

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL , PESHAWAR

In Re:

Service Appeal No. 74/2023

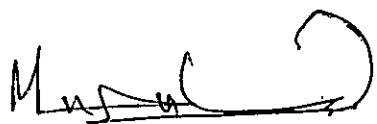
Bahadar KhanAppellant

Versus

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

I N D E X

S.No	Description of Documents	Annex	Pages
1.	Written Reply		1-3
2.	Affidavit		4
3.	Copy of Authority letter		5
4.	Copy of FIR,	A	6
5.	Copies of Charge Sheet	B	7
6.	Copy of Summary Allegations	C	8
7.	Copy of Enquiry Report	D	9
8.	Copy of Final Show Cause Notice	E	10
9.	Copy of Dismissal order	F	11
10.	Copy of Departmental appeal rejection order	G	12


ADSP Legal MianNiazMuhamad,
Elite Force, Peshawar

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In Re:

Service Appeal No. 74/2023

Bhadar Khan

.....Appellant

Versus

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

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 6742

Dated 27/07/23

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.


On Facts:

1. Pertain to service record of the appellant.
2. Pertain to record.
3. Correct, appellant was apprehended by the SHO Phandu Peshawar and he recovered charas 1230 Grams with a 30 bore Pistol without number on the spot from him. He was charged vide FIR #1143 dated 27-11-2021 u/s 9D CNSA PS Phandu (Copy of FIR is enclosed as Annexure 'A').
4. Correct, the appellant was discharged of charges leveled against him by the Addl. Sessions Judge Mr. Nasrullah Khan vide order dated 22-07-2022 (Copy of judgment is enclosed as Annexure 'B').
5. Pertains to record.
6. Correct, only to the extent that where the appellant was charged in FIR of Narcotics, he was immediately suspended and departmental enquiry was initiated against him. He was properly issued with charge sheet & Statement of allegations which he himself duly received.

Mr. Murad Khan SP Elite was nominated as Enquiry Officer. The appellant submitted his reply with no solid grounds. After cross examination, he was afforded with opportunity of personal hearing. The Enquiry Officer after fulfilling all codal formalities submitted

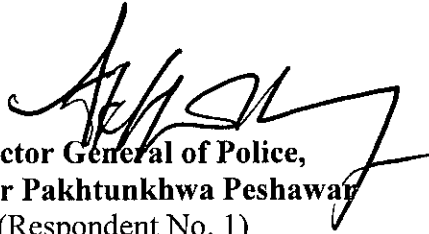
- his findings report wherein he held the delinquent official guilty of gross misconduct and recommended him for major punishment. (Copies of charge sheet, Statement of allegation, finding report, show cause notice and dismissal order are enclosed as Annexure 'B' to 'F').
7. Incorrect, appellant being dissatisfied full submitted a representation / appeal which was badly time barred by more than 5 months, hence was rejected accordingly (Rejection order is enclosed as Annexure 'G').
 8. Incorrect, misleading. Enquiry was conducted in accordance with relevant Sections of Police Rules 1975 (E&D Rules) and as per mandate of law & rules and proper procedure was adopted.
 9. Incorrect, the departmental enquiry was proper and under the mandate of law while the major penalty of dismissal was commensurate with gravity of misconduct committed by the delinquent official.
 10. Incorrect, the appellant was found involved in narcotic supplies being a police official and as such is liable to be made an example for others. His appeal may kindly be dismissed on the following grounds:

Grounds

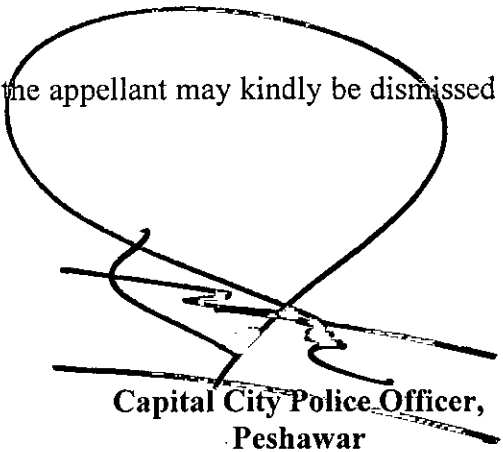
- A. That, appellant got no cause of action to file his service appeal.
 - B. Subject to proof.
 - C. Incorrect, appellant was served with a charge sheet & Statement of allegation dated 30-11-2021 which was duly received by the appellant himself with signatures on 03-12-2021 (Copy of charge sheet and statement of allegation are enclosed as Annexure 'B' & 'C').
 - D. Incorrect. The allegation relates to supplies of "charas" amounting 1230 Grams is a heinous crime committed by the appellant as evident from FIR.
 - E. Incorrect. An enquiry was conducted by acting SP Elite after serving appellant with a charge sheet & Statement of allegation. After conducting enquiry as per law findings were recorded in the enquiry report, after proving appellant guilty of alleged charge. He was recommended for major penalty.
 - F. Incorrect proper enquiry was conducted and all codal formalities were fulfilled. Appellant was proved guilty of charges, after recording pro and contra evidences. However, departmental and judicial proceedings can go simultaneously.
 - G. Incorrect, appellant had never been on duty with any of the respondents.
 - H. Incorrect, appellant was rightly imposed penalty of dismissal from service, after proving his guilt of alleged charges & misconduct.
 - I. Other grounds will be raised at the time of arguments
- 

PRAYER


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



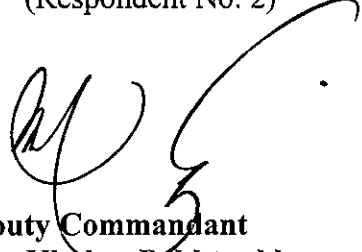
**Inspector General of Police,
Khyber Pakhtunkhwa Peshawar**
(Respondent No. 1)



**Capital City Police Officer,
Peshawar**
(Respondent No. 2)



**Addl: Inspector General of Police,
Elite Force Khyber Pakhtunkhwa
Peshawar**
(Respondent No. 3)



**Deputy Commandant
Elite Force Khyber Pakhtunkhwa
Peshawar**
(Respondent No. 4)

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHWAR

In Re:

Service Appeal No. 74/2023

Bahadar KhanAppellant

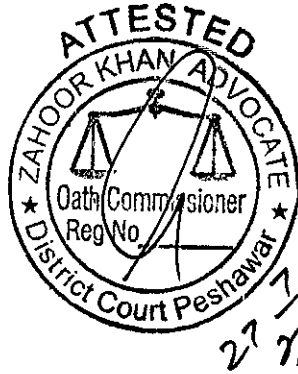
Versus

Inspector General of Police KP and othersRespondent

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.

Identified by:




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

It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense has been struck off.

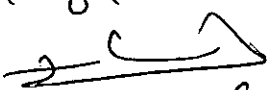
(7)

AUTHORITY LETTER.

The undersigned is hereby authorized to nominate Mr. Mian Niaz Muhammad Acting DSP/Legal Elite Force to submit the replies and attend the Honorable High Court/Supreme Court on behalf of respondents.


(ASIF IQBAL MOHMAND) PSP
Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar

ELITE FORCE COMMANDANT,
Elite Force Khyber Pakhtunkhwa
Peshawar

Alleged
M 
DSP. Legal EF
25-7-2023

ابتدائی اطلاعی رپورٹ نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ 154 مجموعہ ضابطہ فوجداری

نمبر: 1143/21 تھانہ: PS. PHANDU ضلع: Peshawar ای ٹیک نمبر: 000001 تاریخ و وقت وقوع: 7-11-2021 06:45 PM

1	تاریخ و وقت رپورٹ	حوالہ نمبر (9)	6	تھانہ سے روانگی کی تاریخ و وقت	27-11-2021 07:30 PM
2	نام و سکونت اطلاع دہندہ مستفیث	Walayat Khan HC پتہ: تھانہ PS. PHANDU، موجودہ پتہ: دورا چوک، پیشہ: پولیس آفیسر فون نمبر: 03149212855 مرتبہ مرسلہ: پولیس آفیسر			
3	مختصر کیفیت جرم (معدہ دفعہ) و بال اگر کچھ کھو گیا ہے	بجرم: 9D-CNSA-1-			
4	جائے وقوعہ و فاصلہ تھانہ سے اور سمت	دورہ چوک بیٹ نمبر: 1 Beat No1			
5	کارروائی متعلقہ تفتیش اگر اطلاع درج کرنے میں کچھ توقف ہوا ہو تو اس کی وجہ بیان کی جاوے	پولیس آفیسر کی مرسلہ پر مقدمہ درج رجسٹر کیا گیا۔			

دستخط: Qaiser Khan بیلک نمبر: 320/P عہدہ: SI ٹیلی فون نمبر: 03139622795

(ابتدائی اطلاع نیچے درج کریں)

اس وقت ایک تحریری مرسلہ نمٹا مستفیث نمبر 2 بدست کنسٹیبل مہراں 705 موصول ہو کر جو ذیل ہے بخدمت جناب SHO صاحب تھانہ پھندو بوقت جائے وقوعہ بالا پر بغرض ناکہ بندی نذری پولیس موجود تھا کہ اس دوران تجربے اطلاع دی کہ مشہور نشیات فروش بہادر ولد خانزاد سکند نذر بوستان بابا نشیات از قسم چرس باڑہ خمیر اینجی سے لاکر اپنے گھر واقع مسکین آباد لاکر محسوس گاہک کو سپلائی کریں گا جنگی نگرانی جاری تھی کہ ایک شخص کو حسب نشاندہی پتھر قابو کر کے جس نے بدریافت پر اپنا نام بہادر ولد خانزاد سکند نذر بوستان بابا بتلایا ہاتھ میں پکڑا شاہنگ چیک کرنے پر جس میں چرس وزن کرنے پر 1230 براہ ہو کر جس میں 5 گرام چرس بغرض تجزیہ FSL بجکہ بتایا 1225 گرام چرس بطور وجہ ثبوت پارسل نمبر 2 میں بند سر بہ مہر کر کے پارسل مہر 3/3 عدد مہر ای K-1 ٹیٹ کر کے 1/1 عدد نمونہ مہر پارسل پاسے کے اندر رکھے جا کر پارسل نمبر 1 تا 4 پستول 30 بور بلا نمبر بروئے فرد ضبط پولیس میں کر کے فرد موقع پر مرتب کر گواہان سے تکمیل کرائی گئی لازم بالا کو مرتکب جرم بالا پاکر حسب ضابطہ گرفتار کر کے مرسلہ بغرض قائمی مقدمہ ارسال تھانہ ہے پرچہ دیا جا کر تفتیشی افسر کو مامور تفتیش کیا جائے دستخط انگر مبارک زیب خان SHO کارروائی تھانہ آمدہ تحریری مرسلہ حرف بہ حرف درج بالا ہو کر مقدمہ بہ جرم بالا درج درج رجسٹر کر کے پرچہ بغرض تفتیش حوالہ خانہ خان SI/IO کے جائے پرچہ گرا

SI Qaiser Khan

27-11-2021

Attested
M. J. C.
SR-C

CHARGE SHEET

I, Asif Iqbal Mohmand, Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar as competent authority, hereby charge you Driver Constable Bahadur Khan No. 1727, of Elite Force as follows;

As per information report of Line Officer Elite HQrs Peshawar, vide Dairy No. 6417/EF, dated 30.11.2021, you have been charged in case FIR No.1143, dated 27.11.2021 U/S 9DCNSA Police Station Phandu District Peshawar. Being a member of discipline force, your this act amounts to 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.

(ASIF IQBAL MOHMAND)PSP
Deputy Commandant
Elite Force Khyber Pakhtunkhwa
Peshawar

من نے اس طرح سے اور سری اور الگین
درست طور پر بذات خود وصول کیا۔

No 21/8
3/12/21

بہادر خان

Attested
M. J. J.
DSP.C.E.P.

M 50301 854 8300

SUMMARY OF ALLEGATIONS

I, Asif Iqbal Mohmand, Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar as competent authority, am of the opinion that Driver Constable Bahadur Khan No. 1727, 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

As per information report of Line Officer Elite HQrs: Peshawar vide Dairy No. 6417/EF, dated 30.11.2021, he has been charged in case FIR No.1143, dated 27.11.2021 U/S 9DCNSA Police Station Phandu District Peshawar. Being a member of discipline force, his this act amounts to 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 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.

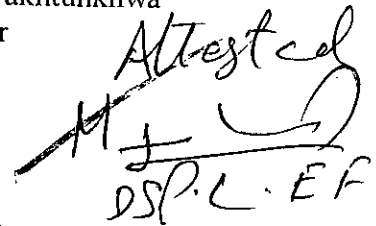
4. The accused shall join the proceedings on the date, time, and place fixed by the Enquiry Officer.


(ASIF IQBAL MOHMAND)PSP
Deputy Commandant
Elite Force Khyber Pakhtunkhwa
Peshawar

No. 14156-61/EF, dated Peshawar the 30/11/2021.

Copy of the above is forwarded to the:-

- ✓ 1. Acting Superintendent of Police, Elite Force Peshawar Region.
2. Supdt: Accounts, Elite Force Khyber Pakhtunkhwa Peshawar.
3. RI, Elite Force Khyber Pakhtunkhwa Peshawar.
4. SRC/FMC, Elite Force Khyber Pakhtunkhwa Peshawar.
5. DFC Bahadur Khan No. 1727, of Elite through reader A/SP Elite Peshawar.

Attested

DSP. L. EF



Office of Superintendent of Police
Elite Force Peshawar Region.



Office No. 091-9223617

D. No. 375
Date 19/01/2022
Commandant Elite f

No. 16 /R SP/PR/EF

Date 19/01/2022

Enquiry report finding

Sir,

It is submitted that summary of allegation and charge sheet issued against Bahader Khan No.1727 of Elite Force KPK Peshawar for involvement in Criminal case vide: F.I.R No 1143 date 27.11.2021 U/S 9-D CNSA PS Phandu, received vide order edust: No 14156-61/EF date 30.11.2021 vide which the undersign was appointment to conduct proper departmental enquiry into the charges framed against the accused constable.

Short fact leading to the instant enquiry are that line officer Elite Force forwarding an information containing the report that driver constable Bahader Khan No 1727 was booked vide: FIR No.1143 date 27.11.2022 U/S 9-D CNSA PS Phandu and narcotics was recovered from his possession. He also forwarded copy of FIR on the basis of which the instant enquiry is being initiated against him as act of the accused constable amount to gross misconduct.

To ascertain the factual position and unearth the real fact, the undersigned summoned the accused constable apprised about the charges and copy of charge sheet was served upon him, to which he submitted his written replay, wherein he deposed that he was arrested by SHO PS Phandu in dissension of 12 gram charas in the jurisdiction of PS Gulbahar and on the gun point was brought to PS Phandu, where he was kept in unlawful confinement for 02 days and later on was charged in quoted above.

Similarly I.O of the case was summoned and his statement was recorded, who in his statement supported contents of the FIR and narrated the criminal proceedings initiated against him as per law and rule.

Apart from the above Moharrar Elite Force vide DD No. 18 date 27.11.2021 also incorporated to the effect that SI Khista Khan of investigation PS Pandu informed him telephonically that driver constable Bahadar Khan No. 1727 son of Khan Zada has been arrested and charged in case vide FIR No. 1143 date 27.11.2022 U/S 9-D CNSA PS Phandu. So he immediately informed his seniors by forwarding copy of the said daily dairy.

Perusal of the relevant record and statements of concerned reveals that accused Constable Bahader Khan No.1727 was lawfully arrested having contraband charas which led to his involvement in criminal case FIR No. 1143 date 27.11.2022 U/S 9-D CNSA PS Pandu. So charge of involvement in criminal against him is established and is recommended for major punishment please.

Dy No. 60 /RI/EF

Date: 21/01/2022

Signature of Dy. Insp. (R)

Attested
Signature of Dy. Insp. (R)
Dy. Insp. (R)

(MURAD ALI KHAN)
Acting Superintendent of Police
Elite, Force Peshawar Region

FINAL SHOW CAUSE NOTICE

I, Asif Iqbal Mohmand, Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar as competent authority under Khyber Pakhtunkhwa Police Rules, 1975 (Amendment 2014) do hereby serve you Driver Constable Bahadar Khan No. 1727. (Elite HQrs: Peshawar) of Elite Force as follows;-

As per information report of Line Officer Elite HQrs: Peshawar vide Dairy No. 6417/EF, dated 30.11.2021, you are charged in case FIR No. 1143, dated 27.11.2021 U/S 9DCNSA Police Station Phandu District Peshawar. Being a member of discipline force, you're this act amounts to gross misconduct on your part.

That consequent upon the completion of enquiry conducted against you by Mr. Murad Khan Acting SP Elite Force Peshawar but you failed to satisfy the Enquiry Officer.

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, Asif Iqbal Mohmand, 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.

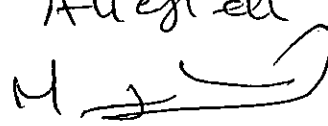
✓


(ASIF IQBAL MOHMAND)PSP
Deputy Commandant
Elite Force Khyber Pakhtunkhwa
Peshawar

No. 843 /EF, dated Peshawar the

24/01/2022

DFC Bahadar Khan No. 1727 of Elite Force through reader A/SP Elite Peshawar.

Attested

D.S.O.C



Office of the Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar



No. 4871-80 /EF

Date: 17/1/2022

ORDER

This order will dispose off the departmental proceedings against Driver Constable Bahadar Khan No. 1727, of Capital City Police Peshawar now on deputation to Elite Force Khyber Pakhtunkhwa.

As per information report of Line Officer Elite HQrs: Peshawar vide Dairy No. 6417/EF, dated 30.11.2021, he has been charged in case FIR No. 1143, dated 27.11.2021 U/S 9DCNSA Police Station Phandu District Peshawar.


In this regard he was suspended and Charge Sheet alongwith Summary of Allegations were issued to him by this office vide No. 14156-61/EF, dated 30.11.2021 and Mr. Murad Khan Acting SP Elite Force Peshawar was appointed as enquiry officer. The Enquiry Officer conducted the enquiry proceedings and submitted his findings report that the accused Driver Constable was lawfully arrested having contraband charas which led to his involvement in the said case. So charge of involvement in criminal against him is established, therefore the Enquiry Officer has recommended for major punishment.

Similarly, a Final Show Cause Notice was issued to him vide No. 843/EF, dated 24.01.2022, which was delivered to him through reader Acting SP Elite Force Peshawar and received by himself. He submitted reply of FSN which was found unsatisfactory. He was also called in orderly room on 10.02.2022 to appear before the undersigned and explain his position but he failed to appear before the undersigned.

Therefore, I, Asif Iqbal Mohmand, Deputy Commandant, Elite Force Khyber Pakhtunkhwa Peshawar as competent authority, keeping in view the above facts, circumstances and recommendations of enquiry officer, impose major penalty of "DISMISSAL" from service upon him under Police Rules 1975 (amended 2014).

(Order announced)!

Attested
M. J. L. EF
DSP. L. EF


(ASIF IQBAL MOHMAND)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. Acting Superintendent of Police, Elite Force HQrs: Peshawar.
3. Acting Superintendent of Police, Elite Force Peshawar w/r to his office Memo No. 16/R SP/PR/EF, dated 18.01.2022.
4. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
5. UC Kal/MTO Elite Force Peshawar.



No. 1/EF '1202'

Dated: 02/11/2022

ORDER

This order will dispose of departmental appeal submitted by Ex-Driver Constable Bahadar Khan No. (1727) against the punishment of dismissal from service awarded to him by Deputy Commandant Elite Force vide order No. 4871-80/EF, dated 17.09.2022 as he was charged in case FIR No. 1143, dated 27.11.2021 u/s 9DCNSA, Police Station Phandu District Peshawar.

Hence, the competent authority after perusal his appeal is hereby filed on the grounds of time limitation i.e: time barred filed the appeal.

Order Announced!

-Sd-

(MUHAMMAD WISAL FAKHAR SULTAN)PSP
Addl: Inspector General of Police,
Elite Force Khyber Pakhtunkhwa Peshawar

No. 12540-44/EF,

Copy of above is forwarded:-

1. Superintendent of Police, Elite Force, Peshawar.
2. OASI /SRC Elite Force, Peshawar.
3. FMC; Elite Force, alongwith complete enquiry file Encl: (30 pages).
4. Ex-Driver Constable Bahadar Khan No. 1727, through Reader SP Elite Force Peshawar.

Att. estcd
M. J. J.
D.S.P.C. EF
25-7-2023

(TARIQ IQBAL) UNPMBAR

Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar