

BEFORE THE HONORABLE,
SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No. 972/2018
Ex-Constable Amal Badshah
No.3831/Ex-Serviceman

....Appellant

V E R S U S

Govt of KP through Secretary Home and Tribunal affair and others...Respondents

I N D E X

S, #	Description of Documents	Annexed	Pages
1.	Parawise Comments		1-3
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3.	Copy of Enquiry Report	A	5
4.	Copy of Judgment Service Tribunal and Peshawar High Court	B	6-10



Deponent
Incharge Legal Branch,
Hangu

BEFORE THE HONORABLE KP SERVICE TRIBUNAL PESHAWAR.

Service appeal No. 972/2018

Ex Constable Amal Badshah No.3331/Ex-Serviceman.....**appellant**

Versus

Government of Khyber Pakhtunkhwa through secretary home and tribal affair and others**Respondent**

Parawise comments on behalf of respondent No.1 to 5

Respectfully sheweth:-

Parawise comments are submitted as under.

Preliminary objection:-

1. That the appellant has got no cause of action to file instant appeal.
2. That the appellant has got no locus standi to file present appeal.
3. That the appellant was inducted purely on contract basis as Ex-serviceman constable, hence his appeal is not maintainable in its present form.
4. That the appellant has not come to this Hon: Tribunal with clean hands.
5. That the appeal is badly barred by law and limitation.

Facts:-

1. Pertains to the service record of the appellant, he was an employee of the department purely on a contractual basis.
2. Pertains to the record, the appellant was appointed purely on contract basis. He breached the law and indulged himself in illegal activities. Therefore, in such a case, the appellant was liable to major punishment.
3. Correct to the extent that verification was carried out at the time of the initial appointment. However, the concerned authorities are checking /verifying background of the employees on a regular basis. If any discrepancies are identified, the department immediately point it out right away. The appellant was dismissed on the ground that he had involved in unlawful activities during his contract employment.
4. Incorrect. Based on the findings of the inquiry report, the appellant was dismissed from service. Further, the department conducted a proper departmental inquiry in accordance with Khyber Pakhtunkhwa Police Rules, 1975. (Copy of enquiry report is annexed as annexar A)
5. Pertains to the record, the appellant/complainant brought a case in the court. Hon'ble Peshawar High Court and Service Tribunal successfully dismissed the case earlier.(Copy of judgment service tribunal and Peshawar High Court is annexed as annexer B)
6. The appellant's impugned order is based on facts and the competent authority award major punishment under Khyber Pakhtunkhwa Police Rules, 1975.

GROUND:-

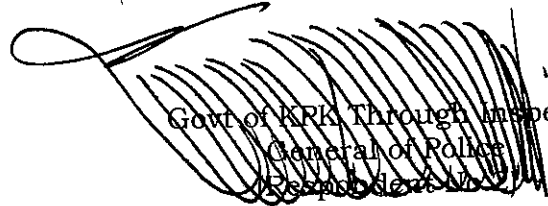
- a) Incorrect. The department conducted a proper departmental inquiry in accordance with Khyber Pakhtunkhwa Police Rules, 1975. The appellant dismissed from service based on the inquiry report's findings. It has both legal and legitimate grounds.
- b) Incorrect. The appellant was aware of all the proceedings initiated against him. The appellant did not make any contact with the department amid this period. Even though department published an advertisement about the notice in the local newspaper. Furthermore, through his home district (Karak), he was also informed to report. In accordance with Police Rules, the competent authority issued the order of his dismissal from service.
- c) Incorrect. The appellant did not submit his reply in the matter. The fact is that the appellant was provided with a notice to appear at the hearings, but he did not contact the department. The already explained Police Rules vide above para were followed in all proceedings against the appellant.
- d) Incorrect. Already explained in vide above para that department conducted a proper departmental inquiry against the appellant. To ensure fairness and impartiality, the competent authority issued the order of dismissal under the provisions of Khyber Pakhtunkhwa Police Rules, 1975.
- e) Incorrect. All legal procedures were followed in this case and the appellant was found guilty.
- f) Incorrect. The appellant indulged himself in illegal activities during contract service. He was dealt strictly in accordance with the provisions of law. The Constitution of the Islamic Republic of Pakistan, 1973 grants the right to the appellant and it was not ignored and bulldozed.
- g) Incorrect. Pertains to the service record of the appellant, his performance was unsatisfactory. He remained absent from his official duties and involved in illegal activities too.
- h) Incorrect. The allegations against the appellant are neither false nor fabricated. The department conducted a detailed inquiry and examined all aspects to issue a dismissal order based on the findings of the inquiry report.
- i) Incorrect. Already explained in the above para that the appellant dismissal was both legal and legitimate. The law applies to everyone in the department. Therefore, there is no evidence of nepotism or discrimination by the department.

- j) Incorrect. All legal procedures were fulfilled against the appellant. He was also given the opportunity to respond. Moreover, the competent authority did not hastily adjudicate the case against the appellant.

Keeping in view of the above, conduct of the appellant, the appeal is devoid of merit/law without any substantiate and badly time barred. It is prayed that the instant appeal of the appellant may kindly be dismissed with cost.



Govt of Khyber Pakhtunkhwa
Through Secretary Home
and Tribal Affairs
(Respondent No. 1)



Govt of KPK Through Inspector
General of Police
(Respondent No. 2)



Deputy Inspector General of Police
Kohat, Division Kohat.
(Respondent No.3)



District Police officer,
Hangu
(Respondent No.4/5)

BEFORE THE HONORABLE,
SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No.72/2018
Ex-Constable Amal Badshah
No.3831/Ex-Serviceman


....Appellant

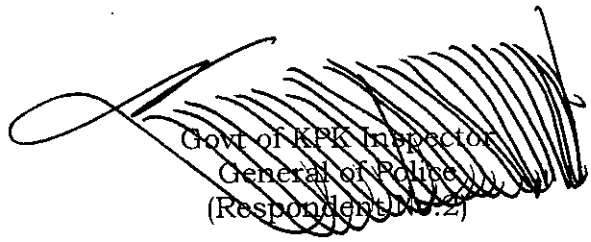
VERSUS


Govt of KP through Secretary Home and Tribunal affair and others...Respondents


AFFIDAVIT

We the below mentioned respondents, do hereby solemnly affirm and declare that contents of **Reply/Parawise Comments** are correct and true to the best of our knowledge and nothing has been concealed from this honorable tribunal.

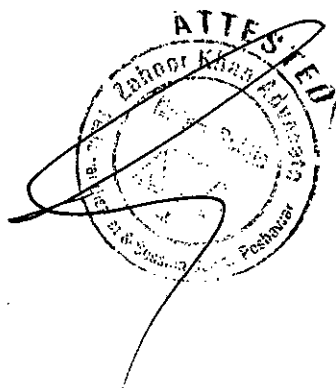

Govt of Khyber Pakhtunkhwa
Through Secretary Home
And Tribal Affair
(Respondent No.1)


Govt of KPK Inspector
General of Police
(Respondent No.2)


Deputy Inspector General of Police
Kohat, Division Kohat.
(Respondent No.3)


District Police Officer,
Hangu
(Respondent No.4/5)

It is further stated on oath
that in this appeal, the answers of
respondents have neither been
placed ex-parte nor their defense
have been struck off.



فائینڈنگ انکوائری رپورٹ

جناب عالی!

بحوالہ محکمہ نہ انکوائری برخلاف کنشیل عمل بادشاہ نمبر 3831/Ex معروف خدمات ہوں کہ کنشیل مذکورہ بالا کو بحوالہ چارج شدٹ نمبری PA/4879 مورخہ 11.12.2014 ایشو ہو کر جس میں اس کو غیر قانونی سرگرمیوں کا حصہ ہونے پر محکمانہ انکوائری کا سامنا ہے اور من انسپکٹریگل کو انکوائری آفیسر مقرر کیا۔

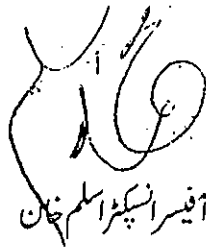
کنشیل مذکورہ برائے انکوائری طلب کر کے مذکورہ کنشیل نے تحریری جواب من انکوائری آفیسر کو پیش کیا جس میں جملہ الزامات سے انکاری ہو کر خود کو بے گنا ظاہر کیا مذکورہ کنشیل پر جرح کرنے کی ضرورت محسوس نہیں کی کیونکہ RI صاحب نے اپنے انکوائری کرنے کے دوران اسی جواب پر تفصیلاً جرح کی ہے۔

علاوہ ازیں درخواست کنندہ سخی رحمن کی دوبارہ بیانات لینے کی بھی ضرورت محسوس نہیں کی کیونکہ اس معاملہ اس کے بیانات پہلے ہی صفحہ انکوائری پر موجود ہیں۔ مزید یہ کہ RI صاحب ہنگو نے انکوائری کے سوا درخواست کنندہ کی درخواست پر جناب DPO صاحب نے بحوالہ چھٹی انگریزی نمبری 2729 مورخہ 21.07.2014 مفصل طور پر جناب IG صاحب خیر پختو آنخواہ کو برائے چھٹی انگریزی جواب دیا ہے۔ جس میں مہجر ریاض نامی شخص اور کنشیل عمل بادشاہ کو معاملہ ہذا میں فراڈ کا حصہ بتایا ہے۔

اس معاملہ میں کافی خط و کتابت اور پہلے بھی انکوائری ہو چکی ہیں اور مذکورہ ایکسرس میں ذاتی صاف نظر نہیں آتے۔

قوم کے لین دین کی بنیاد ان کی ذاتی تعلقات ہیں تاہم فورس کا حصہ ہونے کی بناء پر اپنے کردار بھی شفاف نوعیت کا ہونا بھی ضروری ہیں۔ رقم کا تنازعہ اور وقوعہ منڈی بہاؤ الدین پنجاب کا ہے۔

لہذا درخواست کنندہ مذکورہ ضلیہ کے افسران یا عدلیہ کے ذریعے اپنے معاملے کو حل کروائے تاہم یہ امر بھی قابل ذکر ہے کہ مذکورہ کنشیل کنٹریکٹ کی بنیاد پر سرس کر رہا ہے اور اسی طرح کے کردار کے ساتھ محکمہ پولیس کی بدنامی پاکستان کے سطح پر ہو رہی ہے اور کنٹریکٹ پر ہوتے ہوئے بہتر ہوگا کہ اس کے کنٹریکٹ کو منسوخ کیا جائے اور نوکری سے فارغ کیا جائے تاکہ مزید باعث بدنامی نہ ہو۔ انکوائری ہذا میں کنشیل عمل بادشاہ کے کردار کو غیر شفاف پایا جا کر انکوائری رپورٹ گزارش ہے۔



انکوائری آفیسر انسپکٹر اسلم خان

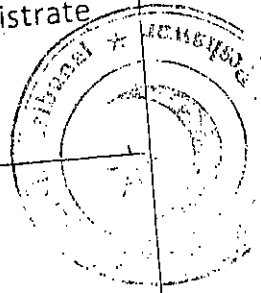
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Order or other proceedings with signature of Judge or Magistrate



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No. 640/2016

Date of Institution ... 13.06.2016
Date of Decision ... 29.01.2018

Amal Badshah S/O Neek Badshah Ex-Constable No.3831/Ex-Servicemen Police Line, Hanguar.

Versus

29.01.2018

1. The Government of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs.
2. Government of Khyber Pakhtunkhwa through Inspector General of Police.
3. D.I.G Kohat District Kohat.
4. D.P.O, Hangu

JUDGMENT

MUHAMMAD HAMID MUGHAL, MEMBER: - Learned counsel for the appellant and Zia Ullah on behalf of the respondents present.

2. The appellants has filed the present service appeals u/s 4 of Khyber Pakhtunkhwa Service Tribunal Act 1974 against the respondents and made impugned the order dated 17.03.2015 whereby he was awarded major penalty of dismissal from service.
3. At the very outset learned DDA raised objection that the present appeals is hopelessly time barred as the impugned final order was issued on 17.03.2015 while the present service appeal was

Attested

ATTESTED

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preferred on 13.06.2016.

4. As against that learned counsel for the appellants argued that against the impugned order dated 17.03.2015^m the appellant filed departmental appeal which was not responded and the appellant then approached the Honorable Peshawar High Court Peshawar and filed Writ Petition against the impugned order, however the same was dismissed being not maintainable. consequently the appellant approached this Tribunal with application for condonation of delay with the same reason.

5. Arguments heard. File perused.

6. It has now become a settled proposition of law that time spent in litigation before the wrong forum would neither extend period of limitation nor the delay in filing the appeal can be condoned for such reason. Judgment dated 29.06.2017 in service appeal bearing No189/2015 of this Tribunal may be quoted as a reference. The appellant is aggrieved from the order dated 17.03.2015 against which he approached this Tribunal on 13.06.2016 i.e after one year and almost three months of the issuance of the impugned order, hence the present service appeal is hopelessly time barred and consequently the same is dismissed as such. Parties are left to bear their own costs. File be consigned to the record room after its completion.

ANNOUNCED
29.01.2018

Certified true copy
MEMBER
Service Tribunal
Peshawar

Muhammad Amin Kundi
(Muhammad Amin Kundi)
MEMBER

Muhammad Hamid Mughal
(Muhammad Hamid Mughal)
MEMBER

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JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

WP No. 2582-P/2015

JUDGMENT.

Date of hearing: 12.4.2016

Petitioner: (Amal Badshah) by Mr. Hidayatullah Khattak.
Advocate.

Respondent: (Govt. of Khyber Pakhtunkhwa and others) by
Mr. Rab Nawaz Khan, AAG.

WAQAR AHMAD SETH, J:- Amal Badshah,

petitioner herein, through the instant constitutional petition, has prayed for issuance of an appropriate writ declaring the impugned order No. 154 dated 17.3.2015 passed by respondent No.3 as unlawful authority, void and ineffective upon his rights. He further prayed that the concerned respondents be directed to reinstate him on the post with all back benefits.

2. Facts, in brief, are that the petitioner, on retirement from Pakistan Army, joined the service on contract basis in the police department as Constable and performed his duties to the satisfaction of his seniors but

Attested

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one Sakhee Rehman filed numerous applications against him, which were referred to inquiries and after completion of inquiry, he was awarded major penalty of dismissal from service vide order dated 17.3.2013, against which, the petitioner filed departmental appeal but no response was given to him; hence, the instant Writ Petition.

3. Comments were from respondents No. 1 & 2, which they accordingly furnished and denied by the assertion of petitioner by stating that numerous complaints were filed against the petitioner for his involvement in illegal activities and after initiation of proper departmental inquiry, he was awarded major punishment of dismissal from service.

4. On the previous date, the learned Additional Advocate General raised objection regarding maintainability of instant Writ Petition that the petitioner being a civil servant, the jurisdiction of this Court is barred under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973, to which, the learned

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counsel for the petitioner sought time to prepare the case. Today, when the learned counsel for the petitioner was confronted with the above objection raised by the learned Additional Advocate General, he argued the case at some length but could not give a positive response.

5. In view of the above, this Writ Petition being not maintainable is hereby dismissed with direction to the petitioner to approach the competent forum for redressal of his grievance along with application for condonation of delay.

ANNOUNCED
Dated: 12.4.2016

*5/11/16. reception. Honoured by the J. S.
Cell no. 34 of Asar Shah J.*

CERTIFIED TO BE TRUE COPY
Examiner
Peshawar High Court, Peshawar
Authorized Under Section 17 of
The Oath-taking Act, 1954
20 APR 2016

Nawab Shah

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Attended
20/4