented yourself from legitimate duty w.e.f 04.04.2022 to till date with any prior information or permission from the competent authority, the fact was brought into the notice of the undersigned vide Director PTS Swat office letter No. 556-57 dated 21.04.2022. This behavior shows your lack of interest in disposal of your official duties. As a part of the disciplinary force this irresponsible behavior is undesirable and unacceptable. Your this act is a gross misconduct in terms of KPK Police E&D Rules 1975" (amended 2014) hence, charge sheeted".

(2) For the purpose of scrutinizing the conduct of the said accused officer with reference to the above allegations, an Enquiry Committee consisting of the following is constituted.

Mr. Fida Muhammad DSP Headquarter Haripur

(3) The Enquiry Officer/Committee shall in accordance with the provision of this Ordinance, provide reasonable opportunity of hearing to the accused, record finding and make within 25 days of the receipt of this order, recommendation as to punishment or the appropriate action against the accused.

(4) The accused and a well conversant representative of departmental shall in the proceedings on the date, time and place fixed by the Enquiry Officer/Committee.

Lt. Cdr @ Kashif Aftab Ahmad Abbasi, PSP
District Police Officer
Haripur

No: 159-60/HC dated Haripur the 25/05/2022.

Copy of above is submitted to the: -

- 1) Enquiry Officer for initiating proceedings against the said accused under Police Efficiency & Discipline Rules 1975 (amended 2014).
- 2) **FC Hshmat Khan No. 795** with the direction to submit his defense within 7 days of the receipt of this statement of allegations and also to appear before the Enquiry Officer on the date, time and place fixed for the purpose of departmental proceedings.

District Police Officer
Haripur



OFFICE OF THE ASSISTANT SUPERINTENDENT OF POLICE CIRCLE
GHAZI, HARIPUR

Ph. # 0995-660265

E-Mail: sdpoghazi1@gmail.com

No: 372 Dated 10 /08/2022

To: The District police Officer,
Haripur,

Subject: DISCIPLINARY ACTION AGAINST FC HSHMAT KHAN NO.795

Memo:

Kindly refer to Charge Sheet No159-60 dated 25.05.2000 against FC Hshmat Khan No.795.

2. Please find attached Inquiry Report, Statement of allegations, charge sheet, statements of accused and documents on the subject inquiry in original duly signed.

Assistant Superintendent of Police
Circle Ghazi
(Inquiry Officer)

Enclosed 35 Pages

Subject: INQUIRY REPORT

Reference. Charge sheet No.159-60/HC Dated 25.05.2022 by The District Police Officer, Haripur served on FC Hshmat Khan No.795.

BRIEF FACTS OF THE CASE

Constable Hshmat Khan No.795 was departed for police training school swat on dated 02.04.2022 but he did not join the course and returned home on the pretext of illness on the way. The fact was brought into the notice of competent authority vide Director PTS Swat office letter No .556-57 dated 21.04.2022.He remained absent from 02.04.2022 to 22.06.2022 (02 months & 20 days) without any permission from the competent authority. The official was Charge sheet, hence the instant in enquiry.

INQUIRY PROCEEDING

Statement of FC Hshmat Khan No.795

He denied the allegations and stated that when I reached at Ghazi, I felt heart problem and approach the THQ Hospital for treatment. After the medical examination the say me heart problem and suggest three weeks medical rest. (Statement Annex-A).

Personal Hearing.

He was given the opportunity of a personal hearing to present evidence for his defense. During the hearing following Questions were asked from FC Hshmat Khan.

S.NO.	QUESTION	ANSWER BY FC
01.	Did you tell the competent authority in District about the situation?	No.
02.	Did you sent your medical to the PTS Swat?	No.
03.	Did you attend the PTS Swat after recovery or not?	I contacted PTS Swat on phone Moharrar Zahid told me that you have been ordered to return to the District.
04	Can you produce any medical document related to your illness?	Yes I can produce medical documents.

✓
FINDINGS

✓
Statement of Accused, Perusal Record, and Personal Hearing-I, Inquiry Officer,
Found Following:-

1. The said Constable was sent to Police Training School Swat for Training on 02.04.2022. He did not attend the training School. Vide Director PTS swat letter No.556-56 dated 21.04.2022 he consider drop from the course.
2. During the inquiry he produced his medical documents. But the medical is not approved from competent authority. (Annex-B)
3. The said remained absent from duty i.e. 02.04.2022 to 22.06.2022 (02 months 20 days)
4. This act of the accused shows breach of discipline and lack of interest in official duty.

CONCLUSION

"From the finding of a preliminary inquiry, statement of accused, Personal hearing, cross-questioning, and perusal of record, I find FC Hshmat No.795 guilty of g misconduct and recommend him for minor punishment as provided under the E&D Rules 1975 amended 2014".

(Signature)

(Inquiry Officer)
Khadija Umer, PSP
sistant Superintendent of Police,
Circle, Ghazi.



**DISTRICT POLICE OFFICER
HARIPUR**

Ph: 0995-920100/01, Fax-0995614714, Email:- dpoharipur1@gmail.com

ORDER

FC Hashmat No.795, was referred to Police Training School (Swat) for police recruitment course. However, he was found absent from training activities w.e.f. 04.04.2022 to 22.06.2022 without obtaining any permission or leave from the competent authority. Therefore, he was dropped from the course and repatriated to parent district vide director PTS Swat office letter No.556-57/Secrecy dated 21.04.2022, which shows lack of interest of delinquent official in disposal of official duties. Being a part of disciplinary force, this irresponsible behavior is undesirable and unacceptable. This tantamounts to gross misconduct on his part in terms of Khyber Pakhtunkhwa, police efficiency and discipline rules 1975 (amended 2014).

To probe the allegations of misconduct Mr. Fida Muhammad, DSP/HQrs, was appointed as Enquiry Officer vide this office memo: No.159-60/HC dated 25.05.2022. The inquiry officer conducted departmental enquiry in which the accused official participated. The inquiry officer recommended him to send for training in next term as well as recommended (period of absence) for leave without pay. However, in view of the undersigned the recommendation of inquiry officer does not meet the gravity of offense committed by the accused. Therefore, Dr. Khadija Omer ASP Ghazi was appointed as enquiry officer for re-enquiry into the matter. She conducted proper departmental inquiry, in which delinquent official also participated and denied the allegations stating therein that he was suffering from heart problems. Therefore, he approached THQ Hospital for treatment and he also produced medical receipts in this regard. The enquiry officer submitted her findings vide Memo No.372 dated 10.08.2022, in which she mentioned that the medical receipts provided by the delinquent officer were not verified from the competent authority. Moreover, pointed out that the act of accused official shows breach of discipline and lack of interest in disposal of official duties, so that charges of misconduct were proved against the delinquent official. Therefore, the enquiry officer recommended him for "Punishment".

Having perused the relevant record and clarification of the defaulter official the charges of misconduct against FC Hashmat No.795 stood proved. Therefore, I, Imran Shahid, (PSP), District Police Officer, Haripur being a competent authority under the Khyber Pakhtunkhwa, Police Efficiency and Discipline Rule 1975 (amended 2014), am fully satisfied that FC Hashmat No.795, committed gross misconduct. Therefore, he is awarded Major Punishment of "Dismissal from Service", with immediate effect.

OB No. 542
Dated 23-08-2022

Imran Shahid, PSP
District Police Officer,
Haripur



25

Annex 'E'

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OFFICE OF THE REGIONAL POLICE OFFICER
HAZARA REGION, ABBOTTABAD

☎ 0992-9310021-22

☎ 0992-9310023

✉ r.pohazara@gmail.com

NO: 16-77/PA DATED 22/11/2022

ORDER

This order will dispose of departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rules, 1975 submitted by Ex-FC Hasnmat Khan No. 795 of District Haripur against the order of punishment i.e. *dismissal from service* awarded by DPO Haripur vide OI No. 542 dated 23.09.2022.

Brief facts leading to the punishment are that the appellant was referred to Police Training School (Swat) for basic recruitment course. However, he was found absent from training activities w.e.f 04.04.2022 to 22.06.2022 without obtaining any permission or leave from the competent authority. Therefore, he was dropped from the course and repatriated to parent district vide Director PTS Swat office letter No 556-57/Secrecy dated 21.04.2022. His absence period is 02 month 18 days.

The appellant was issued charge sheet along with summary of allegations and DSP Hqrs was deputed to conduct departmental enquiry. The IO held the appellant responsible of misconduct. Consequently, DPO Haripur awarded him major punishment of dismissal from service. Hence, the appellant submitted this present appeal.

After receiving his appeal, comments of DPO Haripur were sought and examined/perused. The undersigned called the appellant in OR and heard him in person. The appellant has been given reasonable opportunity to defend himself against the charges, however he failed to advance any justification in his defense. Thus, the disciplinary action taken by the competent authority seems reasonable and the appeal is liable to be dismissed. Therefore, in exercise of the powers conferred upon the undersigned under Rule 11-A (a) of Khyber Pakhtunkhwa Police Rules, 1975 the instant appeal is hereby *rejected* with immediate effect.

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Zaeshan Asghar (PSI)

REGIONAL POLICE OFFICER
HAZARA REGION, ABBOTTABAD

No. 1678/PA, dated Abbottabad the 22/11/2022.

Cc.

DPO Haripur for information and necessary action with reference to his office Memo No 5004 dated 21-09-2022. Service Roll and Fuji Missal containing enquiry file of the appellant is returned herewith for record.

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