

BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

Service appeal No.721/2023

Sartaj Khan S/O Muhammad Ajmal Khan EX-constable No.248 Traffic Police
Peshawar

(Appellant)

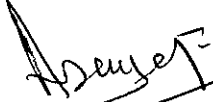
V/S

Capital City Police Officer (CCPO) Peshawar & others

(Respondent)

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DY: Superintendent of Police Legal
City Traffic Police
Peshawar.

①

Before the Honorable Service Tribunal Khyber Pakhtunkhwa, Peshawar

Service appeal No.721/2023

Sartaj Khan S/O Muhammad Ajmal Khan EX-constable No.248 Traffic Police Peshawar

(Appellant)

V/S

Capital City Police Officer (CCPO) Peshawar & others

(Respondent)

Para-wise reply by respondent 1, 2, & 3

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 7448

Dated 12/09/23

Respectfully Sheweth:-

Preliminary objections

1. That the appeal is badly barred by law & limitation.
2. That appeal is bad for mis-joinder and non-joinder of necessary and proper parties.
3. That the appellant has not come to this honorable Tribunal with clean hands.
4. That the appellant has no cause of action and locus standi to file instant appeal.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from his honorable Tribunal.
7. That this tribunal lacks jurisdiction to adjudicate upon the matter.

Facts:-

1. Correct that appellant is serving as constable in Police Department Khyber Pakhtunkhwa, District Peshawar.
2. Correct that respondents are the administrating staff & authority responsible for supervision, operation & management of Police in District Peshawar.
3. Correct to the extent that appellant is performing duty in City Traffic Police Peshawar & was charged in case FIR No.447 dated 02-04-2020 u/s 302,324,458,460,148,149 PPC registered at Police Station Mathra Peshawar & in case FIR No.18 dated 05-01-2020 u/s 324 PPC, Police Khazana, Peshawar.
4. Pertains to record, hence no comments.
5. Correct to the extent that enquiry officer submitted his report before the respondent No.03 & awarded major punishment of Dismissal from service vide office order No.624-87/PA dated Peshawar 29-12-2020 (Copy of charge sheet and order of SP HQRS is attached as annexure-A)
6. Pertains to record, hence no comments.
7. Correct to the extent that respondent No.01 reinstated the appellant in service with immediate effect & the period he remained out of service is treated as leave without pay on datum "No work no pay" (Copy of order of CCPO Peshawar is attached as annexure-B).
8. That the service appeal of the appellant is devoid of any merit & may kindly be dismissed on the following grounds.

Grounds:-

- A. Incorrect, the order of the respondent No.01 is based on facts, justice & in accordance with law/rules.
- B. Incorrect, the respondent No.01 didn't ignore the appellant's acquittal from the charged leveled against him and reinstated in service with letter & spirit.

(2)

- C. Incorrect, respondent No.01 reinstated the appellant in service with immediate effect & the period he remained out of service is treated as leave without pay on famous datum of Supreme Court of Pakistan 2003 SCMR 228 i.e. "No work no pay" (Copy of Judgment of the Apex court is attached annexure-C).
- D. Incorrect, appellant does not apparently taking interest in performing his official duties & respondent Department also issued last warning to be careful in future in performing of his official duties on 09-06-2023 (copy of warning sheet is attached as annexure-D).
- E. Incorrect, as explained in Para "C" of grounds.
- F. Incorrect, actions of the official respondents are in accordance with the constitution of Pakistan 1973 and there is no discriminations on Parts of respondents & decided the instant matter in accordance with rules/law.
- G. Respondents may kindly be allowed to raise additional grounds at the time of hearing of appeal.

PRAYER:-

It is therefore, most humbly prayed that in light of the above facts and submissions, the appeals of appellant being devoid of merit may kindly be dismissed with heavy cast.

(SUPERINTENDENT OF POLICE HQRS)
City Traffic Police
Peshawar.

~~Capital City Police Officer~~
Peshawar

~~Inspector General of Police~~
Khyber Pakhtunkhwa

3

BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

Service appeal No.721/2023.

Sartaj Khan S/O Muhammad Ajmal Khan EX-constable No.248 Traffic Police
Peshawar

(Appellant)

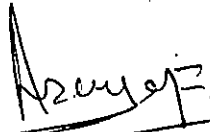
V/S

Capital City Police Officer (CCPO) Peshawar & others

(Respondent)

AFFIDAVIT ON BEHALF OF RESPONDENTS

I, Amir Siyaf DSP Legal City Traffic Police Peshawar do hereby solemnly affirm on oath that the contents of written comments are true and correct to the best of my knowledge and belief. Nothing has been concealed from honorable service Tribunal. It is further stated on oath that in this appeal, the answering respondent has neither been place ex-parte nor has their defense been struck off.


DY: Superintendent of Police Legal
City Traffic Police
Peshawar.



08-09-23



OFFICE OF THE
CHIEF TRAFFIC OFFICER,
CITY TRAFFIC POLICE PESHAWAR
091-9225361,
ctopeshawar@ptpkp.gov.pk

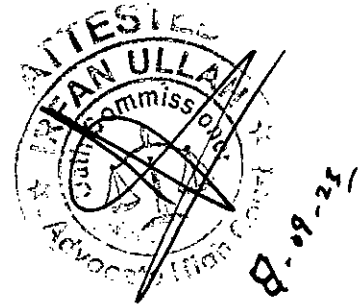
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AUTHORITY LETTER

I, Qamar Hayat, Chief Traffic Officer (CTO), Peshawar hereby Authorize Mr. Amir Sayaf, DSP Legal City Traffic Police Peshawar to attend service appeal No.721/2023 titled Sartaj Khan v/s the Capital City Police Officer (CCPO) Peshawar and others to submit Para-wise comments pertaining to this office in the Khyber Pakhtunkhwa Service Tribunal, on behalf of the undersigned.


CHIEF TRAFFIC OFFICER,
PESHAWAR.



CHARGE SHEET

(A) (5)

1. WHEREAS I am satisfied that a formal enquiry as contemplated by Police Rule 1975 is necessary and expedient.

2. AND whereas, I am of the view that the allegations if established would call for major/minor penalty, as defined in Rule-3 of the aforesaid Rules.

3. Now therefore, as required by Rule 6 (1) (a) & (b) of the said Rules, I, WASEEM AHMAD KHALIL, Chief Traffic Officer, Peshawar hereby charge you HCTO Supt. Khan No.248 under Rules 5 (4) of the Police Rules 1975 on the basis of following allegations:-

i) That you were involved in criminal case vide FIR No.447, dated 03.04.202 U/S 302/324/458/460/148/149 PPC, PS Mallra, Peshawar.

4. By doing this you have committed gross misconduct on your part.

5. AND I hereby direct you further under Rule 6 (i) (b) of the said Rules to put-written defence within 07-days of the receipt of this Charge Sheet as to why if proposed action should not taken against you and also state whether you desire to be heard in person.

6. AND in case your reply is not received within the stipulated period to the enquiry officer, it shall be presumed that you have no defence to offer and in that case, ex parte action will be taken against you.

(Signature)
(WASEEM AHMAD KHALIL)
CHIEF TRAFFIC OFFICER,
PESHAWAR.
(Competent Authority) 15/8

(Signature)
Deputy Superintendent of Police Legal
City Traffic Police,
Peshawar.

6

ORDER

This is an order on the departmental enquiry initiated against Constable Sartaj Khan No.248 for involvement in case FIR No.447, dated 03.04.2020 U/S 302/324/458/460/148/149 PPC, PS Urmar, district Peshawar. He was charge sheeted and DSP/Cantt. Traffic was nominated as Enquiry Officer to conduct formal departmental proceedings under the Khyber Pakhtunkhwa Police Rules 1975 and submit his finding.

He submitted his reply to the charge sheet stating therein that a fight incident took place between his relatives and the opponent party, at about 3 km away from his village. He also told that he was unaware of the whole incident but during midnight at 02 am while sleeping, SHO Mathra along with police party raided his house and arrested him and his brother falsely implicated by the opponent party in the FIR in which 4 persons were died and 05 other injured. The Enquiry officer recorded statements of Police officials and other relevant people and came to the conclusion that he had failed to prove his innocence, therefore, recommended him for suitable punishment as the accused constable is in jail who was arrested by the local police immediate after the occurrence.

Besides the above case, the accused constable had also been involved in case vide FIR No.18, dated 05.01.2020 U/S 324 PPC, PS Khazana, and a departmental enquiry had also been conducted against him. Keeping in view recommendation of the Enquiry Officer as well as the case file, Constable Sartaj Khan No.248 is awarded major punishment of Dismissal from Service under the Khyber Pakhtunkhwa Police Rules 1975 with immediate effect.

Order announced.

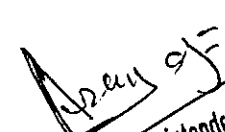

SUPERINTENDENT OF POLICE, HQRS.
CITY TRAFFIC POLICE, PESHAWAR.

No 684-87 /PA, Dated Peshawar the 29/12 /2020.

Copies for information and necessary action to the:-

1. Chief Traffic Officer, Peshawar.
2. Accountant
3. OSI
4. SRC (along-with complete enquiry file consisting of _____ pages)

O.B No. 751
Date. 31-12-2020


Deputy Superintendent of Police Legal
City Traffic Police,
Peshawar.

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HCPRS



(B) (7)

OFFICE OF THE
CAPITAL CITY POLICE OFFICER,
PESHAWAR

OFFICE OF THE
CHIEF
694
1/3/2023

ORDER.

This order will dispose of the departmental appeal preferred by Ex- Constable Sartaj Khan No. 248 who was awarded the major punishment of "Dismissal from service" under KP PR-1975 (amended 2014) by SP/HQr: City Traffic Police Peshawar vide order No. 684-87/PA, dated 29-12-2020.

2- Short facts leading to the instant appeal are that the accused Constable was proceeded against departmentally on the charges that he while posted at City Traffic Police Peshawar, involved in criminal cases vide FIR No. 447, dated 03.04.2020 u/s 302/324/458/460/148/149 PPC Police Station Mathra Peshawar and FIR No. 18, dated 05.01.2020 u/s 324 PPC Police Station Khzana Peshawar.

3- He was issued proper Charge Sheets and Summary of Allegations by Chief Traffic Officer Peshawar. Two separate inquiries were conducted against him through DSP/HQr: City Traffic Police Peshawar and DSP/Cantt: City Traffic Police Peshawar to scrutinize the conduct of the accused official. The inquiry officers after conducting proper inquiries submitted their findings in which both the enquiry officers recommended that the enquiries may be kept pending till the decisions of the Honourable Courts. On receipt of the findings of enquiry officers the competent authority do not agree with the recommendations of the enquiry officers and awarded him the above major punishment.

4- He was heard in person in O.R and the relevant record along with his explanation perused. During personal hearing the appellant categorically denied the allegations and stated that he was falsely been implicated in the said FIRs. Moreover, the Honourable Courts of Additional Session Judges-XIII & IX Peshawar vide orders dated 28.09.2022 and 16.01.2023 acquitted him of the charges levelled against him in the said FIRs. Keeping in view his plea and other documentary proof, his appeal for reinstatement in service is hereby accepted. The punishment order of SP/HQr: City Traffic Police Peshawar is hereby set aside. **He is hereby reinstated in service with immediate effect. The period he remained out of service is treated as leave without pay.**

534
27-2-2023

(MUHAMMAD IJAZ KHAN) PSP
CAPITAL CITY POLICE OFFICER,
PESHAWAR

No. 201-03 /PA dated Peshawar the 04/02/2023

Copies for information and necessary action to the :-

1. Chief Traffic Officer Peshawar, along with complete inquiry file and Fouji Missil.
2. SP/HQrs City Traffic Police Peshawar.
3. Official Concern.

Asif
Deputy Superintendent of Police Legal
City Traffic Police,
Peshawar.

SAC-11
to n/bt
01/3/23

parties and have also perused the record of the case. It may be pointed out that under the Rules, the said items are liable to duty tax/royalty and for such purpose publication was made under the Rules and in open auction petitioner being highest bidder was given contract and there is nothing on record to show that any Government department is exempted from tax/duty; thus the contention of Syed Ayyaz Zahoor, Advocate for the petitioners has substance. Admittedly the petitioners are extracting Hajri, sand, stone crush from Hub River and other parts of District Larkana which is liable to payment of royalty, therefore, petition is allowed as prayed for. Respondent to pay tax in future and also to pay arrears i.e. w.e.f. 24-2-2001 on the material already extracted by them.

(6) Petition is allowed in the above terms with no order as to costs."

The impugned judgment is not open to exception, as it is well-reasoned and based on the law. There is no material irregularity or illegality.

8. For the facts and reasons stated hereinabove, were are of the considered view, that this petition is without merit and substance, which is hereby dismissed and leave to appeal declined.

Q.M.H./M.A.K./C-64/S

Petition dismissed.

2003 S C M R 228

[Supreme Court of Pakistan]

Present: Syed Deedar Hussain Shah
and Tanvir Ahmed Khan, JJ

Syed NIAZ HUSSAIN SHAH BUKHARI, TECHNICIAN
(PROCESS)---Petitioner

versus

OIL AND GAS DEVELOPMENT CORPORATION LIMITED through
Chairman, OGDC Head Office, Islamabad---Respondent

Civil Petition For Leave to Appeal No.51 of 2002, decided on 11th
September, 2002.

(On appeal from judgment dated 2-11-2001 passed by the Federal
Service Tribunal, Islamabad, in Appeal No.1076(R)CE of 2000)

[Signature]
Deputy Superintendent of Police Legal
City Traffic Police,
Peshawar.

(a) Civil service---

....Pay, entitlement to---When there is no work, there is in no pay. ✓
[p. 231] C

(b) Civil service---

....Salary, refund of---Civil servant after obtaining stay order against his transfer was allowed to continue his duties at original place, where he was paid salary for about three years.---Authority deducted from salary of civil servant the amount paid to him as salary for the period when he remained absent from duty---Service Tribunal dismissed appeal of civil servant---Validity---Civil servant had not performed his duties either at original place or at transferred place, thus, was not entitled to salary---Period for which refund of salary was effected from civil servant was the period for which, he had not worked---When there was no work, there was no pay---Recovery had rightly been effected from civil servant---Impugned judgment was not open to exception as there was no jurisdictional error or misconstruction of facts and law---No substantial question of law of public importance as envisaged under Art. 212(3) of the Constitution was made out---Supreme Court dismissed petition for leave to appeal in circumstances---Constitution of Pakistan (1973), Art. 212(3). [pp. 230, 231] A, B, C, D, E & F

Sadiq Muhammad Warrnich, Advocate Supreme Court and Ejaz Muhammad Khan, Advocate-on-Record (absent) for Petitioner.

Sardar Muhammad Aslam, Dy. A.G. and M.S. Khattak, Advocate-on-Record for Respondent.

Date of hearing: 11th September, 2002.

JUDGMENT

SYED DEEDAR HUSSAIN SHAH, J.---Petitioner seeks leave to appeal against that judgment of the Federal Service Tribunal, Islamabad. (hereinafter referred to as the Tribunal) passed in Appeal No.1076(R)CE of 2000 dated 2-11-2001, whereby appeal filed by the petitioner was dismissed.

2. Briefly stated that facts of the case are that on 4-7-1994, the petitioner was transferred from Missa Kiswal to Peer Koh. He felt that transfer order so issued was mala fide and he was punished being the Union Official of the respondent/Corporation, therefore, he approached the NIRC for restraining the order under Regulation 32 of NIRC Procedure and Functions and Regulations, 1974 and a stay order against his transfer to Peer Koh was granted and he was allowed to continue and perform his duties at Missa Kiswal and also paid his salary that after about 3 years the respondent started deductions from the salary of the petitioner i.e. the amount which had

SCMR

Abdul F
Deputy Superintendent of Police Legal
City Traffic Police,
Peshawar.

recovery has already been effected from the petitioner and that Office Memorandum referred to hereinabove was entirely in accordance with the O.G.D.C. Service Regulations, 1974. It was also pointed out by him that the petitioner in due course of service has already been promoted to his Managerial post.

7. We have considered the arguments of the learned counsel for the parties and have carefully examined the record, which shows that the period for which recovery of refund of the salary was effected from the petitioner was the period for which he did not work. By now, it is settled law that when there is no work there is no pay. The petitioner did not perform his duties as mentioned hereinabove and recovery was rightly effected from him; thereafter, he was promoted to the post of Manager. The impugned judgment is entirely based on proper appreciation of the material available with the Tribunal. We further find that there is no jurisdictional error or misconstruction of facts and law. The impugned judgment is not open to exception. B
C
D

8. Moreover, a substantial question of law of public importance, as envisaged under Article 212(3) of the Constitution, is not made out. E

9. For the facts, circumstances and reasons stated hereinabove, we are of the considered opinion that this petition is without merit and substance, which is hereby dismissed and leave to appeal declined. F

S.A.K./N-100/S — Petition dismissed.

.....
2003 S C M R 231

[Supreme Court of Pakistan]

*Present: Qazi Muhammad Farooq, Rana Bhagwandas
and Abdul Hameed Dogar, JJ*

MUHAMMAD YASEEN---Appellant

versus

THE STATE---Respondent

Criminal Appeal No.109 of 2002, decided on 19th September, 2002.

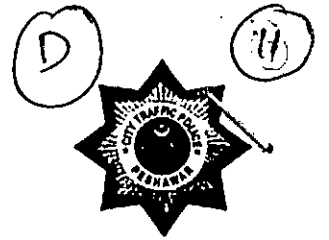
(On appeal from the judgment dated 31-5-2002 of the Lahore High Court, Lahore, passed in Criminal Appeal No.207 of 1996 and Murder Reference No.134 of 1996).

SCMR

Asad JF
Deputy Superintendent of Police Legal
City Traffic Police,
Peshawar.



OFFICE OF THE
CHIEF TRAFFIC OFFICER
CITY TRAFFIC POLICE PESHAWAR
• 091-9225361, ☎ 091-9225368
• ctopeshawar@ptpk.gov.pk



ORDER

Today on 09.06.2023, the undersigned paid a surprise visit to Khyber Road, Peshawar and noticed, the following officials were busy in gossiping with each other and taxi's were standing on the road side created hindrance in smooth flow of traffic and causes inconvenience to the general public:-

1. TO/HC Ikram Ullah No.38 (Peshawar High Court)
2. FC Sartaj Khan No.405 (Lower Court Peshawar)

This shows their lethargic attitude towards their official duties. Therefore, "Last Warning" issued to them to be careful in future, failing which strict departmental action will be initiated against them.

O.B No. 433
Date. 12-08-2023

(QAMAR HAYAT) PSP
CHIEF TRAFFIC OFFICER,
PESHAWAR.

No. 440-44/PA, Dated Peshawar the 09/06/2023.

Copies to the:-

1. SP/Cantt: City Traffic Police, Peshawar.
2. DSP Khyber to supervise their performance.
3. DDIT, City Traffic Police, Peshawar.
- ✓ 4. SRC-II, City Traffic Police, Peshawar
5. OASI/Reader to Chief Traffic Officer, Peshawar.

Adeem J
Deputy Superintendent of Police Legal
City Traffic Police,
Peshawar.