


FORM OF ORDER SHEET

Court of _____

Case No.- 980/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	03/05/2023	<p>The appeal of Mr. Nayab Khan presented today by Mr. Shahzada Irfan Zia Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

Appeal No. ⁹⁸⁰ /2023

Nayab Khan APPELLANT

Versus

Province of KPK etc RESPONDENTS

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APPELLANT

THROUGH:

SHAHZADA IRFAN ZIA

ADVOCATE SUPREME COURT OF PAKISTAN

21-B, Nimra Centre, Faqirabad. NO-1, Peshawar.

CELL. 0300-9345297

Dated. 04-05-2023

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

Appeal No. 980 /2023

Nayab Khan Constable No. 971/ Cook, Police Post Sheikh Landak, District Bannu.

..... APPELLANT

VERSUS

1. Province of KPK through Inspector General of Police/ Provincial Police Officer, Central Police Office, Peshawar.
2. Regional Police Officer, Bannu Region, Bannu.
3. District Police Officer, Bannu.

.....RESPONDENTS

APPEAL UNDER SECTION 4 OF KPK SERVICE TRIBUNAL ACT, 1974 AGAINST IMPUGNED ORDER DATED 18-01-2023, PASSED BY RESPONDENT NO-3 WHEREBY THE APPELLANT HAS BEEN AWARDED THE MAJOR PENALTY OF DISMISSAL FROM SERVICE AND HIS DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER IBID WAS REJECTED BY RESPONDENT NO-2 VIDE IMPUGNED FINAL ORDER DATED 20-04-2023, DISREGARD OF THE RULES AND PRINCIPLES OF NATURAL JUSTICE, THUS BOTH THE IMPUGNED ORDERS ARE LIABLE TO BE SET ASIDE BEING ILLEGAL AND VOID.

Respectfully Sheweth:

FACTS OF THE CASE

1. That the appellant joined the Police Force on 10-09-2012 as Constable and from day one of his service, he performed his statutory duties to the entire satisfaction of his superiors and more than 10 years service is at his credit.
2. That the appellant already passed his B-1 examination and due for Lower School Course at Police Training College, Hangu, which is mandatory for incorporation his name in List C-1, for promotion to the post of Lower Head Constable and the course ibid is starting from the coming month of June, 2023.
3. That unfortunately on 18-01-2023 the respondent No-3 passed the impugned order and imposed the major penalty of Dismissal from service upon the appellant on the pretext of absence from duty, disregard of the rules and procedure provided under the law. (ANNEX.A)

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4. That feeling aggrieved the appellant filed his departmental appeal before the respondent No-2 but the appellate authority (respondent No-2) rejected the departmental appeal of the appellant vide impugned final order dated 20-04-2023. It is strange and surprising that after the impugned order of dismissal from service dated 18-01-2023 a show cause notice dated 19-01-2023 was served upon the appellant, which is illegal and a blatant violation of the law, procedure and rules. (Annex. B, C and D) Hence the present appeal is being filed inter alia on the following grounds:

GROUNDS

- A. That both the impugned orders are illegal and void as the appellant was not absent from duty on 17-01-2023 and on the said day he visited the office of worthy DPO in respect of some official work with the permission of his chowki incharge, but during surprise visit of SHO he held the appellant absent from duty without verifying the real fact from chowki incharge concerned. (ANNEX.E)
- B. That the impugned order dated 18-01-2023 passed by respondent No-3 is based on malafide as the Authority passed the impugned order ibid on 18-01-2023 while served the show cause notice dated 19-01-2023 upon the appellant after the issuance of impugned order, thus entire proceedings are illegal, void and unsustainable under the law.
- C. That before passing the impugned order dated 18-01-2023 no inquiry was conducted through inquiry committee/ inquiry officer to dig out the truth and impugned order was passed in a haphazard manner in haste, therefore, all proceedings and impugned orders are arbitrary and liable to be set-aside.
- D. That before issuance of impugned order dated 18-01-2023 and final order dated 20-04-2023 by competent authority and appellate authority, no chance of personal hearing was afforded to the appellant, thus the appellant was condemned unheard in clear violation of the rules and principles of natural justice. The action of the respondents is in utter violation of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 which reads as under:

“ Right to fair trial. For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.

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E. That both the impugned orders passed by respondents are harsh and not proportionate to guilt of the appellant. The august Supreme Court of Pakistan time and again reiterated that the penalty should proportionate to the guilt of the delinquent civil servant.

(2006 SCMR-443)

F. That the appellant seeks the permission of this honourable court for further/ additional grounds at the time of arguments.

In view of the aforesaid facts and circumstances of the case it is humbly prayed that the impugned order dated 18-01-2023 passed by respondent No-3 and Final order dated 20-04-2023 passed by respondent No-2 both may graciously be set aside being illegal and void, directing the respondents to reinstate the appellant into service with all back benefits.

Any other relief if this court deems appropriate in the circumstance of the case may also be granted in favour of appellant.

APPELLANT

THROUGH

SHAHZADA IRFAN ZIA

ADVOCATE SUPREME COURT OF PAKISTAN

CELL. 0300-9345297

AFFIDAVIT

I, Nayab Khan Constable No- 971, landak chowki, Bannu do hereby declare on oath that the contents of this appeal are true and correct to the best of my knowledge & belief and nothing has been concealed from the court.

DEPONENT

CERTIFICATE

Certified that no such appeal has earlier been filed on behalf of appellant before this court on the subject matter.

ADVOCATE

PUNISHMENT ORDER

The following Constables posted to sensitive Police Posts. However, it has been reported that they remain absent most of the time and do not perform their duty efficiently. They pay no attention to the directions issued by the undersigned and do not mend their ways. They are habitual absentee.

- | | |
|-----------------------------------|-----------------------|
| 1. Constable Wasim Ullah No. 1562 | PP Mazanga |
| 2. Constable Rizwan Khan No. 2291 | PP Mazanga |
| 3. Constable Haq Nawaz No. 157 | PP Mazanga |
| 4. Constable Sair Ullah No. 566 | Cook PP Mazanga |
| 5. Constable Nayub Khan No. 971 | Cook PP Sheikh Landak |
| 6. Constable Parmez Khan No. 662 | Cook PS Haved |

Keeping in view of the above, the undersigned meticulously perused all the relevant record. Being habitual absentee their further retention in service would be detrimental and burden over shoulders of the Department. In the current situation of terrorism, their absence have put other officials of the concerned Police Posts at risk, therefore, I, Dr. Muhammad Iqbal, District Police Officer, Bannu, in exercise of the power vested in me under Police Rule 1975 (As amended vide Govt. of Khyber Pakhtunkhwa Gazette Notification of even No. dated 27th of August 2014) hereby awarded them Major Punishment of "Dismissal from Service" with immediate effect.

OB No. 55
Dated: 18/10/2023

(Dr. MUHAMMAD IQBAL)PSP
District Police Officer,
Bannu.
Tel: 0928-9270036
Fax :0928-9270045
Email: drbannu27@gmail.com

OFFICE OF THE DISTRICT POLICE OFFICER, BANNU.

SHOW CAUSE NOTICE

(Under rules 5 (03) KPK Police Rules, 1975)

That you Cook Constable Iqrar No. 666, Cook Constable Naveed No. 446, Cook Constable Parmez Khan No. 662, Cook Constable Sairullah No. 566, Cook Constable Nayab Khan No. 971 have rendered yourselves liable to be proceeded under Rule 5(3) of the Khyber Pakhtunkhwa Police Rules (As amended vide Khyber Pakhtunkhwa gazette Notification No.27th of August 2014) for the following misconduct:

➤ That as reported by SDPO/Rural-I, Bannu vide letter No. 04/R-I, dated 13.01.2022, you following Cook Constables have been found unawareness of cooking and you officials cook through private cooks and often found absent from Police Stations which shows your irresponsibility and lack of interest in duty.

S.#	Name, Rank & No.	Place of Posting
1.	Cook Constable Iqrar No. 666	PS Miryan
2.	Cook Constable Naveed No. 446	PS Miryan
3.	Cook Constable Parmez Khan No. 662	PS Haved
4.	Cook Constable Sairullah No. 566	PP Mazanga
5.	Cook Constable Nayab Khan No. 971	PP Sheikh Landak

➤ Such an act on your part is against service discipline and amounts to gross misconduct/negligence in duty.

That by reason of above, as sufficient material is placed before the undersigned; therefore it is decided to proceed against you in general police proceeding without aid of enquiry officer.

That the misconduct on your part is prejudicial to good order of discipline in the police force. That your retention in the police force will amount to encourage in efficient and unbecoming of good police officers:

That by taking cognizance of the matter under enquiry, the undersigned as competent authority under the said rules, proposes stern action against you by awarding one or more of the kind punishments as provided in the rules.

You are, therefore called upon to show cause as to why you should not be dealt strictly in accordance with the Khyber Pakhtunkhwa Police Rules, 1975 for the misconduct referred to above.

You should submit reply to this show cause notice within 07 days of the receipt of the notice failing which an ex parte action shall be taken against you.

You are further directed to inform the undersigned that wish to be heard in person or not.

By reason of above you have rendered yourself liable to be proceeded under Khyber Pakhtunkhwa Police Rules (As amended vide Khyber Pakhtunkhwa gazette Notification No.27th of August 2014), hence these ground of action.

(Dr. MUHAMMAD IQBAL) PSP
District Police Officer,
Bannu.

No. 25 /SRC, dated 19 / 01 /2023.

Received by: _____

Dated: / /2023

(Annex: D) 7

1-11/23

ORDER:

This order will dispose of departmental appeal, preferred by Ex-Cook constable Nayab Khan No.971 of District Bannu, wherein he has prayed for setting aside the order of major punishment of "Dismissal from service", imposed upon him by DPO Bannu vide OB No.58 dated 18.01.2023 for committing the following misconduct:-

- That as reported by SDPO Rural-1, Bannu, the appellant was found unaware of cooking and the appellant while posted at PP Sheikh Landak, performed cooking through private cooks and often found absent from Police Post which shows his irresponsibility and lack of interest in duty.

Comments, service record and other relevant papers were received from DPO Bannu vide his office letter No.97/SRC, dated 21.02.2023 and perused in detail. The DPO Bannu has reported that the appellant was issued Show Cause Notice vide No.25/SRC dated 19.01.2023 but his reply was found unsatisfactory. The appellant being habitual absentee, his further retention in service would be detrimental and burden over the shoulder of the department. In the current situation of terrorism his absence has put other officials of the concerned Police Post at risk. Therefore, the competent authority (DPO Bannu) has awarded the appellant major punishment of "Dismissal from Service" vide OB No. 58 dated 18.01.2023. The appellant was heard in person in orderly room held in RPO Office Bannu on 06.04.2023. His plea was not found convincing. He had recruited an "Iwazi" at a rate of Rs:10,000/- per month to perform duties at his place while he himself was doing private business. The introduction of this dirty culture is extremely dangerous in police department and cannot be allowed to go unchecked.

Therefore, I, Syed Ashfaq Anwar, PSP/Regional Police Officer, Bannu Region Bannu, in exercise of the powers vested in me under Khyber Pakhtunkhwa Police Rules, 1975 (amended in 2014) hereby reject his appeal and endorse the punishment awarded to him by DPO Bannu vide OB No. 58 dated 18.01.2023.

ORDER ANNOUNCED

OB No. _____
Dated: 20/04/2023.

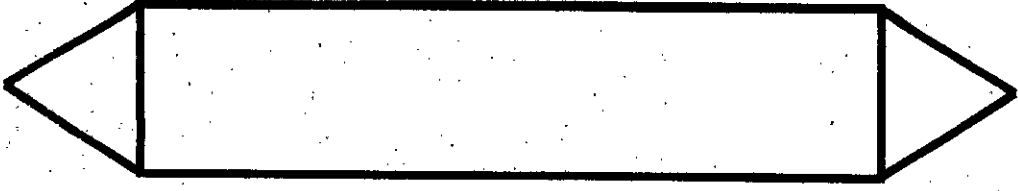
Regional Police Officer,
Bannu Region,
Bannu

No. 1219 /EC, dated Bannu the 20/04/2023
Cc:

DPO-Bannu for necessary action w/r to his office letter No. cited above. Complete Service Roll and other relevant papers of Ex-FC Nayab Khan No.971 of District Bannu are sent herewith for record in your office which may be acknowledged, please.

Regional Police Officer,
Bannu Region,
Bannu

Before the KPK Service Tribunal, Peshawar
بعدالت



Najab Khan

سہ 2 منجانب

03/5/2023

مورخہ

Province of KPK etc

Najab Khan

مقدمہ

Service Appeal

دعوئی

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

Shahzoda Irfan Zia کیلئے

Peshawar

آن مقام

Advocate

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے ق تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعوئی اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعوئی اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا محتاج ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکور با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ ہوں گے سب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔

Attested

Accepted

18/5/23

کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔
(Bc. No. 10-7608)
Cell: 0300-9345297

2023ء

May

3rd - المرقوم

العبد د واہ العبد