

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.904 /2023.


Ex Constable Imran khan No. 6944 of CCP Peshawar..... **Appellant.**

VERSUS

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

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✓ DSP/Legal,
CCP, Peshawar.

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REPLY BY RESPONDENTS NO. 1,2& 3.

Respectfully Sheweth:-

Khyber Pakhtunkhwa
Service Tribunal
Diary No. 8596
Dated 25-10-23

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 performance of the appellant during service was neither satisfactory nor up to the mark and his involvement in criminal cases speaks volume of his inefficiency.
3. Incorrect. The appellant has not a clean service record and contains 02 Minor punishments during his short service.
4. Para pertains to record.
5. Para already explained in the preceding paras.
6. Incorrect. The appellant was proceeded against departmentally on the charges of his involvement in three (03) criminal cases vide FIR No.464 dated 09.06.2022 u/s 392 PPC , FIR No.488 dated 16.06.2022 u/s 394 PPC and FIR No.155 dated 28.02.2022 u/s 392 PPC PS Khazana Peshawar. In this regard, he was issued Charge Sheet with Statement of Allegations. SP Cantt was appointed as Enquiry Officer. The Enquiry Officer during enquiry proceedings pointed out that the appellant is an expert in changing Mobile phone IMEIs and sent phones to Afghanistan by changing the IMEIs of the snatched mobile phones. The appellant was a member of an organized mobile snatcher gang and misused his position of being a member of police force and earned bad name for the department. During the course of enquiry, the enquiry officer found the appellant guilty of the charges leveled against him. Upon the findings report of enquiry officer, he was issued final show cause notice, his reply was found unsatisfactory. After fulfilling all of codal formalities, he was awarded major punishment of dismissal from service by SSP/Operations Peshawar. (Copy of charge sheet, statement of allegations, enquiry report and Final Show Cause Notice are annexed as annexure "A" "B" "C" "D").

7. Incorrect. Furthermore, the appellant being a member of a disciplined force, committed gross misconduct by involving himself in three criminal cases. 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 the solution of the matter, but on contrary acquittal is mandatory.
8. Incorrect. The appellant filed time barred departmental appeal, which was properly processed and also heard him in person by the appellate authority, however he failed to defend himself with plausible/justifiable grounds, hence appeal of the appellant was rejected/ filed on the grounds of facts and limitation.
9. Incorrect. The punishment orders passed by the competent authority are just legal and in accordance with law/rules. Further, 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 a member of a disciplined force, committed gross misconduct, hence the punishment orders are just legal and have been passed in accordance with law/rules. Therefore, liable to be upheld.
- B. Incorrect. The appellant was treated as per law/rules and no article of Constitution of Pakistan has been violated by the replying respondents.
- C. Incorrect. The appellant was called time and again and also contacted on his cell phone No.03139380940 with the direction to appear before the enquiry officer, but the appellant did not bother to attend the enquiry proceedings. After fulfilling all codal formalities he was awarded major punishment.
- D. Incorrect. The appellant being a member of a disciplined force committed gross misconduct. The charges leveled against him were stand proved; hence he was awarded the major punishment.
- E. Incorrect. Charge sheet with statement of allegations was issued to him. Regular inquiry was conducted, during the course of enquiry the appellant was contacted on his personal cell phone, and was called time and again but to no avail, thereafter a final show cause notice was served upon him, hence after fulfilling of all codal formalities, he was awarded the major punishment of dismissal from service under the rules.
- F. Incorrect. The competent authority before imposing the major punishment had completed all codal formalities by issuing him final show cause notice and an ample opportunity of self defense was provided to appellant, but he failed to prove himself innocent.
- G. Incorrect. Proper opportunity of self defense was provided to the appellant but he failed to defend himself. The charges leveled against him were stand proved; hence he was awarded the major punishment.
- H. Incorrect. Para already explained in the above para. Further, the appellant is giving wrong picture just to save his skin from commission of misconduct. The charges leveled against him are proved; hence he was awarded the major punishment.
- I. Incorrect. The appellant being a member of a disciplined force committed gross misconduct, hence he was rightly awarded major punishment.

- J. Incorrect. The appellant was treated as per law/rules and no discrimination has been done by replying respondents. During the course of enquiry, the appellant failed to rebut the charges and the enquiry officer conducted thorough probe into the matter and found the appellant guilty of gross misconduct on his part, hence the punishment order was passed.
- K. Incorrect. The appellant availed the opportunity of personal hearing however, he failed to advance any plausible explanation in his defense, hence after fulfilling all codal formalities he was awarded major punishment of dismissal from service under Police Rules 1975 amended 2014.
- L. Incorrect. The charges leveled against him were proved. The appellant being a member of the disciplined force, committed gross misconduct, hence rightly awarded major punishment.
- M. Incorrect. The Punishment order passed by the competent authority is based on justifiable and genuine grounds, without any malafide intension, hence liable to be upheld.
- N. Incorrect. The appellant was issued charge sheet with summary of allegations, proper departmental enquiry was conducted against him. He was provided full opportunity of defense, but he failed to defend himself. After fulfilling of all codal formalities, he was found guilty, hence awarded major punishment of dismissal from service.
- O. Incorrect. The punishment order passed by the competent authority is in accordance with law/rules and liable to be upheld. Respondents may also be allowed to raise additional grounds at the time of arguments please.

PRAYER.

Keeping in view the gravity of slackness, willful negligence and misconduct of appellant, it is prayed that appeal being devoid of merit and limitation may kindly be dismissed with cost please.

**Senior Superintendent of Police,
Operations, Peshawar.**

**Capital City Police Officer,
Peshawar.**

**Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.**

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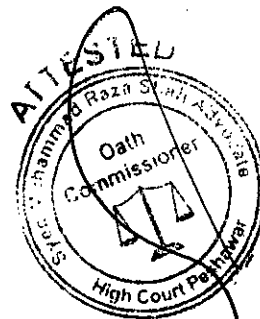
AFFIDAVIT.

We respondents No. 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 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.

**Senior Superintendent of Police,
Operations, Peshawar.**

**Capital City Police Officer,
Peshawar.**

**Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.**



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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

1. Whereas I, Lt Cdr @ Kashif Aftab Ahmad Abbasi, PSP, SSP/Operations Peshawar, am satisfied that a Formal Enquiry as contemplated by Police Rules 1975 is necessary & expedient in the subject case against **Constable Imran Khan No. 6944 of CCP Peshawar.**

2. And whereas, I am of the view that the allegations if established would call for major/minor penalty, as defined in Rule 3 of the aforesaid Rules.

3. Now therefore, as required by Rule 6 (1) (a) & (b) of the said Rules, I, Lt Cdr @ Kashif Aftab Ahmad Abbasi, PSP, SSP Operations, Peshawar hereby charge **Constable Imran Khan No. 6944 of CCP Peshawar** under Rule 5 (4) of the Police Rules 1975.

i. That you involved in the following criminal cases of PS Khazana

- FIR No. 464 dt: 09.06.2022 u/s 392 PPC.
- FIR No. 488 dt: 16.06.2022 u/s 394 PPC.
- FIR No. 155 dt: 28.02.2022 u/s 392 PPC.

ii. Your this act is highly objectionable on your part and renders you liable for disciplinary proceedings under Police Rules 1975.

4. I hereby direct you further under Rule 6 (1) (b) of the said Rules to put forth written defence within 7 days of the receipt of this Charge Sheet to the Enquiry Officer, as to why action should not be taken against you and also stating at the same time whether you desire to be heard in person.

5. In case your reply is not received within the specific period to the Enquiry Officer, it shall be presumed that you have no defence to offer and ex-parte action will be taken against you.

Attested
[Signature]

Lt Cdr @ KASHIF AFTAB AHMAD ABBASI)PSP
Senior Superintendent of Police
(Operations) Peshawar

STATEMENT OF ALLEGATIONS

1. I, Lt Cdr @ Kashif Aftab Ahmad Abbasi, PSP, SSP/Operations Peshawar as competent authority, am of the opinion that **Constable Imran Khan No. 6944 of CCP Peshawar** has rendered himself liable to be proceeded against departmentally as he has committed the following acts/omission within the meaning of section 03 of the Khyber Pakhtunkhwa Police Rules, 1975.

i. That he involved in the following criminal cases of PS Khazana

- FIR No. 464 dt: 09.06.2022 u/s 392 PPC.
- FIR No. 488 dt: 16.06.2022 u/s 394 PPC.
- FIR No. 155 dt: 28.02.2022 u/s 392 PPC.

ii. His this act is highly objectionable on his part and renders him liable for disciplinary proceedings under Police Rules 1975.

2. For the purpose of scrutinizing the conduct of afore said police official in the said episode with reference to the above allegations SP - Comdt. is appointed as Enquiry Officer under Rule 5 (4) of Police Rules 1975.

3. The Enquiry Officer shall in-accordance with the provision of the Police Rules (1975), provide reasonable opportunity of hearing to the accused Official and make recommendations as to punish or other action to be taken against the accused official.

Lt Cdr @ KASHIF AFTAB AHMAD ABBASI)PSP
Senior Superintendent of Police
(Operations) Peshawar

No. 127 E/PA, dated Peshawar the 30 / 06 / 2022

Copy to:-

1. The Inquiry Officer.
2. The Delinquent official through PA to the EO officer

Attested
Nava

PA
For process
SP-Comdt

C' (8)

FINDING U/R 6(5) OF POLICE RULES 1975, (AMENDED 2014)
AGAINST IMRAN KHAN NO. 6944 OF CCP PESHAWAR.

The enquiry in hand was referred to this office to ascertain the misconduct committed by the subject police officer vide order of enquiry No. 127/E/PA dated 30.06.2022.

He was issued charge sheet and statement of allegations, which contained following allegations:-

- i. That he is involved in the following criminal cases of PS Khazana.
 - FIR No. 464 dated 09.06.2022 u/s 392 PPC.
 - FIR No. 488 dated 16.06.2022 u/s 394 PPC.
 - FIR No. 155 dated 28.02.2022 u/s 392 PPC.
- i. His this act is highly objectionable on his part and renders him liable for disciplinary proceedings under Police Rules 1975.

ENQUIRY PROCEEDINGS:

To inquire the matter and find out the real facts, undersigned called the alleged police officer repeatedly but he did not appear before the undersigned. He was informed multiple times on his cell number 0313-9380940 but he did not appear before the undersigned nor recorded his statement. Such lethargic attitude on his part reflects grave negligence, non seriousness, insubordination and lack of responsibility. This amounts to gross misconduct on his part and against the discipline of the force.

However, statement SI Waris Khan IO of the case was recorded which is attached as **(annex-A)**.

FINDINGS

After going through the statement of IO, and enquiring into the matter the undersigned reached following conclusion;

- 1: According to the statement of IO three accused named Salman, Amin and Raft Nawaz were arrested in case FIR No. 488 dated 16.06.2022 u/s 394 PPC. All

Attested
Nawaz

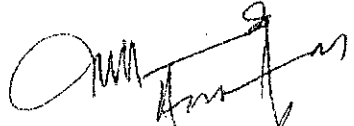
the accused were properly interrogated. During interrogation they disclosed the name of Constable Imran No. 6944 & Irshad that the snatched mobile phones were sold out to them.

2. According to their statements Constable Imran No. 6944 and Irshad were also arrested and interrogated. Constable Imran disclosed the name of Sajjad and on pointation of Constable Imran 20 mobiles and one laptop were recovered from his house and 39 mobiles were recovered from the house of Sajjad.
3. In another case FIR No. 464 dated 09.06.2022 u/s 392/411 PS Khazana 30 mobiles were recovered from constable Imran and 30 mobiles were recovered from his friend Irshad.
4. During the investigation, it was also revealed that the said constable is an expert in changing the mobile phone IMEIs and sends phones to Afghanistan by changing the IMEIs of the snatched mobile phones.
5. It appears that Constable Imran is a member of an organized mobile snatcher gang and misusing his position of being a member of the police force and bringing a bad name for the department.

RECOMMENDATION

Keeping in view the aforementioned findings, Constable Imran No. 6944 is hereby recommended for major punishment "**dismissal**" from service.

Submitted please.


M. AZHAR KHAN (PSP)
 SUPERINTENDENT OF POLICE,
 CANTT PESHAWAR

*Arrested
Rana*

2



Phone No. 3512345

'D' 10

No. 2590 /PA

Dated Peshawar the 16/10/2022

FINAL SHOW CAUSE NOTICE
(Under Police Disciplinary Rules, 1975)

1. I, Senior Superintendent of Police, Operations, Peshawar as competent authority, under the Police disciplinary Rules 1975, do hereby serve you **Constable Imran Khan No. 6944 District Peshawar** as follows:-

2. (i) That consequent upon the completion of enquiry committee conducted against you by SP Cantt Peshawar, who found you guilty of the charges for which you were given the opportunity of personal hearing,

(ii) Ongoing through the findings and recommendations of the inquiry officer, the material on record and other connected papers including your defense before the said officers;

I am satisfied that you have committed the follow misconducts:

You have been **found guilty** of the charges already communicated to you vide this office charge sheet bearing No. 127/A/PA dated 30.06.2022.

3. As a result thereof I, as Competent Authority decided to impose upon you major/minor penalty including dismissal from service under the said Rules.

4. You are, therefore, require to Show Cause as to why the aforesaid penalty should not be imposed upon you.

5. If no reply to this notice is received within 7-days of its delivery, it shall be presumed that you have no defense to put in and in that case an ex-parte action shall be taken against you.

6. You are at liberty to be heard in person, if so wished.

Handwritten signature: DISA...

(Lt Col) **KASHIF AFTAB AHMAD ABBAS** DSP
Senior Superintendent of Police
(Operations) Peshawar

Handwritten note: Alleged

Better copy 'D' 11

LEGIBLE COPY

FINAL SHOW CAUSE NOTICE
(Under Police Disciplinary Rules, 1975)

1. I Senior Superintendent of Police, Operations, Peshawar as competent authority, under the Police Disciplinary Rules 1975 do hereby serve you Constable Imran Khan No. 6944 of District Peshawar as follows:-
2. (i) That consequent upon the completion of enquiry committee conducted against you by SP Cantt Peshawar. Who found you guilty of the charges for which you were given the opportunity of personal hearing.
(ii) On going through the findings and recommendation of the enquiry Officer, the material on record and other connected papers including your defense before the said officers: I am satisfied that you have committed the follow misconducts.
You have been found guilty of the charges already committed to you vide this office charge sheet bearing No. 127/E/PA dated 30.06.2022.
3. As a result thereof, I, as competent authority decided to impose upon you major/minor penalty including dismissal from service under the said rules.
4. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you.
5. If no reply to this notice is received within 7 days of its delivery, it shall be presumed that you have no defense to put in and in that case as ex-parte action shall be taken against you.
6. You are at liberty to be heard in person, if so wished.

(Lt Cdr KASHIF AFTAB AHMAD ABBASI)PSP
Senior Superintendent of Police,
(Operations) Peshawar.

Attested
Ayes