

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.522 /2023.

Ex Constable Raheem Khan No. 4608 of CCP Peshawar,..... **Appellant.**

VERSUS

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

I n d e x

S.NO	DOCUMENTS	ANNEXURE	PAGES
1	Reply		1 to 3
2	Affidavit		4
3	Authority		5
4	Copy of list	A	6
5	Charge sheet	B	7
6	Statement of allegations	C	8
7	Enquiry report	D	9
8	FSCN	E	10



DSP/Legal,
CCP, Peshawar.

31-10-2023

Peshawar.

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REPLY BY RESPONDENTS NO. 1, 2&3.

Respectfully Sheweth:-

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.

Khyber Pakhtunkhwa
Service Tribunal
Diary No. 8721
Dated 31-10-23

REPLY ON FACTS:-

1. Pertains to record.
2. Incorrect. The appellant was appointed as constable in the year 2004 in the respondent department. However, performance of the appellant during service was not up to the mark and earned 20 bad entries, 08 Minor punishments and 01 Major punishment in his credit on the charges of willful absence from duty on different occasions during his short service. Worth mentioning, that appellant is a habitual absentee being lack of interest in his lawful duty. In addition, he was previously reinstated by this Hon'ble Service Tribunal vide judgment dated 14.06.2021. (copy of list as annexure A)
3. Incorrect. The appellant was placed under suspension and charge sheeted based on willful absence from his lawful duty w.e.from 24.01.2022 to 29.06.2022 without any Leave/Permission. DSP Complaint & enquiry Peshawar was nominated as enquiry officer. During the course of enquiry, he was called time and again, but he did not turn up. After receipt of findings, he was served with Final Show Cause Notice but failed to submit his reply in the specific period of time. After observing all codal formalities, he was awarded major punishment of removal from service under Police Rules 1975 amended 2014.(copy of charge sheet, statement of allegations, enquiry report, FSCN are annexure as B,C,D,E)
4. Incorrect. The appellant filed 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.
5. Correct to extent that the appellant previously filed service appeal No.184/2019 before the Hon'ble Service Tribunal which was decided on 14.06.2021 for the purpose of De-novo

enquiry. In light of the judgment de-novo enquiry was conducted against him and finally he was Re-Instated into service in the year 2021. The appellant is a habitual absentee being not interested in official duty failed to mend his ways hence was again penalized on the charges of willful absence from duty.

6. That appeal of the appellant being devoid of merits and limitation may be dismissed on the following grounds.

REPLY ON GROUNDS:-

- A. Incorrect. Punishments orders are just legal, lawful and have been passed in accordance with law/rules and are liable to be upheld.
- B. Incorrect. Charge sheet with statement of allegations was issued to the appellant. Regular enquiry was conducted and thereafter he was issued a final show cause notice, by giving him proper opportunity of personal hearing, but he was failed to defend himself, hence after fulfilling all the codal formalities he was awarded Major punishment of Removal from service under Rules ibid.
- C. Incorrect. Proper departmental enquiry was conducted against him. During the course of enquiry, the appellant was called time and again but failed to appear and defend himself. The whole enquiry was conducted purely on merit. Therefore, rightly be awarded the Major punishment.
- D. Incorrect. Proper opportunity of personal hearing was provided to the appellant but he failed to prove himself innocent.
- E. Incorrect. The competent authority before imposing major punishment had completed all codal formalities by issuing him Final Show Cause Notice, but he failed to submit reply, after observing all codal formalities, he was awarded major punishment of removal from service under the rules ibid.
- F. Incorrect. The appellant was treated as per law/rules and no violation of Article 04 of the Constitution of Pakistan 1973 has been done by the respondent's department.
- G. Incorrect. The appellant wants to save his skin in the matter while apparently he was punished on the charges of his willful absence already explained in the above paras. Record shows that he was an unwilling and unprofessional officer, thereby not interested in discharging of his official duties. Therefore, the punishment order was passed by competent authority in pursuance of his long absence period which is not tolerable in disciplined force.
- H. Incorrect. Being member of a disciplined force, the appellant was well aware about the proceedings and its consequences. However, he deliberately absented from his lawful duty without leave/permission. In fact the appellant is not interested in his official duty, hence was rightly awarded the Major punishment of Removal from service.
- I. Incorrect. The appellant has blemished service record and earned 20 bad entries, 08 Minor punishments and 01 Major punishment in his credit on the charges of his willful absence from duty on different occasions during his short service. It is worth to mention here that appellant is a habitual absentee and not interested in his official duty, he was previously reinstated by this Hon'ble Service Tribunal vide judgment dated 14.06.2021.
- J. Respondents may also be allowed to raise additional grounds at the time of arguments please.

PRAYER.

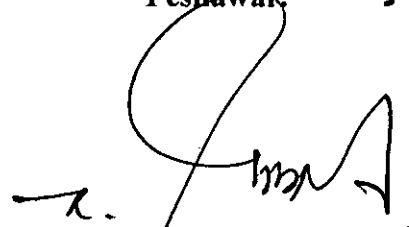
It is therefore, most humbly prayed that in light of above facts and submissions, the appeal of the appellant being devoid of merits and legal footing, may kindly be dismissed with costs please.



Superintendent of Police,
HQrs, Peshawar.



Capital City Police Officer,
Peshawar.



Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.

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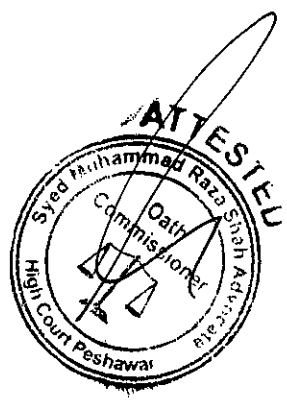
AFFIDAVIT.

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.

**Superintendent of Police,
HQrs, Peshawar.**

**Capital City Police Officer,
Peshawar.**

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



31 OCT 2023

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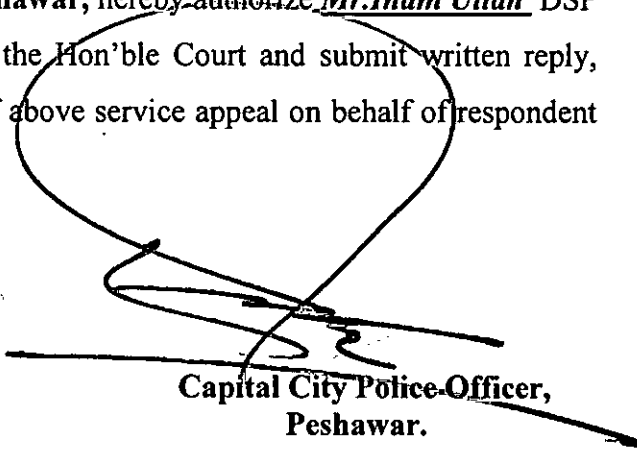
Ex Constable Raheem Khan No. 4608 of CCP Peshawar..... **Appellant.**

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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 Rahim Khan No.4608 S/O Safdar Khan
- R/O Chaghar Matti P.S Mathra Distt: Peshawar
- 2. Date of Birth 28-05-1976
- 3. Date of enlistment 26-10-2004
- 4. Education 10th
- 5. Courses Passed Recruit
- 6. Total qualifying service 07 years, 10 months & 23 day
- 7. Good Entries Nil
- 8. Punishment (previous)

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

- 1. 04 days leave without pay vide OB No.242 dt:10-04-2006
- 2. Warned to be careful in future vide OB No.679 dt:22-09-2007
- 3. 01 day E/drill vide OB No.2190 dt:26-05-2017
- 4. 01 day leave without pay vide OB No.01 dt:01-01-2008
- 5. 11 days leave without pay vide OB No.148 dt:14-03-2008
- 6. 01 day leave without pay vide OB No.54 dt:03-02-2007
- 7. 05 days leave without pay vide OB No.804 dt:20-11-2006
- 8. 03 days leave without pay vide OB No.658 dt:13-09-2008
- 9. 03 days leave without pay vide OB No.1009 dt:22-03-2010
- 10. 01 day leave without pay vide OB No.4205 dt:31-12-2010
- 11. 08 days leave without pay vide OB No.360 dt:27-07-2011
- 12. 05 days leave without pay vide OB No.4131 dt:10-11-2011
- 13. 01 day E/drill vide OB No.3215 dt:31-08-2012
- 14. 01 day E/drill vide OB No.3844 dt:19-10-2012
- 15. 01 day leave without pay vide OB No.4047 dt:16-12-2010
- 16. 01 day leave without pay vide OB No.3931 dt:02-11-2010
- 17. 02 days leave without pay vide OB No.1052 dt:31-03-2014
- 18. 07 days leave without pay vide OB No.4224 dt:23-12-2013
- 19. 01 day E/drill vide OB No.1760 dt:26-05-2014
- 20. 10 days leave without pay vide OB No.1021 dt:27-03-2014
- 21. 01 day E/drill vide OB No.3957 dt:17-12-2014
- 22. 02 days E/drill vide OB No.4240 dt:10-11-2015

Minor Punishment.

- 1. Fine Rs 550/- vide OB No.148 dt:14-03-2008
- 2. Fine Rs 200/- & Warned to be careful in future vide OB No.804 dt:20-11-2006
- 3. Fine Rs 150/- vide OB No.658 dt:13-09-2008
- 4. Fine Rs,300/- vide OB No.1009 dt:22-03-2010
- 5. Censured & 10 days leave without pay vide OB No.699 dt:17-02-2012
- 6. Stoppage of one year annual increment without cumulative effect vide OB No.4278 dt:30.12.2013
- 7. Awarded the punishment of forfeiture of 02 years approved service, his period of absence (total 13 months and 19 days) and intervening period 03 years 04 months and 12 days are treated as leave without pay, vide Order No.8097-8108/PA-SSP/Coordination, dated 22-04-2022 by SSP/Coordination Peshawar.
- 8. Awarded the punishment of forfeiture of 01 year approved service, with immediate effect. 26 days leave without pay & warned to be careful in future vide OB No.1337 dt:26-05-2022 by SP/Cantt:Peshawar..

Major Punishment.

- 1. Awarded the major punishment dismissed from service on the charged of absence vide OB No.1378 dt:13-04-2018 by SP/HQrs Peshawar and re-instated in his service for the purpose of de- novo enquiry vide OB No.2205 dt:25-08-2021

09. Punishment (Current)

- Awarded major Penalty Removal from service with immediate effect.vide OB No.1673 dt: 29.06.2022 by SP/HQrs Peshawar.

10. Leave Account

<u>Total leave at his credit</u>	<u>Availed leaves</u>	<u>Balance</u>
376 days	Nil	376 Days

*Attested
Date*

PA

Signature
CRC
10/11

B 7
27

CHARGE SHEET

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, do hereby, charge you Constable Raheem Khan No.4608 of Capital City Police Peshawar with the following allegation.

"That you Constable Raheem Khan No.4608 while posted at PS AMJS, Peshawar were not taking interest in your official duty & remained absent from duty w.e.f **07.01.2022 till date** without taking permission or leave. This amounts to gross misconduct on your part and is against the discipline of the force."

You are, therefore, required to submit to this office or the Enquiry Officer your written reply within 07-days of the receipt of this charge sheet.

Your written defence, if any, should reach this office or the Enquiry Officer within the specified period, failing which it shall be presumed that you have nothing to put in your defence and in that case an ex-parte action shall follow against you.

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

*Alleged
LMP*

C 8

(25)

DISCIPLINARY ACTION

I, Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that Constable Raheem Khan No.4608 has rendered him-self liable to be proceeded against under the provision of Police Disciplinary Rules-1975

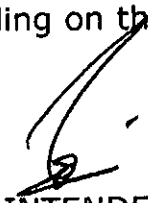
STATEMENT OF ALLEGATION

"That Constable Raheem Khan No.4608 while posted at PS AMJS, Peshawar was not taking interest in his official duty & remained absent from duty w.e.f **07.01.2022 till date** without taking permission or leave. This amounts to gross misconduct on his part and is against the discipline of the force."

For the purpose of scrutinizing the conduct of said accused with reference to the above allegations an enquiry is ordered and DSP Complaint is appointed as Enquiry Officer.

2. The Enquiry Officer shall, in accordance with the provisions of the Police Disciplinary Rules, 1975, provide reasonable opportunity of hearing to the accused officer, record his finding within 30 days of the receipt of this order, make recommendations as to punishment or other appropriate action against the accused.

3. The accused shall join the proceeding on the date time and place fixed by the Enquiry Officer.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 21 /E/PA, dated Peshawar the 21/11 /2022

1 DSP Complaint is directed to finalize the aforementioned departmental proceeding within stipulated period under the provision of Police Rules-1975.

2. Official concerned

Attended
LUP

OFFICE OF THE
DEPUTY SUPERINTENDANT OF POLICE
COMPLAINTS & ENQUIRY
CCP, PESHAWAR

D 9



DATE: 15/01/2022

To: The Superintendent of Police HQrs.,
Peshawar.

Subject: **ENQUIRY AGAINST CONSTABLE RAHEEM KHAN NO. 4608**

Memo:

25

Kindly refer to your office Dy: No. 21/E/PA, dated 21.01.2022 on the subject cited above.

ALLEGATIONS:-

"That constable Raheem Khan No. 4608 while posted at PS AMJS, Peshawar was not taking interest in his official duty and remained absent from duty w.e.f **07.01.2022 till date** without taking permission or leave. This amounts to gross misconduct on his part and is against the discipline of the force".

PROCEEDINGS:-

To dig out the real facts, the alleged Constable Raheem Khan No. 4608 was called through summon/parwana but he did not appear to the office of undersigned for hearing and failed to submit written statement in his defense.

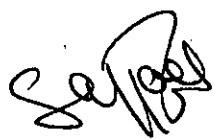
STATEMENT OF MM POLICE LINES:-

MM Police Lines stated that alleged constable Raheem Khan No. 4608 was absent till date vide DD No. 20 dated 24.01.2022 and he is telephonically informed.

CONCLUSIONS:-

Keeping in view of the above facts, figure, it came to light that alleged FC Raheem Khan No. 4608 was contacted time and again but he didn't appear the before the undersigned for hearing. Alleged constable Raheem Khan No. 4608 was absent till date vide DD No. 20 dated 24.01.2022. It is therefore, the undersigned is of the opinion that alleged FC Raheem Khan No. 4608 may kindly be recommended for ex-parte proceedings, if agreed please.

Submitted Please.


DEPUTY SUPERINTENDENT OF POLICE
COMPLAINT & ENQUIRY
CAPITAL CITY POLICE PESHAWAR

Attested
Raid

Agree F.S.C.N.



**FINAL SHOW CAUSE NOTICE**

I Superintendent of Police, Headquarters, Capital City Police Peshawar, as competent authority, under the provision of Police Disciplinary Rules 1975 do hereby serve upon you, Constable Raheem Khan No.4608 the final show cause notice.

The Enquiry Officer, DSP Complaint & Enquiry, after completion of departmental proceedings, has recommended you for ex-parte decision for the charges/allegations leveled against you in the charge sheet/statement of allegations.

And whereas, the undersigned is satisfied that you Constable Raheem Khan No.4608 deserve the punishment in the light of the above said enquiry report.

And as competent authority, has decided to impose upon you the penalty of minor/major punishment under Police Disciplinary Rules 1975.

1. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.
2. If no reply to this notice is received within 7 days of its receipt, in normal course of circumstances, it shall, be presumed that you have no defence to put in and in that case as ex-parte action shall be taken against you.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 214 /PA, SP/HQrs: dated Peshawar the 18/2 /2022.

Copy to official concerned

Attended
2/11/22