

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.227/2023.

Ex-Constable Syed Asif Ali Shah of CCP Peshawar..... **Appellant.**

VERSUS

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

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.227 /2023.

Ex-Constable Syed Asif Ali Shah No.5070 of CCP Peshawar..... **Appellant.**

VERSUS

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

REPLY BY RESPONDENTS NO. 1 to 3.

Respectfully Sheweth:-

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 5972

PRELIMINARY OBJECTIONS:-

Dated 14-06-23

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. Pertains to personal information record of appellant.
2. The appellant was appointed as constable in the respondent department in the year 2007. However, the performance of appellant during service was not upto the mark and earned 17 bad entries, 04 Minor punishments and 01 Major punishment in his credit on the charges of willful absence from duty on different occasions. Further, his service appeal is badly time barred. (Copy of bad entries list as annexure A)
3. Incorrect. The appellant while posted at Police Lines, Peshawar willfully absented from his lawful duty w.e.f. 17.04.2019 to 16.02.2021 (total 01 year & 10 months) without taking permission/leave. The appellant deliberately absented himself from his lawful duty for such long period, and contented that his mother was ill, but failed to produce any relevant documents of her mother illness. Furthermore, record reveals that the appellant is a habitual absentee and not interested in his official duty.
4. Incorrect. Proper Charge Sheet with statement of allegations was issued to the appellant and proper departmental enquiry was conducted against him. During the course of enquiry, he was summoned time and again, but he did not turn up. Thus charges of willful absence were stand proved against him. After receipt of the findings he was issued Final Show Cause Notice and delivered to him through local Police PS Inqilaab which he received by himself but failed to submit his reply or appear before the Competent Authority. The appellant has preferred time barred departmental appeal, which was properly processed and also heard him in person by the appellate

authority, however he failed to defend himself with plausible/justifiable grounds, hence appeal of the appellant was rejected/ filed having no legal footage and time barred. (Copy of charge, Statement of allegation and Enquiry report are annexed as B, C&D).

5. Incorrect. The appellant then filed review petition before the appellate authority which after due consideration was also rejected/filed on the same grounds.
6. That appeal of the appellant being devoid of merit and hit by limitation may be dismissed on the following grounds.

REPLY ON GROUNDS:-

- A. Pertains to personal information & Constitution of Pakistan.
- B. Incorrect. The appellant was treated as per law/rules, no violation of Constitution of Pakistan 1973 has been done by the respondents. After fulfilling all the codal formalities the charges leveled against him were proved, hence he was rightly awarded the Major punishment as per law/rules.
- C. Incorrect. As per record the appellant was a habitual absentee and had a blemish service by not interested in his official duty. He willfully absented himself from duty and enjoying his long absence period without any leave permission, hence his appeals were filed/rejected on merit.
- D. Incorrect. Proper Charge Sheet with Statement of allegations was issued to the appellant and proper departmental enquiry was conducted against him wherein the charges of deliberately absence were proved and thereafter a final show cause notice was served upon him. After completion of codal formalities the punishment orders were passed in accordance with law/rules and no violation of the principle of natural justice has been done by the replying respondent.
- E. Incorrect. The appellant was treated as per law/rules and rightly awarded the major punishment by the competent authority hence liable to be upheld.
- F. Incorrect. The appellant availed the opportunities of defense/ personal hearing, but he could not prove his innocence with plausible grounds.
- G. Incorrect. The appellant was treated as per law/rules. The charges of willful absence were proved, hence the punishment order was passed by competent authority on the charges of his long absence period which is not tolerable in the disciplined force.
- H. Incorrect. The competent authority before imposing the major punishment had completed all codal formalities and an ample opportunity of self defense was provided, but appellant being not interested in his official duty remained continuously absented from lawful duty for long period without any leave.
- I. Incorrect. The appellant was willfully absented from his lawful duty without taking any leave/ permission from his Superior Officers.

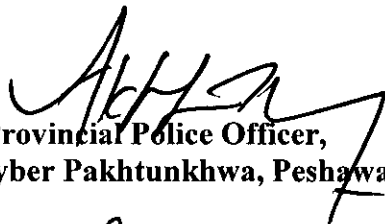
③


J. Incorrect. Final Show Cause Notice was issued to him and sent him on home address to which he received, but he avoided to appear and defend himself.

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

PRAYERS:-

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


Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.


Capital City Police Officer,
Peshawar.


Superintendent of Police,
HQrs: Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.227 /2023.

Ex-Constable Syed Asif Ali Shah No.5070 of CCP Peshawar..... **Appellant.**

VERSUS


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


AFFIDAVIT.

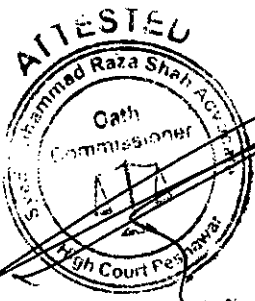
We respondents 1, 2 and 3 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal.

The respondents are neither proceeded Ex-parte nor any cost is imposed.


Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar.


Capital City Police Officer,
Peshawar.


Superintendent of Police,
HQrs: Peshawar.


ATTESTED
Gath
Commissioner
High Court Peshawar

14 JUN 2023

(3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.227 /2023.

Ex-Constable Syed Asif Ali Shah No.5070 of CCP Peshawar..... **Appellant.**

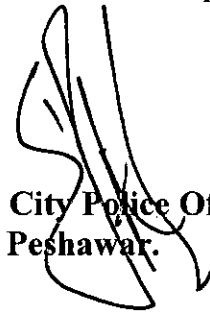
VERSUS

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.**



(A) (6)

SYED ASIF ALI SHAH No.5070 S/O SYED ANWAR SHAH

Ghari Nabi Khan PS Badaber Dist: Peshawar.

03.01.1986

21.08.2007

10th

12 years & 01 month
NIL

1. Name of Official

2. R/O

3. Date of Birth

4. Date of enlistment

5. Education

6. Courses Passed

7. Total qualifying service

Good Entries

Bad Entries (L.W.O Pay, E/Drill & Warning)

- 01 02 days leave without pay vide OB No.1530 dt:07-06-2008
- 02 06 days leave without pay vide OB No.2931 dt:26-09-2008
- 03 01 day leave without pay vide OB No.3058 dt:08-10-2008
- 04 03 days leave without pay vide OB No.2968 dt:27-09-2008
- 05 02 days leave without pay vide OB No.2496 dt:27-08-2009
- 06 03 days leave without pay vide OB No.2654 dt:05-09-2008
- 07 03 days leave without pay vide OB No.554 dt:23-02-2009
- 08 04 days leave without pay vide OB No.1090 dt:10-04-2009
- 09 04 days leave without pay vide OB No.1074 dt:09-04-2009
- 10 39 days leave without pay and warned to be careful in future vide OB No.2985 dt:31-08-2010
- 11 03 days leave without pay vide OB No.1567 dt:18-12-2012
- 12 05 days leave without pay vide OB No.1043 dt:18-03-2013
- 13 06 days leave without pay vide OB No.2630 dt:25-07-2013
- 14 21 days leave without pay vide OB No.1239 dt:02-04-2013
- 15 Awarded one day E/drill vide OB No.135 dt:12-01-2015
- 16 Awarded one day E/drill vide OB No.752 dt:02-02-2015
- 17 39 days leave without pay and warned to be careful in future vide OB No.1480 dt:03-04-2017

Minor Punishment

- 1. Stoppage of 01-year annual increment without coumlative effect and 74 days leave without pay vide OB No.1881 dt:06-06-2014
- 2. Stoppage of 01-year annual increment without coumlative effect and 83 days leave without pay vide OB No.3580 dt:21-11-2014
- 3. 189 days leave without pay and Censure vide OB No.2646 dt:07-07-2015
- 4. 17 days leave without pay and censure vide OB No.1477 dt: 23-04-2018

Major Punishment

Nil

09. Punishment (Current)

5. Awarded Major punishment dismissal from service on the charge of absence w.e.f 17-04-2019 to till date vide OB No.572 dated 16-02-2021 by SP/HQrs Peshawar.

10. Leave Account

<u>Total leave at his credit</u>	<u>Availed leaves</u>	<u>Balance</u>
580	30	550

PA 2/6

Attested

17/6/21
CRC

(B) (7) (3)

CHARGE SHEET

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge that Constable Asif Ali Shah No.5070 of Capital City Police Peshawar with the following irregularities.

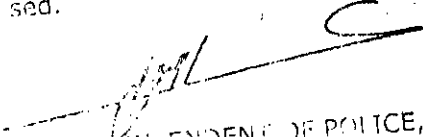
"That you Constable Asif Ali Shah No.5070 while posted at Police Lines, Peshawar were absent from duty from 12.04.2019 till date without taking permission or leave. This amounts to gross misconduct on your part and is against the discipline of the force."

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 you 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.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

Attested
[Signature]

(B)

(B)

BETTER COPY

CHARGE SHEET

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge sheet that Constable Asif Ali Shah No.5070 Capital city Police Peshawar with the following irregularities.

"That you Constable Asif Ali Shah No. 5070 while posted at Police Lines, Peshawar were absent from duty w.e.f. 17.04.2019 till date without taking permission or leave. This amounts to gross misconduct on your part and is against 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 you 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.

SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

Attested
[Signature]

(C) 8 9

DISCIPLINARY ACTION

The Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that Constable Asif Ali Shah No. 5070 has rendered him-self liable to be proceeded against under the provision of Police Disciplinary Rules-1975

STATEMENT OF ALLEGATION

That Constable Asif Ali Shah No. 5070 while posted at Police Lines, Peshawar was absent from duty w.e.f 17.04.2019 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 Sd/PO Sabir 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. 105 /E/PI, dated Peshawar the 22-1-2019

1. Sd/PO Sabir is directed to finalize the aforementioned departmental proceeding within stipulated period under the provision of Police Rules-1975.

2. Officer concerned

Attested
[Signature]

(C) 10

BETTER COPY

DISCIPLINARY ACTION

I, Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that Constable Asif Ali Shah No.5070 4 has rendered himself liable to be proceeded against under the provision of Police Disciplinary Rules 1975.

STATEMENT OF ALLEGATION

"That you Constable Asif Ali Shah No.5070 while posted at Police Lines, Peshawar were absented herself from duty w.e.f. 17.04.2019 till date without taking permission or leave. This amounts to gross misconduct on your part and is against 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/Suburb is appointed as Enquiry Officer

The Enquiry Officer shall, in accordance with the provisions of the Ordinance, 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.

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

SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

*Attested
[Signature]*

CAPITAL CITY POLICE PESHAWAR

(D) (11)

To: The Superintendent of Police, HQR,s Peshawar

From: The Deputy Superintendent of Police Suburb Circle, Peshawar

[Handwritten signature]

No. 65 /E-PA: dated Peshawar, the 07/10/2020

Subject Finding report in enquiry against alleged Constable Asif Ali Shah No.5070 Police Lines Peshawar, u/r 6 (5) police rules 1975

The Subject enquiry was referred to this office vide endst No 104/E/PA dated 14-05-2020, in order to ascertain the misconduct (absence) on his part.

Short facts are that, alleged constable Asif Ali Shah No 5070 during his posting in Police Lines Peshawar, remained absent from the duty w.e.f 17.04.2019 till date without any prior permission, hence this enquiry.

The alleged constable was repeatedly called and summoned but he did not associate the enquiry proceedings, hence there is no other alternative but to proceed with ex-parte.

The undersigned summoned defaulter constable time and again but he did not attend the office of the undersigned. There is no record available which could justify the absence period of alleged constable; hence the alleged charge of absence is being established.

In circumstances, the alleged charge is being proved, hence the alleged constable Asif Ali Shah No.5070 is recommended for suitable punishment, provided u/r 4 (b) Police Rule 1975.

*issue final
show cause notice
Asif Ali Shah
[Handwritten signature]*

*Superintendent of Police
Capital City Peshawar
[Handwritten signature]*

[Handwritten signature]
Dy supdt of Police Suburb
Peshawar