

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 792/2022.

Muhammad Saleem S/O Mutaz Khan R/O Kukkaray, Swat.....Appellant.

VERSUS

1. Deputy Commandant, FRP
Khyber Pakhtunkhwa, Peshawar.
2. Commandant, FRP
Khyber Pakhtunkhwa, Peshawar.....Respondents

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RESPONDENTS

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VERSUS

1. Deputy Commandant, FRP
Khyber Pakhtunkhwa, Peshawar.
2. Commandant, FRP
Khyber Pakhtunkhwa, Peshawar.....

Khyber Pakhtunkhwa
Service Tribunal

Case No. 6758

Dated 8/07/23

Respondents

PARAWISE REPLY BY RESPONDENTS 1 & 2.

RESPECTFULLY SHEWETH.

PRELIMINARY OBJECTIONS:-

1. That the appeal is badly barred by law & limitation.
2. That the appeal is bad for mis-joinder and non-joinder of necessary and proper parties.
3. That the appellant has no cause of action and locus stand to file the instant appeal.
4. That the appellant has not come to this Honorable Tribunal with clean hands.
5. That the appellant is estopped due to his own conduct to file the instant Service Appeal.
6. That the appellant is trying to conceal the material facts from this Honorable Tribunal.

FACTS:-

1. Para No.1 Pertain to the appellant record needs no comments.
2. Pertain to record.
3. Correct to the extent that the appellant while posted for emergency duties at District Swat deserted/absented himself from lawful duties with effect from 03.06.2008 till the date of his removal from service i.e 21.10.2008 for total period of 04 months and 18 days, without any leave or prior permission of the competent authority.
4. Incorrect, the appellant was deserted from his official duty by showing extreme cowardice act and intentionally remained absent from lawful duties with effect from 03.06.2008 till the date of his removal from service i.e 21.10.2008, without prior permission or leave, while his other colleagues bravely faced with every odd and paid their assigned duties in letter with spirit for maintaining the law and order situation in the area.
5. Incorrect, on the allegations of willful absence he was served with Charge Sheet alongwith Statement of Allegations and Mr. Tahir Khan the then RI was nominated as Enquiry Officer to conduct departmental enquiry against him and after fulfillment of codal formalities he was removed from service.

Moreover, the appellant was well known about his removal from service and it is evident from Charge Sheet and Show Cause Notice as well.

6. Correct, to the extent that departmental appeal submitted by the appellant was thoroughly examined and rejected on sound grounds.
7. Incorrect, that a copy of rejection order has already been indorsed to the appellant on his home address vide Endst: No. 5483-84/EC, dated 23.07.2010. (Copy attached as annexure "A").
8. Incorrect: That all deserters' officials of Police Force, including the appellant who deserted from their duties by showing extreme cowardice were proceeded against departmentally and finally all of them had been removed from service after adopting all codal formalities. Later on in the light of directions of the high ups the all ex-officials concerned to Malakand Range including the appellant were called for joining their duties. Thus those Ex-officials who came back within stipulated period were reinstated in service. But the appellant did not turn up and disappeared for a long period about more than 16 years, which he deliberately failed to avail the opportunity of reinstatement in service.
9. Incorrect, the cases mentioned by the appellant in the Para are not at par with the case of the appellant. It is pertinent to mention here that every case has got its own and peculiar facts and merits. Therefore, anticipating similar result in case with diverse facts would amount to miscarriage of justice as the entire building cannot be tarred with one and the same brush.


GROUND:-

1. Pertain to the appellant record. However the appellant while posted for emergency duty at Swat remained absent from his lawful duty without prior permission or valid leave.
2. Incorrect. The Police Force is legally obligated to perform the duty in all situation for maintaining of law & order situation in the area, while the appellant deserted/absented himself from his assigned duty by showing extreme cowardice act and intentionally remained absented himself from lawful duties with effect from 03.06.2008 till the date of his removal from service i.e 21.10.2008 for total period of 04 months and 18 days, without any leave or prior permission of the competent authority. Moreover, the appellant was being a member of Police Force instead to protect life, property and liberty of citizen absconded himself from his assigned duty.
3. Incorrect. As explained in the preceding Paras of facts that all ex-officials concerned to Malakand Range including the appellant were called for joining their duties. Thus those Ex-officials who came back within stipulated period were reinstated in service. But the appellant deliberately failed to avail the opportunity of reinstatement in service.

4. Incorrect. As the appellant was remained absent from duty for a long period of 04 months and 18 days and after adopting the laid down procedure as per law, he was removed from service.
5. Incorrect. As the appellant was willfully remained absent from his lawful duty without any leave or prior permission of the competent authority. The willful absence from duties and that too at a critical time was absolutely unwarranted and contrary to police Rules 1934 read with Police disciplinary Rules 1975 amended in 2014. Moreover, the eligible/entitled Ex-officials who were come back in the earliest were reinstated into service by the respondents and Honorable Tribunal on merit basis. After lapse of more than 15 years the appellant is not deserved/entitled for reinstatement in service.
6. Incorrect. The appellant was remained absented himself from lawful duties without prior permission of the competent authority. In this regard proper departmental enquiry was initiated against him as he was issued Charge Sheet alongwith Summary of Allegations and Muhammad Tahir Khan the then RI was nominated as Enquiry Officer to conduct proper enquiry against him. The Charge Sheet was served upon his brother namely Muhammad Alam S/o Mumtaz, through special messenger on his home address, but he failed to submit his reply before the Enquiry Officer. (Copy of charge sheet attached herewith as annexure "B"). After completion of enquiry the Enquiry Officer submitted his findings, wherein the appellant was found guilty of the charges leveled against him and recommended for ex-pate action. (Copy of enquiry report attached herewith as annexure "C"). Upon the findings of Enquiry Officer, he was issued Final Show Cause Notice and served upon his father namely Mumtaz through special messenger and his signature was obtained as token of its receipt, but the appellant deliberately failed to submit his reply. (Copy of Show Cause Notice attached herewith as annexure "D"). Thus after fulfillment of all codal formalities required the appellant was awarded major punishment of removal from service as per law/rules.

PRAYERS:-

It is therefore, most humbly prayed that in the light of aforesaid facts/submission the instant service appeal may kindly be dismissed with cost.


Deputy Commandant, FRP,
Khyber Pakhtunkhwa, Peshawar
(Respondent No.1)


Commandant, FRP,
Khyber Pakhtunkhwa, Peshawar
(Respondent No.2)

ORDER.

C 7 2 A

This order shall dispose off on the appeal of
Constable Muhammad Saleem No.4067 of FRP HQrs against the order of
Deputy Commandant FRP NWFP wherein he was removed from service.

Brief fact of the case is that while he was absent without leave
duty with effect from 03.06.08 till the date of removal from service without any
leave/permission of the competent authority for a total period of 04 months and
10 days. He was issued charge sheet/statement of allegation and 23.07.08
Peshawar was appointed as enquiry officer. After conducting enquiry the enquiry
officer submitting findings wherein the above named official was recommended for
ex-parte action.

Due to his absence as well as recommendation of enquiry
officer he was removed from service from the date of his absence 03.06.08
Commandant FRP NWFP Peshawar vide his CB No. 1040 dated 23.07.08.

However, from the perusal of record and findings of
Enquiry Officer, there are no cogent reasons to interfere in the order of Deputy
Commandant FRP Peshawar. Therefore his appeal is rejected.

[Signature]
Addl: Inspector General of Police
Commandant Frontier Reserve Police
Khyber Pakhtoonkhwa Peshawar.
[Signature]
23/7

No. 5483-84 /EC dated Peshawar the 23 /07/10.

Copy of above is forwarded for information and record.

Attested
[Signature]

1. Ex-Constable Muhammad Saleem No Muntaz (No Iskanai Mangora District Swat.
2. ✓ SRC FRP HQrs: Peshawar.

ORDER.

This order shall dispose off on the appeal preferred by Ex-constable Muhammad Saleem No. 4067 of FRP HQrs; against the order of Deputy Commandant FRP NWFP wherein he was removed from service.

Brief fact of the case is that while he absented himself from duty with effect from 03.06.08 till the date of removal from service without any leave/permission of the competent authority for a total period of **04 months and 10 days**. He was issued charge sheet/statement of allegation and RI FRP HQrs; Peshawar was appointed as enquiry officer. After conducting enquiry, the enquiry officer submitted findings wherein the above named official was recommended ex-parte action.

Due to his absence as well as recommendation of enquiry officer he was removed from service from the date of his absence by the Deputy Commandant FRP NWFP Peshawar vide OB NO. 1046, dated 22.10.2008.

However, from perusal of record and findings of the enquiry officer, there are no cogent reason to interfere in the order of Deputy Commandant FRP Peshawar. **Therefore, his appeal is rejected.**

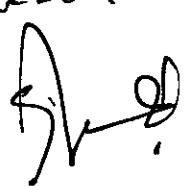
-Sd-

**Add: Inspector General of Police,
Commandant Frontier Reserve Police,
Khyber Pakhtunkhwa, Peshawar.**

No. 5483-84 /EC, dated Peshawar 23 / 07 / 10.

Copy of the above is forwarded for information and n/a to:-

1. Ex-constable Muhammad Saleem S/o Mumtaz R/o Rokarai Mangora,
District Swat.
2. SRC FRP HQrs; Peshawar.

Attested


⑥ R. B. 3
11/7/08

CHARGE SHEET

I, Raja Naseer Ahmed, Deputy Commandant, FRP, NWFP, Peshawar as competent authority, hereby charge you Constable Salceem, No. 4067 of FRP/IQrs.

That you while posted in FRP/IQrs have committed the following misconducts:-

(a) (Attached allegations)

2. By reason of the above, you appear to be guilty of the charge/misconduct under the NWFP Removal from Service (Special Powers) Ordinance 2000 and have rendered yourself liable to all any of the penalties specified in section-3 of the said Ordinance *ibid*.

3. You are therefore, required to submit your defence within seven days of the receipt of this Charge Sheet to the Enquiry Officer/Committee, as the case may be.

4. 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.

5. Intimate whether you desire to be heard in person.

6. A statement of allegation is enclosed.

Deputy Commandant,
Frontier Reserve Police,
N.W.F.P Peshawar.

Master
[Signature]

12/6/08

Deputy Superintendent
Admin. Dept. NWFP
196
13/06/08

9 e B/2 3

SUMMARY OF ALLEGATIONS

I, Raja Nascer Ahmed, Deputy Commandant, FRP, NWFP, Peshawar as competent authority, am of the opinion that Constable Salcem, No.4067, of FRP/IIQrs, Peshawar, has rendered himself liable to be proceeded against as he committed the following misconduct within the meaning of section-3 of the NWFP Removal from service (Special Powers) Ordinance, 2000:-

STATEMENT OF ALLEGATIONS

WHEREAS you Constable Salcem, No.4067, of FRP/IIQrs, Peshawar, remained absent from duty w.c. from w.c. from w.c. from 03-06-2008 till-to date without taking any leave/permission of the competent authority.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations, an enquiry committee consisting of the following is constituted under section-5 of the Ordinance:-

Mr. Muhammad Tahir Khan, RI/FRP/IIQrs, Peshawar.

3. The Enquiry Committee shall, in accordance with the provision of the Ordinance provide reasonable opportunity of hearing to the accused, record its findings and make within twenty five days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the enquiry committee.

Handwritten signature

Dy. Commandant,
Frontier Reserve Police,
N.W.F.P Peshawar.

12/6/08

Deputy Superintendent
Admin. FRP/IIQ
12/06/08

ن 7/4 اور ممتاز خان مسٹر منگڑہہ تبلیغ لکھنؤ

P/89 سولہ کوکارتے۔

تاریخ جون 2004

حضرت عالی! چونکہ برادر ارحم صاحب کو پھر موجود نہ ہے لہذا اسکے لیے
میں نے ایک عدد چارج سید اور ایک عدد سہری آن انجیشن

وصول کیا اور ^{موجودہ} تمام رقم ممتاز خان کو کالی

8-8-80

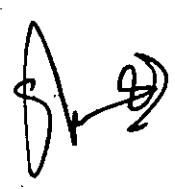
انٹوائری رپورٹ

بشمول تمام انٹوائری اڈا کیٹل جنہیں 4067 عودوں میں سے ایک مذکورہ کیٹل
 لغزی کی ضرورت پڑنے پر تھکانہ رجیم آباد ضلع سوات سے بحال 30 نومبر 03/08 سے غیر حاضر ہوا
 ملک وزارت لغرض کارروائی اسٹران بالا عہدوں کو ارسال کی گئی جس پر ضابطہ کی تکمیل
 عہدوں نے مذکورہ کو حاج ٹیٹ ڈسٹریکٹ انٹوائری کے ذریعہ انٹوائری میں ارسال کیا اور
 مذکورہ کیٹل کو سلسلہ عملی مختلف تاریخوں میں مروجہ حالت جاری ہے۔ مگر
 مذکورہ فقیرہ تاریخوں میں دفترنا نہیں آیا۔ پھر بذریعہ 03/08 شکر اللہ مذکورہ کیٹل
 گاؤں کو گاری میں لے کر مذکورہ ضلع سوات جا کر مذکورہ کیٹل گھر خود میں موجود تھا لہذا
 سٹیٹ ڈسٹریکٹ انٹوائری میں مذکورہ کیٹل کے متعلق ڈسٹریکٹ کیٹل کیٹس
 مذکورہ نے ایسی تک نہ چارج ٹیٹ کا جواب دیا ہے اور نہ ہی بیان تکمیل کیٹل
 مذکورہ صوبہ 03/08 سے بدستور غیر حاضر ہے اور آیا ہے۔

فائنل رپورٹ

مذکورہ انٹوائری ایس اس پی کے ذریعہ پانچ یوں، مذکورہ کے ساتھ دیگر سرکاری
 نوکیٹل کی چارج ڈسٹریکٹ کیٹل جس سے صوبہ میں مذکورہ سال 2004 کا نوکیٹل
 لاڈلہ 4545 بوج، ڈسٹریکٹ بوج 25 بوج جبکہ ساتھ غیر ماضی 65 بوج ہے۔ اب مذکورہ
 صوبہ 03/08 سے بدستور غیر حاضر ہے۔ مذکورہ کیٹل کو مختلف تاریخوں میں مروجہ
 جاری ہے۔ مذکورہ فقیرہ تاریخوں میں پیش نہ ہوا۔ پھر بذریعہ 03/08 شکر اللہ
 مذکورہ کیٹل گاؤں جا کر مذکورہ گھر خود میں موجود تھا۔ لہذا مذکورہ کیٹل کے متعلق
 وصول کر کے دستخط کر کے سٹیٹ مذکورہ کیٹل نہ ہی چارج ٹیٹ کا جواب دیا ہے
 اور نہ ہی بیان تکمیل کیٹل ہے۔ لہذا مذکورہ کیٹل نوکیٹل میں دلچسپی نہیں لگائی
 اور نہ ہی ایسی ماضی کی ضرورت لگتی ہے۔ لہذا مذکورہ کیٹل کے خلاف
 صوبہ 03/08 سے بدستور غیر حاضر ہے اور نہ ہی بیان تکمیل کیٹل ہے۔ یا ہی
 اسٹران بہ اصرار ہے۔ انٹوائری رپورٹ صرف ہرگز نہیں گزارا ہے۔

RI/CRP/HA
 15/18/08

Attested


2 "D"

FINAL SHOW CAUSE NOTICE

I, Deputy Commandant Frontier Reserve Police, N.W.F.P, Peshawar, as competent authority, under the North-West-Frontier Province Removal from Service (Spl: Powers) Ordinance 2000, do hereby serve you Constable Muhammad Saleem, No.4067, of FRP/HQrs, Peshawar.

(1)(i). That consequent upon the completion of enquiry conducted against you by RI/FRP/HQrs, for which you were given full opportunity of hearing and.

ii. On going through the findings and recommendations of the Enquiry Officer, the material available on record and other connected papers, I am satisfied that you have committed the following acts/omissions specified in section-3 of the said ordinance:-

WHEREAS You Constable Muhammad Saleem, No.4067, of FRP/HQrs, Peshawar, remained absent from duty w. e. from 03-06-2008 till-to date without taking any leave/permission of the competent authority.

(2) As a result therefore, I, AWAL KHAN, Dy: Commandant, FRP, NWFP, Peshawar, as competent authority has tentatively decided to impose upon you Major /Minor Penalty including dismissal from service under section-3 of the said ordinance.

(3) You are therefore, require to Show Cause as to why the aforesaid penalty should not be impose upon you.

(4) If no reply to this Final Show Cause Notice is receive within fifteen days of it delivered, in the normal course of circumstances, it shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

(5) The copy of the findings of the Enquiry Officer is enclosed.

دستور العمل کے مطابق
ایک عدد کاغذی دستاویز

Awal Khan

Deputy Commandant,
Frontier Reserve Police,
N.W.F.P Peshawar

g

محمد اسحاق

02/10/08

Abdul
D. Z.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 792/2022.

Muhammad Saleem S/O Mutaz Khan R/O Kukkaray, Swat.....Appellant.

VERSUS

1. Deputy Commandant, FRP
Khyber Pakhtunkhwa, Peshawar.
2. Commandant, FRP
Khyber Pakhtunkhwa, Peshawar..... Respondents

AFFIDAVIT

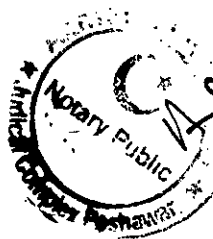
We respondents No. 1 to 2 do hereby solemnly affirm and declare on oath that the contents of the accompanying Para-wise Comments is correct to the best of our knowledge and belief that nothing has been concealed from this Honorable Court.

It is further stated that on oath in this appeal the answering respondents have neither been placed ex. party nor their defence is struck off/lost.

M. Q. M.
Deputy Commandant FRP,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 01)

A. M. S.
Commandant FRP,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 02)

ATTESTED



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 792/2022.

Muhammad Saleem S/O Mutaz Khan R/O Kukkaray, Swat.....Appellant.


VERSUS


1. Deputy Commandant, FRP
Khyber Pakhtunkhwa, Peshawar.
2. Commandant, FRP
Khyber Pakhtunkhwa, Peshawar..... Respondents

AUTHORITY LETTER

Respectfully Sheweth:-

We respondents No. 1 to 2 do hereby solemnly authorize Mr. Ghassan Ullah ASI FRP HQrs; to attend the Honorable Tribunal and submit affidavit/Para-wise comments required for the defense of above Service Appeal on our behalf.


Deputy Commandant FRP,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 01)


Commandant FRP,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 02)