

BEFORE THE HONOURABLE SEREVICE TRIBUNAL
KHYBER PAKHTUNKHWAPESHAWAR, CAMP AT
D.I.KHAN

Service Appeal No. 320/2023

Muhammad Saeed Khan

Versus

IGP KPK& Others

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Dated/7.01.2024


Appellants' counsel

①

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Khyber Pakhtukhwa
Service Tribunal

Diary No. 10732

Dated 23-1-2024

REJOINDER FROM APPELLANT, IN WRITTEN REPLY OF
RESPONDENTS

Respectfully Sheweth:-

REPLY ON PRELIMINARY OBJECTIONS:-

1. Incorrect. The appellant has a valid cause of action and locus standi to file the instant service appeal against the impugned order No.5858-61/CTD dated 07/10/2022.
2. Incorrect. The appeal is maintainable in the present form.
3. Incorrect. All the necessaries parties has been arrayed in the panel of respondents.
4. Incorrect. The doctrine of estoppel is not applicable in the instant service appeal.
5. Incorrect. The appeal is well within time.
6. Incorrect. Appellant has not concealed any facts from this Honorable Tribunal and has come to the court with clean hands for the redressal of his genuine grievance under the law and the Tribunal has very much ample power to entertain such like service appeals.

Advocate

Objections on Facts:-

- 1) Incorrect. The appellant is law abiding citizen. The appellant has approximately 16 years unblemished service. The appellant has not violated any SOPs. The appellant has been made scape goat. The inquiry officer has not conducted the inquiry proceedings according to the demanding circumstances. The appellant has not admitted any of allegations in his statement. Para 1 of the reply is not correct.
- 2) Incorrect and misconceived. The respondents has been failed to incorporate the real facts. The allegations leveled against the appellant were not correct and were not proved.

- I. Incorrect. Not admitted. The appellant has not any contact with an individual namely, Majid Baloch. The appellant has not disclosed his identity and nature of work before anybody else. The alleged WhatsApp screenshots annexed with the reply are not related with the present appellant. On dated 23/07/2022, while during routine work, appellant's cell phone was taken into possession by DSP Cantt; while the documents annexed with the reply are revealing that the memo of cellphone was not prepared and neither any memo is annexed with the reply. The cellphone of the appellant is still in not safe custody. Moreover, cell number 0333-6716323 is not related with the appellant.
- II. Para No. 2 of the reply is Incorrect. The official namely Khuram Shehzad posted at CFU staff in the office of RPO DIKhan and was superior/ senior to the appellant. The appellant, being lower staff, has not persuaded his high ups for provision of any CDRs. Moreover, the said official being blue eyed of the respondents has been reinstated into service vide office order No. 2330/ES dated 31/03/2023. Copy of the office order is annexed as **annexure "F"**.
- III. Incorrect. Not admitted. The appellant has not illegally fetched CDRs of various numbers and has not sent to any individual. Further, the screenshots annexed with the reply are not reflecting any connectivity of the appellant with an individual namely Majid Baloch. Moreover, the alleged screenshots are not from the cellphone of the appellant rather may have been taken from any other device or may be self-created.
- IV. Incorrect. Not admitted. The appellant has not bribed any official of CFUs staff. The screenshots annexed with the reply are self-created and has been prepared to trap the appellant. The appellant is a poor person and has no nexus with various alleged transactions.
- V. Incorrect. Not admitted. Neither iota of evidence is available to connect the relation of the present appellant with the said Majid Baloch from Haiderabad. The appellant has not used any illegal sims, the number of which has not been shown. Further as mentioned above that respondents has in possession of the private/personal cellphone of the appellant without adopting any legal formality. The respondents have violated the fundamental rights of privacy of the appellant.
- VI. Incorrect. Not admitted. The appellant has not received any huge amount of cash for illegally providing data(CDR) to unauthorized person. The alleged annexed screenshots are not genuine and are false and bogus just to trap the appellant. The appellant is a poor person and is being made scape goat for the fault of the others (if any).

*ASST
RPO
17/01*

VII. Incorrect. Not admitted. The appellant has not violated any law and the rules. The annexed alleged documents are not reflecting the misuse of social media by the appellant.

The respondent has not acted in accordance with the law. The appellant, in October 2014 was transferred CTD DIKhan. The appellant falls from the district police under the domain of District Police Officer. The appellant was not charge sheeted by the competent authority as Respected Mr. Iftikhar Ali Shah was serving as DSP investigation CTD DIKhan region and vide order No. 433-37/F.C/CTD dated Peshawar 16/05/2022 was assigned/posted as SP CTD DIKhan region to look after the said post. Copy of the order No. 433-37 is annexed as Annexure "G". Pertinent to mention here that Govt: of KPK establishment Department vide letter No. SO(policy)E & AD/1-1/2012/AP dated 07/12/2022 with the subject "CLERIFICATION REGARDING ASSIGNING LOOK AFTER CHARGE" was issued and the same letter was further circulated vide letter No. E & A (HD) 1-12/2022 dated 12/12/2022 to all the concerned departments and similarly the said instructions were also communicated to all departments/ offices of CTD vide letter dated 27/12/2022. Copies of the said three letters are annexed as Annexure "H", "I" and "J", respectively. Thus the acting SP CTD was not competent to issue charge sheet or even to award major punishment of Dismissal from Service. The inquiry officer has not followed the required procedure. All the documents annexed are merely screenshots taken from any unknown device and are not reflecting any connectivity of the appellant with the commission of offence.

Call
Appellate
17/01

- 3. Para No. 3 of the reply is incorrect while para No. 3 of the appeal is correct. Appellant was not provided any copy of inquiry report as stated by the respondents in the instant para. Detailed reply in para No. 2 may kindly be reiterated.
- 4. The respondents have failed to controvert the instant para.
- 5. Para No. 5 is incorrect. Allegations were not proved against the appellant. The impugned order was not issued by the competent authority.
- 6. The respondents have failed to controvert para No. 6 of the appeal. Rest of the para No. 6 of the reply is incorrect.
- 7. Incorrect as drafted. The appellant was not communicated any order of the appellate authority. The appellant received the copy of the order of the appellate authority on 06/02/2023.
- 8. Incorrect as drafted. The service appeal is based on merits.

OBJECTION ON GROUNDS:

1. Incorrect and misconceived. The impugned removal order dated 7/10/2022 and decision of appellant's departmental appeal dated 04.11.2022 is illegal, against services laws and rules, without jurisdiction, in violation of the precedents of apex courts of the country and is not justifiable for any reason whatsoever. The alleged co-accused namely Khurram Shahzad was reinstated into service by the appellate authority. Hence, discrimination was metted out with the appellant. Moreover, the order dated 07/10/2023 was issued by the authority who was not competent to issue said order.
2. Incorrect and misconceived. While para No.2 of the grounds is correct. Nothing was proved against the appellant. The respondents has been failed to specifically controvert the stance taken by the appellant about official/ co-accused namely Khuram Shehzad. The fact shows nepotism and discrimination.
3. Incorrect and misconceived. The appellant has never ever admitted in any of his statement that he has any connection with HC Khuram Shehzad for illegal distribution/ business of CDR. Khuram Shehzad was posted as Incharge CFU in the office of RPO DIKhan and was a head constable while the appellant was a constable. The appellant followed the instructions of head constable being senior in post and has relation with the said official only to the extent of routine work. However, the said official was also charge sheeted on the same allegations but he has been reinstated into service by the respondents. Appellant has not received/ obtained any payment via easypaisa account. Moreover, in the absence of heavy copy of the inquiry report the issuance of final show cause notice is not according to law and justice. The impugned order was not issued by the competent authority.
4. Incorrect and misconceived. The respondents have failed to specifically deny the averments of para No. 4 of the grounds of the appeal. The respondents are not willing to incorporate any fact or to give any statement in respect of HC Khuram Shehzad.
5. Incorrect and misconceived. Para No. 5 is according to the law. The then SP CTD DIKhan was holding the office as a stop gap arrangement to look after the matters of petty nature and was not competent to issue charge sheet or issued impugned order of dismissal from service. Further para No. 2 (reply on facts) above may kindly be repatriated.
6. Incorrect and misconceived. As already explained in the preceding paras. However, appellant was so pressurized for the wrong (if any) of others that his cellphone was taken into custody and still is in the possession of the respondents without preparing any memo.
7. Incorrect and misconceived. The para is self-contradictory with the record annexed by the respondents themselves. The alleged

*Asst
Commissioner
17/01*

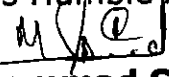
annexure "D" not reflecting any nexus or connectivity of the appellant with any unknown third person namely Majid Baloch.

- 8. Incorrect and misconceived. The respondents have not specifically controverted the ground No. 8 of the appeal. Rather the respondents failed to disclose the real episode of the story.
- 9. Incorrect and misconceived. The appellant has not given any opportunity of being heard. The alleged annexure "E" are screenshots taken from any device. The alleged screenshots of easypaisa reflecting receiving receipts which could only be obtained from sender's device but the inquiry report and documents are silent to explain the said trail. Rest of the para is also incorrect. The appellant was a poor innocent constable and element of undue influence cannot be ruled out in that eventuality.
- 10. Incorrect and misconceived. The respondents have failed to deny the ground in para No. 10 of the appeal. As the appellate authority without perusing any record, just upheld the impugned order of SP CTD. The appellate authority has even not took into consideration that the authority issuing the impugned order was actually not competent authority, under the law to issue said order.
- 11. Need no reply.

In wake of submissions made above, it is therefore, humbly requested that written reply of the respondents be declared as baseless and appeal of the appellant may please be accepted as prayed for. Any other relief deems appropriate may please be given to the appellant.

Dated: 17/01/2024

Yours Humble Appellant

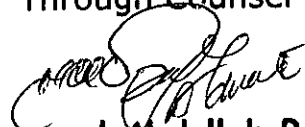


Muhammad Saeed Khan

Ex-constable No. 1180

CTD DIKhan.

Through Counsel



Muhammad Abdullah Baloch

Advocate Supreme Court

6

BEFORE THE HONOURABLE SEREVICE TRIBUNAL
KHYBER PAKHTUNKHWAPESHAWAR, CAMP AT
D.I.KHAN

Service Appeal No. 320/2023

Muhammad SaeedKhan

Versus

IGP KPK& Others

REJOINDER FROM APPELLANT. IN WRITTEN REPLY OF
RESPONDENTS

AFFIDAVIT

I, **Muhammad saeed Khan**, the appellant, do hereby solemnly affirm and declare on oath that contents of the Rejoinder are true and correct to the best of my knowledge and belief and nothing has been deliberately concealed from this Hon'ble Service Tribunal.

Dated: 07/01/2024



M. Saeed

Deponent

12103-1258072-9



OFFICE OF THE
REGIONAL POLICE OFFICER
DERA ISMAIL KHAN
REGION

Anx "F" (7)

☎ 0966-9280291 Fax # 9280290

No. 2330/BS dated DI Khan the 31/03/2023

ORDER

This order disposes off departmental appeal filed by Ex-Constable Khurram Shehzad No. 689 of District Police, DI Khan against the order of Major Punishment (Dismissal from Service) by the DPO DI Khan passed vide his office Order No. 2978/EC, dated 18.08.2022, on the following allegations:

"He while posted as Incharge CDR Branch RPO Office DI Khan, fetched CDR of the number 0323-514302" from the company Jazz Pakistan. Perusal of the record has shown that no police station or any other unit of the three districts of DI Khan Region requested him to call for CDR of the ibid number from this company but by misusing his authority and apparently with ulterior motives sent an email from official ID of RPO DI Khan to company and requested for CDR for which he was not authorized, hence, rendered himself liable for strict departmental action as envisaged in section 4 clause a & b of the Police Rules 1975 amended 2014".


DPO DI Khan served the appellant with Show Cause Notice on the allegations ibid. Reply to the same was received but found unsatisfactory, hence he was summoned and appeared before him. During course of personal hearing, he admitted that he had fetched the data of the Cell Number quoted above at his own to get monetary benefits through constables of CTD.

The appellant preferred a Mercy petition against the impugned order.

Perusal of the service record of the appellant & findings of the enquiry officer and in person appearance before the undersigned in orderly room held on 31.03.2023.


Nevertheless, I, Abdul Ghafoor Afridi, PSP, Regional Police Officer, Dera Ismail Khan, in exercise of the powers conferred upon me under Rule-11, clause-1 (b), of Police Rules 1975, and section-3 of the ESTA code (Establishment Code Khyber Pakhtunkhwa), hereby take a lenient view and set aside the impugned order of major punishment of dismissal from service passed by DPO DI Khan vide his office Order No. 2978/EC, dated 18.08.2022, **REINSTATED** him into service from the date of dismissal and converted it into minor punishment of stoppage of 03-Annual Increments with cumulative effect. The period he remained out of service be treated as leave of kind due with immediate effect.


Order Announced.


(ABDUL GHAFUOR AFRIDI)PSP
Regional Police Officer
Dera Ismail Khan

No. 2331 /BS.

Copy to the DPO DI Khan w/r to his office Order No. quoted above.


**Attested to be
a True Copy**
17/01


(ABDUL GHAFUOR AFRIDI)PSP
Regional Police Officer
Dera Ismail Khan

F 2 (8)

Better Copy

OFFICE OF THE
REGIONAL POLICE OFFICER
DERA ISMAIL KHAN
REGIOIN

0966-9280291 Fax # 9280290

No, 2330/ES

Dated D.I.Khan the

31/03/2023

ORDER

This order disposes off departmental appeal filed by **Ex-Constable Khurram Shehzad No. 689** of District Police, DIKhan against the order of Major Punishment (**Dismissal from Service**) by the DPO DIKhan passed vide his office Order No. 2978/EC, dated 18.08.2022 on the following allegations;

"He while posted as Incharge CDR Branch RPO Office DIKhan, fetched CDR of the number 0323-5143027 from the company Jazz Pakistan. Perusal of the record has shown that no police station or any other unit of the three districts of the DIKhan Region requested him to call for the CDR of the ibid number from this company but by misusing his authority and apparently with ulterior motives sent an email from official ID of RPO DIKhan to company and requested for CDR for which he was not authorised, hence, rendered himself liable for strict departmental action as envisaged in section 4 clause a & b of the Police Rules 1975 amended 2014".

DPO DIKhan served appellant with Show Cause Notice on the allegations ibid. Reply to the same was received but found unsatisfactory, hence he was summoned and appeared before him. During course of personal hearing, he admitted that he had fetched the data of the Cell Number quoted above at his own to get monetary benefits through constables of CTD.

The appellant preferred a Mercy petition against the impugned order.

Perusal of the service record of the appellant & findings of the enquiry officer and in person appearance before the undersigned in orderly room held on 31.03.2023.

Nevertheless, I, **Abdul Ghafoor Afridi, PSP**, Regional Police Officer, Dera Ismail Khan, in exercise of the powers conferred upon me under Rule-II clause-4 (b) of Police Rules 1975, and section-3 of the ESTA code (Establishment Code Khyber Pakhtunkhwa), hereby take a lenient view and set aside the impugned order of major punishment of dismissal from service passed by DPO DIKhan vide his office Order No. 2978/EC, dated 18.08.2022, **REINSTATED** him into service from the date of dismissal and converted it into minor punishment of stoppage of 03-Annual Increments with cumulative effect. The period he remained out of service be treated as leave of kind due with immediate effect.

Order Announced.

(ABDUL GHAFUOR AFRIDI) PSP
Regional Police Officer
Dera Ismail Khan

No.2331/ES

Copy to the DPO DIKhan w/r to his Office Order No. quoted above.

*Attested to be
a True Copy*

(ABDUL GHAFUOR AFRIDI) PSP
Regional Police Officer
Dera Ismail Khan

Anx G (9)





**OFFICE OF THE,
DEPUTY INSPECTOR GENERAL OF POLICE,
COUNTER TERRORISM DEPARTMENT,
KHYBER PAKHTUNKHWA, PESHAWAR.**

ORDER

The following DSSP of this Unit are hereby transferred/posted as noted against each their names with immediate effect and till further orders.

S. No.	Name of Officers	From	To
1.	Mr. Mikhaz Ali Shah	DSP Investigation CTD DI Khan Region	Look after the office of SP CTD DI Khan Region
2.	Mr. Fazal Walid Khan	Look after the office of SP CTD DI Khan Region	Close to CTD HQs: Peshawar



 Deputy Inspector General of Police
 CTD, Khyber Pakhtunkhwa,
 Peshawar.

No 433-37 /E/C/CTD Dated Peshawar the 16/05/2022

Copy of above is forwarded for information and necessary action to the:-

1. Superintendents of Police, CTD DI Khan Region.
2. Deputy Superintendent of Police, CTD HQs: Peshawar.
3. Incharge Database Section, CTD HQs Peshawar (for updating of Database).
4. Accountant CTD HQs: Peshawar.
5. PSO, OASI, SIC, MIC CTD HQs: Peshawar.

Attested to be a True Copy



GOVT. OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

No. SO(Policy)/E&AD/1-3/2012/AFI Rules
Dated Peshawar, the December 07, 2022

3374/CTP
29 12 22

To

1. The Additional Chief Secretary, P&D Department.
2. The Senior Member Board of Revenue.
3. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
4. All Divisional Commissioners in Khyber Pakhtunkhwa.
5. All Heads of Attached Departments in Khyber Pakhtunkhwa.
6. All Deputy Commissioners in Khyber Pakhtunkhwa

Subject:
Dear Sir,

CLARIFICATION REGARDING ASSIGNING LOOK AFTER CHARGE

I am directed to refer to the above cited subject and to state that although in the Khyber Pakhtunkhwa Civil Servant Act, 1973 and rules made thereunder, there is no provision for assigning additional charge/look after charge of a post which becomes vacant due to the transfer of an officer or temporarily becomes vacant due to the officer's proceeding on a visit/leave, however, in such a situation the official business cannot be left to suffer, hence, officer of an equivalent grade is assigned additional charge of the post which is regulated under Finance Department's instructions dated 12th August, 1997. As per Finance Department's instructions such an arrangement is made for a period which is not less than one month and should not exceed three months. However, it can be extended for another three months with the approval of next higher authority.

2. Moreover, in certain conditions where the duration for which a post is likely to remain is short, hence, as a practice, in such a situation an officer is temporarily deputed to look after charge of that post so that routine official business may not suffer. Such an officer is required and expected to run the day to day affairs of that post only and not to take major administrative and financial decisions having far reaching implications. He can take decisions with regard to day to day business of that post which can be reviewed by the competent authority depending upon the merit of the case.

3. However, it has come to the notice that in certain cases officers who have been assigned look after charge have taken major decisions like recruitments expenditure of huge amount etc. which involve major administrative and financial implications which is contrary to the established norms. An officer looking after the charge of a post cannot exercise financial and administrative powers as the same have not been delegated to him by the competent authority.

4. I am therefore directed that the position explained in Para-2&3 above may be disseminated to all concerned for information and compliance.

Yours faithfully,

SYBIR AMIN
Section Officer (Policy)

Endst: No & Date Even.

Copy is forwarded to SPS to Secretary Establishment, Government of Khyber Pakhtunkhwa.

24263 8-12

Section Officer (Policy)

Attested to be
a True Copy

BETTER COPY

**GOVT. OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT**

No. SO(Policy)/E&AD/1-3/2012/API Rules
Dated Peshawar, the December 07, 2022

To,

1. The Additional Chief Secretary, P&D Department.
 2. The Senior Member Board of Revenue.
 3. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
 4. All Divisional Commissioners in Khyber Pakhtunkhwa.
 5. All Heads of Attached Departments in Khyber Pakhtunkhwa.
 6. All Deputy Commissioners in Khyber Pakhtunkhwa.
- Subject: **CLARIFICATION REGARDING ASSIGNING LOOK AFTER CHARGE**

Dear Sir,

I am directed to refer to the above cited subject and to state that although in the Khyber Pakhtunkhwa Civil Servant Act, 1973 and rules made thereunder, there is no provision for assigning additional charge/look after charge of a post which becomes vacant due to the transfer of an officer or temporarily becomes vacant due to the officer's proceeding on a visit/leave, however, in such a situation the official business cannot be left to suffer, hence, officer of an equivalent grade is assigned additional charge of the post which is regulated under Finance Department's instructions dated 12th August, 1997. As per Finance Department's instructions such an arrangement is made for a period which is not less than one month and should not exceed three months. However, it can be extended for another three months with the approval of next higher authority.

2. Moreover, in certain conditions where the duration for which a post is likely to remain is short, hence as a practice, in such a situation an officer is temporarily deputed to look after charge of that post so that routine official business may not suffer. Such an officer is required and expected to run the day to day affairs of that post only and not to take major administrative and financial decisions having far reaching implications. He can take decisions with regard to day to day business of that post which can be reviewed by the competent authority depending upon the merit of the case.

3. However, it has come to the notice that in certain cases officers who have been assigned look after charge have taken major decisions like recruitments expenditure of huge amount etc. which involve major administrative and financial implications which is contrary to the established norms. An officer looking after the charge of a post cannot exercise financial and administrative powers as the same have not been delegated to him by the competent authority.

4. I am therefore directed that the position explained in Para-2&3 above may be disseminated to all concerned for information and compliance.

SABIR AMIN

Approved
**Attested to be
a True Copy**

Yours faithfully,

Section Officer (Policy)

Endst: No & Date Even.

Copy is forwarded to SPS to Secretary Establishment, Government of Khyber Pakhtunkhwa.

Section Officer (Policy)

Aux I (12)



GOVERNMENT OF
KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT

No. E & A (HD) 1-12/ 2022
Dated Peshawar the 12th December, 2022

To,
SP/HQ/2022
F.G. OHSI-Acct

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
3. The Director General Prosecution, Khyber Pakhtunkhwa, Peshawar.
4. The Director, Provincial Public Safety Commission, Khyber Pakhtunkhwa.
5. The Director, Reclamation and Probation, Khyber Pakhtunkhwa, Peshawar.

Diary No. 4702/150
Dated. 13-12-2022

Subject: CLARIFICATION REGARDING ASSIGNING LOOK AFTER CHARGE

Dear Sir,

I am directed to enclose herewith a copy of letter No. SO(Policy)/E&AD/1-3/APT Rules, dated 07/12/2022 received from Government of Khyber Pakhtunkhwa, Establishment Department on the subject noted above, which is self-explanatory for information and compliance, please.

5568
22-12-2022

SECTION OFFICER (GENERAL)

OFFICE OF THE INSPECTOR GENERAL OF POLICE KHYBER PAKHTUNKHWA

No.CPO/E-11 2549

Dated Peshawar the

20 December, 2022

Copy of above alongwith its enclosures is forwarded for information and compliance to the:-

- i) The Capital City Police Officer, Peshawar.
- ii) All Regional Police Officers, in Khyber Pakhtunkhwa.
- iii) All Head of Units/Offices, in Khyber Pakhtunkhwa.

Encl (01)

20/12

(AFSAR JAN)
Registrar

For Inspector General of Police
Khyber Pakhtunkhwa,
Peshawar

Attested to be
a True Copy

OFFICE OF DEPUTY INSPECTOR GENERAL OF POLICE, CTD

KHYYBER PAKHTUNKHWA, PESHAWAR.

No. 1705-15 /EC/CTD

Dated Peshawar the 27/12 12022.

1. All Regional SsP CTD Khyber Pakhtunkhwa, All SsP CTD HQrs: Peshawar w/r to CPO, Peshawar office Letter No. 2549/E-1 dated 20-12-2022, for information and compliance, please.

SSP Admn:

For Deputy Inspector General of Police,
CTD, Khyber Pakhtunkhwa,
Peshawar

Attested to be
a True Copy

Amr-1

Amr J (B)