BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.648 /2023.

Naseeb Jan Ex-PASI No.13/P of CCP Peshawar..... **Appellant.**

VERSUS

Capital City Police Officer, Khyber Pakhtunkhwa, Peshawar and others. **Respondents.**

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DSP/Legal,
CCP, Peshawar.

(1)

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REPLY BY RESPONDENTS NO. 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 not come to Hon'ble Tribunal with clean hands.
4. That the appellant has no cause of action and locus standi to file the 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 Hon'ble Tribunal.
7. That the appeal is not maintainable being devoid of any merit.

REPLY ON FACTS:-

1. Para pertains to record.
2. Incorrect. The appellant was while posted as I/C PP sheikhan, PS Badaber Peshawar, was proceeded against departmentally on the charges of his involvement in a criminal case vide FIR No.04 dated 04.01.2021 u/s 302/34/427 PPC PS Badaber Peshawar.
3. Incorrect. The appellant was issued charge sheet with statement of allegations and regular departmental enquiry was conducted against him wherein he failed to advance any plausible grounds in rebuttal of the charges leveled against him. The enquiry officer after thorough probe found the appellant guilty of the charges. After completion of enquiry proceedings he was issued final show cause notice and sent to Superintendent Central Prison Peshawar vide NO.271/PA dated 21.01.2021, but to no avail, thus was awarded the major Punishment of dismissal from Service under Khyber Pakhtunkhwa Police Rules 1975 (amended 2014).(copy of charge sheet, summary of allegation, enquiry report and FSCN are annexure as A,B,C,D)
4. First part of para pertains to court while rest of para denied on the grounds that when an official is involved in a criminal case then the department is bound to initiate departmental enquiry in the matter to dig out the real facts, whether he is guilty or not. However, Court proceedings and departmental proceedings are two different entities which can run parallel as per dicta of august Supreme Court of Pakistan.
5. Incorrect. Involvement in a criminal case of committing culpable homicide is a heinous offence and being a member of disciplined force he was liable to be proceeded departmentally hence after proof of charge, he was awarded penalty commensurate with his guilt/misconduct. Further, Court proceedings and departmental proceedings are two different entities which can run

parallel without affecting each other. Acquittal in a criminal case would not lead to exoneration of a civil servant in departmental proceedings.

6. Para pertains to record.
7. Correct to the extent that the appellant filed departmental appeal which was thoroughly processed and sufficient opportunity of hearing was provided to him. The appellate authority took a lenient view, accepted his appeal and set aside the major punishment of dismissal from service. The period he remained out of service was treated as leave of the kind due which is based on facts.
8. That appeal of the appellant being devoid of merit and limitation may be dismissed on the following grounds:-

REPLY ON GROUNDS:-

A. Incorrect. The impugned appellate order is just, legal and has been passed in accordance with law/rules and liable to be upheld.

B. Para is totally incorrect and misleading as the appellant was issued charge sheet with statement of allegations due to involvement in the above criminal case. Detailed departmental proceeding was conducted against him under Rules ibid.

C. Para already explined in the above paras. Furthermore, being member of a disciplined force, the appellant was well aware about the proceedings. After fulfilling all codal formalities, the charges leveled against the appellant were stand proved, hence he was awarded the Major punishment.

D. Incorrect. The appellant was provided full opportunity of defense/ personal hearing, but he failed to prove his innocence.

E. Incorrect. Proper departmental enquiry under Rules ibid was conducted against him by issuing him proper charge sheet and statement of allegations wherein he was held guilty of committing misconduct within the meaning of Rules and then reprimanded.

F. Incorrect. The appellant was associated with the enquiry proceedings and ample opportunity of self defense was provided to him however failed to defend the charges hence condemned as per gravity of his guilt.

G. As explained in the preceding para.

H. Incorrect. In fact a full fledge departmental enquiry was conducted against him to dig out the real facts. During the course of enquiry, the allegations were proved beyond any shadow of doubt, hence he was awarded the major punishment under the rules.

I. Incorrect. The appellant was treated as per law/rules and no discrimination have been done by replying respondents.

J. Incorrect. The appellant has been re-instated in service and the period he remained out of service was treated as leave of kind due, hence no laxity was taken in the mater by the replying respondents.

K. Incorrect. The duty of police is to protect life, property and liberty of citizens, preserve and promote public peace but he despite being a member of disciplined force deviated himself from his lawful duty and indulged himself in a murder case.

L. Incorrect. The appellant was treated as per law/rules and no violation of the Constitution of Pakistan 1973 has been done by the respondent's department.

M. Incorrect. The appellant was treated as per Constitution of Pakistan 1973 and no violation of Article 04 & 25 has been done by the respondent's department.

N. Incorrect. Proper departmental enquiry was conducted as per law/rules and the enquiry officer reported that charges leveled against the appellant were proved. The whole enquiry was conducted purely on merit.

O. Incorrect. The appellant involved himself in a criminal case and during the course of enquiry the charges leveled against him were stand proved. As per Khyber Pakhtunkhwa, ESTA code the defaulter officer shall be reprimanded as per quantum of misconduct committed by him and he was rightly punished as per his guilt.

P. Incorrect. The appellant himself is responsible for the situation by committing gross misconduct.

Q. Respondents may also be allowed to raise additional grounds at the time of arguments please.

PRAYER.

It is therefore most humbly prayed that in light of above facts and submissions, the appeal of the appellant being devoid of merits and legal footing, may kindly be dismissed with costs please.

Superintendent of Police,

Saddar, Peshawar.

Capital City Police Officer,

Peshawar.

(4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.648 /2023.

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VERSUS

Capital City Police Officer, Khyber Pakhtunkhwa, Peshawar and others. **Respondents.**

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.

Superintendent of Police,
Saddar: Peshawar.

Capital City Police Officer,
Peshawar.

ATTESTED
Syed Muhammad Raza Shah Advocate
Oath Commissioner
High Court Peshawar
20 SEP 2023

(5)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.648 /2023.

Naseeb Jan Ex-PASI No.13/P of CCP Peshawar..... **Appellant.**

VERSUS

Capital City Police Officer, Khyber Pakhtunkhwa, Peshawar and others. **Respondents.**

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.

OFFICE OF THE
SUPERINTENDENT OF POLICE,
SADDAR, CCP, PESHAWAR

NO. 02/E /PA DATE: 09-01 /2021

CHARGE SHEET.

I, Waqar Ahmed, Superintendent of Police, Saddar Division, Peshawar, as competent authority, hereby charge you ASI Naseeb Jan incharge PP Sheikhan, PS Badhber as follow:-

i) During investigation of case FIR No. 04 dated 04-01-2021 u/s 302/34/427 PPC PS Badhber, it was found that you are involved in instant murder case. Being a member of discipline force, your this act is highly objectionable.

ii) This amounts to gross misconduct, negligence and malafide on your part for which you are liable for punishment as defined in Police Disciplinary Rules, 1975.

By the reasons of the above you appeared to be guilty of misconduct under Police Disciplinary Rules 1975 and have rendered yourself liable to all or any of the penalties specified in the said Rules.

You are therefore, required to submit your written defense within seven days of the receipt of this charge sheet to the Enquiry Officer/Committee.

Your written defense, if any, should reach the Enquiry Officer/Committee 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 follow against you.

Intimate whether you desire to be heard in person or not.

A statement of allegation is enclosed.

Superintendent of Police,
CCP, Peshawar.

Attested

BETTER COPY

CHARGE SHEET

1. I, Waqar Ahmad Abbasi, Superintendent of Police, Sadar Division, Peshawar, as competent authority, hereby charge you ASI Naseeb Jan No. 23/P of PP Sheikhan, PS Badaber as follow:-

i) During investigation of case FIR No. 04 dated 04.01.202 u/s 302/34/427 PPC PS Badaber, it was found that you are involved in instant murder case. Being a member of discipline force, your this act is highly objectionable.

ii) This amounts to gross misconduct, negligence and malafide on your part for which you are liable for punishment as defined in Police Rules, 1975.

iii) By reason of the above, you are appeared to be guilty of misconduct under Police Rules, 1975 and have rendered yourself liable to all or any of the penalties specified in the said rules.

2. You are therefore, required to submit your written defense within seven days of the receipt of this charge sheet to the inquiry officer/Committe.

3. Intimate whether you desire to be heard in person?

4. A statement of allegations is enclosed.

Accepted

Superintendent of Police Saddar Division
CCP, Peshawar.

No. 01-E/PA, Dt. 11/01/2021.

OFFICE OF THE
SUPERINTENDENT OF POLICE,
SADDAR, CCP, PESHAWAR

NO. 02/E /PA DATE: 09/01 /2021

DISCIPLINARY ACTION AGAINST ASI NASEEB JAN INCHARGE PP SHEIKHAN PS BADHBER.

I, Waqar Ahmed Superintendent of Police, Saddar Division, Peshawar, as competent authority, am of the opinion that ASI Naseeb Jan has rendered himself liable to be proceeded against as he has committed the following acts/omissions within the meaning of Police Disciplinary Rules, 1975.

STATEMENT OF ALLEGATIONS.

i) **During investigation of case FIR No. 04 dated 04-01-2021 u/s 302/34/427 PPC PS Badhber, it was found that he is involved in instant murder case. Being a member of discipline force, this act is highly objectionable.**

ii) That all the above acts amount to gross misconduct, negligence, inefficiency and malafide on his part for which he is liable for punishment as defined in Police Disciplinary Rules, 1975.

iii) For the purpose of scrutinizing the conduct of said accused with reference to the above allegations. DSP Alamzeb Khan is deputed as the Inquiry Officer.

iv) The Inquiry shall be conducted in accordance with the provision of the Rules to provide reasonable opportunity of hearing to the accused officer, record its finding within 15 days of the receipt of this order & make recommendations as to punishment or other appropriate action against the accused.

v) The accused shall join the proceeding on the date and time and place fixed by the Inquiry Officer.

Superintendent of Police Saddar Division
CCP, Peshawar.

Copy of above is submitted to the I.O for initiating proceeding against the defaulter under the provisions of Police Disciplinary Rules, 1975.

2- ASI Naseeb Jan is directed to submit the reply to the charge sheet and summary of allegations.

Received on 11-01-2021 at 16:30 Pm

Call him as well as I.O of the case with Case File.

I.O/S. Cell 11/01/2021.

OFFICE OF THE
SUB-DIVISIONAL POLICE OFFICER,
SADDAR CIRCLE, PESHAWAR.

NO. 01-E /PA: Dated Peshawar the 19 / 01 /2021

To: The Superintendent of Police,
Saddar Division, CCP, Peshawar

Subject: **DEPARTMENTAL ENQUIRY AGAINST ASI/NASEEB JAN INCHARGE PP SHEIKAN PS: BADHBER**

Memo:

Please refer to your office Memo: No.02-E/PA, dated 09.01.2021, on the subject noted above.

ALLEGATIONS.

This is a departmental enquiry against ASI/ Naseeb Jan I/C PP Sheikhan PS: Badhber CCP, Peshawar with the allegations that during investigation of case FIR No. 04 dated 04.01.2021 u/s 302/34/427 PPC/PS: Badhber. It was found that he is involved in the instant murder case. Being a member of disciplined force, this act is highly objectionable. That all the above acts amount to gross misconduct, negligence, inefficiency and malafide on his part for which he is liable for punishment as defined in police discipline Rules,1975.

PROCEEDINGS.

After perusal allegations leveled against the defaulter ASI called for recording his statement but he found arrested & confined in central jail Peshawar. In this context the undersigned has called SI/Fazal Ruban I.O of the subject case and the matter was discussed with him in length.

As per report of I.O that accused ASI/Naseeb Jan arrested in the instant case & presently confined in central jail Peshawar. The accused ASI made confession, obtained his (02 days) police custody interrogated & during interrogation found that the firing has been made by the Government Rifle whereas, (05) empty shells of Kalashnikov, (01) pistol from deceased Riaz & 01 pistol from eye-witnesses Akbar have been recovered & sent to FSL/Peshawar for analysis. Accused ASI produced before the court of law in connection for recording his statement u/s-164 364-Cr.PC but denied in the court hence he was jailed & matter was brought into the notice of the high up.

FINDINGS:

In view of the above circumstances & as per report of SI/I.O Fazal Ruban PS: Badaber the undersigned has gone through the conclusions that being a responsible police officer, he remained involved in a case of murder & found guilty. The departmental enquiry report submitted please.

Enclose: (05)

PA
ISSUE F.S-N

Sub-Divisional Police Officer,
Saddar, Circle, Peshawar.

OFFICE OF THE
SUPERINTENDENT OF POLICE,
SADDAR, CCP, PESHAWAR

NO. 02/E /PA, DATE: 21-01 /2021

FINAL SHOW CAUSE NOTICE.

I, Waqar Ahmed, Superintendent of Police, Saddar, CCP Peshawar, as competent authority under the Police Disciplinary Rules, 1975 do hereby serve you ASI Naseeb Jan the then Incharge PP Sheikhan PS Badhber, follow:-

a) That consequent upon the completion of enquiry against you by Enquiry Officer SDPO Saddar Peshawar for which you are given opportunity of hearing and producing evidence.

b) On going through the finding of Enquiry Officers submitted vide memo: No.01/E/ST dated 19.01.2021. The material on record and other connected papers including your defense before the said Enquiry Officers.

1. I am satisfied that you have committed the following acts/omissions specified in the said rules.

That during the departmental enquiry you were found guilty by Enquiry Officers.

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you major/minor punishment under the said rules.

3. You are therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate as to whether you desire to be heard in person.

4. If no reply to this notice is received within 15 days of its delivery, 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. Copy of the findings of Enquiry Officer is enclosed.

No. /E/PA

Dated.

Superintendent of Police, Saddar Division
CCP, Peshawar

Attested