

22.02.2023

Bench is incomplete, therefore, case is adjourned
to 24.05.2023 for the same as before.



Reader

31.05.2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Addl. AG for the respondents present.

Written reply/comments on behalf of respondents have already been submitted through office which is placed on file. Copy of the same is handed over to learned counsel for the appellant. To come up for rejoinder if any, and arguments on 25.07.2022 before D.B.

(Mian Muhammad)
Member (E)

25.7.22

proper DB not available to come up for the same as before on 20-9-22

20.09.2022

Learned counsel for the appellant present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment to further prepare the brief. Adjourned. To come up for arguments on 30.11.2022 before the D.B.

(Mian Muhammad)
Member (E)

(Salah-Ud-Din)
Member (J)

30/11/22

Deleted from list to come up on 22-2-23

Saif Ullah Khan, 4822/2021

14.09.2021

Counsel for the appellant present. Preliminary arguments heard.

Learned counsel for the appellant argued that the impugned order dated 28.12.2020 awarding major penalty of "dismissal from service" and appellate order dated 09.03.2021 are assailed and impugned in the instant service appeal instituted under Section-4 of the Service Tribunal Act, 1974 on 01.04.2021. He further contended that the appellant was nominated in FIR NO. 1361 dated 15.09.2019 for offense under Section-9-C of the CNSA, 1997 registered at Police Station City, District Kohat. He was however released on bail on 18.10.2019 and as such he was performing his duty in the department when the impugned order was issued. Moreover, no charge sheet/statement of allegations framed and issued as is required under Rule-6 of Police Rules 1975. He was required to have been placed under suspension till the conclusion of criminal proceedings, as per provisions under CSR-194. Since no proper enquiry/procedure and due course adopted/followed against the appellant, the appeal may therefore, ~~may~~ be allowed and the appellant reinstated in service with all back and consequential benefits.

Points raised need consideration. The appeal is admitted to regular hearing, subject to all just and legal objections including limitation. 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 in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time or extension of time is not sought, the office shall submit the file with a report of non-compliance. File to come up for arguments on 24.12.2021 before the D.B.

Deposited
Process Fee

1/9/21

(Mian Muhammad)
Member(E)

24.12.2021

Due to winter vacations, case is adjourned to 11.03.2022 for the same as before.

Due to retirement of Worthy Chairman,
the Tribunal is defunct, therefore,
the case is adjourned to 31/03/22
for the same as before.




Reader

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 4822 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	14/04/2021	<p>The appeal of Mr. Saifullah Khan resubmitted today by Mr. Taimur Ali Khan 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>
2-	27/05/21	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>07/06/21</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	07.06.2021	<p>The Worthy Chairman is on leave, therefore, case to come up for preliminary hearing on 14.09.2021 before S.B.</p> <p style="text-align: right;"> Reader</p>

The appeal of Mr. Saifullah Khan Ex-Constable District Police Orakzai received today i.e. on 01/04/2021 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellatant.
- 2- Copy of department appeal is not attached with the appeal which may be placed on it.
- 3- Copies charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.
- 4- Appeal has not been flagged/marked annexures' marks.
- 5- Annexures of the appeal may be attested.
- 6- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 630 /S.T,

Dt. 02/04 /2021



REGISTRAR,
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Taimur Ali Khan Adv. Pesh.

Respected Sir,

- 1- Removed
- 2- Copy of departmental appeal is present at page 11.
- 3- Charge Sheet, Statement of allegation and show cause notice were not communicated to the appellatant and inquiry report was not provided to appellatant, therefore unable to annex with appeal.
- 4- Removed
- 5- Removed
- 6- Removed

Resubmitted after compliance


14/04/2021

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

4822

SERVICE APPEAL NO. _____/2021

Saif Ullah Khan

V/S


Police Deptt:

INDEX

S. No.	Documents	Annexure	P. No.
01	Memo of appeal	-----	01-04
02	Copy of FIR	A	05
03	Copy of bail order dated 18.10.2019	B	06-09
04	Copy of order dated 28.12.2020	C	10
05	Copy of departmental appeal	D	11-16
06	Copy of order dated 09.03.2021	E	17
07	Vakalat Nama	-----	18

APPELLANT

THROUGH:


(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT
&

(ASAD MAHMOOD)
ADVOCATE HIGH COURT

Room No. FR 8, 4th Flour,
Bilour plaza, Peshawar cantt:
Cell# 0333-9390916

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. _____/2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 4526

Dated 01/4/2021

Saif Ullah Khan, Ex-Constable,
District Police Orakzai.

(APPELLANT)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Kohat Region Kohat.
3. The District Police Officer Orakzai.

(RESPONDENTS)

**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974
AGAINST THE ORDER DATED 28.12.2020, WHEREBY THE
APPELLANT WAS DISMISSED FROM SERVICE AND
AGAINST THE ORDER DATED 09.03.2021, WHEREBY THE
DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN
REJECTED FOR NO GOOD GROUNDS.**

PRAYER:

**THAT THE ACCEPTANCE OF THIS APPEAL, THE ORDER
DATED 28.12.2020 AND 09.03.2021 MAY KINDLY BE SET
ASIDE AND THE RESPONDENTS MAY FURTHER BE
DIRECTED TO REINSTATE THE APPELLANT INTO HIS
SERVICE WITH ALL BACK AND CONSEQUENTIAL
BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST
TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY
ALSO BE AWARDED IN FAVOUR OF APPELLANT.**

2

RESPECTFULLY SHEWTH:

FACTS:

1. That the appellant joined the Orakzai levy as Sepoy in the year 1993 and since his appointment, the appellant has performed his duty with great devotion and honesty, whatsoever assigned to him and also have good service record throughout and no complaint has been filed against him regarding his performance.
2. That when the District Levy Orakzai was merged/absorbed in the District Police orakzai, the appellant became the member of Police Force and in police department too the appellant has performed his duty with great devotion and honesty.
3. That the appellant was falsely implicated in criminal case vide FIR No.1361 dated 15.09.2019 u/s 9 (C) CNSA PPC of PS City District Kohat and was arrested. The appellant was suspended by the department on 20.09.2019. **(Copy of FIR is attached as Annexure-A)**
4. That the appellant approached the court of Additional Session Judge-IV Kohat for his release on bail, but his bail was rejected on 24.09.2019 and then filed bail Petition in Peshawar High court which was allowed on 18.10.2019 and the appellant was released on bail. **(Copy of bail order dated 18.10.2019 is attached as Annexure-B)**
5. That after release on bail, inquiry was conducted against the appellant, but the inquiry was not conducted according to the prescribed procedure as neither statements were recorded in presence of the appellant nor gave him opportunity of cross examination. Even the inquiry report was not handed over to the appellant, which may be requisite from the department.
6. That after conducting inquiry, the appellant was reinstated into service and has performed his duty for more than one year and after lapse of more than one year of inquiry proceeding, the appellant was dismissed from 28.12.2020 on the basis of that criminal charge without conducting regular inquiry and without communicating charge sheet and show cause notice to the appellant. **(Copy of order order dated 28.12.2020 is attached as Annexure-C)**
7. That against the order dated 28.12.2020, the appellant filed departmental appeal on 06.01.2021, which was rejected for no good ground on 09.03.2021. **(Copies of departmental appeal and rejection order are attached as Annexure D&E).**

8. That the appellant has no other remedy except to file the instant service appeal in this Honourable Tribunal on the following grounds amongst others.

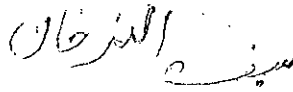
GROUND:

- A. That the impugned orders dated 28.12.2020 and 09.03.2021 are against the law, facts, norms of justice and material on record, therefore, not tenable and liable to be set aside.
- B. That the inquiry was not conducted according to the prescribed procedure as neither statements were recorded in the presence of the appellant nor gave him opportunity of cross examination which is violation of law and rules and the impugned orders are liable to be set aside on this ground alone.
- C. That no opportunity of defence was provided to the appellant during inquiry proceeding, which is violation of Article-10A of the Constitution of Pakistan.
- D. That no charge sheet was communicated to the appellant, which is violation of rule 6 i (a) of Police Rules 1975.
- E. That show cause notice was not issued to the appellant before passing the impugned order, which against the norms of justice and fair play.
- F. That even the inquiry report was not proved to the appellant, which is against the norms of justice and fair play.
- G. That as per Civil Service Regulations, 194-A, the appellant should be suspended till the conclusion of criminal case pending against him, but the appellant was dismissed from service without waiting to conclusion of criminal pending against him, which is violation of CSR, 194-A.
- H. That as per superior court judgment that mere allegation of commission of an offence and registration of FIR against a person would not ipso facto made him guilty rather he would be presumed to be innocent until convicted by a competent court, but the appellant was dismissed from service only on the basis of FIR which is violation of superior court judgment.

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- I. That after inquiry, the appellant was reinstated into service and has performed his duty for more than one year and after lapse of more than one year of inquiry proceeding, the appellant was dismissed from 28.12.2020 on the basis of that criminal charge, which shows the malafide of the respondent department.
- J. That the appellant has been condemned unheard and has not been treated according to law and rules.
- K. That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.



APPELLANT

Saif Ullah Khan

THROUGH:



(TAIMUR ALI KHAN)

ADVOCATE HIGH COURT

&

(ASAD MAHMOOD)

ADVOCATE HIGH COURT

B (6)

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

Cr.M.BA No.2953-P-2019

"Saif Ullah Khan Vs. The State"

JUDGMENT

Date of hearing 18.10.2019

Mr. Tafseel Khan Afridi, Advocate for the petitioner.

Mr. Wilayat Khan, AAG for the State.

(17)

AHMAD ALI, J.- Saif Ullah Khan s/o Khushal Khan, accused-petitioner, seeks his post arrest bail in case FIR No.1361 dated 15.09.2019 for offence under Section 9-C CNSA, 1997 registered at Police Station, City District Kohat.

02. Brief facts of the case are that on 15.09.2019 at City Patak, Hangu Road, District Kohat, during Nakabandi, a person, coming on motorcycle was stopped and search. During search, three packets of charas, from a black bag, which was hanged at right side of the safeguard of the motorcycle while three packets of charas, from a white bag from the left side safeguard, were recovered. On weighing, total charas were 6000 grams and each packet was of 1000/1000 grams.

AR

7

Motorcycle Honda 125 black colour and charas were seized. The accused-petitioner was arrested and said FIR was lodged against him.

03. The present accused-petitioner approached the Court of learned Additional Sessions Judge-IV, Kohat for his release on bail but his bail petition was dismissed vide Order dated 24.09.2019. Hence, the instant bail petition.

04. Arguments of the learned counsel for the parties heard and record perused with their valuable assistance.

05. Lest this Court passes any finding on merits that may prejudice the case of the parties during the trial, suffice it to state that since registration of the case on 15.09.2019, till date FSL report with regard to the samples allegedly separated from the recovered material, is not available on file, therefore, it cannot be ascertain as to whether the alleged recovered material is charas or otherwise, and this makes the case of the petitioner arguable for the purpose of bail and it will be the trial Court to determine the fate

A

of the case after recording pro and contra evidence. Investigation in the case is complete and the accused-petitioner is no more required to the prosecution and in view of doubtful recovery, the case of the petitioner is one of *further inquiry* within the ambit of section 497 (2) Cr.P.C.

06. Before parting, this Court finds it necessary to remind the trial Court that the observations rendered by the High Court while disposing of bail applications are not to be considered during the trial of the accused. In this regard the august Supreme Court of Pakistan in Shuaib Mehmood Butt Vs. Iftekharul Haq (1996 SCMR 1854), has rendered clear guidance, which is to the effect that:-


"However we would like to point out in no certain terms that the observations made by the High Court in the orders granting bail and by us in this order are confined to tentative assessment made for the purpose of disposal of bail applications and not intended to influence the mind of the trial Court, which is free to appraise the evidence strictly according to its merits and the law of the time of disposal of the case, which of course it is needless to say, is the function of the trial Court".

9

07. For what has been discussed above, the accused-petitioner has made out a case arguable for the grant of bail. Consequently, the instant petition is allowed and the accused-petitioner, named above, is admitted to bail, provided he furnishes bail bonds in the sum of Rs.100,000/- (rupees one lac), with two sureties each in the like amount to the satisfaction of the Illaqa/Duty Judicial Magistrate concerned, who shall ensure that the sureties are local and men of means.

08. Above are the reasons of my short order of even date.

ANNOUNCED.
18.10.2019.


JUDGE

Mumtaz PS





OFFICE OF THE DISTRICT POLICE
OFFICER ORAKZAI

C (10)

OFFICE ORDER:-

The order will dispose off the departmental enquiry conducted against Constable Saif Ullah Khan s/o Khushal Khan under the Khyber Pakhtunkhwa, Police Rules, (Amended 2014) 1975.

Constable Saif Ullah Khan s/o Khushal Khan was charged/involved in FIR No. 1361 dated 15.09.2019 U/S 9 (C) CNSA PPC PS City District Kohat.

He was suspended vide order OB No. 595 dated 20.09.2019 and DSP HQrs was nominated as enquiry officer to scrutinize the conduct of the accused official. The enquiry officer vide his finding and found him guilty of the charges leveled against him, and recommend him for major punishment.

These act of the accused official earned bad name to a discipline force on one hand and involved himself in criminal act.

In view of the above and available record, I reached to the conclusion that the accused official was involved in criminal act. Therefore, these charges leveled against accused Constable Saif Ullah Khan s/o Khushal Khan have been established beyond any shadow of doubt. Therefore, in exercise of powers conferred upon me under the rules ibid, a major punishment of "dismissed from service with immediate effect" is imposed on accused Constable Saif Ullah Khan s/o Khushal Khan with immediate effect. Kit etc issued to the Constable be collected.

Announced OB No 1230

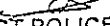
Dated 28/12/2020


DISTRICT POLICE OFFICER, ORAKZAI

No 280 /EC/OASI Dated 28/12 /2020.

Copy of above to the:-

1. The Regional Police Officer, Kohat.
2. DSP HQrs.
3. SDPO Upper for collection of items and clearance.
4. Pay Officer/SRC/OHC/Reader for necessary action.


DISTRICT POLICE OFFICER, ORAKZAI

ORAKZAI



D (11)

THE HONOURABLE DEPUTY INSPECTOR GENERAL OF POLICE
KOHAT REGION KOHAT

APPEAL UNDER RULE 11 OF THE POLICE RULES 1975 (AMENDED 2014) AGAINST THE IMPUGNED ORDER OF THE WORTHY DISTRICT POLICE ORAKZAI DT:28-12-2020 VIDE WHICH THE APPELLANT WAS DISMISSED FROM SERVICE WITHOUT ANY LAWFUL JUSTIFICATION.

Respected Sir,

With great respect and veneration, the appellant may be allowed to submit the following for your kind and sympathetic consideration:-

Facts of the case:

1. That the appellant joined the Orakzai Levy as Sepoy in the year 1993.
2. That the appellant since his enrolment as Sepoy in the Orakzai Levy, worked with honesty, dedication and sincerity.
3. That the appellant due to his good work, not only earned confidence of his senior officers but was also awarded a number of commendation certificates besides the cash reward.
4. That the appellant during his 27 years service in the Levy, did not earn minor or major punishment.
5. That when the District Levy Orakzai was absorbed in the District Police Orakzai District the appellant became member of the Police Force.



6. That in the Police Force too the appellant continued his service with the same spirit and served the Police Deptt: with enthusiasm and dedication.
7. That in the Police Deptt: though the appellant was absorbed as constable but due to his professionalism and meritorious services, he was allowed to work as honorary ASI which in itself is a proof that the appellant was an efficient and hardworking officer.
8. That unfortunately, on 15-09-2019 while the appellant was on his way to Kohat was stopped by the City Police at City Phatak Kohat.
9. That nothing illegal was recovered from the personal search of the appellant or from the motor cycle was, however, the then SHO P.S City at the behest of some ill-wisher, malafide shown recovery of 6 KG Charas from the motor cycle and registered a concocted and fabricated case against the appellant. (Copy of FIR is enclosed).
10. That after registration of the case, departmental proceedings were also initiated against the appellant.
11. That the departmental proceedings ended with the dismissal of the appellant from service vide OB No.1230 dt:28-12-2020. (Copy of the impugned order is enclosed).
12. That the impugned order of punishment contains a number of illegalities / irregularities, factual and legal lacunas, therefore, it is open to be called in question.
13. That following are some of the grounds of appeal among the other:-



(13)

GROUNDS OF APPEAL:


A. That the impugned order of dismissal of the appellant from service is not in accordance with law, facts and evidence on record, hence it is not tenable in the eyes of law and is liable to be set aside. In the great interest of law and justice.

B. That during the departmental proceedings no show cause notice no Charge Sheet or statement of allegation was served upon the appellant.

C. That under the Police Rules 1975 (Amended 2014) service of Show Cause or Charge Sheet / statement of allegation upon the defaulter police official is mandatory because such documents enables the defaulter official to prepare his case and as well as the line of defense which he will adopt during the enquiry proceedings. By not serving show cause notice, charge sheet or statement of allegation, the relevant authority has committed material. Illegality which resulted in miscarriage of justice to the appellant and hence vitiated all the departmental proceedings. Thus the impugned order is of no legal effect.

D. That during enquiry, the Worthy Enquiry Office called the appellant to his office once but no question was asked by him from the appellant regarding the allegation or enquiry.

E. That during enquiry no witness was examined nor any opportunity of cross examination was given to the appellant which is obviously an illegality on the part of the enquiry officer.



- M. That the Police Deptt: was in so hurry that without waiting for the outcome of the criminal case, it dismissed the appellant without any lawful justification.
- N. That the Honourable Supreme Court of Pakistan vide its judgment in the year 2007 has held that *"mere allegation of commission of an offence and registration of FIR against a person would not ipso facto made him guilty rather he would be presumed to be innocent until convicted by a competent court"*.
- O. Similarly, the Honourable Peshawar High Court Peshawar vide its judgment in the year 2019 has held that dismissal from service shall be followed after the decision of the trial court. (Copies of the judgments of the Honourable Courts are enclosed.)
- P. That the appellant has been condemned unheard and without following the proper procedure, the appellant was dismissed from service.
- Q. That by not following the proper legal procedure, enquiry coupled with the impugned order of punishment has become fanciful, highly doubtful, capricious and illegal ab-intio.
- R. That more or less 27 years service of the appellant was ended with one stroke of pen.
- S. That the appellant has a large family. In case the impugned order remains intact, it is likely to force the family of the appellant to starvation.
- T. That the impugned order of dismissal is also the negation of Article 10-A of the Constitution because the

appellant has been denied fair trial, which is undoubtedly violation of the Fundamental Rights of the appellant.

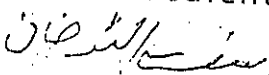
U. That in view of the above legal flaws, inconsistencies, the impugned order of punishment is not sustainable in the eyes of law.

V. That if deemed proper the appellant may kindly be heard in person.

PRAYER:

In view of the above facts, it can be safely concluded that since the impugned order of punishment is not in accordance with law and facts, therefore, in the great interest of law and justice it may kindly be set aside. The appellant may pleased be reinstated in service from the date of dismissal with all back benefits OR the appellant may be reinstated in service from the date of dismissal and his fate may be directed to be kept pending till the decision of the case of the appellant by the trial court. The appellant will be thankful to you for this act of kindness and will pray for your long life prosperity.

Dated: 06-01-2021.

Yours Obediently,

SAIFULLAH KHAN
S/o Khushal Khan
R/o Caste Bezot, village Bezot
Distt: Orakzai.
Cell No.03099744508.

POLICE DEPTT:

ORDER.

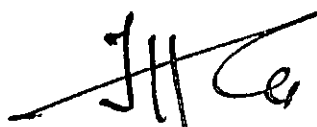
This order will dispose of an appeal preferred by Ex-Constable Saif Ullah of Orakzai district, against the punishment order, passed by DPO Orakzai vide OB No. 1230, dated 28.12.2020 whereby he was awarded major punishment of dismissal from service on the allegations of his involvement in a criminal case vide FIR No. 1361, dated 15.09.2019 u/s 9 (C) CNSA PPC PS City, district Kohat.

He was dealt with departmentally on the score of above charges which resulted into his dismissal. Comments as well as relevant record in this behalf were requisitioned from DPO Orakzai and perused. The appellant was also heard in person in Orderly Room, held in this office on 03.03.2021 wherein he failed to advance any plausible explanation.

Record gone through, which indicates that the appellant being a member of disciplined force was not supposed to indulge himself in such like criminal activities which can tarnish the image of Police.


Above in view, the undersigned reached to the conclusion that the allegations leveled against the appellant are fully proved duly established by the Enquiry Officer in his findings. Hence, the impugned order passed by DPO Orakzai is justified, upheld and the appeal is hereby rejected.

Order Announced
03.03.2021


(TAYYAB HAFEEZ) PSP
Region Police Officer,
Kohat Region.

No. 3092 /EC, dated Kohat the 9/3 /2021.

Copy to District Police Officer, Orakzai for information and necessary action w/r to his office Memo: No. 411/SRC, dated 10.02.2021. His Service Record is returned herewith.


(TAYYAB HAFEEZ) PSP
Region Police Officer,
Kohat Region.

E.C



DPO District Orakzai



VAKALAT NAMA

NO. _____/2021

IN THE COURT OF KP Service Tribunal, Peshawar

Saifullah Khan

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Police Deptt.

(Respondent)
(Defendant)

I/We, Saifullah Khan

Do hereby appoint and constitute **Taimur Ali Khan, Advocate High Court Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/2021

Saifullah Khan

(CLIENT)

ACCEPTED

Taimur Ali Khan

TAIMUR ALI KHAN

Advocate High Court

BC-10-4240

CNIC: 17101-7395544-5

Cell No. 0333-9390916

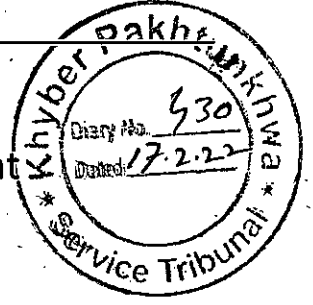
OFFICE:

Room # FR-8, 4th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawar

BEFORE THE HONOABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 4822/2021
Saif Ullah

.....Appellant



VERSUS

Provincial Police Officer, KP & Others

.....Respondents

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04	Copy of charge sheet/ statement of allegation.	B	05
04	Copy of order dated 09/03/2021	C	06
05	Copy of order dated 28/12/2020	D	07


Deponent

P-0

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No.4822/2021

Saif Ullah. Appellant

Versus

Provincial Police Officer, Khyber Pakhtunkhwa & others. Respondents

PARAWISE COMMENTS BY RESPONDENTS

Respectfully Sheweth:

Preliminary Objections:

- a. That the appellant has got no cause of action.
- b. The appellant has got no locus standi.
- c. That the appeal is bad for mis-joinder and non-joinder of parties.
- d. That the appeal is bad in eyes of law and not maintainable.
- e. That the appellant is estopped to file the instant appeal for his own act.
- f. That the appellant has not approached the Hon'ble Tribunal with clean hands.

FACTS:


1. Para No.1 of memorandum of appeal pertains to service record of the appellant, hence no comments.
2. Irrelevant as the appellant being member of the disciplined force own under obligation to perform his duty in accordance with the law and rules.
3. The appellant was charged in case FIR No.1361 dated 15.09.2019 u/s 9(C) CNSA, of Police Station City, District Kohat and a huge quantity charas weighing 6kg was recovered from him. (Copy of FIR is annexure "A").
4. Pertains to record.
5. Incorrect. On the above charges the respondent No.3 initiated a regular inquiry against the appellant with appointment of DSP Headquarters, an Inquiry Officer who proceeded with in accordance with the relevant law and rules. (Copy of Charge Sheet/Statement of Allegation is annexure "B").
6. Incorrect, as explained in paras No.3 & 5.
7. The departmental appeal of the appellant was processed by respondent No.2 and the appellant appeared in person in orderly room held on 09.03.2021 but the appeal being devoid of merits was correctly rejected, vide order dated 09.03.2021. (Copy is annexure "C").
8. The respondents seek permission to raise additional grounds at the time of arguments.


GROUNDS:

- A. Incorrect, a legal and speaking order was passed by the respondent No.1 and all formalities were fulfilled in accordance with relevant rules.
- B. Incorrect. The appellant was afforded opportunity of cross examination of the individual officer.
- C. Incorrect, the inquiry proceedings were conducted under rules and law.
- D. Incorrect, the appellant was served with charge sheet and proceeded with departmentally under the relevant law. The charge/allegation against the appellant was proved beyond any shadow of doubt and departmental proceedings culminated into his dismissal from service. (Copy of order is annexure "D").
- E. Incorrect, the departmental proceedings were conducted against the appellant under the relevant rules, in which all the codal formalities were fulfilled in accordance with the relevant rules and law.
- F. Incorrect, the appellant was directly charged by complainant for the commission of offence, as detailed in the annexed FIR.
- G. Incorrect, the appellant was charged for serious offence and earned a bad name to a disciplined force.
- H. Each and every case has its own facts and merits. However, it is submitted that mere acquittal of accused in a criminal case does not amount to his innocence, in departmental proceedings as both are distinct in nature.
- I. As per record the respondent No.3 was satisfied regarding the commission of offence/misconduct which culminated into his dismissal from service.
- J. Incorrect, the appellant was afforded all the lawful opportunities of defense during inquiry.
- K. The respondents may also be allowed to advance other grounds during the course of arguments.

Prayer:

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

✓ 
Regional Police Officer,
 Kohat
 (Respondent No.2)
~~Regional Police Officer~~
~~Kohat Region Kohat~~


Provincial Police Officer
 Khyber Pakhtunkhwa
 (Respondent No.1)


District Police Officer,
 Orakzai
 (Respondent No.3)

BEFORE THE HONOABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 4822/2021

Saif Ullah

.....Appellant

VERSUS

Provincial Police Officer, KP & Others

.....Respondents

COUNTER AFFIDAVIT

We, the below mentioned respondents, do hereby solemnly affirm and declare on oath that contents o parawise comments are correct and true to the best of our knowledge and belief. Nothing has been concealed from this Hon: Tribunal.



[Signature]

Regional Police Officer,
Kohat

(Respondent No.2)

~~Regional Police Officer,
Kohat~~

[Signature]

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

[Signature]

District Police Officer,
Orakzai

(Respondent No.3)

ابتدائی اطلاع رپورٹ

قلم نمبر 22/50 (1)

(فائل) ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شروع ہونے پر وقوعہ اور مجموعی مناسبات نوپولیزی
 تھانہ
 منبج
 کوہاٹ

نمبر 1361 تاریخ دو وقت وقوعہ 15/9/15 وقت 17:60 بجے

تاریخ دو وقت رپورٹ 15/9/15 وقت 17:30 بجے	جاگیرگی پر وقوعہ 15/9/15 وقت 17:55 بجے
نام و سکونت اطلاع دہندہ و متنیف	ذیال حال خان SHO منبج
مختصر کیفیت جرم (مردہ دفعہ) حال اگر کچھ یا گیا ہو	9 CCNSA (تبادلہ 6000 گرام جہیز گروہ)
جائے وقوعہ فاصلہ تھانہ سے اور سمت	سٹی بھانگ ہنگو روڈ
نام و سکونت ملزم	سیف اللہ خان ولد خوشحال خان سکرگتہ قوم بیزوٹ اور کزنٹی آسی
کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہو تو وجہ بیان کرو۔	برسیدگی مراسلہ پر چر دیا جاتا ہے
تھانہ سے روانگی کی تاریخ دو وقت	سیدیل ڈاک

ابتدائی اطلاع نچر درج کرو
 سکرگتہ جان اللہ 226 نمبر 107 و سیم 673 کے مقام بالا ناکہ بند کراہے موجود تھے دوران ناکہ بند کراہے ایک شخص بزرگ کلا جانب سنہو آتا ہوا ہوا ایک ایک پولیس کے قریب سنی موٹر سائیکل کو واپس موٹر کر رہا تھا سے بڑی رو بارہ جانب سنہو لطف کوھاٹ لکڑی کو کوشش کر رہا تھا جس کے مشکوک جان کر فوراً پر چوک پیل پیل ہونے کی وجہ سے قابو کرنے جس نے موٹر سائیکل کے سیف گاڑنے کے واپس پیل پیل لٹکایا ہوا تھا ڈال طرف کالے بولگ کو اتار کر چریک کرنے پر اندر سے جی عدد بیکیٹ جو زرد رنگ کے بیٹیل لٹے ہوئے تھے پڑتال کرنے پر پیل پیل گڑہ برآمد ہوئی اسی طرح بائیل طرف سیف گاڑنے سے سفید لاسٹک لفافہ سے ایک سفید کادڑیہ بزرگ کالا ماسخ (واضح) برآمد کرنے پیل پیل سے جی عدد بیکیٹ جو زرد بیٹیل لٹے ہوئے تھے جہیز گڑہ برآمد ہوئی موٹر سائیکل بیکیٹ کو علیحدہ علیحدہ بدرجہ ڈیٹیل تیار کر کے برقی بیکیٹ 1000/1000 گرام کل 6000 گرام کل بیکیٹ سے 5 گرام لغرض جنرل FSI بند پارسل نمبر 1 تا 6 جب کہ کلا بزرگ سے جی عدد بیکیٹ جہیز گڑہ 2985 گرام پارسل نمبر 7 سفید لاسٹک لفافہ سے سفید کادڑیہ جی عدد بیکیٹ جہیز گڑہ 2985 گرام پارسل نمبر 8 پیل پیل سے بزرگ پارسل نمبر 3/3 عدد موٹر سائیکل AX نمبر کے منجملہ مناسبات کلا بزرگ سفید پارسل لاسٹک لفافہ سے سفید کادڑیہ موٹر سائیکل نمبر 25/25 بزرگ کالا نمبر RO24371 نمبر EA706513 جہیز گڑہ قوم بیزوٹ اور کزنٹی آسی بیل پیل یا ہب کو بزرگ جہیز گڑہ بالا کلا بزرگ منبج کو قید کر کے منبج قوم منبج دست کوشش جان اللہ 226 ارسال تھانہ سے لیا گیا ہے منبج کے لکڑی تفتیش حوالہ KBI شفاف کیا جاوے دستخط انگریز کا فیصل خان SHO تھانہ منبج 15/9/15 کارروائی تھانہ آمد مراسلہ طرف جہیز گڑہ بالا ہنگو روڈ جہیز گڑہ بالا ہنگو روڈ FIR نمبر لکڑی تفتیش حوالہ

ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ ۱۵۴ مجموعہ ضابطہ فوجداری

تھانہ: سٹی

ضلع: کوہاٹ

علت نمبر 1361

تاریخ وقوع 15/09/2019 وقت 17.00 بجے

1	تاریخ وقت رپورٹ 15/09/2019 وقت 17:30	چالیدگی پرچہ مورخہ 15/09/2019 وقت 17:55 بجے
	نام و سکونت اطلاع دہندہ مستقیم	فیاض خان SHO سٹی۔ Mob:03339662110 NIC:14301-2066071-5
3	مختصر کیفیت جرم (معدفعہ) حال اگر کچھ لیا گیا ہو۔	9CCNSA (برآمدگی 6000 گرام چرس)
4	جائے وقوعہ فاصلہ تھانہ اور سمت	سٹی پھانک ہنگو روڈ
5	نام و سکونت ملزم	سیف اللہ خان ولد خوشحال خان سکند قوم بیڑوٹ اور کرنی ایجنسی۔
6	کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو وجہ بیان کرو۔	برسیدگی مراسلہ پر چھوڑا جاتا ہے۔
7	تھانہ سے روانگی کی تاریخ و وقت	بہ سبیل ڈاگ

ابتدائی اطلاع نیچے درج کرو

اس وقت ایک تحریری مراسلہ منجانب فیاض خان SHO سٹی بدست رحمان اللہ 1226 موصول ہو کر ذیل ہے محرر تھانہ! امر دوز میں معہ عظمت خان ASI رحمان اللہ 1226 وحد خان 107 و سیم علی 673 کے بمقام بالا نا کہ بندی پر موجود تھے دوران نا کہ بندی ایک شخص بذریعہ موٹرسائیکل برنگ کالا جانب ہنگو آتا ہوا جو نبی چیک پوسٹ کے قریب پہنچا تو موٹرسائیکل کو واپس موڑ کر رانگ سائیڈ پر سے روڈ پر جانب ہنگو بطرف کوہاٹ نکلنے کی کوشش کر رہا تھا جسکو مشکوک جان کر فوری طور پر چوک میں رش ہونے کی وجہ سے قابو کر کے جس نے موٹرسائیکل کے سیف گارڈ کے دائیں بائیں سامان لٹکایا ہوا تھا دائیں طرف کالے بیگ کو اتار کر چیک کرنے پر اندر سے 3 عدد پیکٹ جو زرد رنگ کے ٹیپ میں لپٹے ہوئے تھے پڑتال کرنے پر چرس گردہ برآمد ہوئی اسی طرح بائیں طرف سیف گارڈ سے سفید پلاسٹک لفافہ سے ایک شوژ کا ڈبہ برنگ کالا سرخ (واضح) برآمد کر کے پڑتال کرنے پر اسی میں سے 3 عدد پیکٹ جو زرد رنگ میں لپٹے ہوئے تھے چرس گردہ برآمد ہوئی موقع پر ہر ایک پیکٹ کو علیحدہ علیحدہ بذریعہ ڈیجیٹل ترازو تولنے پر فی پیکٹ 1000/1000 گرام کل 6000 گرام نکلی ہر پیکٹ سے 5/5 گرام بغرض تجزیہ FSL بند پارسل نمبر 1 تا 6 جب کہ کالا بیگ بمعہ 3 عدد پیکٹ چرس وزنی 2985 گرام پارسل نمبر 7 سفید پلاسٹک لفافہ بمعہ شوژ کا ڈبہ 3 عدد پیکٹ چرس وزنی 2985 گرام پارسل نمبر 8 میں بند سر بہر کر کے ہر ایک پارسل پر 3/3 عدد مواہیر اسی AK ثبت کر کے جملہ منشیات، کالا بیگ، سفید پلاسٹک لفافہ شوژ کا ڈبہ موٹرسائیکل ہنڈا 125 برنگ کالا انجن نمبر RO24371 پیس نمبر EA706513 بروئے فرد قبضہ پولیس کر کے دریافت پر ملزم نے اپنا نام سیف اللہ خان ولد خوشحال خان سکند قوم بیڑوٹ اور کرنی ایجنسی بتلایا جسکو مرتکب جرم بالا کا با کرسب ضابطہ گرفتار کر کے مراسلہ بغرض قائمی مقرر بدست کنسٹیبل رحمان اللہ 1226 ارسال تھانہ ہے بعد اندراج مقدمہ کے بغرض تفتیش حوالہ KBI سٹاف کیا جاوے دستخط انگریزی فیاض خان SHO تھانہ سٹی مورخہ 15/09/2019 کارروائی تھانہ آمدہ مراسلہ حرف بحرف درج بالا ہو کر پرچہ جرم بالا چاک ہو کر نقل FIR معہ مراسلہ بغرض تفتیش حوالہ انوشی کمیشن سٹاف کیا جاتا ہے۔ پرچہ گزارش ہے۔

SI-PS,CITY
Si 15/09/2019 دستخط

DISCIPLINARY ACTION

P-5
ANNEX-B

I, SALAH UD DIN, District Police Officer, Orakzai as a competent authority, is of the opinion that HC Saif Ullah Khan s/o Khushal Khan of Bezot tribe Police Post Bezot has rendered himself liable to be proceeded against on committing the following act/commission within the meaning of Police Disciplinary Rule-1975 (amendment Notification No. 3859/Legal, dated 27.08.2014) Govt: of Khyber Pakhtunkhwa, Police Department.

STATEMENT OF ALLEGATIONS

"Head Constable Saif Ullah Khan has been directly charged/ involved in case FIR No. 1361 dated 15.09.2019 u/s 9-CNSA PS City Kohat and arrested red handed by the local Police and recovered 6000 Gms charas from his possession. This act on his part is quite adverse being a member of discipline Force and brought bad effect on the image of Police Force. Such act on his part is against service discipline and amount to gross misconduct..."

1. The enquiry Officers Mr. Daswar Khan DSP Hqrs Orakzai in accordance with provision of the Police Rule-1975 (amendment Notification No. 3859/Legal, dated 27.08.2014) Govt: of Khyber Pakhtunkhwa, Police Department may provide reasonable opportunity of hearing to the accused official, record his finding and make within 10-days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused.

2. The accused official shall join the proceeding on the date, time and place fixed by the enquiry officer.

DK District Police Officer, Orakzai

No. 1364-65 / Enquiry, dated 25/09/2019.

Copy to:-

1. The enquiry Officers for initiating proceeding against the accused under the Provision of the Police Disciplinary Rule-1975 (amendment Notification No. 3859/Legal, dated 27.08.2014) Govt: of Khyber Pakhtunkhwa, Police Department.
2. HC Saif Ullah Khan s/o Khushal Khan of Bezot tribe Police Post Bezot.

POLICE DEPTT:

1-6
Annex 2
KOHAT REGION

ORDER.

This order will dispose of an appeal preferred by Ex-Constable Saif Ullah of Orakzai district, against the punishment order, passed by DPO Orakzai vide OB No. 1230, dated 28.12.2020 whereby he was awarded major punishment of dismissal from service on the allegations of his involvement in a criminal case vide FIR No. 1361, dated 15.09.2019 u/s 9 (C) CNSA PPC PS City, district Kohat.

He was dealt with departmentally on the score of above charges which resulted into his dismissal. Comments as well as relevant record in this behalf were requisitioned from DPO Orakzai and perused. The appellant was also heard in person in Orderly Room, held in this office on 03.03.2021 wherein he failed to advance any plausible explanation.

Record gone through, which indicates that the appellant being a member of disciplined force was not supposed to indulge himself in such like criminal activities which can tarnish the image of Police.

Above in view, the undersigned reached to the conclusion that the allegations leveled against the appellant are fully proved duly established by the Enquiry Officer in his findings. Hence, the impugned order passed by DPO Orakzai is justified, upheld and the appeal is hereby rejected.

Order Announced
03.03.2021


(TAYYAB HAFEEZ) PSP
Region Police Officer,
Kohat Region.

No. 3092 /EC, dated Kohat the 9/3 /2021.

Copy to District Police Officer, Orakzai for information and necessary action w/r to his office Memo: No. 411/SRC, dated 10.02.2021. His Service Record is returned herewith.


(TAYYAB HAFEEZ) PSP
Region Police Officer,
Kohat Region.

E.C

3/1
Bijal



OFFICE OF THE DPO, District Orakzai



P-7
Annex-D

OFFICE OF THE DISTRICT POLICE
OFFICER ORAKZAI

OFFICE ORDER:-

The order will dispose off the departmental enquiry conducted against Constable Saif Ullah Khan s/o Khushal Khan under the Khyber Pakhtunkhwa, Police Rules, (Amended 2014) 1975.

H. Constable Saif Ullah Khan s/o Khushal Khan was charged/involved in FIR No. 1361 dated 15.09.2019 U/S 9 (C) CNSA PPC PS City District Kohat.

He was suspended vide order OB No. 595 dated 20.09.2019 and DSP HQrs was nominated as enquiry officer to scrutinize the conduct of the accused official. The enquiry officer vide his finding and found him guilty of the charges leveled against him, and recommend him for major punishment.

These act of the accused official earned bad name to a discipline force on one hand and involved himself in criminal act.

In view of the above and available record, i reached to the conclusion that the accused official was involved in criminal act. Therefore, these charges leveled against accused

H. Constable Saif Ullah Khan s/o Khushal Khan have been established beyond any shadow of doubt. Therefore, in exercise of powers conferred upon me under the rules ibid, a major punishment of "dismissed from service with immediate effect" is imposed on accused

H. Constable Saif Ullah Khan s/o Khushal Khan with immediate effect. Kit etc issued to the Constable be collected.

Announced OB NO 1230

Dated 28/12/2020

DISTRICT POLICE OFFICER, ORAKZAI

No 280 /EC/OASI Dated 28/12 /2020.

Copy of above to the:-

1. The Regional Police Officer, Kohat.
2. DSP HQrs.
3. SDPo Upper for collection of items and clearance.
4. Pay Officer/SRC/OHC/Reader for necessary action.

DISTRICT POLICE OFFICER, ORAKZAI