BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 264/2023.

Naqeeb Ullah, (Ex-constable No. 5345) Police Department, FRP, Khyber Pakhtunkhwa, Kohat Range,.....Appellant.

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar & others.....Respondents.

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Through

RESPONDENTS

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

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VERSUS

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PARAWISE REPLY BY RESPONDENTS 1 to 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 no cause of action and locus stand to file the instant appeal.
4. That the appellant has not come to this Honorable Tribunal with clean hands.
5. That the appellant is estopped due to his own conduct to file the instant Service Appeal.
6. That the appellant is trying to conceal the material facts from this Honorable Tribunal.

FACTS:-

1. The Para has relates to the appellant personal record.
2. Incorrect. The appellant was appointed as constable in the year 2013, but he was found irresponsible and inefficient police office in the line of duty.
3. Incorrect. As the service record of the appellant reveals that in past the appellant remained absent from his lawful duty without any valid leave or prior permission of the compete authority for a period of (16) das previously, which he was awarded minor punishment of extra drill for 04 days vide OB No. 989, dated 04.12.2018 No. 613, dated 27.08.2021 & vide No. 696, dated 01.11.2021.
4. Incorrect. The appellant remained absent from lawful duty with effect from 20.10.2021 to 25.10.2021 and 29.10.2021 till the date of his removal from service for a long period of (144) days without any leave or prior permission of the competent authority. The plea of illness taken by the appellant is a propounded story.
5. Incorrect. The allegations are false and baseless. The appellant failed to submit any leave application before the competent authority.
6. Incorrect. On the allegations of willful absence the appellant was issued Charge Sheet alongwith Summary of Allegations vide No. 276/PA, dated 13.12.2021 and SI Akhtar Hussain LO FRP Kohat Range was nominated as Enquiry Officer to conduct proper enquiry into the matter. The appellant refused to receive Charge Sheet, despite of fact the Enquiry Officer contacted him time and again.

After completion of enquiry, the Enquiry Officer submitted his finding report. Upon the finding of Enquiry Officer the appellant was issued/served with Final Show Cause Notice vide No. 109/PA, dated 01.03.2022, but he failed to submit his reply. Hence, after fulfillment of all codal formalities he was awarded major punishment of removal from service vide OB No. 127, dated 17.03.2022 as per law/rules. (Copies of Charge Sheet & Final Show Cause Notice are attached herewith as annexure "A & B")

7. Incorrect. Departmental appeal submitted by the appellant was thoroughly examined and rejected on sound grounds vide Order Endst; No. 10157-58/SI legal, dated 12.12.2022.

8. Incorrect. The copy of rejection order has already been communicated to the appellant vide this office Endst; No. 10157-58/SI legal, dated 12.12.2022.

9. Incorrect. The appellant has not come to this Honorable Tribunal with clean hands; hence the instant appeal being devoid of merits may kindly be dismissed on the following grounds.

GROUNDS:-

A. Incorrect. The order of removal from service of the appellant passed by the respondent No. 03 is legally justified and in accordance with law/rules as the same was issued after fulfillment of due codal formalities required as per law/rules.

B. Incorrect. The allegations are false and baseless as the appellant was absolutely treated in accordance with existence law/rules.

C. Incorrect. As explained in the preceding Para 06 of facts on the allegations of willful absence the appellant was issued Charge Sheet alongwith Summary of Allegations and Enquiry Officer was nominated. During the course of enquiry the appellant was called by the Enquiry Officer time and again to receive his Charge Sheet as well as to join the Enquiry proceedings, but he deliberately failed to do so. After completion of enquiry, the Enquiry Officer submitted his findings, wherein the appellant was found guilty of the charges leveled against him. Upon the finding of Enquiry Officer, he was issued Final Show Cause Notice, which was served upon his cousin namely Zayan Khan through special messenger namely FC Wajid of FRP Kohat on his home address, but he deliberately failed to submit his reply within stipulate period. Hence, he was awarded major punishment of removal from service after duly adopting of all codal formalities in vogue. (Copy of enquiry report is attached herewith as annexure "C")

D. Incorrect. As the appellant was absolutely treated in accordance with law within the meaning of Article 4 of the constitution by giving him sufficient and proper opportunities at every level of defense and that the entire proceedings were carried out in accordance with existing laws and rules.

E. Incorrect. The citation of 1999 PLC(CS)423 mentioned by the appellant in the Para is not applicable to the case of appellant, as proper enquiry has already

been conducted against the appellant through an Enquiry Officer under the relevant law/rules. The statements of all witness have been recorded by the Enquiry Officer during the course of enquiry and the process of cross examination has also been carried out by the Enquiry Officer. A Final Show Cause Notice was also served upon his cousin on his home address, but he deliberately failed to submit his reply. Besides, a sufficient opportunity of defense in the shape of personal hearing has also been offered to the appellant, but he failed to avail this opportunity meaning thereby that he is no more interested in the service of Police department.

F. Incorrect. As explained in the preceding Paras above, the sufficient opportunity for defense has already been provided to the appellant, but he deliberately failed to avail this opportunity. The Enquiry Officer fully established the allegations leveled against the appellant during the course of enquiry, hence the respondents have not deprived the appellant from his fundamental rights.

G. Incorrect. The respondents have not committed any violation of the law/rules. In fact, all legal formalities provided by law/rules have been adopted by the respondents in the case of appellant and impartial enquiry has been conducted against the appellant and his guilt was obviously proved against him during the course of enquiry without any shadow of doubt. Hence after proper enquiry he was awarded major punishment of removal from service as per law/rules.

H. Incorrect. As the appellant was dealt with proper enquiry and he failed to produced any medical prescription during the course of enquiry. Besides, on departmental appeal the appellant was called and heard in person in orderly room held on 09.12.2022 in the office of respondent No. 02, but he failed to present any justification regarding his innocence.

I. The respondent may also be permitted to raise additional grounds at the time of arguments.

PRAYERS:-

Keeping in view the above facts and circumstances, it is most humbly prayed that the instant service appeal being not maintainable may kindly be dismissed with costs please.

ASAD MEHMOOD
Superintendent of Police FRP,
Kohat Range, Kohat
(Respondent No. 03)

(TAHIR AYUB KHAN) PSP
Commandant FRP,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 02)

Dr. Muhammad Akhtar Abbas DIG/Legal
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 01)

"A"

PA/CH Sheet-2021

No. 276 /PA/FRP Dated 13 / 12 /2021

CHARGE SHEET

I) I, Nasir Khan, SP FRP Kohat as competent authority, am of the opinion that you Constable Naqeeb Ullah No. 5345/FRP, have committed the following acts/omission as defined in Rule 2 (iii) of Police Rules 1975.

(a)That as reported vide DD No. 07 dated 20.10.2021, you have absented yourself from duty on various dates i.e w.e.f 20.10.2021 to 25.10.2021 and 29.10.2021 till date. In this regard a show cause notice No. 314/PA dated 27.10.2021 was issued to you but neither received nor submitted reply. Thus you have committed a gross "Misconduct" as defined in Rule 2 (iii) of Police Rules 1975".

II). By reason of the above, you seem to be guilty as sufficient materials is placed before the undersigned. therefore it is decided to proceed against you in general police proceeding.

III). You are; therefore, required to submit your written reply within 07 days of the receipt of this charge sheet to the Enquiry Officer.

IV). Your written reply, if any, should reach the Enquiry Officer within specific period, failing which it shall be presumed that you have no defense to offer and in case, ex-parte action shall follow against you.

V). Intimate as to whether you desire to be heard in person or not?

VI) A statement of allegation is enclosed.

SUPERINTENDENT OF POLICE, FRP
&KOHAT RANGE, KOHAT

Attested

22/12/23

"B"

FINAL SHOW CAUSE NOTICE

That as reported vide DD No. 07 dated 20.10.2021, you **Constable Nageeb Ullah No. 5345/FRP**, as you remained absent from duty w.e.f 20.10.2021 to 25.10.2021 and 29.10.2021 till date. In this regard, you were issued show cause notice vide this office No. 314/PA dated 27.10.2021 but you neither received nor submitted reply.

Accordingly, charge sheet No. 276/PA dated 13.12.2021 and proper departmental enquiry was conducted by E.O FRP Kohat, in response to which you neither received nor joined enquiry proceedings.

NOW, THEREFORE, I, Superintendent of Police, FRP Kohat Range, Kohat in exercise of the powers vested in me under the Khyber Pakhtunkhwa Police Rules – 1975 hereby call upon you **Constable Nageeb Ullah No. 5345/FRP**, through this Final Show Cause Notice to explain your position within 07 days of the receipt of this notice as to why you should not be awarded one or more Major or Minor Punishment as mentioned in Rule (4) of KP Police Rules 1975. In case of non receipt of reply within the stipulated period, an ex-parte action will be taken against you. Also state in writing as to whether you desire to be heard in person or not. Copy of finding report of Enquiry Officer is enclosed herewith.

No. 109 /PA
Dated 01-03 /2022

Superintendent of Police, FRP
Kohat Range Kohat

میں مسمی نقیب اللہ کنسٹیبل کرزیالی بالا کو ذاتی طور پر
جانتا ہوں جو کہ میرا چچا زاد بھائی ہے
فی الحال گھر پر موجود نہیں ہے۔ آمد پر
نقل فائنل شوکاز نوٹس بھی حوالہ
کروں گا اور مطلع بھی کر دوں گا۔

زایان ہارون ولد محمد عیسیٰ
42301-5246503-3
Mob: 0311-9825252

العبد

Attested
22/12/22

جناب عالی!

فائنل شوکاز نوٹس اجراء 1091/PA مورخہ 4-03-022 کے سلسلے میں دیئے گئے پتہ بالا مذکورہ کنسٹیبل نقیب اللہ 5345 کے گھر جا کر پتہ کیا، دریافت پر معلوم ہوا کہ گھر پر موجود نہیں ہے کافی انتظار کرتا رہا لیکن مذکورہ کنسٹیبل گھر نہیں آیا جس کے چچازاد بھائی زیان بارون ولد محمد یحییٰ ساکنہ دیہہ سے ملاقات ہو کر جس کے ساتھ مذکورہ کنسٹیبل کے بارے میں گفت و شنید کرکے جس نے مجھے ظاہر کیا کہ وہ گھر پر موجود نہیں ہے آنے پر مطلع کروں گا۔ فائنل شوکاز نوٹس کے اصل پرت پر مذکورہ کنسٹیبل کے چچازاد بھائی کے زیان بارون سے حسب ضابطہ تعمیل کرکے جلد کی نقل فائنل شوکاز نوٹس اجراء بالا حوالہ کرکے اندر میعاد سات یوم اپنا تحریری جواب دفتر جناب ایس پی صاحب F-R-P ارسال کرنے کی ہدایت ہوئی۔ رپورٹ عرض ہے

Wajid
P.C واجد
05-03-022

جناب عالی! رپورٹ PR بالا مفصل
اور قابل ملاحظہ ہے

Lo-line FRP Kohat
05-03-022

ج ۱ ۶

فائنڈنگ رپورٹ

(محکمانہ انکوائری برخلاف کانسٹیبل نقیب اللہ نمبر 5345 متعینہ ایف آر پی لائن کوھاٹ)

جناب عالی:۔

بحوالہ مشمولہ چارج شیٹ نمبری 276/PA مورخہ 13.12.2021 برخلاف کانسٹیبل نقیب اللہ نمبر 5345 جناب SP صاحب ایف آر پی کوھاٹ نے جاری کیا۔ من SI کو انکوائری آفسر مقرر کیا من SI نے انکوائری ملاحظہ پڑتال کرنے کے بعد معروض خدمت ہوں کہ:۔

حقائق:۔ مذکورہ بالا کانسٹیبل کے خلاف چارج شیٹ آفسرانِ بالا کی طرف سے جاری ہوا بروقت اطلاعیابی پروانہ محررروزنامچہ کو جاری کیا کہ مذکورہ کانسٹیبل کو فوری طور پر اطلاع دیں کہ اپنا چارج شیٹ دفتر ہذا سے وصول کریں اس کے علاوہ باقاعدہ طور پر روزنامچہ میں رپورٹ لکھی گئی ہے بحوالہ مد 16 روزنامچہ 04.01.2022 میں رپورٹ اندراج ہے کہ کانسٹیبل مذکورہ کے والد صاحب سے چارج شیٹ شوکاز نوٹس لائن حاضر ہونے کے بارے میں گفت شنید ہوئی جواباً کہا کہ میں نے اپنے بیٹے کو مطلع کیا ہے کہ فی الحال نوکری کرنے کا خواہشمند نہیں ہے اور نہ ہی میری بات مانتا ہے اور ہم سے علیحدہ رہائش پذیر ہیں۔ باقاعدہ طور پر دوبارہ بھی مذکورہ کانسٹیبل کے ذاتی موبائل نمبر 0333-9643812 پر رابطہ کر کے بدستور بند آرہا ہے۔ کانسٹیبل مذکورہ کے والد صاحب حاجی عبدالجلیل کے موبائل نمبر 03339619723 پر رابطہ کر کے کانسٹیبل مذکورہ کی چارج شیٹ، شوکاز نوٹس وصول کرنے لائن حاضر ہونے کے بارے میں اگاہ کیا جواباً کہا میں نے پہلے بھی بتایا ہے اب میں دوبارہ کوشش کرونگا کہ چارج شیٹ وشوکاز نوٹس وصول کرے اور لائن حاضر ہو جائے۔ رپورٹ بحوالہ مد نمبر 9 رونامچہ 16.02.2022 میں اندراج ہے نقلمدات ہمراہ لف انکوائری ہذا ہے۔ علاوہ ازیں کانسٹیبل مذکورہ کے خلاف بسلسلہ غیر حاضری شوکاز نوٹس نمبر 314/PA مورخہ 27.10.2021 کو جناب SP صاحب ایف آر پی نے جاری کیا تھا۔ لیکن مذکورہ کانسٹیبل بار بار اطلاع ہونے کے باوجود شوکاز نوٹس وصول نہیں کرنا چاہتا تھا۔

SRC ریکارڈ:۔ SRC ریکارڈ کے مطابق کانسٹیبل مذکورہ مورخہ 23.12.2013 کا بھرتی شدہ ہے گڈ انٹری 06 ہے جبکہ بیڈ انٹری 07 ہے۔ ٹوٹل سابقہ ایامِ غیر حاضری 14 یوم ہیں۔ SRC ریکارڈ ہمراہ لف انکوائری ہذا ہے۔

خلاصہ:۔ من انکوائری آفسر اس نتیجے پر پہنچا ہوں کہ کانسٹیبل مذکورہ عادی غیر حاضر باش ہے نوکری کرنے کا شوقین نہیں ہے اور اپنی من مانی سے نوکری کرتا ہے۔ بار بار اطلاعی رپورٹس درج روزنامچہ ہے ہمراہ لف انکوائری ہذا ہے۔ چارج شیٹ و شوکاز نوٹس وصول نہیں کرتا ہے۔ کانسٹیبل مذکورہ بحوالہ مد نمبر 07 روزنامچہ 20.10.2021 تا مد نمبر 03 روزنامچہ 25.10.2021 ٹوٹل غیر حاضری 04 یوم 22 گھنٹے 30 منٹ بنتی ہے پھر دوبارہ مد نمبر 17 رونامچہ 29.10.2021 سے بدستور غیر حاضر ہیں اور تنخواہ بحوالہ آرڈر بک نمبر 702 مورخہ 08.11.2021 سے بند ہے نقلمدات ہمراہ لف انکوائری ہذا ہے۔ بہتر احکامات کی خاطر انکوائری آفسرانِ بالا کی خدمت میں پیش کی جاتی ہے مناسب حکم/احکام صادر فرمائیں۔

انکوائری رپورٹ مرتب ہو کر گزارش ہے۔

سب انسپکٹر اختر حسین، لائن آفسر

انکوائری آفسر، ایف آر پی کوھاٹ رینج کوھاٹ

22-12-22

Attested

22/12/22

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Inspector General of Police, Khyber Pakhtunkhwa, Peshawar & others.....Respondents.

AFFIDAVIT

We respondents No. 1 to 3 do hereby solemnly affirm and declare on oath that the contents of the accompanying Para-wise Comments is correct to the best of our knowledge and belief that nothing has been concealed from this Honorable Court.

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

Asad Mehmood
Superintendent of Police FRP,
Kohat Range, Kohat
(Respondent No. 03)

(Tahir Ayub Khan) PSP
Commandant FRP,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 02)

Dr. Muhammad Akhtar Abbas DIG/Legal
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 01)

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AUTHORITY LETTER

Respectfully Sheweth:-

We respondents No. 1 to 3 do hereby solemnly authorize Mr. Ghassan Ullah ASI FRP HQrs; to attend the Honorable Tribunal and submit affidavit/Para-wise comments required for the defense of above Service Appeal on our behalf.

Asad Mehmood
Superintendent of Police FRP,
Kohat Range, Kohat
(Respondent No. 03)

(Tahir Ayub Khan) PSP
Commandant FRP,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 02)

Dr. Muhammad Akhtar Abbas DIG/Legal
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 01)