

BEFORE THE KHYBER PUKHTUN KHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.2957of 2021.

Shams-ur-Rehman S/O Gull Rehman

R/O

Singoor, District Chitral Lower.

Ex- Constable No.1011,

Police Station Chitral City, District Chitral Lower.....Appellant


Versus

1. Inspector General Police , Khyber Pakhtunkhwa Peshawar.
2. Regional Police officer, Malakand Region, Saidu Sharif Swat.
3. District Police Officer, Chitral Lower.
4. Inquiry Officer, Mr Zafar Ahmad, S.D.P.O, Chitral Lower.
- 5.

.....Respondents

Index

S.No.	Description of Documents	Annexure	Page No.
1	Para wise Comments	-	1, 2
2	Authority Letter.	-	3
3	Affidavit	-	4
4	Counter Affidavit	-	5
5	Absence Report (DD Report)	A	6
6	Copy of FIR	B	7
7	Copy of Charge Sheet	C	8
8	Enquiry Finding Report	D	9-10
	Order of Dismissal from service	E	11


District Police Officer,
Chitral Lower

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Parawise comments on behalf of Respondents**Respectfully Sheweth****Preliminary objections:-**

1. That the appeal is badly time barred.
2. That the appellant has got no locus standi to institute the instant appeal.
3. That the appellant has not come to the honorable Tribunal with clean hands.
4. That the appellant has no cause of action to prefer the present appeal.
5. That the appeal is bad due to mis-joinder and non-joinder of necessary and proper parties.

On facts:-

- 1- Pertains to record need no comments.
- 2- Para No 02 is admitted as correct to the extent that the appellant was Charged / booked in Case FIR, No.380 U/S 9D CNSA, dated 21.02.2020 Police Station Hayat Abad Peshawar and Contraband (chars) from his possession was recovered by Police.
- 3- Pertains to record of Judicial proceeding.
- 4- Para No 04 correct to the extent that charge sheet was issued to appellant and inquiry was initiated.
- 5- Para No 05 is admitted as correct to the extent that the Enquiry Officer on conclusion of the departmental enquiry submitted his findings report recommending the appellant for major punishment.
- 6- Para No 06 is correct to the extent that reply of appellant was found not satisfactory.
- 7- Para No 07 is correct and pertains to record.
- 8- Para No 08 is denied under the Tribunal Act only one departmental appeal is mandatory.
- 9- The Proceeding and Order mentioned in this Para are valid in the eyes of law and are maintainable. The appellant failed to prefer appeal well in time and has no cause of action.

On Grounds:-

- A- Incorrect. The Orders being based on solid grounds and cogent evidence are maintainable in the eyes of law.

- B- Incorrect. The defense of the appellant was considered but found against facts and Circumstance of the Case, while the evidence collected during the Enquiry proved to be cogent and Convincing in Support of the allegations leveled against the appellant and the appellant despite full and fair Chance of hearing and defence badly failed to Shutter and rebut the same.
- C- Incorrect. The appellant was on a Special and Sensitive duty during Polio Campaign in District Chitral, but the Appellant without any Permission of his Superior officers not only left his duty point, rather he reached Peshawar without intimating his Superior officers, on which he was absented vide DD No 26 dated 20-02-2020...(Copy attached as annexure....."A"). At Peshawar he was arrested while he was in possession of contraband (3000 grams Chars) and was booked in FIR No , 380 dated 21.02.2020 U/S 9 D CNSA Police station Hayat Abad.....(Copy attached as annexure....."B").
- D- Incorrect. The allegations leveled against the appellant in the show cause notice /charge sheet is based on Solid grounds... (Copy attached as annexure...."C").
- E- Incorrect. The allegations leveled against the appellant were based on Solid ground and proved on the basis of cogent and convincing evidence, the appellant failed to prove his innocence during the departmental enquiry, as per law departmental proceeding can be initiated and concluded parallel to that of judicial proceeding on the same charge.
- F- Incorrect. The Order issued by the Competent Authority is based on logical, Cogent and Convincing evidence, the appellant despite having full and fair chance of hearing and defence failed to shatter them and prove his innocence; hence the Order is Sustainable in the eyes of law..... (Copy attached as annexure..... "D").
- G- Incorrect. The finding of the Enquiry Officer is based on solid grounds and cogent evidence, hence sustainable in the eyes of law..... (Copy attached as annexure..... "E").
- H- Incorrect - The appeal of the appellant being badly time barred is not maintainable in the eyes of law.
- I- Any other ground with leave of the honorable Court will be raised during arguments.

Prayer: - In light of the facts Submitted above the appeal in hand may very graciously be dismissed with Cost.

1. Inspector General Police, K. P. K, Peshawar. _____
2. Regional Police officer, Malakand Region, Swat. _____
Regional Police Officer,
Malakand Region,
Saidu Sharif, Swat.
3. District Police Officer, Chitral, lower. _____
4. Inquiry Officer, Mr. Zafar Ahmad, SDPO Chitral Lower _____
Chitral

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Authority Letter

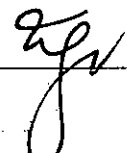
Mr Sher Muhsin ul mulk, Inspector Legal of District Police Chitral Lower is hereby authorized and deputed to attend the Service Tribunal, Khyber Pakhtunkhwa, Peshawar, and peruse Service Appeal No.2957of 2021. Titled Shams-ur-Rehman S/O Gull Rehman Versus Inspector General Police Officer, Khyber Pakhtunkhwa, Peshawar.

1. Inspector General Police, K. P. K Peshawar.

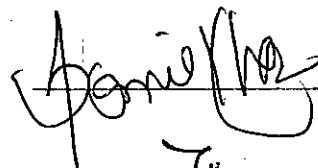
2. Regional Police officer, Malakand Region, Swat.

3. District Police Officer Chitral Lower.

4. Inquiry Officer, Mr. Zafar Ahmad, SDPO Chitral Lower



 Z. Rehman
 Regional Police Officer,
 Malakand Region,
 Saidu Sharif, Swat.



 Zafar Ahmad
 SDPO Chitral Lower

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3. District Police Officer, Chitral Lower.
4. Inquiry Officer Mr. Zafar Ahmad, S.D.P.O Chitral Lower.

.....Respondents

Affidavit

We the following respondents do hereby solemnly affirm that the contents of Para wise comments are true to the best of our knowledge and belief and nothing has been concealed from the Honorable Tribunal.

1. Inspector General Police, K.P.K Peshawar.

2. Regional Police officer, Malakand Region, Swat.

Z. Khan

 Regional Police Officer
 Malakand Region,
 Saidu Sharif, Swat.

3. District Police Officer Chitral.

Zafar Ahmad

4. Inquiry Officer, Mr. Zafar Ahmad, SDPO Chitral Lower

Zafar Ahmad

 Chitral

.....Respondents

ATTESTED



22-07-2022

§

BEFORE THE KHYBER PUKHTUN KHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.2957of 2021.

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R/O

Singoor, District Chitral Lower.

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4. Inquiry Officer Mr. Zafar Ahmad SDPO Chitral Lower

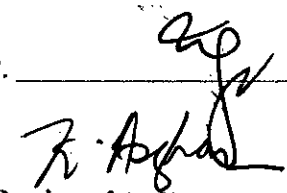
.....Respondents

Counter Affidavit.

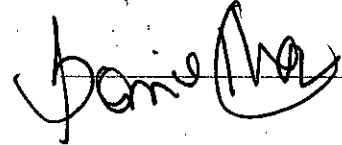
Verified that the contents of Para wise comments/ reply are true and correct and noting has been concealed from the honorable tribunal.

1. Inspector General Police Officer K, P, K Peshawar. _____

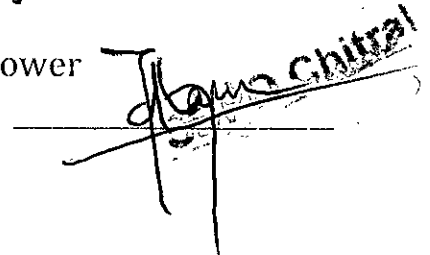
2. Regional Police officer, Malakand Region, Swat.


Regional Police Officer,
Malakand Region,
Saidu Sharif, Swat.

3. District Police Officer Chitral.



4. Inquiry Officer, Mr. Zafar Ahmad, SDPO Chitral Lower


Chitral

.....Respondents

No. 215/5A-KS-20
07/04/20
کتاب خانہ

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تقدیر روزنامی
— X —

Anneauve As

کتاب خانہ

وہ 26 رپورٹ غیر عامری ایکٹر SHO سعاد حسین نورج 20/02/20
15:16 بجے ایسٹیشن ٹنڈل انیس الریحی 1011 ریفنہ حوالہ دی 05 مای
سے بعد ذرا وقت یو یو سکورنگ ڈیویج کافی انتظار کے بعد خود
تھال عامر نے اسٹیشن ڈکوار کے نوٹس پر 0346-9060125
میں رابطہ کرنا شروع کیا۔ سڈار ایسٹیشن ڈکوار کا سب سے پہلی
سافٹویئر اسٹریجیٹک عایشہ ہونا کارسہ کے درمیں عدم دلچسپی کا
دولت ٹیوٹن ہے لہذا اسٹیشن ڈکوار کے خلاف رپورٹ غیر عامری
درج اور ناچھوڑی جاتی ہے۔

حنا عالی

نقل مطابق اصل ہے

Powandee

~~Amir~~
mm-ks-att
att 020/2/20

Signature
SHO/ks-20
07-04-20

CHARGE SHEET

I, **Wasim Riaz (PSP)**, District Police Officer, Chitral as competent authority, hereby charge you Constable Shams-ur-Rehman No.1011, posted Police Lines Chitral as follows:

That you constable Shams-ur-Rehman No.1011 while posted in Police station Chitral had been deputed for Polio duty in Seen Lasht. You left your duty at Seen Lasht Chitral and went to Peshawar without any authorization. At Peshawar you were caught red handed while trafficking/smuggling 3000 grams of Charas by Hayatabad Police.

You were arrested on the spot along with the contraband and FIR No.380 dated U/S 9 (D) CNSA at Hayatabad was registered against you and after investigation the case has been challaned to court.

You have thus committed a gross misconduct, illegal and unlawful act against the laws of the Land and Police Rules

Based on the above reasons, you appear to be guilty of misconduct/inefficient, not fit for service and have rendered yourself liable to all or any of the penalties specified in Rule -4 of the disciplinary Rules.1975 amended 2014.

You are therefore required to submit your written reply within Seven (07) days of receiving of this Charge Sheet to the Enquiry Officer Mr. Zafar Ahmad SDPO Chitral.

Your written reply, if any should reach to the Enquiry Officer, 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 as to whether you desire to be heard in person or not?

A statement of Allegation is enclosed.

Wasim Riaz (PSP)
District Police Officer,
Chitral,

No.2019-30/E-II, Dated Chitral the 17 / 03 /2020.

Copies to:-

Mr. Zafar Ahmad SDPO Chitral for initiating proceeding against the above defaulter official under Police Rule 1975 amended 2014.

FC Shams-ur-Rehman No.1011 posted Police Lines Chitral C/O Line Officer Police Lines Chitral.

فائنڈنگ رپورٹ

بنام:- کنسٹیبل شمس الرحمن نمبر 1011 معنہ پولیس لائن چترال

جناب عالی!

کنسٹیبل شمس الرحمن نمبر 1011 پولیس لائن چترال کے خلاف چارج شیٹ نمبری 129-30/Eii مورخہ 17.03.2020 کو جاری ہو کر برائے انکوآری من SDPO کو حوالہ ہونے پر حسب ضابطہ انکوآری کی شروعات کی گئی۔

الزامات:

آپ کنسٹیبل تھانہ چترال میں تعیناتی کے دوران آپ کو علاقہ سین لٹھ میں پولیوڈیوٹی لگائی گئی تھی۔ آپ کسی مجاز آفیسر کے اجازت کے بغیر ڈیوٹی چھوڑ کر پشاور گئے ہو۔ حیات آباد پشاور میں آپ کو 3000 گرام چرس سمگلنگ کرتے ہوئے مقامی پولیس رنگے ہاتھوں پکڑ کر آپ کے خلاف مقدمہ علت نمبر 380 محررہ 21.02.2020 جرم 9D.CNSA تھانہ حیات آباد میں درج رجسٹر ہو کر بعد تکمیل تفتیش چالان عدالت ہوا ہے۔

انکوآری:

جناب عالی!

دوران انکوآری کنسٹیبل مذکور کو بذریعہ میسج طلب کر کے سے جواب چارج شیٹ معہ چارج شیٹ و خلاصہ الزام Anx-A, B, C حاصل کر کے، کنسٹیبل کا بیان قلمبند ہو کر Anx-D اور میڈیکل کاغذات بابت بیماری کنسٹیبل پیش کرنے پر Anx-E شامل انکوآری کی گئی۔ مذکورہ کنسٹیبل کے خلاف درج شدہ مقدمہ کے حوالے سے فرد مقبوضگی، بیانات فرد پیش کردہ کنسٹیبل Anx-F, G لف انکوآری کی گئی۔ اس طرح کنسٹیبل مذکور کا سروس رول طلب کر کے نقولات سابقہ ریکارڈ شامل انکوآری کی گئی جو کہ Anx-H, I, J شامل انکوآری قابل ملاحظہ ہے۔

فائنڈنگ:

دوران انکوآری کنسٹیبل شمس الرحمن نمبر 1011 کو اپنی صفائی پیش کرنے لئے مکمل موقع دیا گیا تو کنسٹیبل مذکور کا مرضی خود سے بعرض میڈیل معاینہ کسی مجاز آفیسر کے نوٹس میں لائے بغیر چترال سے پشاور جانا ایک ڈسپلن فورس میں ہوتے ہوئے کارس کار میں عدم دلچسپی کا منہ بولتا ثبوت ہے جبکہ HMC ہسپتال پشاور میں اس کا ملاقات ایک مشتبہ شخص مسمی رفیق سکنہ پشاور اس کے خلاف کنسٹیبل مذکور خود اپنے بیان میں تذکرہ کرتا ہے کہ گاڑی سے برآمد شدہ چرس اُس کے تھے سے اتفاقاً ہونا و عرصہ داز سے کنسٹیبل مذکور کا مشتبہ شخص سے آشنا ہونا کسی حد تک درست ہے۔ مگر دونوں کا اکٹھے GT روڈ پشاور میں گاڑی کے انتظار میں کھڑا ہونا اور ایک ہی ویگن میں ایک ہی جگہ کی طرف سفر کرنا کسی علت سے خالی نہیں ہے۔ اور حیات آباد فیئر iii چوک پہنچنے پر مقامی پولیس گاڑی کو روک کر بلڈاز تلاشی گاڑی سمیت دیگر

مافروں کو جانے دینا اور کنسٹیبل مذکور کو محض شناختی کارڈ اور سروس کارڈ میں معمولی فرق کے پیش نظر اپنے ساتھ لے جانا اور اس کے خلاف جعلی FIR درج کر کے ملزم ٹھہرانا کوئی قابل یقین بات نہیں ہے۔ حالانکہ مقامی پولیس کنسٹیبل مذکور سے مقدار 3000 گرام برآمد کر کے اس کے خلاف مقدمہ درج ہو کر کنسٹیبل مذکور عدالت سے برضانت رہا شدہ ہے۔ اور اس بابت فرد مقبوضہ کی بیانات فرد کے اقوالات جو کہ Anx-F, G لف انکواری ہیں۔ اور کنسٹیبل مذکور اپنی بے گناہی کی نسبت کوئی قابل یقین تحریری ثبوت پیش کرنے میں بھی ناکام رہا ہے۔

لہذا اب تک کی انکواری اور درج بالا حقائق کی روشنی میں اس نتیجے پر پہنچا کہ گزشتہ 8 مہینوں سے راجہ میں منشیات کے خلاف جاری کریک ڈاؤن اور منشیات کی بیخ کنی کی نسبت مہم کافی حد تک مثالی رہی ہے اور عوامی سطح پر بھی پزیرائی حاصل ہو چکی ہے۔ آفیسراں بالا بھی منشیات جیسے لعنت کی حاتمے کے لئے بار بار احکامات جاری کرنے کے باوجود کنسٹیبل مذکور کا ڈیوٹی سے غیر حاضر رہ کر 3 کلو چرس پشاور سے ضلع ہڈالانے کی ناکام کوشش کرنا پولیس فورس کی بنیادی اصولوں کا عین منافی ہے اور چترال جیسے پر امن ضلع میں نوجوان نسل کی مستقبل کو داؤ پر لگانا قابل معافی جرم ہے اور آفیسراں بالا کے احکامات کے اوپر یانی پھیرنے کے مترادف ہے۔ باوجود ان کے کہ کنسٹیبل مذکور کا سابقہ ریکارڈ بمطابق سروس رول کوئی قابل معافی نہیں ہے اور کنسٹیبل مذکور پولیس جیسے قابل احترام اور منظم ادارے کے لئے ایک بدنام داغ کی مانند ہے۔ بنا برآں کنسٹیبل مذکور کو Major Panishment دینے کی سفارش کی جاتی ہے۔ تاکہ محکمے پولیس کے دیگر اہلکاران کے لئے سبق اور عبرت حاصل ہو سکے۔

لہذا فائنڈنگ رپورٹ مرتب ہو کر بمبراد ملاحظہ گزارش ہے۔

ابن۔ ڈی۔ بی۔ ایچ۔ چترال

8-4-2020

Agreed

Lambs
10/4

District Police Officer
CENTRAL

ORDER

This office order will dispose off the departmental enquiry under Police Rules 1975 against Constable Shamsur Rehman No.1011 Police Lines Chitral.

Brief facts pertaining to the initiation of the enquiry are that the delinquent Constable during his posting in Police station Chitral was deputed in Anti Polio campaign duty at Seen Lasht. During the duty he left his duty and secretly went to Peshawar where he was caught red handed while trafficking drug by Hayatabad Police and chargs weighing 3000 grams was recovered from him. He was arrested on the spot and case FIR No.380 dated 21.02.2020 U/S 9 (D) CNSA was registered against him at Hayatabad Police station Peshawar. He was sent behind the bar and later on was released on bail by Court.

Initiating the enquiry the accused constable was issued Charge Sheet and Summary of Allegations and Mr. Zafar Ahmad SDPO Chitral was appointed as Enquiry Officer to conduct proper departmentally enquiry against him.

During the enquiry the accused was summoned to join the enquiry and to produce defence in his favour after giving ample opportunity of hearing and defence and on conclusion of enquiry the Enquiry Officer submitted his finding on 08.04.2020 recommending for major punishment.

The undersigned carefully perused the enquiry file, the finding of the Enquiry Officer and all evidence and material on record. From perusal of the record it is crystal clear that the accused has badly failed to prove himself innocent. Though he has produced his treatment prescription at Hayatabad Medical Complex Peshawar, but he failed to explain leaving of his duty and his visit to Peshawar without permission. He was absented in PS Chitral D.D No.26 dated 20.02.2020 and copy of FIR lodged against him at Hayatabad Police station is placed on file to which he is unable to deny.

Record shows that the accused has been given full opportunity of being heard and defence, he is a previous convict of 09 times, and I found no material illegality or irregularity in the enquiry proceeding. The enquiry finding is based on strong evidence and is convincing, hence upheld. The accused is a senior constable having 11 years of service, Police being a disciplined force, cannot allow such like conduct and keeping such like elements will damage the general conduct and discipline of the Force and being in a disciplinary and law enforcing service his conduct act/omission is serious violation of disciplinary laws and Law of the land and deserve no leniency, his keeping in the force waiting for the final decision of the criminal case in court will not only cause bad impression on public against the department rather his retention in service will be harmful for the force, therefore upholding the finding of the Enquiry Officer the accused constable is awarded major punishment and dismissed from service.

J. J. J.
District Police Officer,
Chitral

22/04/2020

No. 2899-2506/E-II, Dated Chitral the
Copy to the:

1. DSP/HQ Chitral.
2. SDPO Drosh
3. SHO PS Drosh and Arandu
4. Pay Officer
5. EC
6. OHC for O.B.
7. Wali C.O Security Clearance Form