

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.801 /2022.

Ex- Constable Abdul Salam No.5741 of CCP Peshawar..... **Appellant.**

VERSUS

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

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Khyber Pakhtunkhwa
Service Tribunal
Dirry No. 5728
Dated 31/5/2023

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REPLY BY RESPONDENTS NO. 1 to 5.

Respectfully Sheweth:-

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. _____

PRELIMINARY OBJECTIONS:-

Dated _____

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 this Hon'ble Tribunal.
7. That the appeal is not maintainable being devoid of any merit.

REPLY ON FACTS:-

1. Incorrect. The appellant was proceeded against departmentally on the charges that he while posted at DAR Peshawar absented himself from his official duty w.e.f. 30.03.2020 to 11.07.2020 and from 13.07.2020 to 03.02.2021 (total 12 months) without taking leave/permission from his seniors. In this regard, he was issued Charge Sheet and Statement of allegations. Two separate enquiries were initiated against him. The enquiry officers repeatedly summoned the appellant and were also contacted on his Mobile cell No.0313 9642274 to attend the enquiry proceeding however, he did not turn up. The enquiry officers finalized the enquiries and submitted findings report, wherein the allegations of willful absence were proved against him for Ex-parte action.(copy of charge sheet, summary of allegations, enquiry report are annexure as A,B,C).
2. Incorrect. The Competent authority before imposing the major punishment had completed all codal formalities and thereafter, he was issued a final show cause notice to which his reply was found unsatisfactory. Hence after fulfillment of all the codal formalities, the competent authority awarded major punishment under the rules. (copy of FSCN is annexure as D)
3. Incorrect. In fact, two departmental enquires were properly conducted against him to dig out the real facts. During the course of enquires, he was issued summons/parwana time and again. Besides he was also contacted on his cell phone, however, the appellant failed to join enquiry proceedings and remained constantly absent for long period without any

leave/permission which showed his disinterest in official duties. Thus, he was awarded the major punishment of dismissal under the rules.

4. Incorrect and misleading. The appellant deliberately avoided the enquiry proceedings reflecting his disinterest behavior so the appellate authority proceeding as he was well aware about the order dated 03.02.2021 and his departmental appeal.
5. Incorrect. The appellant had preferred a time barred departmental appeal, which was properly processed and the appellate authority also heard him in person. However, he failed to depend himself with plausible/justifiable explanations. Meanwhile department has send his blood sample regarding his drug addiction to KMC, Peshawar as well, wherein it was revealed that appellant has positive for cannabis (THC). Therefore, appeal of the appellant was rejected/filed, being time barred. (Copy of report is annexure as "E").
6. Incorrect. The appellant has preferred revision petition before the appellate board, which after due consideration was also filed/rejected on the grounds that the charges of willful absence was proved against him. Appeal of the appellant being devoid of merit and hit by limitation may be dismissed on the following grounds.

REPLY ON GROUNDS:-

- A. Incorrect. Orders passed by the competent authority are legal, lawful hence, liable to be maintained.
- B. Incorrect. The punishment orders passed by the competent authority according to norms of natural justice hence, liable to be upheld.
- C. Incorrect. Charge sheet with statement of allegations was issue to the appellant. Proper enquiries were conducted after which he was recommended for Ex-Parte action due to his continuous willful absence. Thereafter, he was issued final show cause notice with proper opportunity of personal hearing, however, he failed to defend himself. After fulfillment all the codal formalities and being found guilty of deliberate absence from duty he was awarded the Major punishment of dismissal from service under Police Rules 1975 (amended 2014).
- D. Incorrect. The appellant deliberately absented himself for long period nor joined enquiry proceedings. The appellant has been dealt departmentally for his long deliberate absence. Besides, he has been reported positive for cannabin which reflects bad on a member of uniform force.
- E. Incorrect and misleading. The appellant did not join the enquiry proceedings initiated due to his absence for 02 periods are reported by both Enquiry Officers.
- F. Incorrect. after completion of the enquiry proceedings, the appellant was issued final show cause notice by the competent authority to which his reply was found unsatisfactory. However, during enquiries, he did not attend the proceedings. Therefore, contention of the appellant is misleading.

- G. Incorrect. The appellant badly failed to attend both enquiries as already explained in above paras.
- H. Incorrect and misleading. Both enquiry officers recommended the appellant for Ex-Parte action on lather did not attend enquiry.
- I. Incorrect. During the course of both enquiries the appellant was summoned time and again besides contacting on his personal cell No.0313 9642274 however, he did not appear before the enquiry officers.
- J. Incorrect. The appellant deliberately absented from his lawful duty without leave/permission. After fulfilling all codal formalities, he was awarded major punishment of dismissal from service and no kind of any malafide is involved.
- K. Incorrect. Burden of proof fro no communication of dismissal order is on the appellant. Secondly, his departmental appeal, despite being time barred has been entertained with full opportunities of defense for him.
- L. Incorrect. Para is misleading having no legal footage. The appellant was dismissed on the charges of his deliberately absence and copies of which were circulated to all concerned.
- M. Incorrect. The appellant is pretext of epidemics is misleading as it occurred in the year 2020.
- N. Incorrect. The competent authority before imposing the Major punishment had completed all codal formalities and ample opportunity of self defence was provided to the appellant, but he failed to defend himself. Further the whole departmental proceedings initiated against him purely on merits and accordance with rules.
- O. Incorrect. Both Enquiry Officers have recommended him for Ex-Parte action as he did not attend enquiry.
- P. Incorrect. As already explained, proper Charge Sheet with statement of allegations was issued to appellant. Regular inquires were conducted and thereafter he was issued final show cause notice, besides giving proper opportunity of personal hearing and defence, however, he badly failed to defend himself. Hence he was awarded the Major Punishment of dismissal from service under rules ibid.
- Q. Incorrect. The appellant was deliberately absented from his lawful duty without leave/permission. Therefore, the punishment orders were passed by the competent authority & Appellate authority as per rules.
- R. Incorrect. The appellant was treated as per law/rules and no violation of the Constitution of Pakistan 1973 has been done by the respondent department.
- S. Incorrect. Already explained vide proceedings paras.

That the respondents also seek permission of this Hon'ble Tribunal to raise additional grounds at the time of arguments.

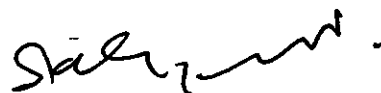
(4)

PRAYER.

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



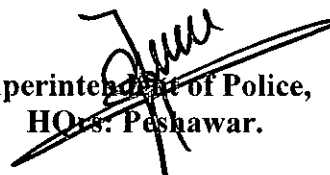
**Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.**



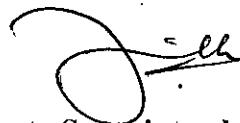
**Additional Inspector General of Police,
HQrs: Khyber Pakhtunkhwa, Peshawar.**



**Capital City Police Officer,
Peshawar.**



**Superintendent of Police,
HQrs. Peshawar.**



**Deputy Superintendent of Police,
Complaints/Enquires Peshawar.**

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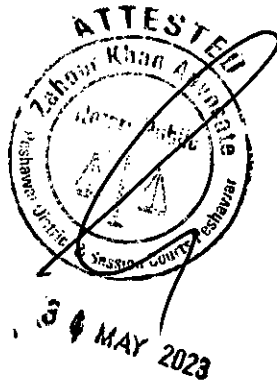
Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. . **Respondents.**

AFFIDAVIT.

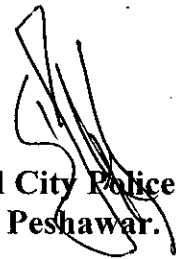
We respondents 1,2,3,4 & 5 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal.



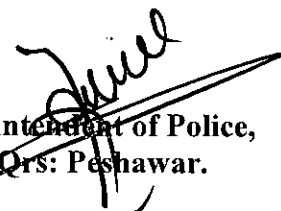
Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.



Additional Inspector General of Police,
HQrs: Khyber Pakhtunkhwa, Peshawar.



Capital City Police Officer,
Peshawar.



Superintendent of Police,
HQrs: Peshawar.



Deputy Superintendent of Police,
Complaints/Enquires Peshawar.

(6) (A)

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CHARGE SHEET

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge that Constable Abdus Salam No.5741 of Capital City Police Peshawar with the following irregularities.

"That you Constable Abdus Salam No.5741 while posted at DAR, Peshawar were absent from duty w.e.f 13.07.2020 till date without taking permission or leave. This amounts to gross misconduct on your part and is against the discipline of the force."

You are, therefore, required to submit your written defence within seven days of the receipt of this charge sheet to the Enquiry Officer committee, as the case may be.

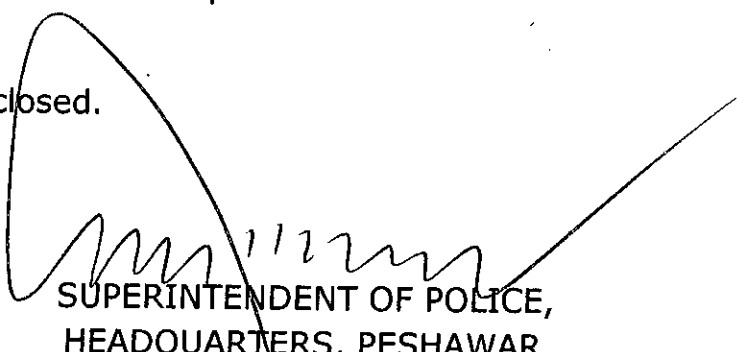
Your written defence, if any, should reach the Enquiry Officer/Committee within the specified period, failing which it shall be presumed that have no defence to put in and in that case ex-parte action shall follow against you.

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.

Attested

Rozay


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

(7) 'B'

DISCIPLINARY ACTION

I, Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that Constable Abdus Salam No.5741 has rendered him-self liable to be proceeded against under the provision of Police Disciplinary Rules-1975

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STATEMENT OF ALLEGATION

"That Constable Abdus Salam No.5741 while posted at DAR, Peshawar was absent from duty w.e.f 13.07.2020 till date without taking permission or leave. This amounts to gross misconduct on his part and is against the discipline of the force."

For the purpose of scrutinizing the conduct of said accused with reference to the above allegations an enquiry is ordered and SDPO Warsak is appointed as Enquiry Officer.

2. The Enquiry Officer shall, in accordance with the provisions of the Police Disciplinary Rules, 1975, provide reasonable opportunity of hearing to the accused officer, record his finding within 30 days of the receipt of this order, make recommendations as to punishment or other appropriate action against the accused.

3. The accused shall join the proceeding on the date time and place fixed by the Enquiry Officer.

[Signature]
SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 246 /E/PA, dated Peshawar the 28/10 /2020

1. SDPO Warsak is directed to finalize the aforementioned departmental proceeding within stipulated period under the provision of Police Rules-1975.

2. Official concerned

Attested
[Signature]



OFFICE OF THE
ASSTT: SUPERINTENDENT OF POLICE
FAQIRABAD SUB DIVISION PESHAWAR
Ph# 091-2049944

No. 01 /PA dated 25 /01 /2021

FINDING REPORT U/R 6(V) OF THE KP POLICE RULES 1975 IN DEPARTMENTAL INQUIRY AGAINST CONSTABLE ABDUS SALAM NO. 5741 DAR PESHAWAR.

The subject enquiry was referred to the undersigned vide order of enquiry bearing Endst: No. 269/E/PA: dated 14.01.2021 by Superintendent of Police, HQrs, Peshawar in order to ascertain the factum of alleged charge /misconduct, against the subject accused Constable Abdus Salam No. 5741 posted at DAR, Peshawar.

SUMMARY OF CHARGE SHEET (ORIGINAL ATTACHED):-

- Allegation as per record is that accused constable Abdus Salam No. 5741 while posted at DAR, Peshawar was absent from duty w.e.f 30.01.2020 to 11.07.2020 (05 months & 11 days) and 13.07.2020 to till date without taking permission or leave.
- All this amounts to gross misconduct on his part and renders his liable for disciplinary proceedings under Police Rules 1975.

PROCEEDINGS:-

During the course of inquiry the alleged official was contacted on his mentioned mobile number (0313.9642274) as well as called through summons/parwanas (copy attached) to attend the office of the undersigned, but he did not appear before the undersigned. Being a member of the disciplined force, his act of non-appearance before the undersigned is condemnable and amounts to gross misconduct on his part. This act of the Police official shows that he has nothing to say in his defense.


FINDING/RECOMMENDATION:-

Keeping in view the above mentioned circumstances, the undersigned is forced to take an ex-parte decision and declare Constable Abdus Salam No. 5741 guilty of "Gross Misconduct and Negligence of Duty".

All relevant papers are enclosed herewith please.

Attested

Rozig


(Dr. MUHAMMAD UMER) PSP
ASSISTANT SUPERINTENDENT OF POLICE
FAQIRABAD SUB-DIVISION PESHAWAR.



OFFICE OF THE
SUB DIVISIONAL POLICE OFFICER,
WARSAK, PESHAWAR

No. 58-E/ST, Dated: 20/01/2021
Ph: No. 091-2950336

9 (C)
30

To: Superintendent of Police,
HQrs, CCP Peshawar.

Subject: **FINDING REPORT IN DEPARTMENTAL INQUIRY AGAINST
ABDUL SALAM NO. 5741/FC.**

The subject inquiry was referred to undersigned vide your office letter No. 246/E/PA dated 28.10.2020 with the directives to conduct impartial enquiry of his misconduct that he while posted at DAR, Peshawar was remained absent w.e.f 13.07.2020 till date without taking permission or leave.

The alleged official was called telephonically and directed to appear before the inquiry officer in connection of inquiry proceeding. Later-on he was called several times but he did not appeared before the inquiry officer. In this regard office of SP HQrs, CCP Peshawar was also approached vide this-office letter No. 1555 dated 10.11.2020 with the request to direct the alleged official through quarter concern, to appear before the inquiry officer but the subject official has not appeared before undersigned yet. According to telephonic discussion with MM DAR, CCP Peshawar, the alleged official has not reported to DAR, and remained absent since 13.07.2020 till date.

Above in view, the circumstances reflects that the accused official is not interested or has no any prove in his defense to produce before the inquiry officer, it is therefore , he is recommended for Ex-parte action.

The relevant record is enclosed.

*Issue Panel
show cause notice*

(FIDA HUSSAIN)
Sub Divisional Police Officer
Warsak, Peshawar.

Superintendent of Police
HQrs. CCP Peshawar.

Attested

Rozig

(10) (D)
titi
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FINAL SHOW CAUSE NOTICE

I Superintendent of Police, Headquarters, Capital City Police Peshawar, as competent authority, under the provision of Police Disciplinary Rules 1975 do hereby serve upon you, Constable Abdus Salam No.5741 the final show cause notice.

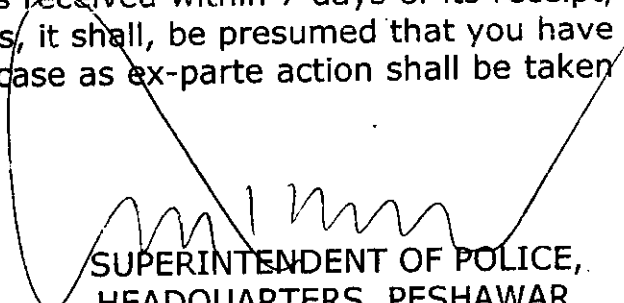
The Enquiry Officer, SDPO Warsak, after completion of departmental proceedings, has recommended you for ex-parte decision for the charges/allegations leveled against you in the charge sheet/statement of allegations.

And whereas, the undersigned is satisfied that you Constable Abdus Salam No.5741 deserve the punishment in the light of the above said enquiry report.

And as competent authority, has decided to impose upon you the penalty of minor/major punishment under Police Disciplinary Rules 1975.

1. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

2. If no reply to this notice is received within 7 days of its receipt, in normal course of circumstances, it shall, be presumed that you have no defence to put in and in that case as ex-parte action shall be taken against you.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 246 /PA, SP/HQrs: dated Peshawar the 25-1-2021.

Copy to official concerned

Attested



وَلَا تَلْبِسُوا الْحَقَّ بِالْبَاطِلِ وَتَكْتُمُوا الْحَقَّ وَأَنْتُمْ تَقْتُلُونَ
 اور جگہ کو جھوٹ کے ساتھ گڈرز نہ کرو۔ اور جان بوجھ کر حق بات کو مست چھپاؤ (القرآن)

(12) E

**DEPARTMENT OF FORENSIC MEDICINE & TOXICOLOGY
 KHYBER MEDICAL COLLEGE, PESHAWAR**

(Admissible as evidence under section 510 of the Code of Criminal Procedure)

the case of Ex-FC Abdul Salam No. 5741
 I hereby certify that I received Direct Sample packet from The above person
 of Police Department Hqs Pesh alleged to have been dispatched by him/her
 on the 30th of Aug 2021 referred to in his office No. cells no. 3049
 Dated 27-08-2021 and received by me on the 30-08-2021

The packet consisted of _____ was sealed with a seal bearing the impression of the invoice here on to attached. And reached me with _____ seals intact.

The contents of the packet were as follows:- The blood sample is taken in my presence.

- (a) _____
- (b) _____
- (c) Urine
- (d) _____
- (e) _____
- (f) _____

2. The above seals were opened in my presence and the contents of the packet were duly examined by me remaining under my immediate custody until the examination was completed.
3. The material / samples I was led to examine for were. Drugs of Addiction

Ravi
 ASSISTANT CHEMICAL EXAMINER
 (BIOCHEMIST)

4. The result was as follows:-

The Urine sample of the above person is only positive for (THC) Cannabis (C/S)

5. Note:-

- (i)
- (ii)
- (iii)

This report is being issued without any cutting/eraser or over writings.
 For the tests performed to reach the above mentioned results kindly see overleaf.
 Any report without embossing mark is not genuine.

Attested
Ravi

No. 777 /FM/KMC/2021,
 KMC, Peshawar.
 Chemical examiner office:

The 30-08-2021
 Enclosures:-

1. GENERAL ALKALOIDS:-

- Heroin. _____
- Morphine _____
- Cannabinol Positive
- Atropine _____
- Hyoscine _____
- Strychnine _____
- Brucine _____

2. VOLATILE POISONS:-

- Ethyl Alcohol _____
- Methyl alcohol _____
- Hydrocyanic acid _____
- Formaldehyde _____
- Phenols _____
- Organophosphates _____
- Chlorinated hydrocarbons _____

Ravi

CHEMICAL EXAMINER
 (BIO-CHEMIST)

ALCOHOL ANALYSIS REPORT:

- Potassium dichromate Test _____
- Sulphomolybdate Test _____
- Ethylbenzoate Test _____

SEMAN ANALYSIS:-

- Berberio's Test. _____
- Florence's Test _____
- Of Spermatozoa. _____

3. METALLIC POISONS:-

- Arsenic _____
- Mercury _____
- Lead _____
- Copper _____
- Silver _____
- Tranquillizer _____
- Barbiturates _____
- Hypnotics _____
- Sedatives _____
- Chloral Hydrates _____

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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.**