

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.**

**Service Appeal No.1135 /2023.**

Ex Constable Fazal Amin No. 4551 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.**

28/7/23

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**REPLY BY RESPONDENTS NO. 1& 2.**

**Respectfully Sheweth:-**

**PRELIMINARY OBJECTIONS:-**

15/09/2023  
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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. Incorrect. The appellant was appointed as constable in year 2007 in the respondent department. He has not a clean service record and earned 14 bad entries in his service. It is worth to mention here that the present service appeal is badly time barred. (Copy of list as annexure A)
2. Incorrect. The appellant while posted at PS Faqirabad, Peshawar was proceeded against departmentally on the charges of his willful absence w.e.f 09.03.2009 to 05.08.2010 (01 year, 04 months & 26 days) without taking permission/leave from the competent authority and also involved himself in a criminal case vide FIR No. 188, dated 24.03.2009, u/s 302/324/34-PPC PS Badaber, Peshawar, wherein, he was declared as proclaimed offender under section 512 CrPC.
3. Incorrect. Initially the appellant was placed under suspension and issued him charge sheet with statement of allegations. Proper departmental enquiry was conducted against him, wherein the allegations leveled against him were proved beyond any shadow of doubt. The enquiry officer finalized the enquiry and submitted findings report that appellant was involved in a heinous case of murder and also absented himself from his lawful duty. After receipt of the findings, Final Show Cause Notice was issued and delivered on his home address, but he failed to appear and defend himself. After fulfilling all codal formalities, the charges leveled against him were proved; hence he was awarded major punishment of dismissal from service under RSO 2000. Furthermore, criminal and departmental proceedings are two different entities which can run side by side.(copy of enquiry report and final show cause notice are annexure as B, C)
4. Para is totally incorrect and based on misleading Facts. Infact the competent authority before imposing the major punishment had completed all codal formalities by issuing him final show

*[Handwritten signature]*

cause notice which was delivered on his home address, which was received by his nephew, but the appellant failed to appear before the competent authority.

5. Incorrect. The appellant being member of a disciplined force involved himself in criminal offence/case and also absented himself from his lawful duties. Furthermore, Court proceedings and departmental proceedings are two different parallel to each other without affecting each other, hence after completion of all codal formalities, the charges leveled against him were proved, therefore, he was awarded Major punishment.
6. Para not related to answering respondents record. Furthermore, the appellant being a member of a disciplined force, committed gross misconduct by involving himself in a criminal case and also absented himself from his lawful duty. It is pertinent to mention here that when an individual is involved in a criminal case and then the court of law released him on bail, so it does not mean that the bail would support the accused in each and every aspect to let him free from the case. Only obtaining bail in a criminal case is not solution of the matter, but on contrary acquittal is mandatory.
7. Incorrect. The appellant had preferred time barred departmental appeal after inordinate delay of period of 12 years, 03 months and 18 days, meaning thereby that he was not interested and his departmental appeal was filed/ rejected on the grounds of facts and limitation.
8. That appeal of the appellant being devoid of merits and limitation may be dismissed on the following grounds.

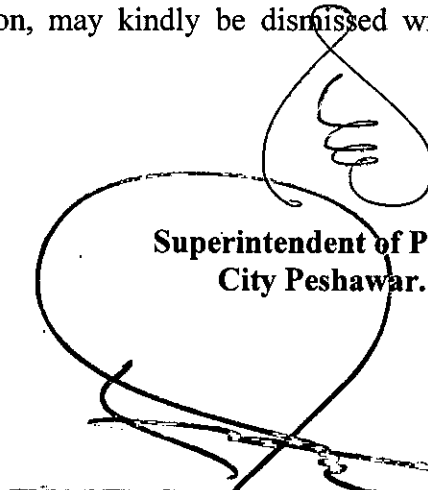
**REPLY ON GROUNDS:-**

- A. Incorrect. The appellant being member of a disciplined force, committed gross misconduct by involving himself in a murder case and also absented himself from his lawful duty, hence the punishment order is just legal and passed in accordance with law/rules and liable to be upheld.
- B. Incorrect. The appellant was associated with the enquiry proceedings and called time and again but the appellant did not attend the enquiry proceedings. The charges leveled against the appellant were proved, hence the punishment order was passed in accordance with facts and rules.
- C. Incorrect. The appellant was provided full opportunity of defense/ personal hearing, but he failed to prove his innocence.
- D. Incorrect. The appellant was issued charge sheet with statement of allegations. The appellant after the commission of offence remained fugitive from law and was absconder for a long period.
- E. Incorrect. The appellant was involved himself in the criminal case and also absented himself from his lawful duty. During the course of enquiry the charges leveled against him were proved, hence as per RSO 2000 the defaulter officer was reprimanded as per quantum of misconduct committed by him and he was rightly punished as per his guilt.
- F. Incorrect. The appellant was treated as per relevant law/rules.
- G. Para already explained in the above paras. Furthermore, the appellant was dealt with relevant law/rules and no illegality was done by the respondent department.
- H. Incorrect. The appellant was associated in the enquiry proceedings and called him time and again but the appellant after the commission of offence remained fugitive from law and was absconder for long period.

- I. Incorrect. Involvement in a criminal case of committing murder is heinous offence comes under the cognizable offences and also willfully absented himself from lawful duty, therefore was proceeded departmentally hence after establishment of charges, he was awarded penalty commensurate with his guilt/misconduct. Besides, acquittal in a criminal case would not ipso facto lead to exonerate Civil Servant from departmental proceedings/punishment.
- J. Incorrect. Proper departmental enquiry was conducted against him to unearth the real facts and Enquiry Officer found the appellant guilty /committing misconduct within the meanings of Rules ibid. However, Court proceedings and departmental proceedings are two different parallel to each other without affecting each other.
- K. Incorrect. After completion of enquiry proceedings, the SP City being competent authority issued him final show cause notice, but the appellant did not appear before the competent authority.
- L. Incorrect. The appellant was treated as per law/rules and no violation of the Constitution of Pakistan 1973 has been done by the replying respondents.
- M. Incorrect. The appellant was treated as per article 10 -A of the Constitution of Pakistan 1973.
- N. Incorrect. The appellant is giving wrong picture just to save his skin from commission of offences as charges leveled against him are proved therefore he was awarded the major punishment as per rules ibid.
- O. Incorrect. Involvement in a criminal case of committing culpable homicide is a heinous offence and also absented himself from lawful duty, 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.
- P. Incorrect. The appellant himself is responsible for the situation by committing gross misconduct of involvement in a criminal offence of committing culpable homicide.
- Q. 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 limitation, may kindly be dismissed with costs please.

  
**Superintendent of Police,  
City Peshawar.**  
~~Capital City Police Officer,  
Peshawar.~~

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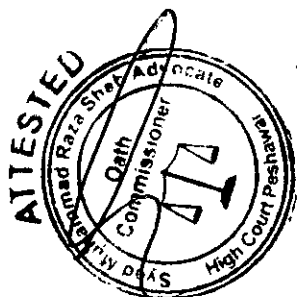
Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others.. **Respondents.**

**AFFIDAVIT.**

We respondents No. 1 & 2 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 Hon'ble Tribunal. It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense have been struck off.

**Superintendent of Police,  
City Peshawar.**

**Capital City Police-Officer,  
Peshawar.**



28/09/23

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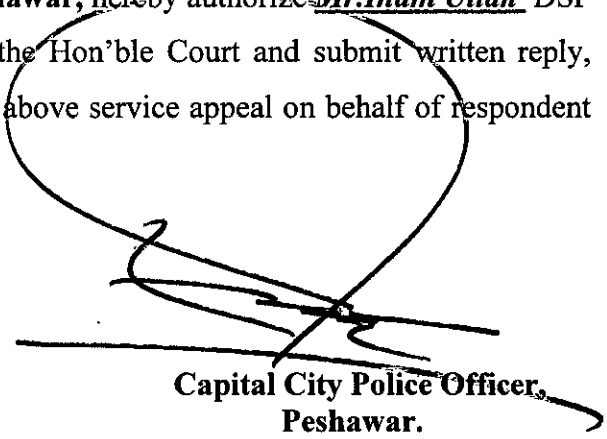
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**AUTHORITY.**

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.**

- 1. Name of Official Fazal Amin No.4551 S/o Gul Rehman  
R/O Haji Khel Masho Gagar PS Badabir Distt: Peshawar
- 2. Date of Birth 15-12-1978
- 3. Date of enlistment 19-07-2007
- 4. Education 10<sup>th</sup>
- 5. Courses Passed Nil
- 6. Total qualifying service 03 years, & 05 days.
- 7. Good Entries Nil
- 8. Punishment (previous)

Bad Entries (L.W.O Pay, E/Drill & Warning)

- 1. 01 day leave without pay vide OB No.2058 dt:24-07-2008
- 2. 02 day leave without pay vide OB No.1308 dt:22-05-2008
- 3. 01 day leave without pay vide OB No.2010 dt:9-07-2008
- 4. 01 day leave without pay vide OB No.2210 dt:08-08-2008
- 5. 01 day leave without pay vide OB No.2390 dt:18-08-2008
- 6. 01 day leave without pay vide OB No.2395 dt:19-08-2008
- 7. 01 day leave without pay vide OB No.2476 dt:25-08-2008
- 8. 02 day leave without pay vide OB No.2511 dt:28-08-2008
- 9. 01 day leave without pay vide OB No.2690 dt:09-09-2008
- 10. 01 day leave without pay vide OB No.2912 dt:24-09-2008
- 11. 01 day leave without pay vide OB No.2928 dt:25-09-2008
- 12. 01 day leave without pay vide OB No.3058 dt:08-10-2008
- 13. 01 day leave without pay vide OB No.3303 dt:25-10-2008
- 14. 01 day leave without pay vide OB No.3470 dt:06-11-2008

Minor Punishment

Nil

Major Punishment

Nil

09. Punishment (Current)

- Awarded punishment of dismissal from service vide CB No. 2722 dated 10.08.2010 by SP/City Peshawar.

10. Leave Account

Total leave at his credit

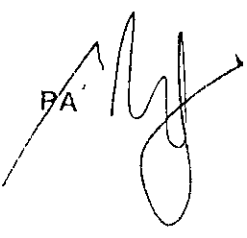
144 days

Availed leaves


Nil

Balance

144 Days

PA 

Attested 

  
CRC  
42

W/CCPO

ENQUIRY FINDING

It is a departmental proceeding against Constable Fazle Amin 4551 to the effect that he while posted to Police station Faqirabad absented himself vide DD No. 11 dated 09-03-09 and still continued absent. It also came to light that he has involved himself in a murder case vide FIR No. 188 dated 24-3-09 u/s 302-324/34 PPC Police station Badbher. Being a member of disciplinary force, his act is highly objectionable and amounts to gross misconduct. He was suspended by worthy SP City vide OB No.974 dated 30-3-09. The undersigned was ordered to initiate departmental enquiry against the above mentioned official with reference to the allegation.

In order to probe into the matter, he was summoned time and again but he is still continued absent. In this connection statement of C.I. PS Badbher has also been obtained. As per his statement Constable Fazle Amin 4551 s/o Gul Rahim r/o Ma-ho Gagar along with other accomplices has been involved in case vide FIR 188 u/s 302-324/34 PPC of Police station Badbher and still at large. Proceeding u/s 204/87 Cr.P.C has been initiated against him. Efforts are underway for his arrest.

Hence, keeping in view his continuous absence from his duty and his involvement in a heinous criminal offence of murder, there is nothing to produce in his defense. It is therefore suggested that the delinquent constable may be awarded major punishment under NWFP Special Power Ordinance 2000 after observing legal formalities.

*Waqar*  
(Arbab Waqar)  
Deputy Superintendent of Police,  
Faqirabad Circle Peshawar.

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agains.

*Attended  
Fazle*

No. 168  
Dt: 24

Constable Faza  
PS Faqirabad.



(8)

M. IJAZ ABID  
Superintendent of Police City  
Peshawar

**FINAL SHOW CAUSE NOTICE**

1. I, Muhammad Ijaz Abid, Superintendent of Police, City Peshawar, as competent Authority under the N.W.F.P, Removal from Service (Special Power) ordinance 2000, as amended up to date do hereby serve final Show Cause Notice to you Constable Fazali Amin No. 4551 while posted to PS Faqirabad.

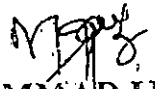
- i) That consequent upon the completion of enquiry conducted against you by DSP/Faqirabad, Enquiry Officer, found you guilty of misconduct.
- ii) Ongoing through the finding and recommendations of the Enquiry Officer, the material on record and other connected papers, I am satisfied that you have committed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

WHEREAS that you constable Fazali Amin No. 4551 while posted to PS Faqirabad were required for duty and searched in the vicinity of Police Station but not found and an absent entry was made vide DD No.11 dated 09.03.2009 till to date without any leave/permission from your seniors. Now you have involved yourself in criminal case vide FIR No.188 dated 24.03.2009 u/s 302/324/34 PFC Police Station Badaber. Being a member of a discipline force your this act is high objectionable and against the rules and regulations of the force.

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.

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

No. 1886 /SP: City:  
Dt. 24 /April: 2009.

Constable Fazali Amin No. 4551  
PS Faqirabad.

Attested  
