

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.**Service Appeal No.57/2022.**


Ex- Constable Jehangir khan No.2685 of CCP, Peshawar.....Appellant.

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others.Respondents.

I n d e x

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DSP/Legal,
CCP, Peshawar.

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REPLY BY RESPONDENTS NO. 1, 2, &3.

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 not come to Hon'able Tribunal with clean hands.
4. That the appellant has no cause of action and locus standi.
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 Honorable Tribunal.
7. That the appeal is not maintainable being devoid of any merit.

REPLY ON FACTS:-

- (1) Pertains to record.
- (2) Incorrect. The appellant was appointed as constable in the year 2001 in the respondent department. The appellant is a habitual absentee and not interested in his official duty. He has not a clean service record and contains 8 bad entries and 02 Minor punishments on the charges of absence on different occasions in his service. Appeal of the appellant also badly time barred.
- (3) Incorrect. The appellant belongs to village Nodeh Payan Pistakhara Peshawar. Infact the appellant while posted at PS Bahanamari Peshawar absented himself from official and lawful duty w. e. from 18.04.2009 till the date of dismissal from service i.e 10.04.2010 (total 11 months and 22 Days) without prior permission or leave from the competent authority. In this regard he was issued charge sheet with statement of allegations. SDPO Subrub was appointed as enquiry officer. The enquiry officer finalized the enquiry and submitted findings report, wherein the allegations of wilful absence were proved against him. After receipt of the findings report, Final Show Cause Notice was issued to him and sent to him on home address, which he received by himself but he failed to appear and submit reply. After observing all codal formalities, he was awarded major punishment of removal from service.(copy of charge sheet, statement of allegations, enquiry report, Final Show Cause Notice are annexure as A,B,C,D)
- (4) Incorrect. The appellant willfully absented himself from lawful duty without any prior permission or leave. The appellant is a habitual absentee and not interested in official duty and enjoying his long absence period without any leave permission. After fulfilling all the

codal formalities, he was awarded the major punishment of removal from service vide order dated 10.04.2010.


- (5) Incorrect. The appellant preferred time barred departmental appeal against order dated 10.04.2010 after inordinate delay of about 02 months, meaning thereby that he was not interested and his departmental appeal was filed/ rejected on the grounds of facts and limitation vide order dated 05.03.2011.
- (6) That appeal of the appellant being devoid of merits and limitation may be dismissed on the following grounds.

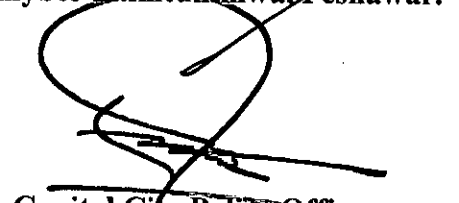
REPLY ON GROUNDS:-

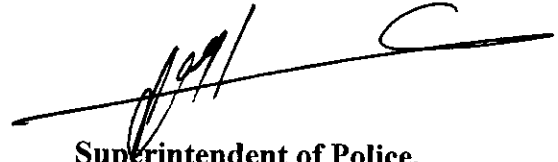
- A. Incorrect. The competent authority before imposing the major punishment had completed all codal formalities and an ample opportunity of self defense was provided, but appellant being not interested in his official duty remained continuously absented from lawful duty for long period without any leave.
- B. Incorrect. After completion of the enquiry proceedings, the appellant was issued final show cause notice and delivered to him on his home address, which he received by himself but failed to appear/ submit his written reply.
- C. Incorrect. Proper charge sheet with statement of allegations was issued to the appellant. The appellant is a habitual absentee and not interested in his official duty. Detail reply is given in supra para No.03.
- D. Incorrect. Proper departmental enquiry was conducted against appellant. He was called time and again to appear before the enquiry officer and defend himself but he failed to appear before the enquiry officer.
- E. Incorrect. The appellant availed the opportunity of personal hearing but failed to defend himself. After completion of codal formalities he was awarded major punishment.
- F. Incorrect. The appellant was provided the opportunities of defense, but he willfully avoided. The appellant being not interested in his official duty remained continuously absented from lawful duty for long period without any leave.
- G. Incorrect. The punishment order passed by the competent authority is in accordance with law/rules and liable to be upheld.
- H. Incorrect. The charges of deliberately absence were proved against him. Therefore, the punishment order was passed by competent authority in pursuance of his long absence period which is not tolerable in the disciplined force.
- I. Respondents also seek permission of this Honorable Tribunal to raise additional grounds at the time of arguments.

Prayers:-

Keeping in view the above stated facts & reasons it is, most humbly prayed that the appeal of the appellant being devoid of merits and barred by law, may kindly be dismissed with costs please.


Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.


Capital City Police Officer,
Peshawar.


Superintendent of Police,
City Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

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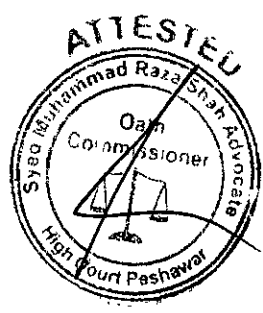
AFFIDAVIT.

We respondents 1, 2 & 3 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal. 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.

f

Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.


Capital City Police Officer,
Peshawar.


Superintendent of Police,
City, Peshawar.



20 SEP 2023

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Service Appeal No.57/2022.

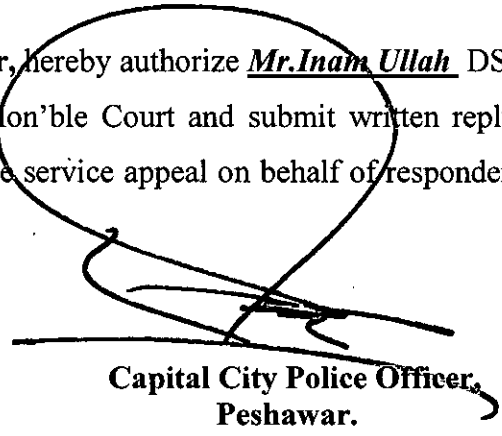
Ex- Constable Jehangir khan No.2685 of CCP, Peshawar.....Appellant.

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AUTHORITY.

I, **Capital City Police Officer, Peshawar**, hereby authorize Mr.Inam Ullah DSP legal of Capital City Police, Peshawar to attend the Hon'ble Court and submit written reply, statement and affidavit required for the defense of above service appeal on behalf of respondent department.



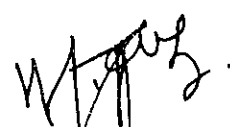
Capital City Police Officer,
Peshawar.

CHARGE SHEET

I, Muhammad Ijaz Abid, Superintendent of Police City, Division, Capital City Police, Peshawar as competent authority charge you constable Jehangir Khan No.2685 of Police Station Bahanamari as follows: -


“That while he Posted to ^{Police} Police Station Bahanamari, he absented from his lawful duty without any leave/permission from his superiors from 29.04.2009 vide DD No.29 till to date”.

1. By reasons of the above, you appear to be guilty of misconduct under Section-3 of the N.W.F.P removal from service (Special Powers) Ordinance 2000 and have rendered yourself liable to all or any of the penalties, specified in Section-3 of the Ordinance.
2. You are therefore required to submit your written reply for defence within seven days of the receipt of this Charge Sheet to the enquiry officer.
3. Your written defence, if any, should reach the enquiry officer within the specified period, failing which it shall be presumed that you have no defence to put in and in that case an exparte action shall be taken against you. Also intimate whether you desire to be heard in person.
4. A statement of allegations is enclosed.

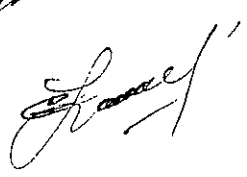

(MUHAMMAD IJAZ ABID)
Superintendent of Police City,
Peshawar.

No. 6540 /SP:City:

Dt: 11 /Oct, 2009.

Accepted


PA
Call the constable along with the record.



DEPUTY SUPERINTENDENT
Police District Peshawar.

26/10/09

DISCIPLINARY ACTION AGAINST JEHANGIR KHAN NO.2685 OF POLICE STATION BAHANAMARI.

1. I, Muhammad Ijaz Abid, Superintendent of Police City Division, Capital City Police Peshawar, as competent authority am of the opinion that he constable Jehangir Khan No. 2685 has rendered himself liable to be proceeded against as he committed the following act within the meaning of Section-3 of the NWFP Removal from Service (Special Powers) Ordinance-V/2000.

STATEMENT OF ALLEGATIONS.

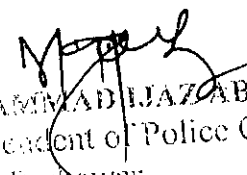
“Constable Jehangir Khan No. 2685 have absented himself from lawful duty with effect from 14.04.2008 vide DD No. 29 till to date with out any leave/permission from his seniors”.

All this amounts to gross misconduct on his part and renders him liable for minor/major punishment under the Rules, removal from “Service (Special Power ordinance 2000).

1. For the purpose of scrutinizing the conduct of the said constables with reference to the above allegations an enquiry is ordered to be conducted SDPO/Suburb is appointed as Enquiry Officer.

2. The Enquiry Officer shall, in accordance with the Provisions of the Ordinance, provide reasonable opportunity of hearing to the accused officer, record its findings and submit within 25 days of the receipt of this order, make recommendations as to punishment or other appropriate action against the accused.

The defaulter constable and well conversant representative of the department shall join the proceedings on the date time and place fixed by the Enquiry Officer.


(MUHAMMAD IJAZ ABID)
Superintendent of Police City,
Peshawar.

No. _____ / SP/City:
DT: _____ /Sep: 2009.

Accepted
Ruler

FROM :- The Deputy Superintendent of Police,
Suburb, Peshawar.

TO :- The Superintendent of Police, City,
Peshawar.

NO. 65-E /ST, Dated Peshawar the 4/11 /2009.

SUBJECT :- DISCIPLINARY ACTION AGAINST CONSTABLE JEHANGIR
KHAN NO.2685 OF PS/BANAMARI.

Memo:

Please refer to your Office No.6590/SP-City,
dated 17/10/2009 (Reference attached).

INDING.

It is submitted that Constable Jehangir Khan
No.2685, while posted to Police station Banamari, remained absent
from lawful duty with effect from 29/04/2009 up till now. In this
connection he was issued Charge sheet with Statement of Allegations
by W-SP/City. The undersigned appointed as enquiry officer to conduct
proper departmental proceeding against the defaulter constable.

The defaulter constable Jehangir Khan No.2685,
summoned to the office by the undersigned to appeared in orderly
room in connection with the enquiry, but he did not appeared before
the enquiry officer. The Moharrer of PS/Banamari stated that constable
Jenangir Khan is still remained absent from duty. He also produce his
absentee report vide DD No.29 dated 3/11/2009 remained absent uptill
now. His service record also checked, which was perused. From the
perusal of his service record, it revealed that constable Jehangir
is a habitual absentee and not taking interest in his official duty.
However there is no hope of him that constable Jehangir Khan will come
back to join the duty.

RECOMMENDATION.

During the course of enquiry the undersigned
reached on the episode that Constable Jehangir Khan No.2685 is a
habitual absentee and not taking interest in his duty. Therefore
Constable Jehangir Khan No.2685 is recommended for Ex-parte decision
of Major Punishment

Signature
DEPUTY SUPERINTENDENT OF POLICE,
SUBURB, PESHAWAR.

PA
Issue 75 N. and pay stopped.
SP/City
5/11

Attended
Signature

FINAL SHOW CAUSE NOTICE

1. I, Syed Abdul Kalam, Superintendent of Police, City Peshawar, as competent Authority do hereby serve final Show Cause Notice to you Constable Jehangir Khan No. 2685 while posted to PS Bhanamari.

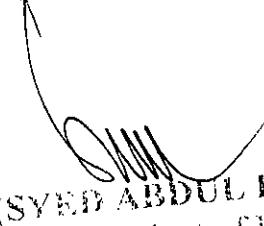
- i) That consequent upon the completion of enquiry conducted against you by DSP/Suburb, Enquiry Officer, found you guilty of misconduct.
- ii) Ongoing through the finding and recommendations of the Enquiry Officer, the material on record and other connected papers, I am satisfied that you have committed the following acts/omission specified in Section-3 of the said Ordinance on the following grounds:-


WHEREAS that "You Constable Jehangir Khan No. 2685 has absented himself from lawful duty vide DD No. 29 dated 18.04.2009 till to day date without any leave/permission from your seniors."

2. As a result thereof, I am competent Authority have tentatively decided to impose upon you the major penalty including dismissal from service under section-3 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 notice is received within (15) days of its receipt of this notice in the normal course of circumstances, it shall be presumed that you have no defence to put in, ex parte action shall be taken against you.

o/c

(SYED ABDUL KALAM)
Superintendent of Police City,
Peshawar.

Accepted

No. 7165 /SP: City:
Dt: 10 /Nov: 2009.

Constable Jehangir Khan No. 2685
PS Bhanamari.

Jehangir
12.11.09.

0771921397/1