

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Case No.

4968

Dated

20/4/2023

In Re:

Service Appeal No. 880/2022

EX-FC Azam Shahzad No. 1027


.....Appellant

Versus

Inspector General of Police KPK and others..... Respondents

I N D E X

S.No	Description of Documents	Annex	Pages
1.	Written Reply		1-4
2.	Affidavit		5
3.	Copy of Authority letter		6
4.	Letter No. 648/EF11 dated 08.10.2020	A	7
5.	Copies of Charge Sheet	B	8
6.	Copy of Summary Allegations	C	9
7.	Copy of Travel History	D	10
8.	Copy of Enquiry Report	E	11
9.	Copy of Final Show Cause Notice	F	12
10.	Brothers Statement	G	13
11.	Newspaper Notice	H	14
12.	Copy of Dismissal order	I	15


ADSP Legal Mian Niaz Muhammad,
Elite Force, Peshawar

(C)

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In Re:

Service Appeal No. 880/2022

EX-FC Azam Shahzad No. 1027Appellant

Versus

Inspector General of Police KPK and others..... Respondents

PARAWISE COMMENTS OF BEHALF RESPONDENTS NO 01, 02, 03,04.....08.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS:-

1. That the appeal is not based on facts.
2. That the appeal is barred by law and limitation.
3. That the appeal is not maintainable in its present form.
4. That the appeal is bad for mis-joinder and non-joinder of necessary and proper parties.
5. That the appellant is estopped to file the instant appeal by his own conduct.
6. That the appellant has come to this Hon'ble Tribunal with unclean hands.
7. That the appellant has got no cause of action and locus standi to file the instant service appeal.

On Facts:

1. Pertains to office record needs no comments.
2. Incorrect, the instant appeal relates to dismissal from service due to his willful absence.
3. Incorrect, the appellant has blemished service record as he has committed a gross misconduct by going abroad without leave / prior permission of competent authority.
4. Postings & transfers are part of service. Rest is denied.
5. Incorrect, needs no comments.
6. Need no comments.
7. Incorrect, as per letter of SP Elite Force Hazara vide No. 648/EFH dated 10.08.2020, appellant remained absent from lawful duty without any leave or prior permission w.c.from 10.03.2020 to till date. In this regard Charge Sheet alongwith Summary of Allegation were issued to him and SP Elite Force HQrs Peshawar was appointed as

Enquiry Officer. The Enquiry Officer reported that Charge Sheet and Summary of Allegations were served upon him through A/DSP Abbotabad but were not received personally by him or other family member and return; with information that the said constable has proceeded abroad. In this regard, on enquiring it was revealed that he went abroad on 09.02.2020 without getting leave or NOC for said. Therefore, the Enquiry Officer recommended that he may be dismissed from service from the date of absence. Final Show Cause Notice was also issued to him vide No. 13454/EF dated 23.10.2022 which is received by his brother Anjum Shehzad S/o Muhammad Aslam R/o Mandi Roop Lal Abbotabad on 19.11.2020 and stated that his brother has proceeded to abroad. To ensure his appearance, a notice was issued to him in "Daily Mashriq" Newspaper dated 27.11.2020 and was directed to join the enquiry proceedings within 15 days after the publication of the notice but he did not appear. Hence, he was awarded dismissal from service. (**Annexure 'A'** letter No. 648/EFH dated 08.10.2020, **Annexure 'B'** Charge Sheet, **Annexure 'C'** Summary of Allegation, **Annexure 'D'** Travel History, **Annexure 'E'** Enquiry Report, **Annexure 'F'** Final Show Notice, **Annexure 'G'** brothers statement, **Annexure 'H'** Newspaper notice, **Annexure 'I'** Dismissal order.

8. Incorrect, as already explained in para 7.
9. Incorrect, appellant never applied for Ex-Pakistan leave, and willfully absented from lawful duty without prior permission of high-ups.
10. Incorrect, as already explained in para 8 & 9, the appellant went abroad without seeking leave and /or NOC from said and absented on his own will.
11. Incorrect, needs no comments.
12. Incorrect, appellant is still abroad and has not come to Pakistan. Disciplinary proceedings were initiated against him as there was no chance of his coming and remain absent for long period.
13. Incorrect, the appellant did not prefer any application as he is still abroad.
14. Incorrect in pursuance of his departmental appeal, the appellant was called in orderly room on 27.09.2021 but he did not appear and again proceeded abroad without NOC or any Ex-Pakistan leave (**Annexure 'J'** appeal rejection order).

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15. Incorrect, the appellant never pursued his departmental appeal rather he went abroad for second time in defense of departmental proceedings against him, showing his lack of interest in official duties..
16. Incorrect, his departmental appeal was rejected on the ground of disinterest in official job (Rejection Order attached as **annexure 'J'**).
17. Incorrect, appellant has got no cause of action to file the instant appeal, therefore, it may kindly be dismissed on the following grounds.

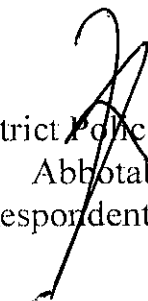
GROUND:


- a. Incorrect, the appellant has put forth wrong ground as despite being member of discipline Force he has committed gross misconduct by going abroad and doing job there without seeking leave/ permission of competent authority.
- b. Incorrect, the appellant himself did not appeal before enquiry proceedings at any stage.
- c. Incorrect, the appellant never appeal for ex-pakistan leave and this, concealed his scheme of abroad visit.
- d. Incorrect, after all codal formalities appellant was dismissed by the competent authority from service.
- e. Incorrect, as already explained in preceding para.
- f. Incorrect, Respondent No. 2 was competent authority to initiate proceedings against appellant.
- g. Incorrect, the appellant has been provided opportunity of hearing but he could not appear.
- h. Incorrect, previous record could not alleviate the misconduct of the appellant by remaining absent for long.
- i. Incorrect, appellant has dealt according to law, rules and after fulfillment of codal formalities.
- j. Incorrect, already explained vide proceeding para.
- k. The appellant has been proceeded for his willful long absence.
- l. Incorrect, as already explained in preceding paras.
- m. Incorrect, as already explained in preceding paras.
- n. That respondents may also be allowed to raise additional grounds at the time of arguments.

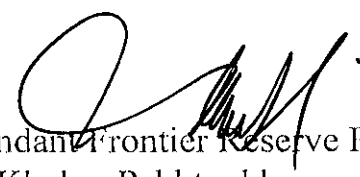
4

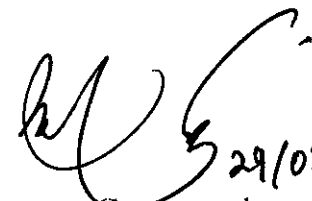
PRAYER:

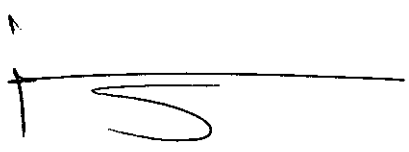
Keeping in view of the above stated facts, it is humbly prayed that the service appeal is based on fallacious may kindly be dismissed with cost please.



District Police Officer
Abbotabad
(Respondent No. 1)



Addl: Inspector General of Police
Elite Force, Khyber Pakhtunkhwa,
Peshawar
(Respondent No. 3)

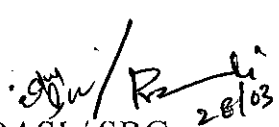

Commandant Frontier Reserve Police,
Khyber Pakhtunkhwa,
Peshawar
(Respondent No. 2)


29/03/23.
Deputy Commandant,
Elite Force, Khyber Pakhtunkhwa,
Peshawar
(Respondent No. 4)


DGP Superintendent of Police
Elite Force, Khyber Pakhtunkhwa,
Peshawar
(Respondent No. 5)


Superintendent of Police
Elite Force, Khyber Pakhtunkhwa,
Hazara Region
(Respondent No. 6)


RI / Accountant
Elite Force, Khyber Pakhtunkhwa,
Peshawar
(Respondent No. 7)


28/03
Incharge Kot / OASI / SRC
Elite Force, Khyber Pakhtunkhwa,
Peshawar
(Respondent No. 8)

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IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL , PESHAWAR

In Re:
Service Appeal No. 880/2022

EX-FC Azam Shahzad No. 1027Appellant

Versus

Inspector General of Police KPK and others..... Respondents

AFFIDAVIT

I **Mian Niaz Muhammad (ADSP Legal) Elite Force, Khyber Pakhtunkhwa Peshawar**, do hereby solemnly affirm that the contents of this **Written Reply on behalf of respondents** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.


DEPONENT

CNIC: 17301-1519386-1

Identified by:


Cell # 0300-5899631



20-04-23

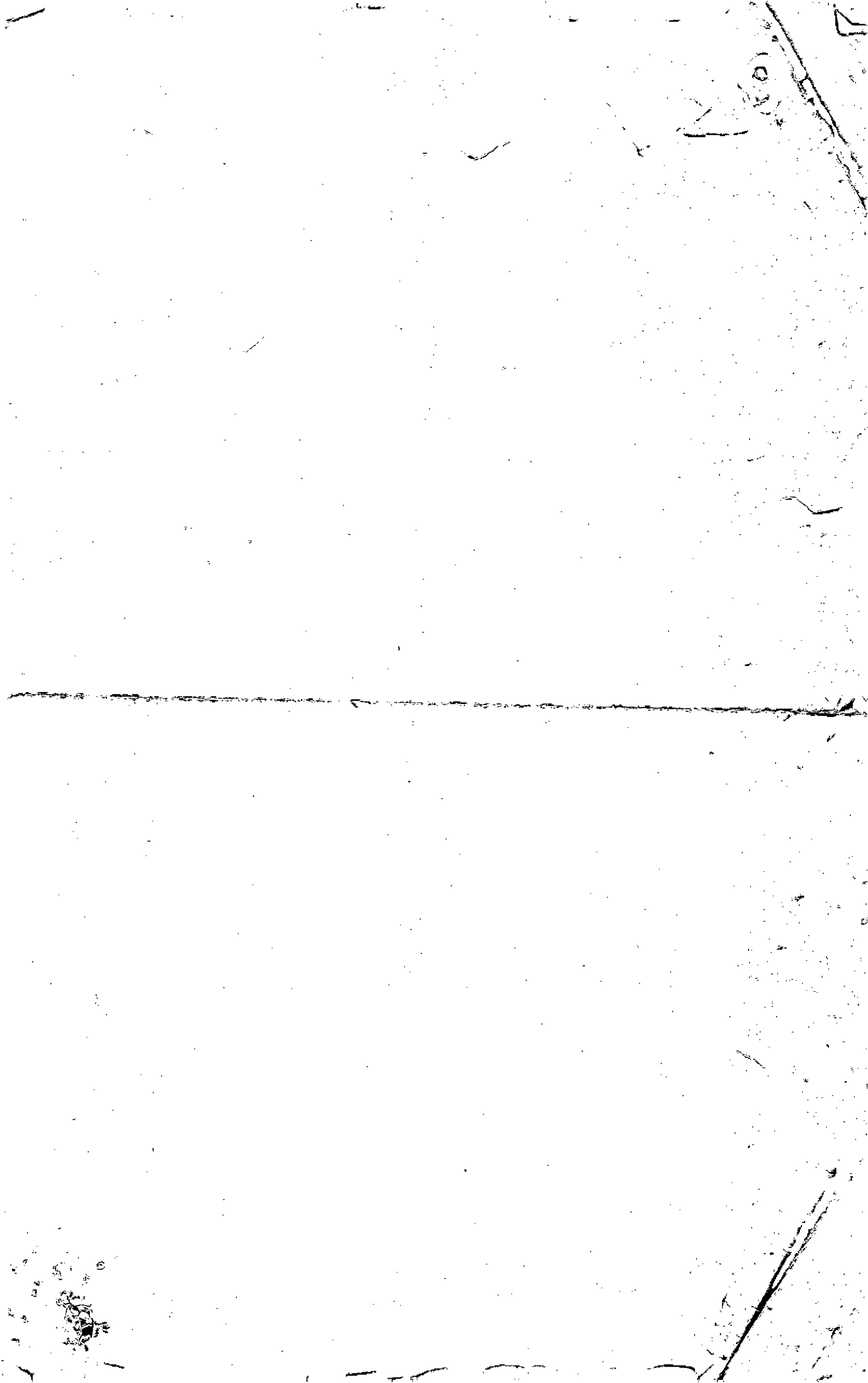
AUTHORITY LETTER.

The undersigned is hereby authorized to nominate Mr. Mian Niaz Muhammad Acting DSP/Legal Elite Force to submit the replies and attend the Honorable High Court/Supreme Court on behalf of respondents.


(ASIF IQBAL MOHMAND) PSP
Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar

DEPUTY COMMANDANT,
Elite Force Khyber Pakhtunkhwa
Peshawar





Annex-A

7

OFFICE OF THE SR. SUPERINTENDENT OF POLICE
ELITE FORCE/ RRF HAZARA REGION



Dated 10-08-2020

No. 648 /EFH

To: The Deputy Commandant,
Elite Force Khyber Pakhtunkhwa.

Subject: PAY STOP AND DEPARTMENTAL ACTION.

Kindly with refer to above cited subject.

It is submitted that Constable Azam Shahzad No. 1027 Platoon No. 45 was on long leave for 30 days w.e.f 09-02-2020 to 10-03-2020 later on he was granted 30 days more long leave from your office vide order No. OB-149 dated: 17-03-2020. He has to made his arrival on 10-04-2020 but he has not made his arrival so far. In this connection undersigned directed Acting Deputy Superintendent of Police Elite Force Abbottabad for preliminary enquiry to check the whereabouts of the said official. He may be considered as absent w.e.f. 10-04-2020 to till date.

For the reason above it is requested that pay of Constable Azam Shahzad No. 1027 may please be stopped and proper departmental action be taken against him.

Submitted for consideration please.

[Signature]
Sr. Superintendent of Police,
RRF/ Elite Force, Hazara
Region Abbottabad

No. 648-49 /EF dated: Abbottabad the 10 / 08 / 2020

Copy for information to the Deputy Superintendent of Police Elite Force Abbottabad with the direction that expedite the enquiry and report.

[Handwritten initials]

[Handwritten notes: 2500 S.C., 15, 31-08-2020]

[Signature]
Sr. Superintendent of Police,
RRF Elite Force, Hazara
Region, Abbottabad

D. No 4184
D. D. 25-8-20

Dy No 588 /RI EF
Date 25-8-20

etc

[Handwritten signature]

(report attached)

7

Annex-B

8

CHARGE SHEET

I, Zaib Ullah Khan, Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar as competent authority, hereby charge you Constable Azam Shahzad No. 1027, (Platoon No. 45) of Elite Force as follows;

As per letter of SP Elite Force Hazara vide No. 648/EFH, dated 10.08.2020, you remained absent from lawful duty without any leave or prior permission w.e.from 10.03.2020 to till date. Being a member of discipline force, your act amounts gross misconduct on your part.


2. By reason of the above, you appear to be guilty of misconduct under the Khyber Pakhtunkhwa Police Rules, 1975 (Amendment 2014) and have rendered yourself liable to all or any of the penalties specified in the said rules.

3. You are therefore, directed to submit your defense within Seven days of the receipt of this Charge Sheet to the Enquiry Officer.

4. Your written defense, if any, should reach the Enquiry Officer 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 be taken against you.

5. You are directed to intimate whether you desire to be heard in person.

6. A statement of allegation is enclosed.


(ZAIB ULLAH KHAN)PSP
Deputy Commandant
Elite Force Khyber Pakhtunkhwa,
Peshawar

Charge Sheet for Absentee 2020.

CTE



D.N

Date

Com

8

SUMMARY OF ALLEGATIONS

I, Zaib Ullah Khan, Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar as competent authority, am of the opinion that Constable Azam Shahzad No. 1027, (Platoon No. 45) of Elite Force has rendered himself liable to be proceeded against as he has committed the following misconduct within the meaning of Khyber Pakhtunkhwa Police Rules, 1975 (Amendment 2014).

SUMMARY OF ALLEGATIONS

As per letter of SP Elite Force Hazara vide No. 648/EFH, dated 10.08.2020, he remained absent from lawful duty without any leave or prior permission w.e. from 10.03.2020 to till date. Being a member of discipline force, his this act amounts gross misconduct on his part.

2. For the purpose of scrutinizing an enquiry is conducted of the said accused with reference to the above allegations, Mr. Shah Jehan Durrani SP Elite Force HQrs: Peshawar is appointed as Enquiry Officer.
3. The Enquiry Officer shall provide reasonable opportunity of hearing to the accused, record statements etc and findings within (25 days) after the receipt of this order.
4. The accused shall join the proceedings on the date, time, and place fixed by the Enquiry Officer.

(ZAIB ULLAH KHAN)PSP
Deputy Commandant
Elite Force Khyber Pakhtunkhwa,
Peshawar

No. 10320-15 /EF, dated Peshawar the 09/09 /2020.

Copy of the above is forwarded to the:-

1. Superintendent of Police, Elite Force HQrs: Peshawar.
2. RI, Elite Force Khyber Pakhtunkhwa Peshawar.
3. Accountant Elite Force Khyber Pakhtunkhwa Peshawar to stop pay.
4. SRC/FMC, Elite Force Khyber Pakhtunkhwa Peshawar.
5. FC Azam Shahzad No. 1027, of Elite through reader SP Elite HQrs.

(ZAIB ULLAH KHAN)PSP
Deputy Commandant
Elite Force Khyber Pakhtunkhwa,
Peshawar

Charge Sheet for Absentee 2020.

CTC
M

Annex - D

10



**OFFICE OF THE SUPERINTENDENT OF POLICE,
HEADQUARTERS, ELITE FORCE, PESHAWAR.**



To: The Director Federal Investigation Agency (FIA),
Hayat Abad Peshawar.

Subject: - **PROVISION OF TRAVEL HISTORY**

Memo:

It is submitted that constable Azam Shezad No.1027 (Platoon No.45) of this unit was absent from lawful duty without justification, said constable has proceeded abroad, in this connection an enquiry was initiated.

It is therefore requested that travel history against the below mentioned CNIC may kindly be provided for further proceeding into the matter.

1. Azam Shezad s/o Mohammad Aslam.
2. CNIC: 13101-4215167-5.

**Superintendent of Police,
HQrs, Elite Force, Peshawar**

No. 171-72 R/SP/HQrs, EF,

Date: 28 /09/2020.

Copy for information and necessary action:-

The Additional Director of Immigration Airport Peshawar.

**Superintendent of Police,
HQrs, Elite Force, Peshawar**

cc
[Signature]

10



Annex - E

(17)



Office of the Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar

Subject: DEPARTMENTAL ENQUIRY

R/Sir,

Constable Azam Shehzad No. 1027, Platoon No. 45 of Elite Force Khyber Pakhtunkhwa was found guilty on the following grounds:-

2. As per letter of SP Elite Force Hazara vide No. 648/EFH, dated 10.08.2020, you remained absent from lawful duty without any leave or prior permission w.e. from 10.03.2020 to till date. Being a member of discipline force, your act amounts gross misconduct on your part.
3. In this regard Charge Sheet alongwith Summary of Allegations were issued to him and SP Elite Force HQrs was appointed as enquiry officer. Charge Sheet and Summary of Allegation were served upon the said constable through A/DSP Abbottabad but was not received by personally or other family member and sent back return with verbal information that the said constable has proceed abroad. Enquiry Officer reported that a travel history of said constable was received from Director FIA which reveled that he has flew up by airline on 09.02.2020 and has no keen interest in duty and has gone to abroad without any permission and No Objection Certificate (NOC).
4. Enquiry Officer recommended he may be dismissed from service from the date of absenteeism, if agreed so.

Submitted for perusal and kind orders, please

R/EF

14/10/2020

5. Dy: Cmp/dnt/EF

Final show cause.

A2

20/10/2020

He is hereby dismissed from service with immediate effect.

A2

17/12/2020

FINAL SHOW CAUSE NOTICE

I, Zaib Ullah Khan; Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar as competent authority under Khyber Pakhtunkhwa Police Rules, 1975 (Amendment 2014) do hereby serve you Constable Azam Shehzad No. 1027, Platoon No. 45, of Elite Force as follows:-

As per letter of SP Elite Force Hazara vide No. 648/EFH, dated 10.08.2020, you remained absent from lawful duty without any leave or prior permission w.e. from 10.03.2020 to till date. Being a member of discipline force, your this act amounts to gross misconduct on your part.

That consequent upon the completion of enquiry conducted against you by Mr. Shah Jehan Khan SP Elite Force HQrs but you did not appear before the Enquiry Officer nor submitted any reply of Charge Sheet.


ii. Ongoing through the finding and recommendation of the enquiry officer, the material available on record, I am satisfied that you have committed the omission/commission specified in Police Rules and charges leveled against you have been established beyond any doubt.

2. As a result therefore, I, Zaib Ullah Khan, Deputy Commandant Elite Force, Khyber Pakhtunkhwa Peshawar as competent authority have tentatively decided to impose major penalty upon you, under Police Rules of the said ordinance.

3. You are therefore, directed to show cause as to why the aforesaid penalty should not be imposed upon you.

4. If no reply to this show cause notice is received within seven days of its delivery, in the normal course of circumstances, it shall be presumed that you have no defense to put and in that case an ex-parte action shall be taken against you.

5. A copy of the finding of the Enquiry Officer is enclosed.


(ZAIB ULLAH KHAN)PSP
Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar

No. 13454 /EF, dated Peshawar the

23/10/2020

FC Azam Shehzad No. 1027 at his home address through reader SP Elite HQrs.





بیان ازان انجم شہزاد (برادرِ حقیقی) نیشنل اعظم شہزاد غیر 1027 پلاؤن (45) ولد محمد اسلم نکتہ منڈی روپے لال ایسے آباد نے جو دریافت بیان کیا کہ نیشنل اعظم شہزاد غیر 1027 پلاؤن (45) میرا حقیقی بھائی ہے جو کہ بیرون ملک قطر چلا گیا ہے۔ اہد سمریدست قطر میں ہی مقیم ہے۔ گھریلو/بچی معاملات کے سلسلہ میں قطر گیا تھا۔ کرونا وائرس آنے کے بعد قطر قطر میں ہی رہ گیا ہے۔ کیونکہ وہاں سے واپس آنے میں کافی مشکلات ہیں۔ اہد کرونا وائرس کی وجہ سے سمریدست دایسی کائنات میں مل رہا۔

میں اپنے بھائی سے رابطہ میں ہوں اور کوئی فائل تو طراز نوٹس کی نسبت اسے آگاہ کر دیا ہے۔ جیسے ہی میرے بھائی کو دایسی کائنات سے گاہ واپس آجائے گا اور اپنی ڈیوٹی پر حاضر ہو کر رہے گا۔ میرا ہی بیان ہے جو دست ہے۔

انجم شہزاد ولد محمد اسلم نکتہ منڈی روپے لال ایسے آباد

1310-4043659-5

0313-5825648

سنیٹ
20/11/20

etc

M. S.

اللہ ہی کیلئے ہیں مشرق و مغرب القرآن

DAILY MASHRIQ PESHAWAR

پشاور

برقہ کے بانی
سید تاج میر شاہ

روزنامہ

مشرق

مستقل اشاعت کے 54 سال

ABC
CERTIFIED

پبلشرز اسلام آباد سٹیج 1 قسٹم ہاؤس ٹریڈنگ کمپنی پرائیویٹ لمیٹڈ

جلد 54 محتسب نمبر 11 تاریخ 1442 2761442 طبر 14.2020 تک قیمت 20 روپے

15

آخری نوٹس

آپ ذیل کنٹینر ان ایلیٹ فورس خیر پختونخوا سرکاری ڈیوٹی سے بغیر کسی اجازت بدستور غیر حاضر پلے آر ہے ہیں۔ آپ کے خلاف نکلانہ کارروائی جاری ہے۔ اس لئے آپ کو بذریعہ اشتہار ہذا مطلع کیا جاتا ہے کہ آپ اس اشتہار کے شہر ہونے کے 15 دن کے اندر اندر مجاز آفسر کے سامنے پیش ہوں بصورت دیگر آپ کے خلاف کیلٹرڈ نکلانہ کارروائی کی جائے گی۔

1۔ کنٹینرل حید اللہ نمبر 3545 (آپائی ضلع کی مرمت) حال ایلیٹ فورس خیر پختونخوا سرکاری ڈیوٹی سے بغیر کسی اجازت مورخہ 26.06.2020 سے بدستور غیر حاضر پلے آر ہے ہیں۔

2۔ کنٹینرل ایچ بی نمبر 1027 (آپائی ضلع ایٹ آباد) حال ایلیٹ فورس خیر پختونخوا سرکاری ڈیوٹی سے بغیر کسی اجازت مورخہ 10.03.2020 سے بدستور غیر حاضر پلے آر ہے ہیں۔

(زیب اللہ خان)

ڈپٹی کمائنٹ ایلیٹ فورس خیر پختونخوا پشاور

"Take Special Care of Special Persons" INF(P) 4491/2020

صوابہ ایمن
کپشن وہی پاکستان

etc

as



Office of the Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar



15

No. 1573P-47 /EF

Date: 21/12/2020

ORDER

This order will dispose of the departmental proceedings against Azam Shehzad No. 1027, of District Police Abbottabad now on deputation to Elite Force Khyber Pakhtunkhwa.

[B] As per letter of SP Elite Force Hazara vide No. 648/EFH, dated 10.08.2020, you remained absent from lawful duty without any leave or prior permission w.e. from 10.03.2020 to till date. In this regard Charge Sheet alongwith Summary of Allegations were issued to him and SP Elite Force HQrs Peshawar was appointed as enquiry officer. The Enquiry officer reported that Charge Sheet and Summary of Allegations were served upon him through A/DSP Abbottabad but was not received by personally or other family member and sent back return with verbal information that the said constable has proceed abroad. In this Connection a travel history of said constable was received from Director FIA which revealed that he has flew up by airline on 09.02.2020 and has no keen interest in duty and has gone to abroad without any permission and No Objection Certificate (NOC). Therefore the Enquiry Officer has recommended that he may be dismissed from service from the date of absenteeism. A Final Show Cause Notice was also issued to him vide No. 13454/EF dated 23.10.2020 which is received by his brother Anjum Shehzad s/o Muhamamd Aslam r/o Mandi Roop Lal Abbottabad on 19.11.2020 and stated that his brother has proceed to abroad. To ensure his appearance, a notice was issued to him in Daily "Mashriq" Newspaper, Dated 27.11.2020 and was directed to join the enquiry proceedings within fifteen days after the publication of notice but he did not appeared. *have dismissed*

Therefore, I, Zaib Ullah Khan, Deputy Commandant, Elite Force Khyber Pakhtunkhwa Peshawar as competent authority, keeping in view the above facts, circumstances and recommendations of the enquiry officer, impose major penalty of dismissal from service upon the defaulter official from the date of absence i.e 10.03.2020.

(Order announced)

(ZAIB ULLAH KHAN)PSP
Deputy Commandant
Elite Force Khyber Pakhtunkhwa
Peshawar.

Copy of the above is forwarded to the:-

1. District Police Officer, Abbottabad for information.
2. Superintendent of Police, Elite Force HQr: Peshawar.
3. Superintendent of Police, Elite Force Hazara.
4. RI/Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
5. Incharge Kot/OASI/ SRC, Elite Force Khyber Pakhtunkhwa Peshawar.
6. FMC, Elite Force along with complete enquiry file Enls: (19) pages.

[Signature] 15