

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

1854/2023

Khyber Pakhtunkhwa
Service Tribunal

Hassan Waheed

----- VERSUS -----

IGP and others

9628

30-11-2023

**APPLICATION FOR CORRECTION OF THE DATE OF
REMOVAL OF THE APPELLANT IN THE DRAFT APPEAL
AND ANNEXING RELEVANT PETITION AT ANNEXURE "G"
SUBMITTED TO THE IGP (KPK) IN THE FILE APPEAL.**

Respectfully Sheweth:

The Appellant submits as under:

1. That today i.e 30/11/2023, the above referred appeal is fixed for preliminary hearing by this Hon'ble Tribunal.
2. That in draft appeal at page no. 1 date of removal of the appellant has been inadvertently mentioned as 26/07/2022 instead of 24/05/2022, while an irrelevant document has been annexed as Annexure "G".
3. That for arriving at the just and fair conclusion, the appellant desires to make good the deficiencies pointed above.

It is, Therefore, most humbly requested that permission for correction in draft appeal and annexing relevant annexure "G" in the file appeal as pointed above may please be allowed in the best interest of law and justice.

Dated: 30/11/2023

APPELLANT

Through


Qazi Sajid Ud Din

Advocate (Counsel for the Appellant)

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

Hassan Waheed Ex-Recruit Constable No.5385

R/o Bahadar Colony Near D.C Office Pindi Road Kohat. (Appellant)

Versus

1. Govt. of Khyber Pakhtunkhwa Through Secretary Home and Tribal Affairs Khyber Pakhtunkhwa Peshawar.
2. The Superintendent of Police FRP Kohat Range Kohat.
3. Commandant Frontier Reserve Police Khyber Pakhtunkhwa.
4. Additional Inspector General of Police Headquarters Khyber Pakhtunkhwa Peshawar.
5. Inspector General of Police Headquarters Khyber Pakhtunkhwa Peshawar.

(Respondents)

1. Appeal Under Section 4 of the Khyber Pakhtunkhwa Services Tribunal Act against orders of the S.P FRP Kohat Range Kohat dated 24-5-2022, whereby the appellant was removed from service, appellate order of the Commandant FRP KPK dated 27-6-2022 and order passed on Revision Petition dt:31-7-2023 by the Additional Inspector General of Police Headquarters whereby they upheld the impugned order of removal from service of the appellant without any lawful justification.
2. The impugned orders being unlawful, quorum non judice, legally defective, unjust, capricious, colourful and legally not sustainable may kindly be set aside and the appellant may be reinstated in service from the date of removal from service with all back benefits.

Respected Sir,

Facts:

1. That appellant is a bonafide resident of Kohat. He belongs to a respectable law abiding, peace loving and noble family of Kohat.

2. That after qualifying F.Sc. exam the appellant applied for the post of constable at the Kohat Police strength.
3. That with the blessing of Allah Almighty, the appellant qualified all the written, physical and medical tests. Resultantly, the appellant was selected as constable in the year 2019.
4. That the appellant soon after his enrollment as constable, started his official functions with zeal and zest.
5. That on 11-9-2021 the appellant was selected for the Basic Recruit Course at the Police Training College Hangu.
6. That the appellant in compliance with the order had proceeded to the Police Training College Hangu for joining the Basic Recruit Course.
7. That the appellant while undergoing his training enthusiastically and whole heartedly, unfortunately became victim of some misunderstanding and malafides by some quarters wherein, the PTC authorities had alleged that ASI Iqrar Khan vide Daily Diary No.10 dated 06-3-2022 had reported that another Recruit Constable namely Naeem Gul tried to pay 20 notes of 1000 rupees denomination each as mess fee. The notes were detected as forged one. During enquiry by SI Niaz Gul, Recruit constable Naeem Gul disclosed that he had received the said notes from the appellant namely recruit Hassan Waheed (appellant). According to the enquiry officer he recovered three notes of thousand denomination from the appellant Hassan Waheed. Thus total 23 notes of one thousand rupees each were allegedly recovered. Twenty notes from Naeem Gul and three from the appellant Hassan Waheed.
8. That according to the enquiry officer the recovered notes were sent of the state Bank of Pakistan Peshawar for examination from where they were declared as forged one.

9. That resultantly, the appellant was returned to district Kohat as unqualified. (Copy of the orders enclosed as Annexure-A).
10. That after return to District Kohat, the SP Kohat FRP Kohat Region Kohat Served charge sheet in this respect upon the appellant. (Copy of the charge sheet is annexed as Annexure-B)
11. That the appellant accordingly submitted reply wherein he denied the allegation leveled against him. (Copy of the reply is enclosed as annexure-C)
12. That after conclusion of departmental enquiry, the appellant was awarded major punishment of removal from service with immediate effect. (Copy of the order is enclosed as annexure-D)
13. That the appellant moved departmental appeal before the Commandant FRP KPK Peshawar, however, the Appellate Forum upheld order of the competent authority and dismissed appeal of the appellant. (Copies of the draft appeal and order of the appellate forum are enclosed as annexure E & F respectively)
14. That thereafter, the appellant filed review petition against the both the impugned orders, however, the appellant did not succeed and his revision petition was turned down vide order dated 31-7-2023. (Copies of the Review Petition and order on revision petition are enclosed as annexure G & H respectively)
15. That due to the illegalities in the impugned orders, the appellant has strong reservations. Such reservations have given cause of action to the appellant for filing the instant appeal before this honorable tribunal.
16. That following are some of the grounds of appeal among others against the impugned orders.

Grounds of Appeal:

- A. That the order of removal of the appellant from service including Appellate and Revisional Orders are against law, facts and evidence on record, hence they are liable to be set aside.
- B. That from the very outset, enquiry conducted against the appellant is illegal ab-intio .

Record would show that the Police Training College Hangu conducted a separate departmental enquiry under the KPK Police Rules 1975 (Amended 2014) while subsequently another departmental enquiry was conducted by the SP FPR Kohat Region Kohat on the same allegations.

- C. That by virtue of the departmental enquiry conducted by the PTC Hangu, the appellant was sent back to FRP Kohat as unqualified while the subsequent enquiry conducted by the FRP Kohat Region Kohat, the appellant was removed from service.

- D. That under the Constitution of Pakistan 1973, Article 13 has prohibited trial of a delinquent on the same charge on two or more occasions.

Thus, order of removal of the appellant from service is not only illegal but it is also unconstitutional and inoperative on the rights of the appellant. Law and the constitution require that the impugned order be set aside and the appellant be reinstated in service immediately

- E. That perusal of the order of the PTC annexure A would indicate that though the competent authority of the PTC has given colour to the probe against the appellant as departmental enquiry under the KPK Police Rules 1975 (Amended 2014) but at the same time, has not fulfilled the legal mandatory requirements. The competent authority did not serve charge sheet and statement of allegations nor properly appointed enquiry officer to conduct the enquiry. Hence such an inquiry is alien to the law and rules hence the enquiry and order of returning the appellant to FRP Kohat as unqualified are illegal and of no

legal effect. Hence the order is not sustainable in the eyes of law and it deserves to be set aside.

F. That the charge leveled by the PTC Hangu is very strange because on one side the Enquiry Officer said that recruit Naeem Gul admitted that the 20 currency notes of thousand were given to him by the appellant and that in follow up, the Enquiry Officer recovered 03 notes of thousand from him not indicating value of the each note.

G. That the charge does not indicate that how many notes were allegedly given by the appellant to the recruit Naeem Gul and that how many notes were recovered from the possession of the appellant. It is further explained that the order annexure A does not mention that from where, at which time and date and in presence of whom the alleged recovery of currency notes was affected.

In absence of such important material, no enquiry whatsoever can be held against the appellant and thus the entire proceeding are legally null and void and no punishment whatsoever can be awarded on such flimsy and defective allegation.

H. That regarding the subsequent departmental enquiry conducted by the SP FRP Kohat, facts were twisted and it was alleged that the appellant had received forged currency notes from recruit constable Naeem.

In the earlier departmental enquiry it was alleged that the currency notes were given by the appellant to the recruit Naeem Gul while in the subsequent departmental enquiry it is alleged quite contrary to the earlier that the forged currency notes were received by the appellant from recruit Naeem Gul.

Keeping in view this unrebuttable fact being appeared in documentary evidence both the PTC authorities and the FRP authority have materially contradicted with each other, hence no punishment could be awarded to the appellant on the basis of such material contradiction.

- I. That the appellant submitted reply to the charge sheet wherein he denied the charge leveled against him and claimed innocence. However, submissions of the appellant were not considered by the competent authority.
- J. That during departmental proceedings the appellant was not associated by the enquiry officer.
- K. That the enquiry was conducted one sided and unilaterally which has got no force in the eyes of law.
- L. That during the enquiry proceedings no witness was examined in presence of the appellant nor the appellant was provided any opportunity to cross examine the witnesses.
- M. That another surprising fact is that, recovery of the forged currency notes is cognizable offence. The appellant was not only exposed to the departmental action but also to the criminal proceedings. The alleged offence attracts Section 489 B or C PPC but till to date no criminal case was registered against the appellant nor his colleague recruit Naeem Gul which ^{does not} speaks of truthfulness and authenticity of the charge leveled against the appellant.
- N. That during stay of the appellant in PTC Hangu, the staff confined the appellant in Quarter guard and also tortured and intimidated the appellant to admit his guilt but since the appellant was innocent therefore, he did not bow down to their illegal and illegitimate demand.
- O. That the competent authority neither provided enquiry report along with the final show cause notice nor heard in person the appellant which is yet another illegality having made the impugned order as perverse to the vires of law and justice.
- P. That against the impugned order the appellant preferred departmental appeal but the Commandant FRP KPK without applying his judicial mind had upheld order of the SP FRP Kohat Region Kohat. Since the

appellate order is based on the impugned punishment order which on different counts is illegal and of no legal effect, therefore, the appellate order having upheld punishment to the appellant is also illegal and against the established principles of justice and fair play.

- Q. That, after dismissal of his departmental appeal, the appellant filed a Review Petition before the Inspector General of Police KPK vide annexure H against the impugned orders but the same was rejected vide order dated 21-7-2023.
- R. That the order upon the Review Petition is also illegal and misleading because, the appellant filed Revision before the Inspector General of Police KPK Peshawar while order was passed by the Additional Inspector General of Police Headquarters KPK Peshawar. Legally speaking, the Additional Inspector General Headquarter has got no jurisdiction to entertain Review Petition being addressed to the inspector General of Police KPK. Thus the order upon Review Petition is without jurisdiction and amounts to quorum non Judice. The Addl: Inspector General of Police Headquarters KPK has applied no judicial mind and passed a stereo type order which has no bearing in the eyes of law. Furthermore, the appellant has never admitted that he borrowed the money. Stance taken in the order is therefore, misleading and without any corroboration.
- S. That if the impugned order of the Addl: Inspector General of Police Headquarters KPK is perused, it will reveal that no copy of the order was directed to be conveyed to the appellant which is yet another illegality / irregularity and malafide. By not conveying order to the appellant, it appears that it was an effort to deprive the appellant from his legal right to file appeal in time before the Honorable Service Tribunal.

Due to the fact that the appellant was kept in dark regarding fate of his Review Petition, however, the appellant was succeeded to obtain copy of the order through his own sources and also due to the summer vacations of the courts, the instant appeal became slightly time barred however; a separate application for condonation of delay is submitted / enclosed.

T. That the appellant has got no other source of income. The appellant has aged/ailing parents who require medicines and other necessities to keep their body and breathe together. In case the order of punishment is upheld they will be deprived from medicines and other necessities being essential for their lives and the appellant may sustain irreparable loss.

U. That any other ground will be taken with the permission of this Honorable Tribunal at the time of arguments of the instant appeal.

Prayer:

It is therefore, humbly prayed that since the impugned orders are one sided, unilateral, capricious, fanciful, whimsical, based on presumptions / conjectures, Quorum non judice, illegal ab-initio , unconstitutional and against the vires of law and well established universally accepted principles of justice, therefore, all the impugned orders may graciously be set aside in the great interest of law, justice and fair play. The appellant may kindly be reinstated in service with all back benefits.

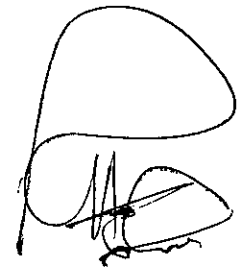
Dated: 11-09-2023.

Yours Obediently,

Hassan Waheed

(Ex-Constable No.538 FRP)

Through Javed Muhammad Advocate



Annex "B"

BEFORE THE INSPECTOR GENERAL OF POLICE KHYBER
PAKHTUNKHWA, PESHAWAR

Subject: **APPEAL AGAINST THE ORDER OF SP/FRP KOHAT RANGE KOHAT BEARING OB NO. 207 DATED 24-07-2022 (WHEREBY THE APPELLANT EX-RECRUIT CONSTABLE HASSAN WAHEED NO. 5385 FRP WAS REMOVED FROM SERVICE WITH IMMEDIATE EFFECT AND ORDER OF THE COMMANDANT FRP KHYBER PAKHTUNKHWA, PESHAWAR DATED 27.06.2022, WHEREIN ORDER OF THE SP/FRP WAS UPHELD WITHOUT ANY LAWFUL JUSTIFICATION.**

Respected fully Sheweth,

With veneration, the appellant presents the instant appeal against the order of SP/FRP Kohat Range and Commandant FRP Khyber Pakhtunkhwa, Peshawar, cited as per subject for your consideration on the bases of the following facts and grounds:-

FACTS:-

As per charge sheet, allegation against the appellant is that while undergoing basic Recruits Training Course at PTC Hangu, he received Three(3) forged currency notes of one thousand denomination each from recruit Constable Naeem Gul No. 5451 which were recovered from your possession as reported vide Deputy: Commandant PTC Hangu order Endst: No. 57-59/PA dated 31-03-2022 and returned as unqualified vide above quoted reference. Thus committed gross misconduct. In this regard, DSP FRP/HQ Kohat was deputed to conduct departmental enquiry against the appellant. On completion of departmental enquiry, findings report was submitted to SP/FRP Kohat Range Kohat who punished the appellant vide the impugned order. Hence this appeal.

GROUND:-

1. The department all enquiry conducted against the appellant is defective and not carried out in accordance with rules because none of the witness concerned of PTC Hangu had appeared before the enquiry officer despite being summoned several times by the enquiry officer without recording the statements of these witnesses, the adverse findings of the enquiry officer against the appellant is quite novel to the rules and regulations prescribed in this regard- Even the based impugned order based on such findings is not sustainable under the law.

2. Prior to imposition of the penalty upon the appellant, only the final show cause notice was delivered to the appellant but the copy of dining report of the inquiry officer(DSP/HQ FRP) was not provided along with the final show cause notice by SP FRP Kohat Range Kohat. The impugned order did not contain the fact that copy of the fining report of the enquiry officer was also furnished to the appellant along with the final show cause notice before imposition of penalty upon the appellant. This would show that the principles of "Natural Justice" were not observed. According to PLD 1965- Page-90, it was held by the Supreme Court of Pakistan that in all proceedings by whom so ever held whether Judicial or administrative, the principles of "Natural Justice" have to be observed if the proceeding might result in consequence affecting the person or elementary and essential principles of fairness" the person sought to be affected property or other rights of the parties Concerned. In order to ensure the "elementary and essential principles of of fairness. The person sought to the effected must the least be made aware to the nature of the adverse finding of the enquiry officer against him and he should be given a fair opportunity to make any relevant statement putting forward his Own case and correct or controvert any relevant statement brought forward to his prejudice.


3. Non observance of the principles of "Natural Justice" by SP FRP Kohat Range Kohat has resulted in causing prejudice to the appellant in his defense which renders the impugned order unlawful, void and not sustainable under the law.

4. As far as the recovery of three forged currency notes each of one thousand denomination from the possession of the appellant is concerned, this fact is not denied. Its receipt from recruit constable Naeem Gul is also admitted but the actual fact is that above named recruited constable borrowed Rs. 3000/- (Rs Three Thousand) from me as loan sometime back and paid me the said loan two days prior to the instant events. I had received the amount little knowing or having reason to believe the same to forged. As such I have not committed is conduct as alleged.

PRAYER:-

In light of the above submissions, it is prayed that the impugned order may kindly be set aside and the appellant e-instated in service w.e.f the date of his removal from service please.

Yours Obediently


Ex-Recruit Constable Hassan Waheed
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S/O Abdul Waheed
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Moh: New Bahadar Colony Kohat.
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