

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 31/2023
Mufariq Shah
Constable No. 1007, District Kohat

..... Appellant

VERSUS

Inspector General of Police,
Khyber Pakhtunkhwa & others

..... Respondents

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Deponent

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BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 31/2023

Mufariq Shah

Constable No. 1007, District Kohat

..... Appellant

Khyber Pakhtunkhwa
Service Tribunal

Case No. 7963

Dated 28/09/23

VERSUS

Inspector General of Police,
Khyber Pakhtunkhwa & others

..... Respondents

REPLY BY RESPONDENTS NO. 1 TO 3

RESPECTFULLY SHEWETH: That the respondent submitted as under:-

PRELIMINARY OBJECTIONS:-

- 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, departmental proceedings against the appellant was initiated on the following score of charges;-
 - i. *That he has either himself or his spouse was receiving Benazir Income Support Program (BISP) cash grant and deceived the government as he or his spouse are not entitled for such beneficiary.*
 - ii. *His above, conduct prejudicial to good order/ service discipline and thus he have committed gross misconduct.*

Short facts are that in pursuance of directives received vide Region Office Kohat Letter No. 3416-21/EC, departmental proceedings initiated against the appellant. The appellant was served with charge sheet & statement of allegations (Copies enclosed as Annexure 'A' & 'B'). SP/ Operations, Kohat was appointed as enquiry officer to scrutinize the conduct of the accused official. The enquiry officer conducted fair and transparent enquiry and submitted his findings wherein the appellant was found guilty of above mentioned charges. Therefore, after fulfillment of all codal formalities the appellant was awarded

major punishment of reduction of pay by two stages vide Order dated 04.05.2020. (Copy enclosed as Annexure 'C').

3. Incorrect, as already explained above in detail in preceding para.
4. Incorrect, the appellant filed departmental appeal before the appellate authority and the same was found badly time barred hence, rejected on grounds of time barred vide Order dated 16232/EC, dated 06.10.2021 (Annexure 'D'). It is worth mentioning here that when appeal before departmental authority is time barred, service appeal before the Service Tribunal is incompetent. Reliance has already been placed on 2017 SCMR 965, 2006 SCMR 453, 2007 SCMR 513, 2011 SCMR 1429 & 2021 SCMR 144.
5. Incorrect, the appellant filed revision petition wherein he prayed for rejection of orders dated 04.05.2020 & 06.10.2021. The same was rejected being time barred vide Order dated 30.11.2021 (Annexure 'E'). Furthermore, the instant appeal of the appellant is liable to be dismissed on the following grounds.

GROUNDS

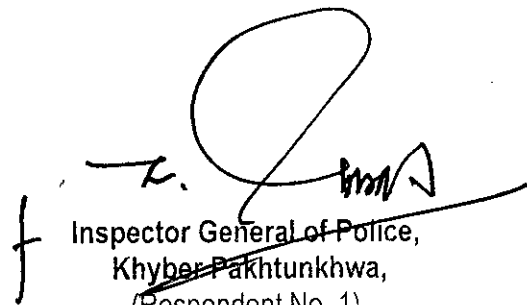
- A. Incorrect, as already explained above that the appellant was found guilty of gross misconduct therefore, the orders passed by the authorities are in accordance with law, rules and principles of natural justice.
- B. Incorrect, the appellant was heard in person on 05.10.2021, in Orderly Room in the office of Regional Police Officer, Kohat wherein the appellant badly failed to advance plausible reasons in his self-defense in rebuttal of charges leveled against him.
- C. Incorrect, misleading and misconceived, as already explained above in Para No. 2 of Facts.
- D. Incorrect, as already explained above, that appellant was found guilty of gross misconduct by conducting a proper departmental enquiry therefore, was awarded major punishment of reduction of pay by two stages vide Order dated 04.05.2020.
- E. Incorrect misleading and misconceived, let the appellant to prove this para. It is worth mentioning here that every case has its own facts and circumstances therefore one case cannot compete with another. Furthermore, no discrimination has been committed by the answering respondents.
- F. Incorrect misleading and misconceived, no violation of Constitution exist on part of answering respondents.
- G. Incorrect, as already explained above in Para No. 2.
- H. Incorrect, appellant has been provided with ample opportunity of self defense but he badly failed to advance any plausible grounds in his self defense.
- I. Incorrect, appellant has been treated in accordance with law/ rules as well as Constitution of Islamic Republic of Pakistan, 1973.
- J. 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)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

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Mufariq Shah
Constable No. 1007, District Kohat

..... Appellant

VERSUS

Inspector General of Police,
Khyber Pakhtunkhwa & others

..... Respondents

REPLY TO THE APPLICATION FOR CONDONATION OF DELAY

RESPECTIVELY SHEWETH:

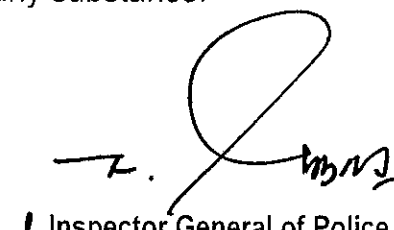
1. This para pertains to facts, hence no comments.
2. Incorrect, delay in filing appeal was intentional and deliberate, hence, delay is not condonable.


Grounds:-

1. Incorrect, all orders issued by the respondents are in accordance with law and rules, hence question of Corm Non Judice does not arise under the circumstances.
2. Incorrect, the respondent department has not exercised any discrimination whatsoever with the appellant, hence his appeal cannot be condoned.
3. That since in this case, delay in filing appeal is deliberate and, therefore, dictum of the Honorable court is not applicable on the case of the appellant.

It is, therefore, requested that application for condonation of delay in lodging appeal may kindly be turned down being without any substance.


Regional Police Officer,
Kohat
(Respondent No. 2)


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


District Police Officer,
Kohat
(Respondent No. 3)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

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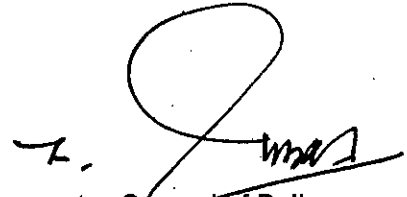
..... Respondents

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.



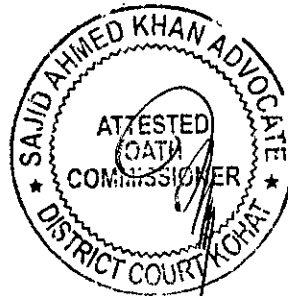
Regional Police Officer,
Kohat
(Respondent No. 2)



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



District Police Officer,
Kohat
(Respondent No. 3)



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

Phone No: 9260112.
Fax No: 9260114.

EC/OHC.

To send posting/Bell nos of the defaulters at the earliest.

From: - The Regional Police Officer,
Kohat Region, Kohat.

- To: -
1. The District Police Officer, Kohat.
 2. The District Police Officer, Karak.
 3. The District Police Officer, Hangu.
 4. The District Police Officer, Kurram.
 5. The District Police Officer, Orakzai.
 6. The Superintendent of Police, FRP Range, Kohat.

D.P.O. KOHAT
18/2/2020

No. 3416-21 /EC, Dated Kohat the ___/___/2020.

Subject: - GOVERNMENT OF KHYBER PAKHTUNKHWA EMPLOYEES OR THEIR SPOUSE WHO WERE BENEFICIARIES OF BENAZIR INCOME SUPPORT PROGRAMME (BISEP).

MEMO:

Enclosed please find herewith a copy of self-explanatory Letter No. CPO / E-I / 437, dated 19.02.2020 on the subject quoted above alongwith the lists of the following officials of your concerned districts / unit for necessary action against them as per the directives contained in the letter under reference:-

SP (ops)
for 1st division
2nd division
3rd division
4th division
5th division
6th division
7th division
8th division
9th division
10th division
11th division
12th division
13th division
14th division
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16th division
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96th division
97th division
98th division
99th division
100th division

- | | | |
|---------------------|---|-----------------|
| 1. District Kohat | : | <u>50</u> pages |
| 2. District Karak | : | 16 pages |
| 3. District Hangu | : | 99 pages |
| 4. District Kurram | : | 30 pages |
| 5. District Orakzai | : | 186 pages |
| 6. FRP Range Kohat | : | 12 pages |

OFFICE OF THE DISTRICT POLICE OFFICER
1791
6/3/2020

Compliance report be submitted to this office at an early date as directed by the high ups, please.

OFFICE OF THE DISTRICT POLICE OFFICER
345
08-3-020
KOHAAT

JHC
Regional Police Officer,
Kohat Region

No. ___/___/EC,

Copy of above is submitted to the Inspector General of Police, Khyber Pakhtunkhwa for favour of information w/r to his office Letter quoted above please.

PA. (DPO)
Issue show cause notice
Superintendent of Police
Operations
Kohat
9/3/2020

No. 47 /P.A-ops
Date 9-03-2020

JHC
Regional Police Officer,
Kohat Region

34
Attested
Adhem



No 1473-74/PA

P-7
Annex-B
Office of the
District Police Officer,
Kohat

Dated 16-3-/2020

CHARGE SHEET

I, **CAPT @ MASNOOR AMAN, DISTRICT POLICE OFFICER, KOHAT,** as competent authority under Khyber Pakhtunkhwa Police Rules (amendments 2014) 1975, am of the opinion that you Capt. Mubarrat Shela No 1004 rendered yourself liable to be proceeded against, as you have committed the following act/omissions within the meaning of Rule 3 of the Police Rules 1975.

- i. *That you either yourself or your spouse was receiving Benazir Income Support Program (BISP) cash grant and deceived the government as you or your spouse are not entitled for such beneficiary*
- ii. *Your above, conduct is pre-judicial to good order / service discipline and thus you have committed gross misconduct.*

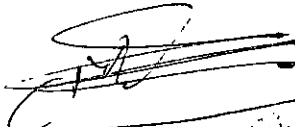
2. By reasons of the above, you appear to be guilty of misconduct under Rule 3 of the Rules ibid and have rendered yourself liable to all or any of the penalties specified in the Rule 4 of the Rules ibid.

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.

Received by

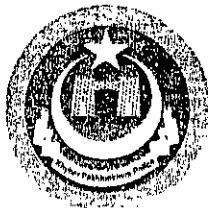
 all

Constable Mubarrat Shela
No. 1004

19/3/20

Attested
Shela


DISTRICT POLICE OFFICER,
KOHAT 16/3



Office of the
District Police Officer,
Kohat

No. 1473-74 /PA

Dated 16-3- /2020

DISCIPLINARY ACTION

I, **CAPT @ MANSOOR AMAN, DISTRICT POLICE OFFICER, KOHAT** as competent authority, am of the opinion that you

Const. Mushtaq 1004 have rendered yourself liable to be proceeded against departmentally under Khyber Pakhtunkhwa Police Rule 1975 (Amendment 2014) as you have committed the following acts/omissions.

STATEMENT OF ALLEGATIONS

- i. *That you either yourself or your spouse was receiving Benazir Income Support Program (BISP) cash grant and deceived the government as you or your spouse are not entitled for such beneficiary.*
- ii. *Your above, conduct is prejudicial to good order / service discipline and thus you have committed gross misconduct.*

2. For the purpose of scrutinizing the conduct of said accused with reference to the above allegations **SP Operations, Kohat** is appointed as enquiry officer. The enquiry officer shall in accordance with provision of the Police Rule-1975, provide reasonable opportunity of hearing to the accused official, record his findings and make, within twenty five days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused official.

The accused official shall join the proceeding on the date, time and place fixed by the enquiry officer.

**DISTRICT POLICE OFFICER,
KOHAT** *16/3*

No. 1473-74 /PA, dated 16-3- /2020.

Copy of above to:-

1. **SP Operations, Kohat**:- The Enquiry Officer for initiating proceedings against the accused under the provisions of Police Rule-1975.
2. The **Accused Official**:- with the directions to appear before the Enquiry Officer, on the date, time and place fixed by him, for the purpose of enquiry proceedings.

*Attested
Mansoor*



P-9
Annex-C

**OFFICE OF THE
DISTRICT POLICE OFFICER,
KOHAT**

• Tel: 0922-9260116 Fax 9260125

ORDER

This order will dispose of departmental proceedings initiated against constable Mufariq Shah No. 1007 under the Khyber Pakhtunkhwa, Police Rules, 1975 (amendment 2014), on the below score of charges.

- i. That he has either himself or his spouse was receiving Benazir Income Support Program (BISP) cash grant and deceived the government as he or his spouse are not entitled for such beneficiary.
- ii. His above, conduct is pre-judicial to good order / service discipline and thus he have committed gross misconduct.

Short facts are that in pursuance of directives received vide Region Office Kohat letter No. 3416-21/EC, dated nil, departmental proceedings against the above named official. Therefore, the accused official was served with charge sheet & statement of allegations. Superintendent of Police Operations, Kohat was appointed as enquiry officer to scrutinize the conduct of the accused official. The enquiry officer file his report.

The available record gone through, which indicates that the delinquent official, despite having reasonable means of subsistence, availed BISP funds through his spouse without any official entitlement / permission. Therefore, I, Capt @ Mansoor Aman, District Police Officer, Kohat in exercise of the powers conferred upon me, impose a **major punishment of reduction of pay by two stages upon constable Mufariq Shah No. 1007**, to compensate the losses incurred by public exchequer with immediate effect.

**DISTRICT POLICE OFFICER,
KOHAT**

OB No. 269

Date 04-5-2020

No 1969-71 /PA dated Kohat the 04-5- 2020.

Copy of above to the:-

1. Reader, Pay officer, SRC and OHC for necessary action.

Attested

Aaleem

[Handwritten signature]

P-10
Annex-D

POLICE DEPTT:

KOHAT REGION


ORDER.

This order will dispose of a departmental appeal moved by Constable Mufariq Shah No. 1007 of district Kohat, against the punishment order, passed by DPO Kohat vide OB No. 269, dated 09.08.2020 whereby he was awarded major punishment of **reduction in pay by two stages** on the allegations of receiving BISP Cash Grant being not entitled for it.

Comments as well as relevant record were requisitioned from DPO Kohat and perused. The appellant was also called and heard in person in Orderly Room held in this office on 05.10.2021. During hearing the appellant did not advance any plausible explanation in his defense to prove his innocence.

Above in view, the undersigned reached to the conclusion that the punishment order passed by DPO / Kohat is justified. The appellant being not entitled for the BISP cash grant was receiving the same and thus deceived the government. Therefore, in exercise of the powers conferred upon the undersigned, the instant appeal being devoid of merits and time-barred is hereby **rejected**.


Order Announced
05.10.2021


(TAHIR AYUB) PSP
Region Police Officer,
Kohat Region.

No. 16232 /EC, dated Kohat the 6/10 /2021.

Copy to District Police Officer, Kohat for information and necessary action w/r to his office Memo: No. 11819/LB, dated 22.09.2021. His Service Roll / Fauji Missal is returned herewith, please.

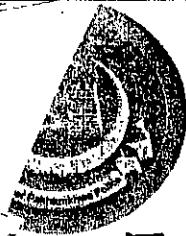
D/P/63 OH/5 RC
22/10/21
PSP


(TAHIR AYUB) PSP
Region Police Officer,
Kohat Region.

S. W. J.
Attested
M. Akram

6992
8/10/21

th
(D)



OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar.

P-10
Annex-E

No. S/ 4482 /21, dated Peshawar the 30/11 /2021.

1007/KT

To : The Regional Police Officer,
Kohat.

Subject: APPEAL.

Memo:

Please refer to your office Memo: No. 17663/EC, dated 29.10.2021.

The Competent Authority has examined and filed the revision petition submitted by FC Mufariq Shah No. 1007 of Kohat district Police against the punishment of reduction in pay by two stages awarded by District Police Officer, Kohat vide OB No. 269, dated 09.08.2020, being time barred.

The applicant may please be informed accordingly.

BE
03/12/2021



(Signature)
(NOOR AFGHAN)
Registrar,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

(Signature)
25/11

No. 19333/EC
dt 6-12-2021

D.P.O/Kohat

To inform the appeal.

(Signature)
6/2/21

(Signature)

312
021

Attested
(Signature)

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BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 31/2023
Mufariq Shah
Constable No. 1007, District Kohat

..... Appellant


VERSUS

Inspector General of Police,
Khyber Pakhtunkhwa & others

..... 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)