

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1767 /2022

Rashid Khan Ex-Constable No.523 Police Station Totalai Buner

.....Appellant

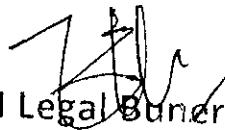
Versus

1. Inspector General of Police Khyber Pakhtunkhwa Peshawar
2. Regional Police Officer Malakand at Saidu Sharif Swat,
3. District Police Officer Buner.

.....Respondents

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SI Legal Buner

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 1767/2022

Rashid Khan Ex-Constable No.523 Police Station Totalai District Buner

..... Appellant

VERSUS

1. Inspector General of Police KP Peshawar
2. Regional Police Officer Malakand at Saidu Sharif Swat.
3. District Police Officer Buner

..... Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS

Respectfully Sheweth:-

Preliminary objections.

1. That the appeal is badly barred by Law & limitation.
2. That the appellant has got no cause of action and locus standi to file the present appeal.
3. That the appeal is bad due to mis-joinder and non-joinder of necessary parties.
4. That the appellant has not come to the Tribunal with clean hands.
5. That the instant appeal is not maintainable in its present form.
6. That the appellant has concealed the material facts from this Hon'ble Tribunal.

Reply on facts:-

1. Pertain to record, hence needs no comments.
2. That the appellant while posted to P.S Totalai was found guilty of gross misconduct as it was reported vide DD No.09 dated 28/02/2009 P.S Totalai, that the appellant had left the place of duty and absented himself from official duty without prior permission or approved leave of his high ups till the date of dismissal vide OB No.43 dated 13/04/2009. (Copies of DD report & Dismissal Order as Annexure "A" & "B") Moreover, that in the year 2009 when militancy was at its peak and the services of the appellant were direly needed by the department for the protection of lives and properties of the public, he showed cowardice and left his place of duty without any permission of his high ups.

3. Incorrect. In some cases the department has mandate to dispense the enquiry proceeding as per rules, removal of special power Ordinance 2000. The appellant willfully absented himself from official duty without any permission or approved leave and did not want to continue his job, hence he was dismissed from service as per law/rules.
4. ° That every case has its different footing, however the case of present appellant is different from those of others appellants.
5. Incorrect. As stated above, every case has its different footings. Furthermore, The appellant has not preferred any departmental appeal before the appellate authority i.e Regional Police Office, Malakand Region within the statutory period of 03 month nor any record is available in this regard. (Certificate of Respondent No. 2 is attached as annexure "C")
6. Incorrect. As stated above, the appellant has not preferred any departmental appeal before the appellate authority within the statutory period of 03 month i.e Regional Police Office, Malakand Region. Furthermore, Appeal of the appellant is badly time barred and has wrongly challenged the legal and valid orders of the respondents before the honorable tribunal through unsound reasons/grounds.


GROUND:


- A. Incorrect. That the order passed by the respondents is legal and in accordance with law/rules and no violation of the article of Islamic Republic of Pakistan has been made by the respondents.
- B. Incorrect. That the order of respondents is legal, lawful and in accordance with law/rules.
- C. Incorrect. That the order passed by the respondents is legal and in accordance with law/rules and no violation of the article of Islamic Republic of Pakistan has been made by the respondents.
- D. Incorrect. The appellant has not been discriminated and every case has its own footing, however the case of present appellant is different from those of other appellants.
- E. Pertain to record, hence needs no comments.
- F. Incorrect. This Para already explained above in detail.
- G. As explained above in detail.
- H. That other grounds not specifically answered in the reply, will be agitated with the permission of honorable Tribunal at the time of arguments.

PRAYER:

Keeping in view the above facts and circumstances, it is humbly prayed that the appeal of appellant being devoid of legal force may kindly be dismissed with costs.

Inspector General of Police,
KPK, Peshawar
(Respondent No. 01)


Regional Police Officer,
Malakand Region
(Respondent No. 02)

~~
District Police Officer,
Buner
(Respondent No. 03)
Buner~~

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AUTHORITY LETTER

We the above respondents do hereby authorize and allow Mr. Zahir Shah SI Legal Buner to file the accompany para-wise comments on our behalf in the Honorable tribunal and do whatever is needed in the court.

Inspector General of Police ,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 01)


Regional Police Officer
Regional Police Officer
Malakand at Saidu Sharif Swat
(Respondent No.02)


District Police Officer
Buner
(Respondent No.03)
District Police Office
Buner

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2. Regional Police Officer Malakand at Saidu Sharif Swat,
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AFFIDAVIT

We the above respondents do hereby solemnly affirm and declare on oath that the whole contents of this Para-wise comments is true and correct to the best of our knowledge and belief and nothing has been kept secret from this honorable Tribunal.

Inspector General of Police
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 01)


Regional Police Officer
Regional Police Officer
Malakand at Saidu Sharif Swat
(Respondent No.02)


District Police Officer
Buner
(Respondent No.03)
Buner

ضلع نوشہرہ

تھانڈہ 9 روزنامہ 28 جنوری 2019ء

رپورٹ غیر حاضری Si وقت 13:00 بجے صبح 28 جنوری 2019ء کی وقت کنٹینل
کوہاڑہ سرفکار کیلئے طلب کیا گیا۔ مگر مذکورہ عیم موجود یا گیا۔ جو میں
مذکورہ کنٹینل کے خلاف رپورٹ غیر حاضری درج روزنامہ ہے

جناب عالی!

ذیل مطابق اصل ہے

17.11.19 PST
3.59

ORDER

As reported you Constable Rashid Khan No 523 was posted at Police Station Totalai. According to the report received in this office you absented yourself from lawful duty vide D.D No. 9 dated 28/02/2009 Daily Dairy Police Station Totalai and remain absent till this date.

Your this act is highly irresponsible, indisciplined and misconduct on your part which is liable U/S 5 Sub Section (4) of the Removal from Service (Special Power) Ordinance 2000 (Amendment) Ordinance 2001.

I, as competent authority, therefore, satisfied to proceed under Section 5 of Sub Section (4) of the Removal from Service (Special Powers) (Amendment) Ordinance 2001 and dispense with the enquiry proceedings as laid down in the said ordinance and further satisfied that there is no need of holding departmental enquiry since the accused Police Official Constable Rashid Khan No 523 has been found guilty of misconduct as defined in the said Ordinance. I, Abdur Rashid D.P.O Buner as competent authority therefore, impose major penalty by dismissing him from service from the date of his absence.


DISTRICT POLICE OFFICER,
BUNER

GENO. 43

DATED. 13 / 4 / 2009.



OFFICE OF THE
REGIONAL POLICE OFFICER, MALAKAND
SAIDU SHARIF SWAT.

Ph: 0946-9240381-82 & Fax No. 0946-9240390

Email: digmalakand@yahoo.com

No. 2998 /E, dated Saidu Sharif the 08 / 03 / 2023

To: The District Police Officer, Buner

- Subject:
1. SA No. 1401/2022 OF EX-CONSTABLE SAJJAD HUSSAIN NO. 522
 2. SA No. 1765/2022 OF EX-CONSTABLE ABDUL AZIZ NO. 501.
 3. SA No. 1766/2022 OF EX-CONSTABLE FAYAZ AHMAD NO. 282.
 4. SA No. 1767/2022 OF EX-CONSTABLE RASHID KHAN NO. 523

Memorandum:

Reference your office Memo: No. 956/Legal dated 06/03/2023 on the subject cited above.

According to this office record none of the subject Police personnel have preferred departmental appeal for reinstatement into service in this office

Insp. Legal

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Regional Police Officer,
Malakand, at Saidu Sharif Swat

10/5/23
11/3/23