

**IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHWAR**

In Re:

Service Appeal No. 1415/2022

Sami Ullah .....

Appellant

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1387

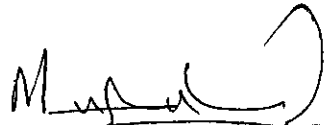
Dated 11/7/2022

Versus

Inspector General of Police KP and others ..... Respondent

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(MIAN NIAZ MUHAMMAD)  
DSP Legal  
Elite Force, Peshawar

**IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

In Re:

Service Appeal No. 1415/2022

Sami Ullah .....Appellant

Versus

Inspector General of Police KPK and others..... Respondents

**PARAWISE COMMENTS OF BEHALF RESPONDENTS NO 01, 02, 03 & 04**

Respectfully Sheweth:

**PRELIMINARY OBJECTIONS: -**

1. That the appeal is not based on facts.
2. That the appeal is barred by law and limitation.
3. That the appeal is not maintainable in its present form.
4. That the appeal is bad for mis-joinder and non-joinder of necessary and proper parties.
5. That the appellant is estopped to file the instant appeal by his own conduct.
6. That the appellant has come to this Hon'ble Tribunal with unclean hands.
7. That the appellant has got no cause of action and locus standi to file the instant service appeal.

**Facts**

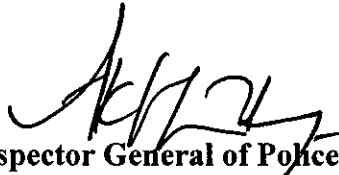
1. Pertain to record.
2. Pertain to record.
3. Pertain to record.
4. Pertain to record.
5. Correct to the extent, that he remained absent from duty w.e.f. 29-01-2020 till issuance of removal order dated 29-09-2020. He unlawfully remained absent from duty without prior approval of the competent authority. Subsequently, he was issued Charge Sheet along with Summary of Allegations and Mr. Murad Khan Acting SP/Elite Force Peshawar was appointed as enquiry officer. The enquiry officer has recommended that ex-parte action may be taken against him. Consequently, he was issued Final Show Cause Notice vide No. 7478/EF, dated 07-07-2020, which was delivered to him through Reader Acting Elite Force Peshawar and received by his father namely Muhammad Nazir, but he failed to reply. To ensure his appearance, a notice was also published in daily newspapers "Mashriq" dated 15-08-2020 and was directed to join the enquiry proceedings but he neither jointed the enquiry proceedings nor appeared for duty. (Copy enclosed)
6. Already explained in para no. 5
7. Incorrect Departmental appeal preferred by appellant was disposed off in the light of recommendation given by the enquiry officer in the enquiry report. Hence, after serving show cause, the order of removal from service was passed against appellant by the competent authority.
8. The respondents also seek permission to raise any other grounds at the time of arguments.

Grounds

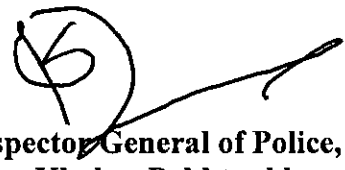
- A. Incorrect the appellant has been treated in accordance with law and the penalty imposed upon appellant has rightly and squarely been fixed.
- B. Incorrect, all the codal formalities have been satisfied before passing order against appellant.
- C. Incorrect, appellant unlawfully absented himself w/o prior permission of the competent authority.
- D. Incorrect, already explained in preceding paras.
- E. Incorrect, Show Cause notice No. 7478/EF dated 07-07-2020 was delivered to the appellant through Reader acting SP Elite Force Peshawar & received by his father namely M. Nazir but he failed to ensure his appearance. Notice was also published in daily newspaper "Mashriq" dated 15-08-2020 and was directed to join the enquiry proceedings but he failed to comply there with.
- F. Incorrect, proper enquiry was conducted according to law & rules.
- G. Incorrect, such precedents of the superior courts have been settled in accordance to the circumstances which is distinguishable from the instant case.
- H. Incorrect, order has been passed in accordance with law & rules in vogue.
- I. Incorrect, already explained preceding paras.
- J. Incorrect, the punishment order was passed after satisfying all the codal proceedings to ensure his presence before enquiry officer but he failed to appear before the Enquiry Officer.
- K. The respondents seek leave to raise additional grounds at the time of arguments.

PRAAYER

It is most humbly prayed that the appeal of the appellant may kindly be dismissed with cost.



**Inspector General of Police,  
Khyber Pakhtunkhwa Peshawar  
(Respondent No. 4)**



**Addl: Inspector General of Police,  
Elite Force Khyber Pakhtunkhwa  
Peshawar  
(Respondent No. 1)**



**Superintendent of Police HQrs  
Elite Force Khyber Pakhtunkhwa  
Peshawar  
(Respondent No. 3)**



**Deputy Commandant  
Elite Force Khyber Pakhtunkhwa  
Peshawar  
(Respondent No. 2)**

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In Re:

Service Appeal No. 1415/2022


Sami Ullah .....Appellant

Versus

Inspector General of Police KP and others .....Respondent

AFFIDAVIT

I, Mian Niaz Muhammad (DSP Legal Elite Force Khyber Pakhtunkhwa Peshawar) do hereby solemnly affirmed that the contents of these joint parawise comments on behalf of Respondents No. 1 to 4 are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.



DEPONENT  
CNIC No. 17301-1519386-1  
Cell # 0300-5899631

Identified by:

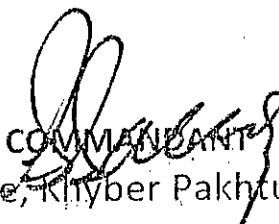
*It is further stated on oath that in this appeal the answering Respondents have neither been placed Ex Parte nor their defence has been struck off.*



(2) (S)

**AUTHORITY LETTER**

I the undersigned do hereby authorized Mr. Mian Niaz Muhammad Inspector/ADsp Legal to submit the replies and attend the Honorable High Court on behalf of respondents.



COMMANDANT  
Elite Force, Khyber Pakhtunkhwa,  
Peshawar.

Accepted  
  
DSP-C



(7)

CHARGE SHEET

I, Muhammad Hussain, Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar as competent authority, hereby charge you Constable Sami Ullah No. 4173, Platoon No. 02 of Elite Force as follows;

You remained absent from Polio duty without any permission from the competent authority w.c.from 29.01.2020 to till date. Being a member of discipline force, your act amounts gross misconduct on your part.

2. By reason of the above, you appear to be guilty of misconduct under the Khyber Pakhtunkhwa Police Rules, 1975 (Amendment 2014) and have rendered yourself liable to all or any of the penalties specified in the said rules.

3. You are therefore, directed to submit your defense within Seven days of the receipt of this Charge Sheet to the Enquiry Officer.

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

5. You are directed to intimate whether you desire to be heard in person.

6. A statement of allegation is enclosed.

(MUHAMMAD HUSSAIN)PSP  
Deputy Commandant  
Elite Force Khyber Pakhtunkhwa,  
Peshawar

میں نے اپنا جانچ سہی کر لی اور اس پر

نہ ان کو دیکھوں گی  
4173  
13-3-2020

mob- 0333 9580587  
17301-9745613-1

Attested  
M. S. C.



2/SP-EPDA  
12-3-2020

(8)

67

SUMMARY OF ALLEGATIONS

I, Muhammad Hussain, Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar as competent authority, am of the opinion that Constable Sami Ullah No. 4173, Platoon No. 02 of Elite Force has rendered himself liable to be proceeded against as he has committed the following misconduct within the meaning of Khyber Pakhtunkhwa Police Rules, 1975 (Amendment 2014).

SUMMARY OF ALLEGATIONS

He remained absent from Polio duty without any permission from the competent authority w.e. from 29.01.2020 to till date. Being a member of discipline force, his act amounts gross misconduct on his part.


2. For the purpose of scrutinizing an enquiry is conducted of the said accused with reference to the above allegations, Mr. Murad Khan Acting SP Elite Force Peshawar is appointed as Enquiry Officer.
3. The Enquiry Officer shall provide reasonable opportunity of hearing to the accused, record statements etc and findings within (25 days) after the receipt of this order.
4. The accused shall join the proceedings on the date, time, and place fixed by the Enquiry Officer.

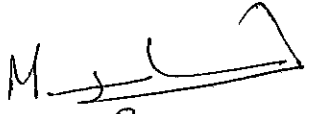
(MUHAMMAD HUSSAIN)PSP  
Deputy Commandant  
Elite Force Khyber Pakhtunkhwa,  
Peshawar

No. 4195-4200 EF, dated Peshawar the 12/03 2020.

Copy of the above is forwarded to the:-

1.  Acting Superintendent of Police, Elite Force Peshawar.
2. RI, Elite Force Khyber Pakhtunkhwa Peshawar.
3. Accountant Elite Force Khyber Pakhtunkhwa Peshawar.
4. SRC/FMC, Elite Force Khyber Pakhtunkhwa Peshawar.
5. FC Sami Ullah No. 4173, of Elite through reader Acting SP EF Peshawar.

  
(MUHAMMAD HUSSAIN)PSP  
Deputy Commandant  
Elite Force Khyber Pakhtunkhwa,  
Peshawar

  
DSP-L

(15)

(1)

نوٹیفکیشن کنٹرول سیکشن  
4173  
P-2

کوارٹر گارڈ کے لئے مورچہ 131 کو جو کہ صابن اور دیگر  
دیکھنے کے لئے آفس کے اندر لے کر آئے ہیں ان کو سنبھال کر آفیسر  
نہایت خود دراصل لے گیا اس میں آفیسر (7) دل کے  
انداز میں کوربی بیان فرمایا تھا ابھی تک آفیسر نے  
سب سے پہلے لے اور ہم کو سنبھال لیا اور آفیسر نے  
نوٹیفکیشن اول آفیسر کے پاس لے گیا اور آفیسر نے  
جو کہ سب سے پہلے لے لیا اور آفیسر نے  
خود بھی سنبھال لیا اور آفیسر نے  
صرف لکھنے کے لئے لے لیا اور آفیسر نے

نوٹیفکیشن کنٹرول سیکشن

دیکھنے کے لئے کنٹرول سیکشن

Attested  
ممبر

93239091066  
DSP.L

نوٹس دوئم بنام کنٹریبل سمیع اللہ 417 بلاٹون نمبر 02۔

بکارسر کا تحریر ہے کہ آپ کو بذریعہ نوٹس اول مطلع کیا گیا تھا۔ چونکہ آپ خود اور نہ ہی آپ کے لہے والے اور نہ کوئی رشتہ دار آپ کا نوٹس وصول کرنے کو تیار نہیں تھے اس لئے آپ کا نوٹس اول مقامی جالبیلہ کے انچارج عبدالحمید ASI کے حوالہ کیا گیا تاہم ابھی تک آپ نے کوئی تحریری جواب پیش نہیں کیا اور نہ ہی SP صاحب ایلیٹ فورس پشاور کے آفس پیش ہوئے۔

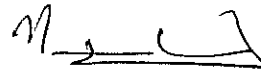
لہذا آپ کو بذریعہ نوٹس دوئم مطلع کیا جاتا ہے۔ کہ تین دن کے اندر اندر دفتر جناب SP صاحب ایلیٹ فورس آکر اپنا تحریری بیان پیش کریں بصورت دیگر آپ کے خلاف یکطرفہ کارروائی عمل میں لائی جائیگی۔

ریڈر نوٹس ایلیٹ فورس پشاور ریجن۔

173019745613-1

73 417 بلاٹون نمبر 02  
28/3/2020  
0333-9580587

Attested



SP-C

فائل نوٹس بنام کنسٹیبل سمیع اللہ 4173 بلاٹون نمبر 02۔

بکار سرکار تحریر ہے کہ آپ کو بذریعہ نوٹس دوئم مطلع کیا گیا تھا۔ چونکہ آپ نے نوٹس اول LHC تشکیل سے بذات خود وصول کیا تھا تاہم ابھی تک کوئی تحریری بیان پیش نہیں کی اور نہ ہی SP صاحب ایلٹ فورس پشاور ریجن آفس پیش ہوئے۔

لہذا آپ کو بذریعہ آخری فائل نوٹس مطلع کیا جاتا ہے۔ کہ تین دن کے اندر اندر دفتر جناب SP صاحب ایلٹ فورس آکر اپنا تحریری بیان پیش کریں بصورت دیگر آپ کے خلاف یکطرفہ کارروائی عمل میں لائی جائیگی۔

ریڈر نوٹس SP ایلٹ فورس پشاور ریجن۔

مستندہ باب عدالت / 29/3/2020

7301-1383807-1

03340935860

Attested

M. S. P. C.

**FINAL SHOW CAUSE NOTICE**

I, Zaib Ullah Khan, Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar as competent authority under Khyber Pakhtunkhwa Police Rules, 1975 (Amendment 2014) do hereby serve you Constable Sami Ullah No. 4173, Platoon No. 02, of Elite Force as follows:-

~~You~~ remained absent from Polio duty without any leave or prior permission w.e. from 29.01.2020 till date. Being a member of disciplined force ~~your~~ act amounts to gross misconduct on his part.

That consequent upon the completion of enquiry conducted against you by Mr. Murad Khan Acting SP Elite Force Peshawar but you did not appear before the enquiry Officer nor submitted any reply of Charge Sheet.

ii. Ongoing through the finding and recommendation of the enquiry officer, the material available on record, I am satisfied that you have committed the omission/commission specified in Police Rules and charges leveled against you have been established beyond any doubt.

2. As a result therefore, I, Zaib Ullah Khan, Deputy Commandant Elite Force, Khyber Pakhtunkhwa Peshawar as competent authority have tentatively decided to impose major penalty upon you, under Police Rules of the said ordinance.

3. You are therefore, directed to show cause as to why the aforesaid penalty should not be imposed upon you.

4. If no reply to this show cause notice is received within seven days of its delivery, in the normal course of circumstances, it shall be presumed that you have no defense to put and in that case an ex-parte action shall be taken against you.

5. A copy of the finding of the Enquiry Officer is enclosed.

(ZAIB ULLAH KHAN)PSP  
Deputy Commandant  
Elite Force Khyber Pakhtunkhwa Peshawar

07/07/2020

No. 7478 /EF, dated Peshawar the  
FC Sami Ullah No. 4173 at his home address through reader A/SP Elite Peshawar.

مذکورہ ذیل کے مطابق  
میں نے اپنا مافیہ ذیل کے مطابق  
مذکورہ ذیل کے مطابق

nic 17 301-1383807-1  
mah 03340935860

RI  
Attested  
DSP.c

3552  
21-7-20

NO # 137/SP,EP,PR

01-07-2020

(13)

﴿فائینڈنگ رپورٹ﴾

جناب عالی۔

بحوالہ انکوائری برخلاف کنشٹیبل سمیع اللہ 4173 پلاٹون نمبر 02. معروض خدمت ہوں کہ مذکورہ کنشٹیبل تھانہ مٹی سے بحوالہ مد 19، روزنامہ 29.1.2020 سے بدستور غیر حاضر چلا آ رہا ہے۔ اسی غیر حاضری پر مجاز اتھارٹی کی جانب سے مذکورہ کنشٹیبل کے خلاف چارج شیٹ بمعہ سری آف ایگیشن جاری ہو کر من ISP ایلٹ فورس پشاور ریجن کو انکوائری آفیسر مقرر کیا گیا۔ کنشٹیبل مذکورہ پر چارج شیٹ بمعہ سری آف ایگیشن بذریعہ ریڈر تقسیم ہو کر مذکورہ کنشٹیبل سے 07 یوم کے اندر اندر جواب دینا تھا۔ مگر ابھی تک مذکورہ کنشٹیبل نہ دفتر زبردست خطی پیش ہوا اور نہ ہی اپنا تحریری جواب پیش کیا۔ جس پر مذکورہ کنشٹیبل کو مورخہ 21.03.2020 کو نوٹس اول اس کے گھر کے پتے پر بھجوا کر جس کو عبد الحمید ASI چوکی انچارج جالا میلانے وصول کیا۔ جس میں بھی تین دن کے اندر اندر جواب دینا تھا مگر نہ پیش ہوا اور نہ ہی کوئی تحریری بیان دی۔ مورخہ 25.03.2020 کو نوٹس دوئم گھر کے پتے پر بھجوا کر مذکورہ نے خود وصول کیا مگر نوٹس دوئم کا بھی نہ جواب دیا اور نہ ہی پیش ہوا۔ مورخہ 29.03.2020 کو فائنل نوٹس اس کے والد محمد نذیر صاحب کو دفتر طلب کر کے حوالہ کیا گیا۔ مگر تا حال کوئی جواب نہ ملا۔ مذکورہ کنشٹیبل مورخہ 29.01.2020 تھانہ مٹی سے بدستور غیر حاضر چلا آ رہا ہے۔ بحیثیت انکوائری آفیسر میں اس نتیجے پر پہنچا کہ مذکورہ کنشٹیبل مزید نوکری میں دلچسپی نہیں لیتا۔ لہذا مذکورہ کنشٹیبل کے خلاف یکطرفہ کارروائی کرنے کی سفارش کی جاتی ہے۔ انکوائری بنیاد مناسب حکم ارسال خدمت ہے۔

﴿مراد علی خان﴾

سپرٹینڈنٹ آف پولیس

ایلٹ فورس پشاور ریجن

By No 383 RIF

Date 02-7-20

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Attested  
M  
DSP-C

تم  
issue P.S.C.N.

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06-07-2020

3181

2-7-20

(10)



No. 112PS-11301 /EF

Date: 29/01/2020


ORDER

This order will dispose of the departmental proceedings against Constable Sami Ullah No. 4173, of Capital City Police Peshawar now on deputation to Elite Force Khyber Pakhtunkhwa.

He remained absent from lawful duty without any leave or prior permission w.e. from 29.01.2020 to till date. In this regard Charge Sheet along with Summary of Allegations were issued to him by this office vide No. 4195-4200/EF, dated 12.03.2020 and Mr. Mirad Khan Acting SP Elite Force Peshawar was appointed as enquiry officer but he failed to appear before the enquiry officer. Similarly a Final Show Cause Notice was issued to him by this office vide No. 7478/EF dated 07.07.2020 which was delivered to him through reader A/SP Elite Force Peshawar and received by his father namely Muhammad Nazir but he failed to reply. To ensure his appearance, a notice was issued to him in daily newspaper "Mashriq" dated 15.08.2020 and was directed to join the enquiry within 15 days after the publication of notice, but he neither joined the enquiry proceeding conducted against him, nor appeared for duty. It seems that he has no interest in his current job.

Therefore, I, Zaib Ullah Khan, Deputy Commandant, Elite Force Khyber Pakhtunkhwa Peshawar as competent authority, keeping in view the above facts take ex-parte action, impose major penalty of removal from service upon him from the date of absence i.e. 29.01.2020.

(Order announced)

  
(ZAIB ULLAH KHAN)PSP  
Deputy Commandant  
Elite Force Khyber Pakhtunkhwa  
Peshawar.

Copy of the above is forwarded to the:-

1. Capital City Police Officer, Peshawar for information.
2. Superintendent of Police, Elite Force HQr: Peshawar.
3. Acting Superintendent of Police, Elite Force Peshawar.
4. RI, Elite Force Khyber Pakhtunkhwa Peshawar.
5. Accountant /Incharg Kot, Elite Force Khyber Pakhtunkhwa Peshawar.
6. OASI/SRC, Elite Force Khyber Pakhtunkhwa Peshawar.
7. FMC, along with complete enquiry file Enls: (12) pages.

Attested  
  
DSP