

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 297/2019

Date of Institution ... 26.02.2019

Date of Decision ... 10.12.2020

Khalid Khan, Ex-Constable No. 268, Line FRP Head Quarters Peshawar.  
... (Appellant)

VERSUS

The AIG/Establishment for Inspector General of Police Khyber Pakhtunkhwa  
Peshawar and one other. ... (Respondents)

Present.

Syed Noman Ali Bukhari,  
Advocate. ... For appellant

Mr. Muhammad Riaz Khan Paindakhel,  
Assistant Advocate General, ... For respondents.

MR. HAMID FAROOQ DURRANI, ... CHAIRMAN  
MR. ATIQ-UR-REHMAN WAZIR, ... MEMBER(E)

JUDGMENTHAMID FAROOQ DURRANI, CHAIRMAN:-

1. The appellant is aggrieved of order dated 10.12.2018 passed by respondent No. 2, whereby, he was dismissed from service with immediate effect. He has also questioned the order dated 29.01.2019 by respondent No. 1 rejecting his departmental appeal.

2. The facts, gatherable from record, are in terms that the appellant was employed in the Frontier Reserve Police as a recruit constable at the relevant time. During the performance of his duty he received a show cause notice containing the allegations of absence and failure to qualify Basic Recruit Course.

The reply to the notice was duly submitted, however, it was not found

satisfactory and resultantly the impugned order dated 10.12.2018 was passed against him.

3. Learned counsel for the appellant as well as learned AAG heard and available record gone through.

4. Learned counsel assailed the impugned order mainly on the ground that during departmental proceedings the appellant was not provided with any opportunity of personal hearing nor any regular enquiry was held against him. Even charge sheet was not issued to the appellant. Referring to the contents of reply, submitted by the respondents, it was contended that there was admission on the part of respondents regarding non-issuance of charge sheet and also doing away with the enquiry. It was also argued that the impugned order dated 10.12.2018 was passed by the Commandant of the Frontier Reserve Police Khyber Pakhtunkhwa, Peshawar who was not competent for the purpose. The order was, therefore, void ab-initio. Learned Counsel relied on judgments reported as 1980 SCMR 850, 2015 SCMR 1040, 2008 SCMR 1369, 2006 SCMR 1641, 2000 SCMR 1743 and 2007 SCMR 192. A judgment of this Tribunal in Appeal No. 17/2017 dated 22.02.2019 was also referred to.

On the other hand, learned AAG referred to Rule 5(5) of the Khyber Pakhtunkhwa Police Rules, 1975 and argued that the proceedings were undertaken against the appellant in accordance with law. He further contended that in his reply to show cause notice the appellant did not raise any objection regarding its contents and also admitted the charges of absence from duty. He referred to 2019-SCMR-95.

5. It is a fact that the appellant was not issued any charge sheet or statement of allegations throughout the proceedings. It could not be denied by

the respondents that a proper enquiry was not held against the appellant. Adverting to the show cause notice dated 28.11.2018, it shall be useful to reproduce herein below contents regarding charges against the appellant:-

- "i. That you while posted in Line FRP HQrs: Peshawar, you Recruit Constable Khalid No. 268 is insufficient and guilty of misconduct within the meaning of Section 3(a & b), reinstated in service in the past but failed to mend your ways utterly failed till this day to qualify basic recruit course, from where you without any cause and valid reason abandoned the course, manipulating earned leave on couple of occasion and of late proceeding on leave without any formal departure entered in the Line D.D. All these acts amount to misconduct necessitating departmental action in contemplated in Police Rules- 1975, as amended by Police Rules Efficiency & Disciplinary Rules- 2016.*
- ii. All this speaks highly adverse on your part warranting stern disciplinary action against you."*

It is abundantly clear from the above reproduction that even the dates of Basic Recruit Courses wherefrom the appellant slipped nor those of absence from duty were ever mentioned. The allegations were vague not enabling the appellant to submit proper reply. Besides, the past service record of appellant was also made basis of allegations. We are, therefore, of the view that the show cause notice was neither proper nor as per requirements of law.

6. It is very much on the record that no proper enquiry was held against the appellant nor any charge sheet was given to him. Contrary to that, in the order dated 10.12.2018 it was noted that the order was to dispose of the departmental enquiry against recruit constable Khalid Khan No. 268 of Frontier Reserve Police Headquarters, Peshawar. It is also required to be noted that proper/regular enquiry is all the more necessitated in cases where the accused

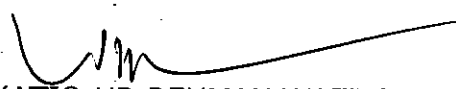
is penalized with major punishment/penalty. The impugned order as well as departmental proceedings against the appellant, therefore, are not sustainable.

7. Attending to the argument by learned counsel for the appellant regarding incompetence of respondent No.2, we adverted to Schedule-I in the rules *ibid*. It is laid, *inter alia*, that for awarding departmental punishment to constable in terms of dismissal, removal from service, compulsory retirement the competent authority was DPO/SSP. In order to confirm the rank of Commandant F.R.P Peshawar, the representative of respondents was asked to assist this Tribunal. His reply was in terms that the Commandant is an officer having rank of Deputy Inspector General of Police.

In the stated backdrop, it becomes clear that respondent No. 2 was not competent under the rules to pass the order dated 10.12.2018. It, therefore, can safely be termed as *coram-non-judice*.

8. For what has been discussed, we allow this appeal in terms that the impugned orders dated 10.12.2018 by the respondent No. 2 and 29.01.2019 by respondent No. 1 are set aside. The appellant is reinstated into service. The respondents may conduct proper enquiry against the appellant within ninety days of receipt of copy of this judgment. The issue of back benefits shall be settled in accordance with the outcome of enquiry.



Parties are left to bear their respective costs. File be consigned to the record room.

  
(ATIQ-UR-REHMAN WAZIR)  
MEMBER(E)

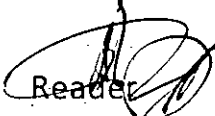
  
(HAMID FAROOQ DURRANI)  
CHAIRMAN

ANNOUNCED  
10.12.2020

297/19.

S.No.	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	10.12.2020	<p><u>Present.</u></p> <p>Syed Numan Ali Bukhari, ... For appellant Advocate</p> <p>Mr. M. Riaz Khan Paindakhel, Asstt. Advocate General ... For respondents. alongwith Ihsanullah, ASI</p> <p>Learned counsel for the appellant as well as learned Asstt. A.G heard and available record gone through.</p> <p>Vide our detailed judgment, we allow this appeal in terms that the impugned orders dated 10.12.2018 by the respondent No. 2 and 29.01.2019 by respondent No. 1 are set aside. The appellant is reinstated into service. The respondents may conduct proper enquiry against the appellant within ninety days of receipt of copy of this judgment. The issue of back benefits shall be settled in accordance with the outcome of enquiry.</p> <p>Parties are left to bear their respective costs. File be consigned to the record room.</p> <p> (ATIQ-UR-REHMAN WAZIR) Member(E)</p> <p> CHAIRMAN</p> <p><u>ANNOUNCED</u> 10.12.2020</p>

\_\_\_\_\_ .2020 Due to COVID19, the case is adjourned to  
13 / 8 / 2020 for the same as before.

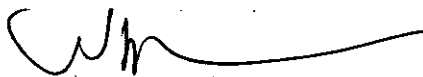
  
Reader

13.08.2020 Due to summer vacations case to come up for the same on  
16.10.2020 before D.B.

  
Reader

16.10.2020 Appellant in person present. Mr. Kabirullah Khattak  
learned Additional Advocate General for respondents  
present.

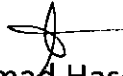
Former requests for adjournment that his senior  
counsel is busy before Hon'ble Peshawar High Court.  
Adjourned. To come up for arguments on 10.12.2020  
before D.B.

  
(Atiq-Ur-Rehman Wazir)  
Member

  
(Muhammad Jamal Khan)  
Member

04.02.2020

Appellant in person and Mr. Ziaullah, Deputy District Attorney for the respondents present. Appellant requested for adjournment on the ground that his counsel is not available today due to general strike of Khyber Pakhtunkhwa Bar Council. Adjourned to 19.03.2020 for arguments before D.B.



(Ahmad Hassan)  
Member



(M. Amin Khan Kundi)  
Member

19.03.2020

None for the appellant present. Addl: AG for respondents present. Due to general strike on the call of Peshawar Bar Council, the case is adjourned. To come up for arguments on 21.05.2020 before D.B.




(MAIN MUHAMMAD)  
MEMBER



(M. AMIN KHAN KUNDI)  
MEMBER

05.09.2019

Appellant in person present. Mr. Usman Ghani, District Attorney for respondents present. Written reply on behalf of the respondents not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on 03.10.2019 before S.B.

  
(Ahmad Hassan)  
Member

03.10.2019

Appellant in person and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Ihsanullah, ASI for the respondents present.


Written reply on behalf of respondents No. 1 & 2 submitted which is placed on record. The appeal is posted for arguments before D.B to 05.12.2019. The appellant may submit rejoinder within fortnight, if so advised.

CHAIRMAN 

05.12.2019

Learned counsel for the appellant present. Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Learned counsel for the appellant submitted rejoinder and seeks adjournment. Adjourned. To come up for arguments on 04.02.2020 before D.B.

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member




16.05.2019

Learned counsel for the appellant present. Preliminary arguments heard.

The appellant (Ex- Constable) has filed the present service appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 10.12.2018 whereby he was dismissed from service. The appellant has also assailed the order dated 29.01.2019 through which his departmental appeal under Rule-11 of Khyber Pakhtunkhwa Police Rules, 1975 was rejected.

Points urged need consideration. The appeal is admitted for regular hearing subject to all the legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 17.07.2019 before S.B.

211-21/19  
16/5/19  
Appellant Deposited  
Security & Process Fee



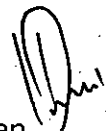
Member

17.07.2019

Appellant in person and Mr. Muhammad Riaz Khan Painsdakhel, Asstt. AG for the respondents present.

Learned Asstt. AG requests for time to procure written reply of the respondents. To come up for written reply/comments on 05.09.2019 before S.B.

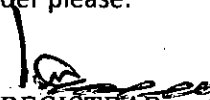



Chairman



Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 297/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	26/2/2019	<p>The appeal of Mr. Khaled Khan presented today Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 26/2/19</p>
2-	01/03/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>21/03/19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	21.03.2019	<p>Appellant in person present. Due to general strike of the bar, the case is adjourned. To come up for preliminary hearing on 23.04.2019 before S.B.</p> <p style="text-align: right;"> Member</p>
	23.04.2019	<p>Appellant in person present and seeks adjournment due to general strike of the bar. Adjourned. Case to come up for preliminary hearing on 16.05.2019 before S.B.</p> <p style="text-align: right;"> (Ahmad Hassan) Member</p>

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 297/2019

Khalid Khan

V/S

Police Deptt:

**INDEX**

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	1-4
2.	Copy pay slip	-A-	5-6
3.	Copy of show cause	-B-	07
4.	Copy of reply	-C-	08
5.	Copy of impugned order	-D-	09
6.	Copy of departmental appeal	-E-	10
7.	Copy of rejection order	-F-	11
8.	Vakalat Nama	-----	12

*Khalid Khan*  
APPELLANT  
Khalid Khan

THROUGH:

*Asif Yousafzai*  
(ASIF YOUSAFZAI)  
& *Syed Noman Ali Bukhari*  
(SYED NOMAN ALI BUKHARI)  
ADVOCATES, HIGH COURT  
PESHAWAR

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 297 /2019

Khyber Pakhtukhwa  
Service Tribunal

Diary No. 282

Dated 26/2/2019

Khalid Khan, EX- Constable, 268,  
Line FRP, Head Quarters Peshawar.

.....(Appellant)

**VERSUS**

1. The AIG/Establishment for Inspector General of Police, KPK, Peshawar.
2. The Commandant Frontier Reserve Police, KP, Peshawar.

.....(Respondents)

**APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER of RESPONDENT NO. 2 DATED 10.12.2018 WHEREBY, THE APPELLANT HAS BEEN DISMISSED FROM SERVICE AND AGAINST THE REJECTION ORDER DATED 29.01.2019 WHEREBY THE DEPARMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED FOR NO GOOD GROUNDS.**

**PRAYER:**

Filed to-day

Registrar

26/2/19

**THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDERS DATED 10.12.2018 AND 29.01.2019 MAY PLEASE BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED IN TO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARADED IN FAVOUR OF APPELLANT.**

**RESPECTFULLY SHEWETH:**

**FACTS:**

Facts giving rise to the present service appeal are as under:

1. That the appellant was the employee of the Frontier Reserve Police force Peshawar.
2. That the appellant while serving or performing duties regularly received show cause notice contained baseless allegation of absence and failed to qualified the basic recruit course. The appellant properly replied to the show cause notice and clear the situation. **Copy of the pay slip, show cause and reply is attached as annexure-A, B & C.**
3. That, thereafter, the appellant was departmentally proceeded, without charge sheet, statement of allegation, regular inquiry and even without final show cause notice, the impugned order dated 10.12.2018 was passed against the appellant whereby the appellant was dismissed from service by incompetent authority. The appellant been aggrieved from the impugned dismissal order preferred departmental appeal, the same was also rejected vide order dated 29.01.2019. **(Copy of impugned order, departmental appeal and rejection order is attached as Annexure-D, E & F).**
4. That now the appellant come to this august Tribunal on the following grounds amongst others.

**GROUND:**

- A) That the impugned orders dated 10.12.2018 and 29.01.2019 is against the law, facts, norms of justice and void-ab-initio as has been passed by Incompetent Authority and material on record, therefore not tenable and liable to be set aside.
- B) That the first show cause and impugned order was passed by incompetent authority which was void in the eye of law, according to Superiors Court Judgment reported as 2007 PLC (cs) 85 and

2007 PLC (cs) 132. So the whole procedure and order is void-ab-initio cannot be sustained in the eye of law and liable to be set aside.

- C) That, there was no order in black and white form to dispense with the regular inquiry which is violation of law and rules and without charge sheet, statement of allegation, proper inquiry and final show cause notice, the appellant was dismissed from the service vide order dated 10.12.2018, without given personal hearing which is necessary and mandatory in law and rules before imposing major penalty. So the whole procedure conducted has nullity in the eye of law. So the impugned order is liable to be set aside.
- D) That the appellant was dismissed was only on the allegation that the appellant was not qualified the recruit course which is highly discriminatory because at present in FRP 200/250 officials ASIs, Head Constable and constables are not qualified the Recruit course and they were still in service and there service are more than 20 years. Further it is added that the appellant properly submitted that nominate me for next recruit course I will properly complete my course but the respondent not considering the plea of the appellant in slip shod manner dismissed the appellant which means that the respondent with malafide intention bent upon to dismissed the appellant at every cost.
- E) That the appellant was present at duty but with malafide intention shown absent which is against the law and rules.
- F) That the appellant has been condemned unheard which is violation of 'Audi Alterum Paltrum' and has not been treated according to law and rules.
- G) That the appellant has not been treated under proper law despite he was a civil servant of the province, therefore, the impugned order is liable to be set aside on this score alone.
- H) That no chance of personal hearing was provided to the appellant and as such the appellant has been condemned unheard throughout.
- I) That the appellant is young and efficient but due to some serious problems he can't complete he recruit course, the department taken so harsh view, may kindly be taken lenient view and re-instate the appellant in to service.



J) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

  
APPELLANT

Khalid Khan

THROUGH:

  
(ASIF YOUSAFZAI)  
&   
(SYED NOMAN ALI BUKHARI)  
ADVOCATES, HIGH COURT  
PESHAWAR

5

0656504 MUHAMMAD KHALID KHAN Prev Pers No: Desig: CONSTABLE (00100745) Grade: 07 NTN: Buckle No.: 86 Gazetted/Non-Gazetted: N  
 Father Name: MUHAMMAD ANWAR KHAN Date Of Birth: 30.03.1990 Date Of Appointment: 28.12.2011 CNIC: 1710187759097

PAYMENTS AMOUNT DEDUCTIONS AMOUNT LOAN/FUND PRINCIPAL REPAYED BALANCE

0001 Basic Pay	12,820.00	3007 GPF Subscription - Rs	1,010.00-	GPF#:	45,538.00	(A/S)
1001 House Rent Allowance	2,384.00	3530 Police wel:Fud BS-1 t	256.00-			
1210 Convey Allowance 20	1,932.00	4004 R. Benefits & Death C	690.00-			
1300 Medical Allowance	1,500.00					
1547 Ration Allowance	681.00					
1567 Washing Allowance	150.00					
1646 Constabulary R Allow	300.00					
1901 Risk Allowance (Poli	3,530.00					
1902 Special Incentive-AI	775.00					
2148 15% Adhoc Relief All	322.00					
2168 Fixed Daily Allowanc	2,730.00					
2199 Adhoc Relief Allow @	200.00					
2211 Adhoc Relief All 201	1,027.00					
2224 Adhoc Relief All 201	1,282.00					
2247 Adhoc Relief All 201	1,282.00					

PAYMENTS 30,915.00 DEDUCTIONS 1,956.00- NET PAY 28,959.00 01.11.2018 30.11.2018  
 Branch Code: Payment through DDO Accnt.No:



6

00656504 MUHAMMAD KHALID KHAN Prev Pers No: Desig: CONSTABLE (00100745) Grade: 07 NTN: Buckle No.: 86 Gazetted/Non-Gazetted: N

Father Name: MUHAMMAD ANWAR KHAN Date Of Birth: 30.03.1990 Date Of Appointment: 28.12.2011 CNIC: 1710187759097

PAYMENTS	AMOUNT	DEDUCTIONS	AMOUNT	LOAN/FUND	PRINCIPAL	REPAID	BALANCE
0001 Basic Pay	13,430.00	3007 GPF Subscription - Rs	1,010.00-		GPF#:		46,548.00
1001 House Rent Allowance	2,384.00	5011 Adj Conveyance Allowa	3,864.00-				
1210 Convey Allowance 20	1,932.00	5801 Adj Basic Pay	20,942.00-				
1300 Medical Allowance	1,500.00	3530 Police wel:Fud BS-1 t	269.00-				
1547 Ration Allowance	681.00	4004 R. Benefits & Death C	690.00-				
1567 Washing Allowance	150.00						
1646 Constabulary R Allow	300.00						
1901 Risk Allowance (Poli	3,530.00						
1902 Special Incentive AI	775.00						
2148 15% Adhoc Relief All	322.00						
2168 Fixed Daily Allowanc	2,730.00						
2199 Adhoc Relief Allow @	200.00						
2211 Adhoc Relief All 201	1,027.00						
2224 Adhoc Relief All 201	1,343.00						
2247 Adhoc Relief All 201	1,343.00						

PAYMENTS 31,647.00 DEDUCTIONS 26,775.00- NET PAY 4,872.00 01.12.2018 31.12.2018  
 Branch Code: Payment through DDO Accnt.No:



B

7

SHOW CAUSE NOTICE.

I, SAJID ALI KHAN PSP, Commandant FRP, Khyber Pakhtunkhwa, Peshawar, as Competent Authority, under Police Rules-1975, do hereby serve Show Cause Notice to you Recruit Constable Khalid Khan No.268 while posted in Line FRP HQrs: Peshawar, on the score of the following grounds that:-

- i. That you while posted in Line FRP HQrs: Peshawar, you Recruit Constable Khalid Khan No. 268 is insufficient and guilty of misconduct within the meaning of Section-3(a & b), reinstated in service in the past but failed to mend your ways utterly failed till this day to qualify basic recruit course, from where you without any cause and valid reason abandoned the course, manipulating earned leave on couple of occasion and of late proceeding on leave without any formal departure entered in the Line D.D. All these acts amount to misconduct necessitating departmental action in contemplated in Police Rules-1975, as amended by Police Rules Efficiency & Disciplinary Rules-2016.
- ii. All this speaks highly adverse on your part warranting stern disciplinary action against you.

Keeping in view of the above allegations on your part, you are hereby called upon to show cause within 07 days of the receipt of this notice as to why you should not awarded punishment under Police Rules-1975. If your written reply is not received within the stipulated period, it shall be presumed that you have no defense to offer. You are also allowed to appear in person before the undersigned if you so desire.

*SJ*  
(SAJID ALI KHAN)<sup>PSP</sup>  
COMMANDANT  
Frontier Reserve Police  
Khyber Pakhtunkhwa,  
Peshawar

No. 1206/ EC  
dated 28 / 11 / 2018.

بیان ازاں ریکروٹ کنسٹیبل خالد نمبر 268 ایف آر پی ہیڈ کوارٹر پشاور

جناب عالی!

بحوالہ شوکاز نوٹس مجاریہ دفتر جناب کمانڈنٹ صاحب ایف آر پی خیبر پختونخواہ پشاور معروض خدمت ہوں کہ سائل ایف آر پی ہیڈ کوارٹر لائن میں بطور ریکروٹ کنسٹیبل تعینات ہوں۔ من سائل اپنے گھر کا واحد کفیل ہوں والد صاحب ضعیف العمر ہے اور اکثر اوقات بیمار رہتا ہے جس کی تیمارداری کے لئے میرے سوا گھر میں کوئی ناریہ نہ فرد نہیں۔ اور پچھلے 2 سال سے سائل ہیپیٹائٹس سی بیماری میں مبتلا ہے جس وجہ سے سائل مجبوراً ریکروٹ کورس کے لئے نہ جاسکا۔

افسران بالا صاحبان نے من سائل کو آئندہ ریکروٹ کورس کے لئے منتخب کیا تو سائل اپنی مجبوریوں کو بالائے طاق رکھ کر بخوشی خود ریکروٹ کورس میں شامل ہوگا۔

آپ صاحبان سے التماس کی جاتی ہے کہ سائل کی مجبوری اور غریبی کو مد نظر رکھ کر سائل کے خلاف جاری کردہ شوکاز نوٹس فائل کر کے سائل کی تمام خاندان پر رحم فرمائیں۔

سائل تاحیات دعا گو رہیگا۔

آپکا تابع فرمان ریکروٹ کنسٹیبل خالد نمبر 268 ایف آر پی ہیڈ کوارٹر پشاور۔

ORDER

This order will dispose off on the departmental enquiry against Recruit Constable Khalid No. 268 of FRP HQrs: Peshawar.

Brief facts of the case are that the accused officer namely Khalid No. 268 was given a Show Cause Notice alleging therein that he is inefficient and found to be guilty of the misconduct within the meaning of Section- 3(a & b), of Police Rules-1975 as amended in 2014. It was further alleged that the accused official failed to mend his ways with his constant failure to complete his Basic Recruit Course, manipulating earned leave and absence without proper permission from his seniors.

1. The reply to the Show Cause Notice issued vide this office No. 12061/EC dated 28.11.2018 was submitted by the accused officer, however, the same was found to be unsatisfactory due to the following: -

Constable Khalid No. 268 of this establishment was enlisted in Police Department on 28.11.2011, and was subsequently detailed for the Basic Recruit Course on various occasions. The accused officer, however, frustrated every time the orders of his superior to undergo the Basic Recruit Course which speaks volume regarding his level of commitment, proclivity of insubordination and either scant or no regards for discipline, thus making him utterly inefficient within the meaning of Section 3 (a & B) of Police Rules-1975.

2. To add to this he was proceeded against in the past and terminated from service but latter-on reinstated into service by the appellant authority taking lenient view into the matter. Afterwards he was again detailed for undergoing Basic Recruit Course immediately after his reinstatement into service but once again the accused officer remained absent and was shunted out on the same grounds from the course.

3. Moreover, the service record of accused official indicates that he manipulated earned leave on several occasions and of late he left and proceeded on earned leave without proper permission to be entered into the Daily Diary which in itself amounts to insubordination and an act of ill-discipline.

4. All this is a proof that the accused official who were issued Show Cause Notice to defend himself against the charges leveled therein, but the reply to the same was totally found to be unsatisfactory and utterly unconvincing.

5. In the light of the stated facts and circumstances, I Mr. SAJID ALI KHAN, Commandant FRP Khyber Pakhtunkhwa, Peshawar being the Competent Authority empowered under Section 5 (3-c), (5) came to the conclusion after evaluating the entire evidence against the accused official and having given him sufficient opportunity of being heard in the light of natural justice i.e. "Audi-Alteram Paltram" that the accused official is inefficient and guilty of misconduct within the meaning of Section-3 (a & b) of Police Disciplinary Rules-1975 as amended in 2016, hence awarding the punishment of dismissal from service with immediate effect.

COMMANDANT  
Frontier Reserve Police  
Khyber Pakhtunkhwa,  
Peshawar

No. 12534-39/EC, dated Peshawar the, 10 1 12 2018.

Copy of above is sent for necessary action to the:-

1. Deputy Commandant FRP Khyber Pakhtunkhwa, Peshawar.
2. DSP/Accountant FRP HQrs: Peshawar.
3. SRC/OASI/FMC FRP HQrs: Peshawar.

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17-12-2018  
Case No: 03159836196

Head Office  
HQ/268  
Ex

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OFFICE OF THE  
INSPECTOR GENERAL OF POLICE  
KHYBER PAKHTUNKHWA  
PESHAWAR.

No. S/ 327 /19, dated Peshawar the 29 /01/2019.

ORDER

This order is hereby passed to dispose of departmental appeal under Rule 11 of Khyber Pakhtunkhwa Police Rule-1975 (amended 2014) submitted by **Ex-Recruit Constable Khalid Khan No. 268**. The petitioner was dismissed from service by Commandant, FRP, Khyber Pakhtunkhwa, Peshawar vide order Endst: No. 12534-39/EC, dated 10.12.2018 on the charge that he was given a show cause notice alleging therein that he is inefficient and found to be guilty of the misconduct within the meaning of Section - 3 (a & b), of Police Rules - 1975 as amended in 2014. It was further alleged that he failed to mend his ways with his constant failure to complete his Basic Recruit Course, manipulating earned leave and absence without proper permission from his seniors. He was enlisted in Police Department on 28.11.2011 and was subsequently detailed for Basic Recruit Course on various occasions but he frustrated every time the orders of his superior to undergo the Basic Recruit Course.

Meeting of Appellate Board was held on 23.01.2019 wherein petitioner was heard in person. During hearing petitioner contended that he was suffering from jaundice.

Petitioner failed to advance any plausible explanation in rebuttal of the charges. He was detailed for Basic Recruit Course on various occasions but he frustrated every time the orders of his superior to undergo the Basic Recruit Course. He has earned 20 bad entries during his service. The Board see no ground and reasons for acceptance of his petition, therefore, the Board decided that his petition is hereby rejected.

**This order is issued with the approval by the Competent Authority.**

(SADIQ BALOCH) PSP  
AIG/Establishment,  
For Inspector General of Police,  
Khyber Pakhtunkhwa,  
Peshawar.

No. S/ 328-34 /19,

Copy of the above is forwarded to the:

1. Commandant, FRP, Khyber Pakhtunkhwa, Peshawar. Service record alongwith departmental file of the above named Ex-Constable received vide your office Memo: No. 1-11/SI Legal, dated 03.01.2019 is returned herewith for your office record.
2. Deputy Commandant, FRP, Khyber Pakhtunkhwa, Peshawar.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. PA to AIG/Legal, Khyber Pakhtunkhwa, Peshawar.
7. Office Supdt: E-IV CPO Peshawar.

0315-9836196

# VAKALAT NAMA

NO. \_\_\_\_\_/20

IN THE COURT OF KoPak Service Tribunal, Pesh

Khalid Khan

(Appellant)  
(Petitioner)  
(Plaintiff)

VERSUS

Police Dept

(Respondent)  
(Defendant)

I/We Khalid Khan

Do hereby appoint and constitute **M.Asif Yousafzai, Advocate, Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated \_\_\_\_\_/20

M Khalid

( CLIENT )

ACCEPTED

Asif

**M. ASIF YOUSAFZAI**  
Advocate

E

Noman

**Syed Noman Ali Bukhari**  
Advocate  
Attested

**M. ASIF YOUSAFZAI**  
Advocate High Court,  
Peshawar.

**OFFICE:**

Room No.1, Upper Floor,  
Islamia Club Building,  
Khyber Bazar Peshawar.  
Ph.091-2211391-  
0333-9103240

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No. 297/2019.**

**Khalid Khan, Ex-constable, No. 268 Line FRP HQrs; Peshawar.....Appellant.**

**VERSUS**

1. **The AIG/Establishment,**  
For Inspector General of Police,  
Khyber Pakhtunkhwa, Peshawar.
2. **Commandant Frontier Reserve Police,**  
Khyber Pakhtunkhwa, Peshawar .....**Respondents.**

**PRELIMINARY OBJECTIONS**

1. That the appeal is badly time barred.
2. That the appeal is not maintainable in the present form.
3. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
4. That the appellant has no cause of action to file the instant appeal.
5. That the appellant has not come to this Honorable Tribunal with clean hands.
6. That the appellant is estopped due to his own conduct to file the instant Service Appeal.
7. That the appellant is trying to conceal material facts from this Honorable Tribunal.

**WRITTEN REPLY ON BEHALF OF RESPONDENTS.**

**RESPECTED SHEWETH.**

**FACTS:-**

1. Pertains to the appellant record.
2. Incorrect and denied. The appellant was found an insufficient Police Officer. He was deputed for Basic Recruit Course time and again, but he failed to qualify the recruit course, which is mandatory for every recruit Police Official/officer. Besides, he remained absent from lawful duty with out prior permission of the competent authority. Therefore he was issued Show Cause Notice, to which he replied, but his reply was found unsatisfactory.
3. Incorrect and denied. That the appellant was proceeded under the relevant law i.e Police Rules 1975 Rule 5 Section 3 (b & c) amended in 2014. According to the instant rules, the competent authority is empower to proceed an accused official only with Show Cause Notice. As per said Rules there is no need to issue Charge Sheet or conduct enquiry into the mater. However, the appellant was found guilty of the charges leveled against him and therefore, dismissed form service in accordance to law/rules. The departmental appeal submitted by the appellant was thoroughly examined and rejected on sound grounds.
4. Incorrect and denied. The appellant has not come to this honorable Tribunal with clean hands, therefore, the same may kindly be dismissed on the following grounds.



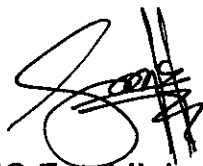
**GROUNDS:-**

- A. Incorrect and denied. The orders of respondents are legally justified and in accordance to law/rules as the same have been passed under the relevant/ applicable law.
- B. Incorrect and denied. The Show Cause Notice and impugned order is tenable and in accordance to law, as the same was passed by competent authority in the light of relevant rules. The judgment of Supreme Court of Pakistan mentioned by the appellant in para is not applicable in the case of appellant. Thus all procedure adopted by the respondent are legally justified and in accordance to law.
- C. Incorrect and denied. The appellant was found inefficient and guilty of misconduct within the meaning of Rule 5 Section 3 (b & c) of Police Rules 1975 amended 2014. That the appellant was proceeded under Rule 5 Section 3 (b & c) of Police Rules 1975 amended in 2014, according to the instant rules, the competent authority is competent to proceed an accused official only with Show Cause Notice. According to the said Rules, the issuance of Charge Sheet or conducting of enquiry are not mandatory. An ample opportunity was provided to the appellant, the appellant being heard in person in the light of natural justice i.e Audi-Alteram Paltram, but the appellant failed to satisfy the competent authority Therefore, the appellant was awarded major punishment of dismissal from service in accordance to law/rules.
- D. Incorrect and denied. The allegations are false and baseless as all officials who working in FRP have qualified the basic recruit course after their appointment. Head constable and ASI posted in FRP have already successfully qualified the basic recruit course and departmental courses than they have been promoted to the next senior rank. The plea taken by the appellant regarding non selection of his nomination for next recruit course is a concocted story.
- E. Incorrect and denied. The appellant was deliberately remained absent from lawful duty and his guilt was subsequently established against him.
- F. Incorrect and denied. Ample opportunity of personal hearing was provided to the appellant to which he availed, but he failed to advance any justification regarding to his innocence.
- G. Incorrect and denied. As explained in preceding Para that the appellant was proceeded under the relevant/special law of Police Rules 1975 amended in 2014. Therefore the impugned order is justified and in accordance to law/rules. Therefore, the instant appeal is liable to be dismissed.
- H. Incorrect and denied. This Para has already been explained in the preceding Para No. F above.

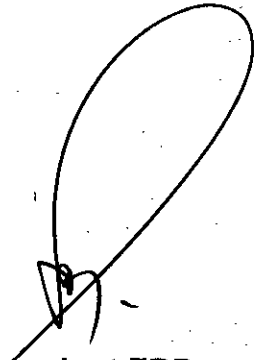
- I. Incorrect and denied. That the appellant was enlisted in Police department on 28.12.2011, and he was detailed time and again for basic recruit course which is mandatory for all recruit constable, because without qualifying the same a constable not become an efficient Police officer and as well as he could not be assigned any field duty. Moreover, before this the appellant was dismissed from service on the account of absence from recruit training program, which he subsequently reinstated in service by the Appellate Authority by taking lenient view vide Order Endst; No. 2324/EC, dated 17.03.2016, but he failed to mend his ways. The appellant has utterly failed till date to qualify the mandatory basic recruit course, which is a gross misconduct on his part. Thus the applicant has been found to be an inefficient and irresponsible person in utter disregard of discipline Force, as there is no hope/chance of being mended his way. His reinstatement may into service will adversely effect the discipline of the Force. Thus the punishment awarded to the appellant is commensurate with the gravity of his misconduct.
- J. The respondents may also be permitted to raise additional grounds at the time of arguments.

**PRAYERS:-**

It is therefore, most humbly prayed that in the light of aforesaid facts/submission, the service appeal may kindly be dismissed with cost.



**AIG Establishment,**  
For Inspector General of Police,  
Khyber Pakhtunkhwa, Peshawar.  
(Respondent No. 1)



**Commandant FRP,**  
Khyber Pakhtunkhwa, Peshawar  
(Respondent No.2)

4/2/20

**BEFORE THE KPK, SERVICE TRIBUNAL PESHAWAR.**

**Service Appeal No. 297/2019**

Khalid Khan

VS

Police Deptt:

.....

**REJOINDER ON BEHALF OF APPELLANT**

.....

**RESPECTFULLY SHEWETH:**

**Preliminary Objections:**

(1-7) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

**FACTS:**

- 1 Admitted correct by the deptt: as service record is already in the custody of respondent deptt:.
- 2 Incorrect hence denied. While para-2 of the appeal is correct as mentioned in the main appeal of the appellant. Moreover, the allegation mentioned in show cause notice is not specific which is violation of law and rules. Hence the all procedure is void ab-initio. Further it is added, there is a lot of appellant whom not passed basic recruit course till date.
- 3 Incorrect hence denied. While para-3 of the appeal is correct as mentioned in the main appeal

of the appellant. Moreover, in show cause notice neither dispense with the inquiry nor any reason was mentioned. Even no final show cause notice was issued

- 4 Incorrect. While para-4 of the appeal is correct as mentioned in the main appeal of the appellant. The appellant has good cause of action to file the instant appeal.

**GROUND:**

- A) Incorrect. The orders of the respondents are against the law, rules and norms of justice therefore not tenable and liable to be set aside.
- B) Incorrect. While para-B of the appeal is correct as mentioned in the main appeal of the appellant.
- C) Incorrect. Incorrect. While para-C of the appeal is correct as mentioned in the main appeal of the appellant.
- D) Incorrect. Incorrect. While para-D of the appeal is correct as mentioned in the main appeal of the appellant. Moreover. List of not qualified recruit person is attached.
- E) Incorrect. Incorrect. While para-E of the appeal is correct as mentioned in the main appeal of the appellant., moreover, there is no specific date was mentioned of absentia so the the allegation is baseless.
- F) Incorrect. Incorrect. While para-F of the appeal is correct as mentioned in the main appeal of the appellant.
- G) Incorrect. Incorrect. While para-G of the appeal is correct as mentioned in the main appeal of the appellant

- H) Incorrect. Incorrect. While para-H of the appeal is correct as mentioned in the main appeal of the appellant.
- I) Incorrect. Incorrect. While para-I of the appeal is correct as mentioned in the main appeal of the appellant.
- J) Legal.

It is, therefore, most humbly prayed that the appeal of appellant may kindly be accepted as prayed for.

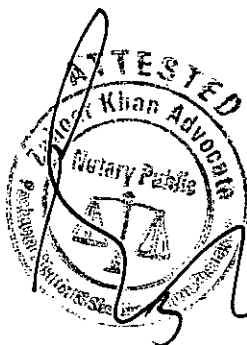
**APPELLANT**

Through:

  
**SYED NOMAN ALI BUKHARI**  
ADVOCATE HIGH COURT.

**AFFIDAVIT**

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.



  
DEPONENT

LIST OF RL FRP-HCD

Sl No	Name	Belt No	Cadre	Remarks
1.	Azam	04	Follower	
2.	Nazeer Muhammad	17	Dhobi	
3.	Riaz Muhammad	25	Constable	
4.	Sifat Khan	26	Barber	
5.	Maqsood Khan	35	Constable	
6.	M. Ayaz	39	Follower	
7.	Shams Ul Islam	40	Follower	
8.	Irshad Maseeh	45	Sweeper	
9.	Mores iqbal Maseeh	46	Sweeper	
10.	Syed Rehman	58	Cook	
11.	Pakistan	66	Cook	
12.	Parvez Maseeh	69	Sweeper	
13.	Wali Khan	95	Constable	
14.	Imtiaz Khan	98	Constable	
15.	Habib Khan	120	Squash Player	
16.	Umer Ayaz <i>Exempted by 123 Act</i>	123	Tennis Player	
17.	Jan Sher	124	Squash Player	
18.	Javed Khan	125	Follower	
19.	M. Qasim	150	Driver	
20.	Noorshed	172	Constable	
21.	Abbas Ali	198	Follower	
22.	Miraj Ahmad Khan	225	Waiter	
23.	M. Islam	239	Constable	
24.	Ali Rehman	262	Constable	
25.	Abbas Khan	291	Follower	
26.	Tariq Maseeh	403	Sweeper	
27.	Zubair Jan	426	Driver	
28.	Tariq Khan	462	Driver	
29.	Ghafoor Khan	578	Constable	
30.	Raza Muhammad	644	Follower	
31.	Munir	686	Constable	
32.	Amjid Ali	698	Follower	
33.	Hassan Khan	711	Constable	
34.	Ibrahim	735	Constable	
35.	Irfan Ullah	950	Gardner	
36.	Bahar Ali	1145	Constable	
37.	Raz Muhammad	1158	Constable	
38.	Ibadat Khan	1192	Follower	
39.	Rahmat Gul	1193	Constable	
40.	Khan Sher	1436	Constable	
41.	Shasti Gul	1437	Follower	
42.	Islam UD Din	2033	Constable	
43.	Riaz Khan	29	Driver	
44.	Amin Wali Shah	44	Cook	
45.	Aqeel Khan	105	Painter	
46.	Zafar Iqbal	142	Follower	
47.	Zulfiqar	151	Follower	
48.	Sardar Hussain	164	Follower	
49.	Zarshad Khan	165	Driver	
50.	Khalid Khan	268	Follower	
51.	Ubaid Ullah	463	Cook	
52.	Sareer Ahmad	502	Follower	

ASST. M. A. 196  
 Reemil

برکت

53.	Noor Islam	595	Driver
54.	Salman Farsi	643	Follower
<del>55.</del>	<del>Mahdi Asad</del>	<del>871</del>	<del>Driver</del>
56.	Jahangir Khan	1164	Follower
57.	Asfandyar	1948	Follower
58.	Tauheed jan	1953	Behshti
59.	Muzammil Khan	2010	Driver
60.	M.Adnan	2031	Driver

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 4082-83/ST

Dated 16 / 12 / 2020

To

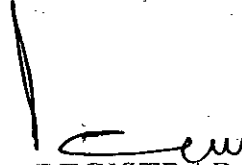
1. The AIG/Establishment for Inspector General of Police,  
Government of Khyber Pakhtunkhwa,  
Peshawar.
2. Commandant Frontier Reserve Police,  
Government of Khyber Pakhtunkhwa,  
Peshawar.

Subject: -

**JUDGMENT IN APPEAL NO. 297/2019, MR. KHALID KHAN.**

I am directed to forward herewith a certified copy of Judgement dated 10.12.2020 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.