BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 731/2023

Inayat Shah ..... (Appellant)
Ex- IHC Kohat

VERSUS

Inspector General of Police,
Khyber Pakhtunkhwa etc .....(Respondents)

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Deponent

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Inspector General of Police,
Khyber Pakhtunkhwa etc .....(Respondents)

REPLY BY RESPONDENTS NO. 1 TO 3

RESPECTFULLY SHEWETH:

PRELIMINARY OBJECTIONS:-

Khyber Pakhtukhwa Service Tribunal
Diary No. 6928
Dated 09/08/23

i. That the appeal is not based on facts.
ii. That the appeal is barred by law and limitation.
iii. That the appeal is not maintainable in the present form.
iv. That the appeal is bad for mis-joinder and non-joinder of necessary and proper parties.
v. That the appellant is estopped to file the instant appeal by his own conduct.
vi. That the appellant has not come to this Honorable Tribunal with clean hands.
vii. That the instant Service Appeal is badly time barred.
viii. That the appellant has got no cause of action and locus standi to file the instant Service Appeal.

FACTS

1. Pertains to service record of the appellant.
2. Incorrect, the appellant while deputed for challan duty and to produce hardened criminals including accused Najeeb Ullah s/o Taj Ali Khan r/o Civil Lines District Tank involved in case FIR No. 35 dated 30.03.2022 u/s 302/324/353/120-B/4-5 ESA/15AA/7 ATA PS CTD DI Khan. During Police custody the said accused made escape from the Police party due to his negligence & carelessness as such proper case has been registered against the above official vide FIR No. 729 dated 23.11.2022 u/s 223/224 PPC PS Cantt. The appellant was served with charge sheet & statement of allegations. SP Operations Kohat was appointed as enquiry officer to conduct proper departmental enquiry and to submit his finding with reasonable period. The appellant was found guilty of gross misconduct and the enquiry officer recommended the appellant for major punishment. After fulfillment of all codal formalities the appellant was awarded major punishment of dismissal from service vide Order dated 22.12.2022.
3. Incorrect, as already explained above. The appellant was found guilty of gross misconduct as he badly failed to perform his official duty. The accused escape from the custody of appellant. Therefore, the appellant was proceeded against departmentally and after conclusion of enquiry he was awarded major punishment of dismissal from service vide Order dated 22.12.2022.

4. Incorrect, as already explained in preceding Paras.
5. Incorrect, the appellant is not aggrieved. In fact the appellant has been punished on his gross misconduct. On the departmental appeal of the appellant the appellant was heard in person on 14.02.2023 in the office of Regional Police Officer, Kohat wherein the appellant badly failed to advance any plausible grounds in rebuttal of charges. Furthermore, escape of a prisoner/ accused from Police custody either due to negligence or collusion is the most unjustifiable offence and must not be condoned therefore, the departmental appeal was rejected vide Order dated 22.02.2023. The instant appeal of the appellant is liable to be dismissed on the following grounds.

GROUNDS

A. Incorrect, as already explained above that the appellant was found guilty of gross of misconduct therefore, the order of dismissal is in accordance with law/ rules.
B. Incorrect, as already explained in preceding Paras.
C. Incorrect, misleading and misconceived, as already explained above that accused made escape from the custody of Police on account of negligence of the appellant. The appellant was proceeded against departmentally and the appellant was found guilty of gross misconduct. Therefore, he was awarded with major punishment of dismissal from service.
D. Incorrect, the enquiry officer recommended the appellant for major punishment. In fact the appellant badly failed to advance any plausible grounds in rebuttal of charges.
E. Incorrect, as already explained in preceding Paras.
F. Incorrect, as already explained in detail in Paras No. 2 & 3.
G. Incorrect, misleading and misconceived, the appellant badly failed to advance any plausible grounds in his self-defense.
H. Incorrect, the appellant showed negligence due to which the accused escaped from the custody of Police.
I. Incorrect, the appellant is blaming respondents. The appellant showed negligence in performance of official duty due to which the accused escaped from the Police custody. This kind of negligence always brings bad image of Police towards general public.
J. Incorrect, the respondents neither violated fundamental rights of the appellant nor violated any Article of Constitution of Islamic Republic of Pakistan, 1973.
K. Incorrect, as already explained in preceding Paras.
L. Incorrect, as already explained above in detail.
M. As already explained in Para No. 2 of Facts.
N. Incorrect, misleading and misconceived, let the appellant to prove this Para.
O. Incorrect, the appellant was proceeded against departmentally in accordance with law/ rules. Proper enquiry conducted wherein the appellant was found guilty of gross misconduct.

P. Incorrect, no violation of Constitution of Islamic Republic of Pakistan exist on part of answering respondents.

Q. Incorrect and misconceived, the criminal case proceedings and departmental proceedings are distinct in nature, can run side by side.

R. Incorrect, all codal formalities have been adopted by answering respondents during course of departmental enquiry.

S. Incorrect, as already explained above.

T. Incorrect, no violation of law/ rules exist on part of answering respondents.

U. Incorrect, the enquiry conducted as per law/ rules as well as mandate assigned to respondents.

V. Incorrect, as already explained above in detail.

W. Incorrect, as already explained above, that the appellant was heard in person 14.02.2023 in orderly room wherein the appellant badly failed to advance any plausible grounds in rebuttal of charges.

X. Incorrect, as already explained above that criminal case proceedings and departmental proceedings are distinct in nature and both can run side by side. Furthermore, the appellant found guilty of gross misconduct therefore, he was awarded major punishment of dismissal from service.

Y. Incorrect, the appellant is not eligible to be reinstated because he has shown such negligence due to which accused escaped from the custody of Police.

Z. Incorrect, all codal formalities adopted by respondents and after which the major punishment of dismissal from service was given to the appellant.

AA. Incorrect, misleading and misconceived, the appellant is not eligible to be reinstated in service again.

BB. The answering respondents may also be allowed to adduce additional grounds at time of hearing of instant Service Appeal.

PRAYER:-

Keeping in view the above stated facts and circumstances, it is therefore humbly prayed that the appeal is not maintainable being devoid of merits hence, may kindly be dismissed with costs, please.

Regional Police Officer,
Kohat
(Respondent No. 2)

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

District Police Officer,
Kohat
(Respondent No. 3)

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COUNTER AFFIDAVIT

We, the below mentioned respondents, do hereby solemnly affirm and declare on oath that contents of parawise comments are correct and true to the best of our knowledge and belief. Nothing has been concealed from this Hon: Tribunal.

Regional Police Officer,
Kohat
(Respondent No. 2)

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

District Police Officer,
Kohat
(Respondent No. 3)

SAJID AHMED KHAN ADVOCATE
ATTESTED
OATH COMMISSIONER
DISTRICT COURT KOHAT

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Office of the District Police Officer, Kohat

No 10839-40/PA

Dated 24-11-/2022

CHARGE SHEET

I, **SHAFI ULLAH KHAN, DISTRICT POLICE OFFICER, KOHAT,** as competent authority under Khyber Pakhtunkhwa Police Rules (amendments 2014) 1975, am of the opinion that you **IHC Inayat Shah No. 678** rendered yourself liable to be proceeded against, as you have omitted the following act/omissions within the meaning of Rule 3 of the Police Rules 1975.

i. ***That you IHC Inayat Shah No. 678 was deputed for Challan duty and to produce hardened criminals including accused Najeeb Ullah s/o Taj Ali Khan r/o Civil Lines district Tank involved in case FIR No. 35 dated 30.03.2022 u/ss 302,324,353,120-B,4/5 ESA,15 AA, 7-ATA PS CTD D.I. Khan at ATC Kohat.***

ii. ***That during Police custody the said accused made good escape due to your negligence & irresponsibility as such proper case has been registered against you vide FIR No. 729 dated 23.11.2022 u/ss 223,224 PPC PS Cantt.***

2. By reasons of the above, you appear to be guilty of misconduct under Rule 3 of the Rules ibid and have rendered yourself liable to all or any of the penalties specified in the Rule 4 of the Rules ibid.

3. You are, therefore, required to submit your written statement within 07days of the receipt of this Charge Sheet to the enquiry officer.

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 ex-parte action shall be taken against you.

4. A statement of allegation is enclosed.

DISTRICT POLICE OFFICER,
KOHAT

Received by

DI 30.11.2022

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OFFICE OF THE
DISTRICT POLICE OFFICER,
KOHAT

ORDER

This order will dispose of departmental enquiry against IHC Inayat Shah No. 678 of this district Police under the Khyber Pakhtunkhwa, Police Rules, 1975 (amendment 2014).

Brief facts of the case are that IHC Inayat Shah No. 678 was deputed for Challan duty and to produce hardened criminals including accused Najeeb Ullah s/o Taj Ali Khan r/o Civil Lines district Tank involved in case FIR No. 35 dated 30.03.222 u/ss 302,324,353,120-B, 4/5 ESA, 15 AA, 7-ATA PS CTD D.I. Khan at ATC Kohat.

That during Police custody the said accused made good escape from the Police party due to his negligence & carelessness as such proper case has been registered against the above official vide FIR No. 729 dated 23.11.2022 u/ss 223,224 PPC PS Cantt.

He was served with charge sheet & statement of allegations. SP Operations Kohat was appointed as enquiry officer to conducted proper departmental enquiry and to submit his finding within stipulated period. The accused official was associated with the proceedings and afforded ample opportunity of defense by E.O. The accused official was held guilty of the charges vide finding of the enquiry officer.

In view of the above and available record, I reached to the conclusion that the charged leveled against the accused official is established beyond any shadow of doubt and retention of such like element in a discipline force is not desirable and shall earned bad name to Police. Therefore, in exercise of powers conferred upon me under the **rules ibid** I, Abdul Rauf Babar District Police Officer, Kohat impose a major punishment of **dismissal from service on accused IHC Inayat Shah No. 678**. Kit etc be collected and report.

DISTRICT POLICE OFFICER,
KOHAT

OB No. 781
Date 22-12 /2022
No 11640-41/PA dated Kohat the 22-12- 2022.

Copy of above to the R.I/Reader/SRC/OHC for necessary action.

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بیان آزاں میاں عنایت شاہ 678/LHC متعینہ پولیس لائن

مورخہ 23/11/2022 کو حسب معمول میری لائن سے چالان ڈیوٹی ڈسٹرکٹ جیل کوہاٹ سے کچہری ملزمان لینے کے لیے لگائی گئی تھی۔ عرصہ تقریباً 2 ماہ سے میں پولیس لائن میں ہوں اور حسب معمول چالان ڈیوٹی کے دوران میں اپنی رہائش کمرہ سے سیدھا کچہری جا کر وہاں پر حوالات کی صفائی چابیاں اور پانی کی بندوست کرتا ہوں۔ جب انچارج صاحبان اور پولیس نفری ملزمان لا کر جوڈیشل حوالات میں بند کرتے ہیں۔ اور بعد میں جب ملزمان واپس جیل چلے جاتے ہیں تو میں حوالات کو چیک کرے بند کرتا ہوں۔ اور حوالات کی چابیاں دینے مقررہ کردہ جگہ پر رکھ کر واپس اپنے رہائش جگہ جاتا ہوں۔

چونکہ بروز وقوع ملزمان پولیس نفری سے لا کر حوالات میں بند کی اور لے جاتے وقت گنتی کے دوران نفری نے ظاہر کیا کہ ایک ملزم فرار ہو چکا ہے۔

چونکہ میں نے اپنی ڈیوٹی خوش اسلوبی کے ساتھ کی ہے اور ہی مجھے یہ علم ہے کہ جیل سے کتنے ملزمان لائے ہیں۔ اور بعد میں معلوم ہوا کہ ایک ملزم فرار ہو چکا ہے۔

جس میں میری کوئی غفلت شامل نہیں ہے۔ کیونکہ مقررہ کردہ ڈیوٹی میں احسن طریقے سے ادا کی ہے۔ میں بے گناہ ہوں۔ بس میرا یہ بیان ہے۔

میاں عنایت شاہ 678/LHC متعینہ پولیس لائن

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ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ ۱۵۴ مجموعہ ضابطہ فوجداری

تھانہ	ضلع تنہاٹ
729	تاریخ وقت رپورٹ
۲۸ ۲۳ وقت ۱۵:۵۵	تاریخ وقت وقوعہ
۲۸ ۲۳ وقت ۱۵:۵۵	نام و سکونت اطلاع دہندہ، مستغیث (اگر ہو) ای میل فون نمبر
شاہ نواز ولد [illegible] قانون گو	کیفیت جرم (معہ دفعہ) حال اگر کچھ لیا گیا ہو۔
PPC 223-224	کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو بیان کرو
[illegible]	سکونت ملزم
[illegible]	اگر کوئی مال مسروقہ ہو تو بتایا جائے
[illegible]	وقت روانگی کی جگہ سے وقت

ابتدائی اطلاع نیچے درج کرو۔ ایک عورتی مراسلہ بمقام شاہ [illegible]

[illegible] کرنا ہوگی کیلئے روانہ ہونے [illegible] ہوائی اڈہ [illegible]
جو شیڈول بکنگ اجناح کو سیٹ رکھتی کیا جائے وہ [illegible]
ستاہ دوران سفر [illegible] 23-11 [illegible]
[illegible] درج ہائی [illegible] [illegible]
[illegible] [illegible]
[illegible] [illegible]
[illegible] [illegible]

MAH/PS-comm
23-11-22

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POLICE DEPTT:

KOHAT REGION

ORDER.

This order will dispose of a departmental appeal moved by Ex-IHC Inayat Shah No. 678 of Kohat district Police against the punishment order, passed by DPO Kohat vide OB No. 781, dated 22.12.2022 whereby he was awarded major punishment of **dismissal from service** on the following allegations:-

"The appellant alongwith others was deputed for Challan duty to produce hardened criminal including accused Najeeb Ullah s/o Taj Ali Khan r/o Civil Line district Tank involved in case FIR No. 35, dated 30.03.2022 u/s 302, 324, 353, 120-B, 4/5 ESA, 15-AA, 7-ATA PS CTD, D.I.Khan at ATC Kohat. During custody, the said accused made good his escape from Police custody due to negligence & carelessness of Police and a proper case vide FIR No. 23.11.2022 u/ss 223, 224 PPC PS Cantt, Kohat was registered".

Comments as well as relevant record of Ex-IHC Inayat Shah No. 678 were obtained from DPO Kohat. His service record, service profile and all relevant records were perused. He has 08 bad entries and no good entry to his credit. He was also heard in person in orderly room held in this office on 14.02.2023. The appellant was properly seated and was heard patiently.

It is crystal clear from the above facts that the delinquent Police officer miserably failed to perform his duty in a professional manner. Police Rules (1934) 16.37 recommends **"Normal punishment of Dismissal from Service in case of escape from Police custody".** Here it is the escape of a diehard / hardened under trial prisoner Najeeb Ullah s/o Taj Ali Khan r/o Civil Lines district Tank involved in case FIR No. 35, dated 30.03.2022 u/s 302, 324, 353, 120-B, 4/5 ESA, 15-AA, 7-ATA PS CTD, D.I.Khan which escape from Police custody became a headline and dented the reputation of Police amongst the general public. Escape of a prisoner / accused from Police custody either due to negligence or collusion is the most unjustifiable offence and must not be condoned. Any clemency / leniency granted to Police officers accused of committing such offence will further lower the image of Police department in the eyes of the general public. So, I, **Dar Ali Khan Khattak, PSP, Regional Police Officer, Kohat Region** hereby **reject** the instant appeal in exercise of powers conferred upon me under Police Rules 1975, amended 2014 Rules, Section- 11(2) and endorse the punishment of dismissal of service awarded to the appellant Inayat Shah No. 678 (Ex-IHC) by DPO / Kohat.

Order Announced
14.02.2023

(DAR ALI KHAN KHATTAK) PSP
Region Police Officer,
Kohat Region.

No. 2220 /EC, dated Kohat the 24/2/2023.

Copy to District Police Officer, Kohat for information and necessary action w/r to his office Memo: No. 1027/LB, dated 03.02.2023. His Service Record is returned herewith.

(DAR ALI KHAN KHATTAK) PSP
Region Police Officer,
Kohat Region.

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Service Appeal No. 731/2023

Inayat Shah
Ex- IHC Kohat ..... (Appellant)

VERSUS

Inspector General of Police,
Khyber Pakhtunkhwa etc .....(Respondents)

AUTHORITY LETTER

Mr. Arif Saleem steno (Focal Person) of this office is hereby authorized to file the parawise comments and any other registered documents in the Honorable Tribunal on behalf of respondents / defendant and pursue the appeal as well.

District Police Officer,
Kohat
(Respondent No. 3)