


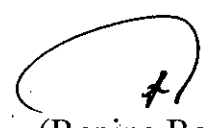
04.04.2023

Appellant present through counsel.

Asad Ali, learned Assistant Advocate General for respondents present.

Being not prepared, learned counsel for appellant requested for adjournment in order to prepare the brief. Adjourned. To come up for arguments on 14.06.2023 before D.B. Parcha Peshi given to the parties.


(Muhammad Akbar Khan)
Member (E)


(Rozina Rehman)
Member (J)

SCANNED
KPST
Reshwar

25th May, 2022

Counsel for the appellant present. Mr. Muhammad Rashid,
Deputy District Attorney for the respondents present.

Counsel for the appellant requested for adjournment in
order to properly assist the court. To come up for arguments on
10.08.2022 before D.B.



(Fareeha Paul)
Member(E)



(Kalim Arshad Khan)
Chairman

10-8-2022

Proper DB not available the case
is adjourned to 2-11-2022

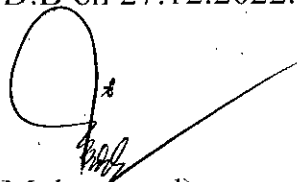

Reader

02.11.2022

Nemo for the appellant. Mr. Raziq, H.C alongwith Mr. Asif
Masood Ali Shah, Deputy District Attorney for the respondents
present and submitted reply/comments which are placed on file.

Counsel was
informed
telephonically
on 13/12/2022

Previous date was changed on Reader Note, therefore, notice
for prosecution of the appeal be issued to the appellant as well as
his counsel through registered post and to come up for arguments
before the D.B on 27.12.2022.




(Mian Muhammad)
Member (E)



(Salah-ud-Din)
Member (J)

27-12-22

Due to winter vacation, the case
is adjourned to 4-4-2023


Reader

12.11.2021

Counsel for the appellant present. Preliminary arguments have been heard. Memorandum of appeal and documents annexed therewith have been perused.

Subject to all just and legal objections including limitation, this appeal is admitted for 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 20.01.2022 before the S.B.

Appellant Deposited
Security & Process Fee

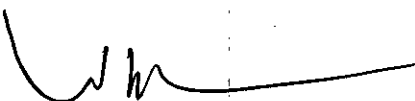
19/11/21


Chairman

20.01.2022

Junior to counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl. AG for respondents present.

Reply/comments on behalf of respondent are still awaited. Learned Additional Advocate General sought time for submission of reply/comments. Last opportunity is granted to respondents to furnish reply/comments on or before next date, failing which their right to submit reply/comments shall be deemed as struck off by virtue of this order. To come up for arguments before the D.B on 25.05.2022.

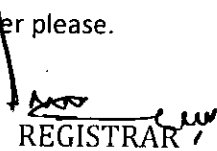


(Atiq-Ur-Rehman Wazir)
Member (E)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 7422 /2021


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	17/09/2021	<p>The appeal of Mr. Muhammad Ismail resubmitted today by Mr. Muhammad Ziaullah Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>12/11/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2-		

The appeal of Mr. Muhammad Ismail son of Abdul Subhan District Peshawar received today i.e. on 08.09.2021 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.


- ① Check list is not attached with the appeal.
- 2- Affidavit may be got attested by the Oath Commissioner.
- 3- Certificate be given to the effect that the appellant has not been filed any service appeal earlier on the subject matter before this Tribunal.
- 4- Memorandum of appeal may be got signed by the appellant.
- 5- Annexures of the appeal may be attested.
- ⑥ Annexure-D of the appeal is illegible which may be replaced by legible/better one.
- 7- One more copy/set of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal

No. 1798 /S.T,

Dt. 08/09 /2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. M.Ziaullah Adv. Pesh.

*Resubmitted after
compliance.* 

7422/21

BEFORE THE CHAIRMAN SERVICE
TRIBUNAL KHYBER PUKHTOON
KHAWA PESHAWAR.

MUHAMMAD ISMAIL

VERSUS

GOVERNMENT OF KPK AND OTHERS

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9	SPARE COPIES FOR RESPONDANTS NO: 1 TO 5		

Dated: 07.09.2021

APPELLANT

Through

Muhammad Ziaullah
Advocate, High Court

BEFORE THE CHAIRMAN SERVICE
TRIBUNAL KHYBER PUKHTOON
KHAWA PESHAWAR.

MUHAMMAD ISMAIL S/O: ABDUL SUBHAN R/O: KANDAR P.O
 NAHKI LANDI DAUDZAI TEHSIL AND DISTRICT PESHAWAR.

APPELLANT *Er Pakhtukhwa*
 Service Tribunal

Diary No. 7535

Dated 08/09/2021

VERSUS

1. GOVERNMENT OF KPK THROUGH CHIEF SECRAETARY.
2. CAPITAL CITY POLICE OFFICER PESHAWAR.
3. SUPERINTENDENT POLICE HEAD QUARTERS PESHAWAR.
4. SENIOR SUPERINTENDENT POLICE (Ops) HEAD QUARTERS PESHAWAR.
5. SUPERINTENDENT POLICE RURAL DEVISION PESHAWAR.

RESPONDENTS

APPEAL U/S: 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974
AGAINST THE IMPUGNED ORDER PASSED BY W/SSP (Ops)
VIDE Endst NO: 1209-12/PA DATED: 11.06.2021 AND
IMPUGNED ORDER IN DEPARTMENTAL APPEAL NO: 2539-
42 DATED: 13.08.2021. WHEREBY AN ORDER FOR
FORFEITURE OF 01 YEAR APPROVED SERVICE IS PASSED
AGAINST THE APPELLANT.

PRAYER IN APPEAL:

ON ACCEPTANCE OF THIS APPEAL THE ORDER
 W/SSP (Ops) VIDE Endst NO: 1209-12/PA DATED:
 11.06.2021 AND NO: 2539-42 DATED: 13.08.2021
 PASSED BY RESPONDENTS TO FORFEITURE 01
 YEAR APPROVED SERVICE OF APPELLANT
 MAY PLEASE BE SET ASIDE AND TO RESTORE
 THE SAID TWO YEAR SERVICE WITH ALL HIS
 BACK BENEFITS TO MEET THE ENDS OF
 JUSTICE.

RESPECTFULLY SHEWETH:

The appellant most humbly submits as under:

1. That the appellant was appointed as constable on 08.10.2009 in police department and he served the department with zeal and efficiency.

(Copy of service card is attached annexure A)

Filed to-day

Registrar

8/9/2021

2. That the appellant performed his job to the entire satisfaction of his Superior and during service no adverse remark or black spot has been found on the part of appellant.
3. That the appellant had wrongly been involved in case FIR No: 234/2021, u/s: 15AA, P.S West Cantt, dated: 14.03.2021 lodged against under the custody accused namely Shah Zeb s/o: Khyal Akbar R/O: Bara Khyber committed suicide in the lock up.
4. That the appellant was issued charge sheet for act of misconduct which was properly answered but not considered by worthy inquiry officer as well worthy authority/SSP (Ops).

(Copy of charge sheet and reply are attached as annexure B-C)

5. That on submission of finding report by worthy inquiry officer SP (Rural), the authority without going in to the merits of the case, passed the impugned order dated 11.06.2021.

(Copy of impugned order dt: 11.06.2021 is attached as annexure D)

6. That feeling aggrieved from the impugned order passed by W/SSP (Ops) vide Endst No: 1209-12/PA dated: 11.06.2021, the appellant filed departmental appeal which was also rejected on 13.08.2021.

(Copy of departmental appeal and order are attached as annexure E-F)

7. That feeling aggrieved, the appellant filed this appeal before this Hon'ble Court on the following grounds inter-alia:

GROUND:-

- A. That the appellant was legally appointed on the post of police constable and was performing his duty regularly.
- B. That appellant has spotless service record, always acted beyond the call of duty at the risk of life and also performed to the entire satisfaction of superiors, hence awarded penalty shall cause irreparable loss to the appellant and his family.
- C. That the impugned order is against the law and facts as inquiry officer did not follow prescribed procedure as per rule 6 of KP police Rules 1975 (Amended 2014) relevant para whereof reproduced as under "the inquiry office shall inquire in to the charge and may examine such oral or documentary evidence in support of the charge or in defense of the accused as may considered necessary and the witnesses against him" the inquiry officer had not examined any witness or brought any incriminating material in shape of documentary evidence on record. Therefore the finding report is void-ab-intio.
- D. That as per rule 6 (v) of rule 1975, the inquiry officer had to submit cogent grounds in finding report to connect the accused officer with alleged charge but no grounds has so far been collected and brought on record, therefore recommendation of the inquiry officer is not tenable.
- E. That even for the sake of arguments, the finding report/recommendation of inquiry officer is admitted for a while (Which is strongly denied), i.e the appellant failed to monitor CCTV camera screen as the appellant was busy in his official work as usual while there is an I.T section in police line and it is the duty of I.T section staff to monitor CCTV of all over the police stations of district Peshawar whom are supposed to monitor CCTV camera as long as the allegation of no guard to look up is concern, the appellant cannot be condemned for this alleged act/ charge as there is not available rather constructed any observation room in any of the police station at Peshawar. The police lock up is the mid up of PS and since long no guard duty has been directing while number of applications for police Nafri have been sent to Hi-ups, therefore the charge of failure /negligence

with respect of CCTV installation and deployment of guard to lock up cannot be attracted, but the appellant as Moharar /LHC of said police station has been held responsible for this alleged act and punished.

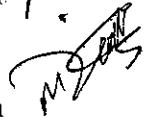
(Copies of applications for police Nafri are attached as annexure ②)

- F. That reply to charge sheet is self-explanatory which have not been given any weight by inquiry officer rather by the appellate authority.
- G. That personal hearing is mandatory whether provided in statute or not, reported in judgment 2005 PLC (CS) 1982 but appellant was not heard by authority in person to explain the circumstances behind the alleged charge, hence the penalty is not sustainable, as per afore-stated judgment and on this score, the appellant deserves to be dealt with leniently and exoneration from alleged charge.
- H. That 02 proceedings i.e registration of criminal case u/s 302 PPC and disciplinary action have been initiated against appellant which as per law and Pakistan Constitution 1973 provided barring provisions, therefore the awarded penalty is unwarranted rather unjustified, needs your esteemed interference. Worth mention that appellant was arrested in the murder case and remained in judicial lock up for sufficient time for no justified reason, bringing ill-repute to him and his family for no act on his part.
- I. That the appellant has been treated discriminately, involving infringement of rights, therefore, the awarded punishment in principle violates Pakistan Constitution 1973 and prevailed laws.
- J. That finding report of worthy inquiry officer is self-explanatory, he has clearly observed that no torture has been reflected on the accused/ late Shah Zeb and no observation room at present is available but condemn for lack of proper supervision. That it is to submit that lack of supervision or command and negligence cannot be judged/valued on single instance/case and it requires to be assessed from routine performance / daily life of an officer. With due apology, the famous maxim is referred "That one swallow does not make a summer" No malice on the part of appellant has been reported by worthy Inquiry officer.
- K. That the appellant was not associated with departmental inquiry, conducted by Worthy SP (Rural), which as per law is without lawful authority, hence is not tenable.
- L. That the worthy inquiry officer JMIC-viii Peshawar in the judicial inquiry finding report at Para-9 has only fixed responsibility on the appellant that deceased should have not been kept under observation home/room as per section 5 of Juvenile Justice system 2018 but kept in ordinary PS lock up. The appellant cannot be condemned for this alleged act / charge, as there is not available rather constructed any observation room in any of the police station at Peshawar, hence the charge of failure/negligence with respect to CCTV installation and deployment of guard to lock up cannot attract.
- M. That the appellant after his arrest in murder case remained in jail for such a sufficient time, without any justification and lawful purpose as during the course of judicial Inquiry, no specific role proved against him.
- N. That finding of worthy inquiry officer is based on hearsay as no direct or indirect evidence is collected and brought on record to connect the appellant with alleged misconduct (2005 PLC (C.S) page 559).
- O. That the appellant is the only serving member of huge family and such harsh punishment without considering his hardships during his false implication in the criminal case not only put him in so many mental worries, financial crises but also spoiled his career in a very bad way.

- P. That the appellant was not given personally heard neither given him a chance of cross-examination even a proper procedure is not followed.
- Q. That there is a basic principle of Islam as well as of law that no one should be condemned unheard but such rule has been ruined out by passing one sided Order.

IT IS, THEREFORE, PRAYED THAT ON ACCEPTANCE OF THIS APPEAL THE ORDER W/SSP (Ops) VIDE Endst NO: 1209-12/PA DATED: 11.06.2021 AND NO: 2539-42 DATED: 13.08.2021 PASSED BY RESPONDENTS TO FORFEITURE 01 YEAR APPROVED SERVICE OF APPELLANT MAY PLEASE BE SET ASIDE AND TO RESTORE THE SAID ONE YEAR SERVICE WITH ALL HIS BACK BENEFITS TO MEET THE ENDS OF JUSTICE.


Appellant

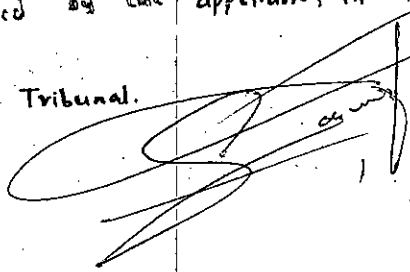
Through 

Muhammad Zia Ullah
Advocate, High Court,
Peshawar.

Dated: 06.09.2021

CERTIFICATE:

It is certify that prior to the instant appeal, no such like appeal is filed by the appellant, in the instant matter before the Service Tribunal.



BEFORE THE CHAIRMAN SERVICE TRIBUNAL KHYBER PUKHTOON KHAWA PESHAWAR.

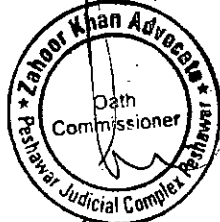
MUHAMMAD ISMAIL

VERSUS

GOVERNMENT OF KPK AND OTHERS

AFFIDAVIT

It is verified upon oath that the contents of this appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

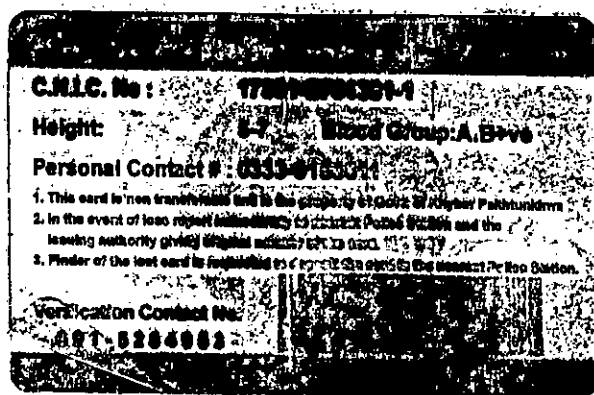
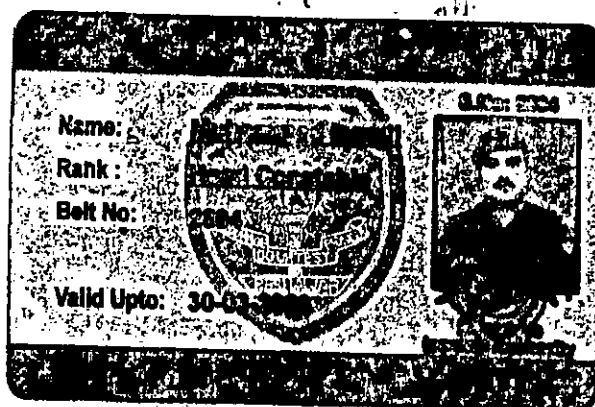


16/9/21

[Handwritten Signature]
Deponent

1

Annexure (A)



Attested as
 True copy of original
 M R

PAKISTAN National Identity Card
 ISLAMIC REPUBLIC OF PAKISTAN

Name: Muhammad Ismail

Father's Name: Abdul Subhan

Gender: M. Country of Birth: Pakistan

Identity No: 17301-2781381-4 Date of Birth: 01-10-1988

Date of Issue: 27-03-2019 Date of Expiry: 27-03-2029

Holder's Signature

گمشدہ کارڈ ملنے پر قریبی لیو بکس میں ڈال دیں

47301-2781381

503141133346

Minister General of Pakistan

Attested as true
 Copy of
 original

[Handwritten Signature]

Bio Data



9

Name	MOHAMMAD ISAMIL	Belt No	2894
Present Posting	RE-INSTATE IN SERVIC	Rank	LHC
Date of Birth:	10-Jan-88	Height: 5-7	Chest: 33.0x34.5
Qualification:	FA	Seniority List	
Identity Card No:	17301-2781381-1	S. Date	
Appointment Date:	08-Oct-09	Gender:	MALE
Address:	LANDI DAUDZAI DISTT: PESHAWAR	HomePS:	DUADZAI
		Blood Group:	A+VE
		CellNo:	0300-5956289
		OtherContNo:	0307-5943848

Posting History

Posting	From	To	Location	Order book
POLICE LINES	05-Oct-10	20-Oct-10		
DAR	20-Oct-10	09-May-12		3542
PS HAYATABAD	09-May-12	02-Apr-13		1838
PS NASIR BAGH	02-Apr-13	06-Aug-13		1228
POLICE LINES	06-Aug-13	07-Mar-14		2768
PS KOTWALI	07-Mar-14	27-Jun-14		758
PS HAYATABAD	27-Jun-14	04-Mar-15		2100
POLICE LINES	04-Mar-15	05-Apr-16		919
PS BADABER	05-Apr-16	25-Aug-16		1255
LOWER COURSE PTC	25-Aug-16	15-Jan-17		1511
P/ LINES(GUARD PAK HOTEL)	15-Jan-17	25-Aug-17	3-7-17	
MM PS WESTCANTT	25-Aug-17	20-Aug-18		3235
PS K.R.S	20-Aug-18	30-Jul-19		2584
PS WESTCANTT	30-Jul-19	19-Aug-20		2405
MM PS MICHANI GATE	19-Aug-20	01-Sep-20		1975
AMUC PS WEST CANTT	01-Sep-20	16-Mar-21		2106
SUSPEND POLICE LINES	16-Mar-21	05-May-21		913
RE-INSTATE IN SERVIC	05-May-21	06-May-21		1305
RE-INSTATE ORDER CANCELLE	06-May-21	03-Aug-21		1310
RE-INSTATE IN SERVIC	03-Aug-21			2071

Attested as true copy
of original
M C

CHARGE SHEET

10

(B)

1. Whereas I, Yasir Afridi PSP, SSP/Operations Peshawar, am satisfied that a Formal Enquiry as contemplated by Police Rules 1975 is necessary & expedient in the subject case against you **LHC Ismail 2894, the then Addl: Muharrar PS West Cantt.**
2. And whereas, I am of the view that the allegations if established would call for major/minor penalty, as defined in Rule 3 of the aforesaid Rules.
3. Now therefore, as required by Rule 6 (1) (a) & (b) of the said Rules, I, Yasir Afridi PSP, SSP Operations, Peshawar hereby charge you **LHC Ismail 2894, the then Addl: Muharrar PS West Cantt** under Rule 5 (4) of the Police Rules 1975 on the basis of following allegations/grounds:

On 14.03.2021, under custody accused namely Shah Zeb r/o Khyal Akbar r/o Bara Khyber arrested vide case FIR # 234/2021 u/s 15-AA PS West Cantt committed suicide in the lock up and stirred intense public outcry. Despite a functioning CCTV monitoring system, the incident happened which prima facie reflects criminal negligence of Police Station staff. By doing so, you have rendered yourself liable to be proceeded against departmentally under Police (E&D) Rules, 1975.
4. I hereby direct you further under Rule 6 (I) (b) of the said Rules to put forth written defence within 7 days of the receipt of this Charge Sheet to the Enquiry Officer, as to why action should not be taken against you and also stating at the same time whether you desire to be heard in person.
5. In case your reply is not received within the specific period to the Enquiry Officer, it shall be presumed that you have no defence to offer and ex-parte action will be taken against you.

2.
YASIR AFRIDI PSP
Senior Superintendent of Police,
(Operations) Peshawar

No. 518 E/PA dated Peshawar the 16/03 2021.

Attested as true
copy of original
M. J.

rough: proper channel

11 Annexure (C)

Subject: REPLY TO CHARGE SHEET WITH SUMMARY OF ALLEGATIONS

Respected Sir,

I have the honor to refer charge sheet under subject, vide endorsement No.518-E/PA dated 16.03.2021, received on 01.04.2021, would humbly submit at the very outset that the alleged mishap was happened in such a shortest span of time, as reflected from finding report of the inquiry officer JMIC-VIII at Para-7 of the report that could not be noticed due to blurred / black screen of CCTV in PS.

2. Worth mentioning, that CCTV of PS West Cantt is also linked with various offices in Police lines/worthy Capital City Police Offices and it could have been judged/noticed in those offices also, but unfortunately missed/went un-attended, however, do not involve any mala-fide or ill-intention of the undersigned.

3. With due respect, the alleged charge, vocalized in the summary of allegations is based on misconception and I am ready to swear on oath that alleged charge, bearing no authenticity or veracity, on my part.

4. Worth clarifying that on one hand criminal case was registered where as on other hand, disciplinary proceedings have been initiated, thus dual proceedings for one and the same charge, have been barred under Article 13 Pakistan Constitution 1973, Sec 403 Cr.PC and Sec 26 of General Clauses Act. As per judgment 2005 PLC (CS page 1187) it has been further held by superior court that no one should be vexed twice for one and the same charge, therefore the competent authority should kindly be pend disciplinary proceedings till disposal of criminal case.

5. The principle of natural justices would be violated only when an action is taken against a person without his knowledge (NLR 214 April QTA) I swear that the alleged misshape was not in my knowledge rather involves any consent or malafide. It has been held by Hon'able Court that without knowledge, conviction is illegal and it was set aside (NCR 2004 (Feb) P-84/Peshawar).

6. I have been placed under suspension without any justification and on no good ground, violating Rule 16.18 Police Rules 1934 r/w 43 FR which clearly speaks that un-necessary suspension should be avoided because it not only suffers the assigned work but also amounts to additional penalty, the circumstances, therefore warrants and justifies my release from suspension, as per afore-stated provision.

7. Since, I have joined this August force, I always performed honestly, dedicatedly and to the entire satisfaction of my superiors. I always acted beyond the call of duty at the risk of my life and never hesitated to culminate the menace of crime from the area, where I remain posted.

In circumstances, the alleged charge bears no authenticity, being without merit and substance, I request that the charge sheet may very kindly be filed without further proceedings.

Further requests for personal hearing to explain the circumstances, behind the alleged charge.

Attested as true
copy of original

Sincerely Yours

LHC Ismail No.2894,
the then Moharar PS West Cantt
Peshawar

12
OFFICE OF THE
SUPERINTENDENT OF POLICE,
RURAL DIVISION, PESHAWAR
No. 1537/SPR/DT: 9/6/2021
Email: officespruralpeshawar@gmail.com

To: The SSP Operations, Peshawar
Subject: INQUIRY REPORT - LHIC ISMAIL NO. 2894

Please refer to your office diary No. 518 /E/PA, dated: 16.03.2021.

According to statement of allegations & charge sheet, on 14.03.2021, accused namely Shah/Ch. s/o Khyal Akbar r/o Bara Khyber Agency arrested vide 21, u/s 15-AA, PS West Cantt committed suicide in the lock up and stirred intense. Despite a functioning CCTV monitoring system, the incident happened which reflects criminal negligence of Police Station staff. A criminal case has been registered FIR No. 235/2021, u/s 302 PPC at PS West Cantt which is under investigation.

The alleged official was summoned and charge sheet / summary of offence served upon him to which he submitted reply.

LHIC Ismail No.2894, Addl: Muharrar PS West Cantt stated that the incident happened in such a shortest span of time, as reflected from finding report of the JMHC-VIII at Para-7 of the report that could not be noticed due to blurred / blacked CCTV in PS.

He stated that CCTV of PS West Cantt is also linked with various of news agencies Offices and it could have been judged / noticed in those offices also but missed/went un-attended, however, do not involve his any mala-fide or fraud. He stated, that with due respect, the alleged charge, vocalized in the summary of offence is based on misconception and he is ready to swear on oath that alleged charge, authenticity or veracity, on his part.

He stated that on one hand criminal case was registered where as on other ordinary proceedings have been initiated, thus dual proceedings for one and the same have been barred under Article 13 Pakistan Constitution 1973, Sec 492 Cr.PC and General Clauses Act. As per judgment 2005 PLC (CS page 1187) it has been held by superior court that no one should be vexed twice for one and the same offence therefore the competent authority should kindly be pending disciplinary proceedings pending of criminal case.

He stated that the principle of natural justices would be violated only if a case is taken against a person without his knowledge (NLR 214 April QTA) he stated that the incident and misshape was not in his knowledge rather involves any consent or mala-fide. It is held by Hon'ble Court that without knowledge, conviction is illegal and it was held in NLR 2004 (Feb P-84 Peshawar).

Attested as true copy of original
M R

To
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13

OFFICE OF THE
SUPERINTENDENT OF POLICE,
RURAL DIVISION, PESHAWAR
No. /SPR, DT: /2021
Email: officespruralpeshawar@gmail.com

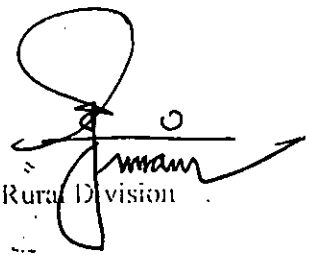
He stated that he has been placed under suspension without any ground on no good ground, violating Rule 16.18 Police Rules 1934 r/w 43 FR which states that un-necessary suspension should be avoided because it not only suffers the accused but also amounts to additional penalty, the circumstances, therefore warrants his release from suspension, as per afore-stated provision.

He stated that in circumstances, the alleged charge bears no authenticity, merit and substance, he requested that the charge sheet may very kindly be filed in court proceedings.

Delinquent official LIC Ismail had assumed his charge as acting Moharrar on an eventful day while Moharrar of PS West Cantt was on leave. Enquiry transpired that accused committed suicide in Police Station's lock up for the reason best known to him. No torture etc was inflicted upon him by LIC Ismail (CCTV footage attested the facts). However, being Moharrar of a PS, it was binding on him to provide adequate guard on lock up & inmates detained therein. Had he deployed guard on lock up or deployed CCTV Cameras, the incident could have been avoided.

Conclusions:-

After going through enquiry, the undersigned reached to the conclusion that gross negligence was found on the part of LIC Ismail, however, being Moharrar of a PS on duty day, he is found guilty for not deploying guard on lock up & paying attention to inmates in Moharrar office.


SP Rural Division

Attested as true
copy of original
M. J. J.

justi
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and

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STATEMENT OF ALLEGATIONS

14

1.
that I
be pr
mean

fridi PSP, SSP/Operations Peshawar as competent authority, am of the opinion
2894, the then Addl: Muharrar PS West Cantt has rendered himself liable to
inst departmentally as he has committed the following acts/omission within the
on 03 of the Khyber Pakhtunkhwa Police Rules, 1975.

3.2021) under custody accused namely Shah Zeb s/o Khyal Akbar r/o Bara
rrested vide case FIR # 234/2021 u/s 15-AA PS West Cantt committed suicide in
up and stirred intense public outcry. Despite a functioning CCTV monitoring
the incident happened which prima facie reflects criminal negligence of Police
staff. By doing so, he has rendered himself liable to be proceeded against
entally under Police (E&D) Rules, 1975.

2.
with
Offi

purpose of scrutinizing the conduct of afore said police official in the said episode
to the above allegations SP (R) is appointed as Enquiry
ule 5 (4) of Police Rules 1975.

3.
pro
to j

quiry Officer shall in accordance with the provision of the Police Rules (1975),
able opportunity of hearing to the accused Official and make recommendations as
er action to be taken against the accused official.

Nc

E/PA, dated Peshawar the

20 ✓
YASIR AFRIDI PSP
Senior Superintendent of Police,
(Operations) Peshawar

/2021

Attested as true copy of original

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15

OFFICE OF THE
SR: SUPERINTENDENT OF POLICE,
(OPERATIONS)
PESHAWAR

Annexure (D)

ORDER

LHC Ismail No 2894 while posted to Police Station West Cantt was placed under suspension and subsequently proceeded against departmentally vide charge sheet 518/E/PA dated 16.03.2021 on the charges that on 14.03.2021, under custody accused namely Shah Zeb s/o Khyal Akbar r/o Bara Khyber arrested vide case FIR # 234/2021 LS-AA PS West Cantt committed suicide in the lock up of PS West Cantt. Despite functioning CCTV monitoring system, the incident happened which prima facie reflects criminal negligence of Police Station staff. A criminal case was registered vide FIR 235/2021 u/s 302 PPC at PS West Cantt.

2. SP Rural Peshawar was appointed as Inquiry Officer to inquire into the allegations ascertain the role of accused official with reference to the allegations framed against him. Inquiry Officer submitted his findings on 09.06.2021 wherein he mentioned that on eventful day, the Moharrar was on leave and the accused official was performing as a Moharrar. The under custody accused committed suicide in the lock-up for the reasons known to him. However, it is worth mentioning that no torture was inflicted upon him LHC Ismail as is evident from the CCTV footage available on record. However, being a Moharrar of PS it was binding on him to pay attention to the lock up & inmates detained therein. Had he deployed guard on lock up or deputed staff to observe CCTV camera incident could have been avoided. The E.O further added that no criminal negligence found on the part of LHC Ismail, however, being Moharrar of PS on that very day, he is guilty for not deploying guard on lock up and to pay attention to CCTV cameras in Moh Office.

3. Findings of the E.O. Judicial Enquiry Report and other relevant record gone through is very much clear from CCTV footages that the accused official was negligent in discharge of his routine official duties. It is also pertinent to mention here that there is no observation room in any of Police Station in Khyber Pakhtunkhwa. Moreover, no detainee or under trial accused was in the cell. In the circumstances, he is hereby awarded the punishment of "forfeiture of 01 year approved service under Police (E&D) 1975. He is hereby re-instated into service from the date of suspension.

(YASIR AFRIDI) PSP
Senior Superintendent of Police,
(Operations) Peshawar

No. 1209-12 /PA dated Peshawar, the 11/06/2021.

Copy for information and necessary action to:-

1. The Capital City Police Officer Peshawar.

2. EC-I/EC-II/CRC/AS/PO

3. TMC along with complete enquiry file containing _____ pages for record.

Attested as true copy of original

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16
Before the Capital City Police Officer, Peshawar

Annexure (E)

Dr. 15-6-21
Enc:

Subject: Departmental Appeal u/r 11(2) of Police Rules 1975 (Amended 2014), against the impugned order, Passed by Worthy SSP(Ops) Peshawar vide order No. 1209-12/PA dated 11.06.2021.

Respected Sir,

The appellant respectfully prefers this appeal against the impugned order of Worthy SSP(Ops) Peshawar, inter-alia on the following grounds, amongst others. (Order is enclosed as Annexure-A).

FMC

For Seal
SA

Dy. Legal Officer

PRELIMINARIES:

105
15/6/21

1. The worthy inquiry officer did not follow prescribed procedure as per rule 6 of KP Police Rules 1975 (Amended 2014), therefore contains legal infirmity and the finding report is void abenitio and coram non iudice, thus not tenable. (Reported judgment 2005 PLC (CS) page 1544)
As per rule 6(v) of rule 1975, the worthy inquiry officer had only to submit cogent grounds to connect the appellant with alleged charge but no ground has so far been collected and brought on record, therefore, recommendation of inquiry officer is without jurisdiction and that too not provided under the Police Rules 1975.
3. Worth mentioning that double proceedings were initiated against the appellant i.e disciplinary proceedings and criminal/murder case for one and the same act, having been barred under Article 13 Pakistan Constitution 1973, Sec 403 Cr.PC and Sec 26 of General Clauses Act. As per judgment 2005 PLC (CS) page 1187) it has been further held by superior court that no one should be vexed twice for one and the same charge, therefore the competent authority should have waited till the disposal of criminal case, pending adjudication in Azad Kashmir.
4. Personal hearing is mandatory as per reported judgments 2005 PLC (CS) 1982 and 1987 PLC (CS) 810 but the appellant was not provided the opportunity of personal hearing to explain the circumstances behind the alleged charge, hence condemned unheard, therefore whole proceedings involve much more irregularities / illegalities and impugned order is not sustainable, in the eyes of law.

ON FACTS:

- i. Short facts are that on 14.03.2021, accused Shah Zeb s/o Khyial Akbar r/o Bara Khyber Agency, involved in case u/s 15AA vide FIR 234/2021 PS West Cantt Peshawar committed suicide in the lock up of PS, being monitored through cctv cameras, hence the appellant and SHO Dost Muhammad Khan were booked for a murder case and also disciplinary proceedings were initiated against appellant.
- ii. The appellant was issued charge sheet for act of misconduct which was properly answered but not considered by worthy inquiry officer as well worthy authority / SSP (Ops). (Copy attached as Annexure-B)
- iii. On submission of finding report by worthy inquiry officer SP (Rural), the authority without going into the merits of the case, passed the impugned order dated 03.06.2021 and forfeited 01 year approved service.

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true copy of
original
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ENDS OF APPEAL:

The impugned order of W/SSP (Ops), is assailable on the following grounds.

- a. The inquiry proceedings have not been conducted as per law, within the meaning of police rules 1975. It has been held by superior court, relevant observation is as under:
"Sketchy inquiry is not sufficient to prove any charge against appellant – no witness was examined in inquiry proceedings – appellant was found guilty by inquiry officer without any substantive evidence – impugned order was set-aside".
- b. The alleged charge is not justifiable and is considerable on the following few stances:-
 - i. The appellant was not associated with departmental inquiry proceedings, conducted by Worthy SP(Rural), which as per law is without lawful authority hence is not tenable.
 - ii. The worthy Inquiry Officer JMIC-viii Peshawar in the judicial inquiry finding report has only fixed the responsibility on the appellant that deceased should have not been kept under observation home/room as per Section 5 of Juvenile Justice System 2018, but kept in ordinary PS lock up and non deployment of security guard on the lock up. I cannot be condemned for this alleged act / charge as there is not available rather constructed any observation room in any of the Police Station at Peshawar. The police lock up is the mid up of PS and since long, no guard duty has been directing, therefore the charge of failure/negligence with respect to CCTV installation and deployment of guard to lock up cannot attract.
 - iii. The principle of natural justices would be violated only when an action is taken against a person without his knowledge (NLR 214 April QTA). It has been held by Hon'able Court that without knowledge, conviction is illegal and it was set aside (NCR 2004 (Feb P-84 Peshawar). I swear that I did not notice the alleged act of deceased Shah Zaib hence am innocent.
 - iv. Since the appellant has joined this august force, he performed dedicatedly, honestly, efficiently and to the entire satisfaction of superiors. The awarded penalty shall cause irreparable loss to the appellant and his family.
- c. The appellant after his arrest in murder case remained in Jail for such sufficient time, without any justification and lawful authority as during the course of judicial inquiry, the alleged act of deceased Shah Zaib was not proved to be a case of murder.
- d. Findings of worthy inquiry officer is based on hearsay as no direct or indirect evidence is collected and brought on record to connect the appellant with alleged misconduct (2005 PLC (C.S)page 559)


PRAYER

Apropos, it is humbly prayed that by accepting this appeal, the impugned order dated 11.06.2021 (forfeiture of 01 years approved service) may very kindly be set aside, to meet the ends of justice.

Attested as true copy of
original



Sincerely yours


LHC Ismail
No.2894
(Appellant)



18

Annexure (F)

OFFICE OF THE
CAPITAL CITY POLICE OFFICER,
PESHAWAR

ORDER.

This order will dispose of the departmental appeal preferred by LHC Muhammad Ismail No. 2894 who was awarded the punishment of " Forfeiture of 1-year approved service" under PR-1975 by SSP/Operations Peshawar vide order No. 1209-12/PA, dt. 11.06.2021.

2- Short facts leading to the instant appeal are that the appellant while posted Additional Moharrar PS West Cantt was proceeded against departmentally on account of charges that on 14.3.2021, accused namely Shahzeb s/o Khayal Akbar r/o Bara Khyber arrested vide case FIR No. 234/2021 u/s 15-AA PS West Cantt committed suicide in the PS Lock up and stirred intense public outcry. Despite of functioning CCTV monitoring system, the incident happened which prima facie reflects criminal negligence of Police Station staff. A criminal case has been registered vide FIR No. 235/2021 u/s 302 PPC at PS West Cantt.

3- He was placed under suspension and issued proper Charge Sheet and Summary of Allegations by SSP/Operations. SP/Rural, CCP Peshawar was appointed as enquiry officer to scrutinize the conduct of the accused official. The enquiry officer after conducting proper enquiry submitted his findings and found him guilty. Hence the competent authority awarded him the above punishment.

4- He was heard in person in O.R and the relevant record along with his explanation perused. During personal hearing the appellant failed to submit any plausible explanation in his defence. Therefore, his appeal for setting aside the punishment awarded to him by SSP/Ops: vide No. 1209-12/ PA, dated 11.06.2021 is hereby rejected/filed.

(ABBAS AHSAN) PSP
CAPITAL CITY POLICE OFFICER,
PESHAWAR

No. 2539-42 /PA dated Peshawar the 13 / 10 / 2021

Copies for information and necessary action to the :-

1. SSP/Operations Peshawar
2. OASI, CRC, Pay Officer,
3. FMC along with enquiry papers. + P-M
4. Official Concern.

Attested as true
Copy of original

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طبع شمار

تعداد نفری

سٹیٹمنٹ نفری اپریشن، انوسٹی گیشن اور چوکی ایئر پورٹ

FC,s	IHC,HC,s	ASI,s	SL,s	INSP:	تفصیل
100	20	10	5	1	منظوری
35	6	1	-	-	موجودہ
65	14	9	5	1	کی
-	-	-	-	-	میشی
35	6	1	-	1	میراں

انوسٹی گیشن سٹاف

ASI,s	IHC,HC,s	FC,s	SL,s	INSP:	تفصیل
3	-	4	-	-	موجودہ

چوکی ایئر پورٹ

EXM	ASI,s	IHC,HC,s	FC,s	SL,s	INSP:	تفصیل
-	-	1	4	-	-	موجودہ

ایکس سروس مین

FC,s	HC,s	ASI,s	SL,s	INSP:	تفصیل
-	-	-	-	-	موجودہ

جناب عالی!

سٹیٹمنٹ نفری مرتب ہو کر گزارش ہے۔

Signed
MASI.W.CANTT
01/03/2021

Attested as true

Copy of original

M.D.

طبع پشاور
e/e

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83

تھانہ غزنی

درخواست بہر ادا: (ٹرانسفر اپوسٹنگ)

جناب عالی!

معروضی خدمت ہوں۔ کہ تھانہ ہڈا کیساتھ زیادہ تر انتہائی اہم تجارتی مراکز، حساس، اور پرہجوم مقامات واقع پزیر ہیں۔ تھانہ ہڈا کیساتھ افسران بالائے تھانہ شرقی کا علاقہ ڈینز پلازہ بھی شامل کیا گیا ہے۔ لاک ڈاؤن میں صوبائی حکومت کی طرف سے نرمی کر کے پرحدود علاقہ کے بازاروں میں عوام الناس کی انتہائی رش ہوتی ہے۔ جو کہ نفری کی کمی کی وجہ سے کنٹرول کرنے میں شدید تکلیف کا سامنا ہے۔ تھانہ ہڈا کیساتھ افسران تھانہ کی انتہائی کمی کی وجہ سے عوام الناس کے خطرات کا دورہ پھر کر یافت ہانے کی بروقت بحال میں کافی مشکلات کا سامنا ہے۔

تھانہ ہڈا سے SI سجاد خان (ایڈیشنل SHO سیکورٹی) ایلیٹ فورس، IHC گلگام درانی 2222 کارخانہ چیک پوسٹ، جبکہ IHC فیاض خان 2034 پولیس لائن، IHC محمد رامش DAR426 جبکہ SI اورنگزیب خان کا تعلق تھانہ پھندو جبکہ کنسٹیبلان محمد صام 7570 ٹی پٹرول، ضیاء اللہ 12905 ایلیٹ فورس، عزیز الرحمن 2287 تھانہ چچی گیٹ جبکہ عبدالجلال 4492 رحمت LPR جبکہ رحمان گل LPR2812 ہیں جبکہ HC مرتضیٰ 15486 انٹرمیڈیٹ کان کورس میں ہے۔ جبکہ مذکورین بالا کے متبادل ٹرانسفر نہیں ہوئے ہیں۔ تھانہ ہڈا کیساتھ پہلے ہی نفری کی انتہائی کمی ہے۔ جبکہ تبدیل شدہ نفری کے متبادل فراہم نہ کرنے کا یہ حال ہے۔

بذریعہ درخواست استدعا ہے کہ مندرجہ بالا افسران اور کنسٹیبلان کے بطور متبادل پولیس لائن سے تھانہ ہڈا کے اپریشن سٹاف میں ٹرانسفر کرنے کے احکامات صادر فرمائیں۔



Insp:SHO.W.Cantt

15.10.20

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of original
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o/c

ضلع پشاور

(21)

تھانہ فری

درخواست بمراو: (ٹرانسفر اپوسٹنگ)

جناب عالی!

معروض خدمت ہوں۔ کہ حدود علاقہ میں زیادہ تر انتہائی اہم حساس مقامات واقع پڑے۔ کنسٹیبلان سیراج بی 3623، سرتاج 2735 متعینہ تھانہ پشترہ جبکہ کنسٹیبل اشتیاق 1334 متعینہ تھانہ تارا حدود علاقہ سے بخوبی واقف ہے۔ اور اسکی کارکردگی قابل ستائش ہے۔ استدعا ہے کہ کارکردگی بہترین تر مفاد کی خاطر کنسٹیبلان سیراج بی 3623، سرتاج 2735 تھانہ پشترہ سے جبکہ کنسٹیبل اشتیاق 1334 تھانہ تارا سے تھانہ پشترہ ٹرانسفر کرنے کے احکامات صادر فرمائیں۔

Insp:SHO.W.Cantt

12.01.21

Attested as true
copy of original

M

ضلع پشاور

cf

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چوکی شہباز اٹھانہ نغری

درخواست بمبراد: (ٹرانسفر اپوسٹنگ)

جناب عالی!

معروض خدمت ہوں۔ کہ تھانہ نغری کیساتھ چوکی شہباز (ہاجا خان انٹرنیشنل ایئر پورٹ) میں واقع ہے۔ چوکی ہذا کیساتھ زیادہ تر انتہائی اہم حساس مقامات واقع پزیر ہیں۔ چوکی ہذا میں قبل ازیں پولیس لائن سے 8 نفر کی گارڈ فرام کی گئی تھی پولیس لائن سے فراہم شدہ نفری کے ذریعہ اندرون ایئر پورٹ اور بیرون ایئر پورٹ کی حدود علاقہ کوڑکی جاتی تھی۔ اب پولیس لائن نے نفری کلوز کر لی ہے۔ تھانہ ہذا سے دفتر کنسٹیبلان عارضی طور پر لی گئی ہے۔ چونکہ تھانہ نغری کیساتھ بھی برطانیہ سینٹ نفری کی انتہائی کمی ہے۔ نفری کی کمی کی وجہ سے شدید تکلیف کا سامنا ہے۔ بذریعہ درخواست استدعا ہے کہ چوکی ہذا کیلئے پولیس لائن سے ایک سیکشن نفری بزرگ رینجرز برگ ٹرانسفر کرنے کے احکامات صادر فرمائیں۔

I/C PP Airport.W.Cantt

06.02.21

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of Original
M. J.

درخواست بمبراد: (ٹرانسفر اپوسٹنگ)

جناب عالی!

معروض خدمت ہوں۔ کہ تھانہ ہڈا کیساتھ برطانیہ سینٹ افسران تھانہ کی انتہائی کمی ہے۔ تھانہ ہڈا کیساتھ انتہائی اہم، حساس مقامات واقع پڑے۔ اور افسران تھانہ کی کمی کی وجہ سے عوام الناس کے خط و کتابت اور دیگر دریافت ہائے کی بروقت تکمیل میں کافی مشکلات کا سامنا ہے۔ تھانہ ہڈا کے آپریشن سٹاف سے SI عمران خان (ایڈیشنل SHO سیکورٹی) بحیثیت SHO تھانہ داوڑی ٹرانسفر ہو چکا ہے۔ جبکہ ESM/ASI وٹسار خان بھی حسب الحکم افسران محکمہ سے فارغ ہو چکا ہے جبکہ متبادل فراہم نہیں کیا گیا ہے علاوہ ازیں تھانہ ہڈا کیساتھ اپسہارڈینیٹ میں کوئی افسر باقی نہیں رہا۔ جبکہ برطانیہ سینٹ ماتھان اوٹی کی شدید کمی ہے۔

استدعا ہے کہ تھانہ ہڈا کو ASHO بمعہ 2 نفر، SI، s، 5 جبکہ ASI، s، 15 نفر کنستبلان فراہم کرنے کے احکامات صادر فرمائیں۔

Insp:SHO.W.Cantt

18.02.21

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copy of original
M. D.

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MUHAMMAD ZIA ULLAH DURRANI

Advocate Peshawar High Court, Federal Shariat Court, Legal Consultant & Practitioner,
Cell # 0314-9806895

WAKALAT NAMA

(POWER OF ATTORNEY)

IN THE COURT OF CHAMAN SERVICE TRIBUNAL IZPIK
PESHAWAR

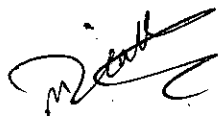
MUHAMMAD ISMAIL
(APPELLANT)

VERSUS

GOVERNMENT OF IZPIK AND OTHERS
(RESPONDENTS)

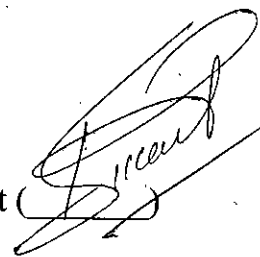
I/We, Muhammed Ismail (Appellant) in the
above noted Service Appeal, do hereby appoint and constitute **MUHAMMAD
ZIA ULLAH DURRANI, ADVOCATE HIGH COURT,
PESHAWAR** to appear, plead, act, compromise, withdraw or refer to arbitration
for me/us as my/our counsel in the above noted matter, without any liability for their
default and with the authority to engage/appoint any other Advocate/Counsel at
my/our matter.

Dated:



Attested & Accepted.

Client



MUHAMMAD ZIA ULLAH DURRANI

BC# 10-8033

Advocate High Court, Peshawar.

Chamber: J. Waqar Ahmad Seth Block,

2nd floor, District Courts, Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.7422 /2021.

LHC Ismail No.2894 of CCP Peshawar..... **Appellant.**

VERSUS

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

REPLY BY RESPONDENTS NO. 1, 2,3,4& 5.

Respectfully Sheweth:-

PRELIMINARY OBJECTIONS:-

1. That the appeal is badly barred by law & limitation.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has not come to Hon'ble Tribunal with clean hands.
4. That the appellant has no cause of action and locus standi to file instant appeal.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from Hon'ble Tribunal.
7. That the appeal is not maintainable being devoid of any merit.

REPLY ON FACTS:-

1. Pertains to record, however the performance of appellant during service was not upto the mark.
2. Incorrect as stated in para above.
3. Incorrect. The appellant while posted Additional Moharrar PS West Cantt was proceeded against departmentally on the charge that on 14.03.2021, under custody accused Shahzeb arrested in case FIR No. 234 u/s 15 AA PS West Cantt: committed suicide inside the lock up which infuriated general public across the city and demonstrations held against Police alleged torture and high handedness. Despite a CCTV inside lock up, the incident took place which prima facie attributes to criminal negligence of Police staff of Police Station. A criminal case in the matter was registered vide FIR No. 235/2021 u/s-302 PPC at PS West Cantt.
4. Incorrect. The appellant was issued charge sheet with statement of allegations to which he replied but his reply was found unsatisfactory. The enquiry officer after thorough probe into the matter, found the appellant guilty of the charges.(copy of charge sheet, statement of allegations and departmental enquiry along with impugned order are annex as A,B,C,D)
5. Incorrect. The competent authority after completion of all codal formalities as per spirit of KP Police Rules, 1975 (amended 2014) inflicted the penalty on the appellant when Enquiry Officer made him guilty of commission of misconduct and charges proved.

6. Incorrect. Appeal of the appellant was properly evaluated and perused and provided opportunity of hearing to appellant by the appellate authority, however he failed to arm himself with plausible/justifiable grounds, hence the appeal was rejected/ filed. (copy of departmental rejection order is annex as D)

That appeal of the appellant being devoid of merit and limitation may be dismissed on the following grounds.

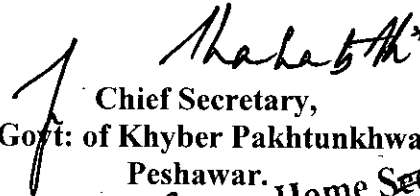
REPLY ON GROUNDS:-

- A. Incorrect. Para pertains to record.
- B. Pertains to record, however performance of appellant during his service was not upto the mark as he failed in supervision of his subordinate staff stationed in Police Station.
- C. Incorrect. The appellant was associated with the enquiry proceedings as per law/rules by giving him proper opportunity of defense but he failed to defend the charges, hence Enquiry Officer after thorough probe into the matter reported that the charges were stand proved.
- D. Incorrect. Proper departmental enquiry was conducted against him to unearth the real facts and Enquiry Officer found the appellant guilty /committing misconduct within the meanings of Rules ibid.
- E. Incorrect. The appellant being Moharrar of the police station was well aware how to supervise the Police Station and he was duty bound to monitor these CCTV cameras which system of it installed in each of Roznamcha of Police Station but he failed, hence the incident took place which obviously tarnished the soft image of Police in the minds of general public.
- F. Incorrect. The reply of appellant was considered, however found unsatisfactory having no substance in it.
- G. Incorrect. The appellant was given proper opportunity of personal hearing for his self defence but he could not prove his innocence.
- H. Incorrect. Court proceedings and departmental proceeding are two different entities which can run side by side.
- I. Incorrect. The appellant was treated as per law/rules and no violation of the Constitution of Pakistan 1973 has been done by the respondents and the punishment was in consonance with the gravity of misconduct.
- J. Incorrect. Proper departmental enquiry was conducted in the matter to dig out real facts and the enquiry officer found the appellant guilty of the charges.
- K. Incorrect. The appellant was associated with the enquiry proceedings and proper opportunity of defense was provided to him but he failed to defend the charges and his replies are cogent proof annexed with his appeal.
- L. Incorrect. The charges leveled against him are proved, hence awarded Minor punishment of forfeiture of 01 year approved service under Rules ibid.

- M. Para pertains to record, however the charges leveled against him were proved, hence he was penalized under the existing rules.
- N. Incorrect. Proper departmental enquiry in the matter was conducted which is based on facts after proving charges leveled against the appellant. The whole enquiry was conducted purely on merit and in accordance with law/rules.
- O. Incorrect. Objections raised by the appellant in the Para over the punishment awarded to him are having no legal footage as the entire process was done on merit.
- P. Incorrect. The appellant was heard in person, however he failed to rebut the charges and after completion of all codal formalities, he was awarded an appropriate punishment commensurate with his guilt.
- Q. Incorrect. The appellant was provided full opportunity of defense but he failed to defend himself. After fulfilling all the codal formalities, he was awarded the Minor punishment under Rules *ibid*.

PRAYER.

It is therefore most humbly prayed that in light of above facts and submissions, the appeal of the appellant being devoid of merits and legal footing, may kindly be dismissed with costs please.


Chief Secretary,
Govt: of Khyber Pakhtunkhwa,
Peshawar.

Home Secretary,
Khyber Pakhtunkhwa

Capital City Police Officer,
Peshawar.

Senior Superintendent of Police,
Operations, Peshawar.

Superintendent of Police,
HQs, Peshawar.

Superintendent of Police,
Rural, Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.7422 /2021.

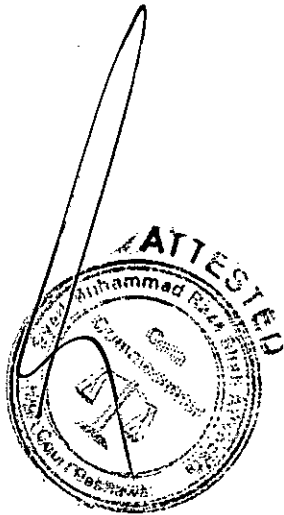
LHC Ismail No.2894 of CCP Peshawar.....Appellant.

VERSUS

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

AFFIDAVIT

We respondents No. 1,2,3,4 & 5 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Hon'ble Tribunal.



02 NOV 2022

Mahabub
Chief Secretary,
Govt of Khyber Pakhtunkhwa,
Peshawar.

Home Secretary,
Khyber Pakhtunkhwa

Capital City Police Officer,
Peshawar.

Senior Superintendent of Police,
Operations, Peshawar.

Superintendent of Police,
HQs: Peshawar.

Superintendent of Police,
Rural, Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.7422 /2021.

LHC Ismail No.2894 of CCP Peshawar..... **Appellant.**

VERSUS

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

AUTHORITY.

I, **Capital City Police Officer, Peshawar**, hereby authorize **Mr.Ahmad Jan** SI legal of Capital City Police, Peshawar to attend the Hon'ble Court and submit written reply, statement and affidavit required for the defense of above service appeal on behalf of respondent department.

**Capital City Police Officer,
Peshawar.**

CHARGE SHEET

1. Whereas I, Yasir Afridi PSP, SSP/Operations Peshawar, am satisfied that a Formal Enquiry as contemplated by Police Rules 1975 is necessary & expedient in the subject case against you **LHC Ismail 2894, the then Addl: Muharrar PS West Cantt.**

2. And whereas, I am of the view that the allegations if established would call for major/minor penalty, as defined in Rule 3 of the aforesaid Rules.

3. Now therefore, as required by Rule 6 (1) (a) & (b) of the said Rules, I, Yasir Afridi PSP, SSP Operations, Peshawar hereby charge you **LHC Ismail 2894, the then Addl: Muharrar PS West Cantt** under Rule 5 (4) of the Police Rules 1975 on the basis of following allegations/grounds:

On 14.03.2021, under custody accused namely Shah Zeb s/o Khyal Akbar r/o Bara Khyber arrested vide case FIR # 234/2021 u/s 15-AA PS West Cantt committed suicide in the lock up and stirred intense public outcry. Despite a functioning CCTV monitoring system, the incident happened which prima facie reflects criminal negligence of Police Station staff. By doing so, you have rendered yourself liable to be proceeded against departmentally under Police (E&D) Rules, 1975.

4. I hereby direct you further under Rule 6 (1) (b) of the said Rules to put forth written defence within 7 days of the receipt of this Charge Sheet to the Enquiry Officer, as to why action should not be taken against you and also stating at the same time whether you desire to be heard in person.

5. In case your reply is not received within the specific period to the Enquiry Officer, it shall be presumed that you have no defence to offer and ex-parte action will be taken against you.

2.
YASIR AFRIDI PSP
Senior Superintendent of Police,
(Operations) Peshawar

No. 518 E/PA dated Peshawar the 16/03 /2021.

STATEMENT OF ALLEGATIONS

1. I, Yasir Afridi PSP, SSP/Operations Peshawar as competent authority, am of the opinion that LHC Ismail 2894, the then Addl: Muharrar PS West Cantt has rendered himself liable to be proceeded against departmentally as he has committed the following acts/omission within the meaning of section 03 of the Khyber Pakhtunkhwa Police Rules, 1975.

On 14.03.2021, under custody accused namely Shah Zeb s/o Khyal Akbar r/o Bara Khyber arrested vide case FIR # 234/2021 u/s 15-AA PS West Cantt committed suicide in the lock up and stirred intense public outcry. Despite a functioning CCTV monitoring system, the incident happened which prima facie reflects criminal negligence of Police Station staff. By doing so, he has rendered himself liable to be proceeded against departmentally under Police (E&D) Rules, 1975.

2. For the purpose of scrutinizing the conduct of afore said police official in the said episode with reference to the above allegations SP (R) is appointed as Enquiry Officer under Rule 5 (4) of Police Rules 1975.

3. The Enquiry Officer shall in-accordance with the provision of the Police Rules (1975), provide reasonable opportunity of hearing to the accused Official and make recommendations as to punish or other action to be taken against the accused official.

2- ✓
YASIR AFRIDI PSP
Senior Superintendent of Police,
(Operations) Peshawar

No. _____ E/PA, dated Peshawar the _____ / _____ /2021

To :

The SSP Operations, Peshawar

Subject:

INQUIRY REPORT - LHC ISMAIL NO. 2894

Memo:-

Please refer to your office diary No. 518 A/P/A, dated: 16.03.2021.

Allegations :-

According to statement of allegations & charge sheet, on 14.03.2021, under custody accused namely ShahZeb s/o Khyal Akbar r/o Bara Khyber Agency arrested vide FIR.No.234/2021, u/s 15-AA, PS West Cantt committed suicide in the lock up and stirred intense public outcry. Despite a functioning CCTV monitoring system, the incident happened which prima facie reflects criminal negligence of Police Station staff. A criminal case has been registered vide FIR No. 235/2021, u/s 302 PPC at PS West Cantt which is under investigation.

Proceedings :-

The alleged official was summoned and charge sheet / summary of allegations were served upon him to which he submitted reply.

LHC Ismail No.2894, Addl: Muharrar PS West Cantt stated that the alleged mishap happened in such a shortest span of time, as reflected from finding report of the inquiry officer JMIC-VIII at Para-7 of the report that could not be noticed due to blurred / black screen of CCTV in PS.

He stated that CCTV of PS West Cantt is also linked with various offices in Police Lines Offices and it could have been judged / noticed in those offices also but unfortunately missed/went un-attended. however, do not involve his any mala-fide or ill intention. He stated that with due respect, the alleged charge, vocalized in the summary of allegations is based on misconception and he is ready to swear on oath that alleged charge, bearing no authenticity or veracity, on his part.

He stated that on one hand criminal case was registered where as on other hand, disciplinary proceedings have been initiated, thus dual proceedings for one and the same charge, **have been barred under Article 13 Pakistan Constitution 1973, Sec 403 Cr.PC and Sec 26 of General Clauses Act. As per judgment 2005 PLC (CS page 1337) it has been further held by superior court that no one should be vexed twice for one and the same charge, therefore the competent authority should kindly be pend disciplinary proceedings till disposal of criminal case.**

He stated that the principle of natural justices would be violated only when an action is taken against a person without his knowledge (NCR 214 April QTA) he swear that the alleged mishap was not in his knowledge rather involves any consent or mala-fide. It has been held by Hon'able Court that without knowledge, conviction is illegal and it was set aside (NCR 2004 (Feb P-84 Peshawar).

He stated that he has been placed under suspension without any justification and on no good ground, violating Rule 16.18 Police Rules 1934 r/w 43 FR which clearly speaks that un-necessary suspension should be avoided because it not only suffers the assigned work but also **amounts to additional penalty**, the circumstances, therefore warrant and justifies his release from suspension, as per afore-stated provision.

He stated that in circumstances, the alleged charge bears no authenticity, being without merit and substance, he requested that the charge sheet may very kindly be filed without further proceedings.

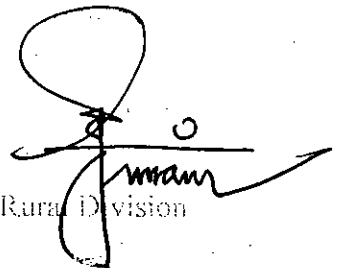
Findings:-

Delinquent official LHC Ismail had assumed his charge as acting Moharrar on the eventful day while Moharrar of PS West Cantt was on leave. Enquiry transpired that the deceased accused committed suicide in Police Station's lock up for the reason, unfortunately, best known to him. No torture etc was inflicted upon him by LHC Ismail (CCTV Cameras revealed the facts). However, being Moharrar of a PS, it was binding on him to pay attention to the lock up & inmates detained therein. Had he deployed guard on lock up or deputed staff to observe CCTV Cameras, the incident could have been avoided.

Recommendations:-

After going through enquiry, the undersigned reached to the conclusion that no criminal negligence was found on the part of LHC Ismail, however, being Moharrar of PS on that very day, he is found guilty for not deploying guard on lock up & paying attention to CCTV cameras in Moharrar office.

*one year to same
Re-initiate the
date to susp
nil*


SP Rural Division