

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.1956/2023.


Ex-Constable Jehandad Khan No.2127 of CCP Peshawar..... **Appellant.**

VERSUS

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

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**DSP/Legal, ✓
CCP, Peshawar.**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.**Service Appeal No.1956/2023.**Ex-Constable Jehandad Khan No.2127 of CCP Peshawar..... **Appellant.****VERSUS**Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others.....**Respondents.****REPLY BY RESPONDENTS NO. 1, 2&3.****Khyber Pakhtunkhwa
Service Tribunal****Respectfully Sheweth:-**Diary No. 10764
Dated 25/1/24**PRELIMINARY OBJECTIONS:-**

1. That the appeal is badly barred by law & limitation.
2. That the appeal is bad for mis-joinder and non-joinder of necessary and proper parties.
3. That the appellant has not come to Hon'ble Tribunal with clean hands.
4. That the appellant has no cause of action and locus standi to file the instant appeal.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from Hon'ble Tribunal.
7. That the appeal is not maintainable being devoid of any merit.

REPLY ON FACTS:-

1. Incorrect. The appellant was appointed as constable in the year 2007 in the respondent department. He has not a clean service record and contains 02 bad entries and 01 Minor punishment on different occasions during his service. The performance of the appellant during service was neither satisfactory nor up to the mark and his involvement in a criminal case vide FIR No.125 dated 12.12.2021 u/s 9(D) KPCNSA PS Levy Post Malakand with a huge quantity of 11 KG & 340 grams Chars speaks volume of his inefficiency. In this regard, he was issued charge sheet with statement of allegations and to dig out the real facts a regular inquiry was conducted, wherein the charges were proved. The appellant also admitted in the instant para that he was arrested on the spot by the police after the commission of the offence meaning thereby that the appellant was actively involved in the offence of moral turpitude.
2. Incorrect. The appellant was proceeded against departmentally on the charges of his involvement in a criminal case vide FIR No.125 dated 12.12.2021 u/s 9 (D) KPCNSA PS Levy Post Malakand. Besides commission of Criminal Offence, the appellant being member of a disciplined department committed professional misconduct alienated with criminality which falls under moral turpitude as such the above act of the appellant is a bad stigma for the entire Police Force, which is against the norms of disciplined force resultantly, departmental proceedings were initiated against the appellant and DSP Complaint & Enquiry Peshawar was appointed as E.O to probe into the matter. The charge sheet with statement of allegations was issued to him vide No.312/E/PA dated 27.12.2021. The enquiry officer during the course of enquiry, had fulfilled the departmental proceedings and after receipt of

the findings, Final Show Cause Notice was issued vide No.312-E/PA, SP/HQrs: dated 18.02.2022 and delivered on his home address which was received by his cousin, but he failed to appear and defend himself. After fulfilling all codal formalities, the charges leveled against him were proved; hence he was awarded major punishment of dismissal from service vide OB No. 3045, dated 16.11.2022 under Police Rules 1975 (amended 2014). (Copy of charge sheets, statement of allegations, enquiry report and FSCN are attached as A, B ,C& D).

3. Correct to the extent that the appellant was convicted and sentenced for life imprisonment by the learned Sessions Judge Malakand.
4. Para pertains to record of court, hence needs no comments. Furthermore, the prime duty of police is to protect life, property and liberty of citizens, preserve and promote public peace. Instead the appellant committed gross misconduct by indulging himself in moral turpitude offences which speaks volume of his misconduct and unlikely of becoming a good police officer.
5. Para pertains to record. Furthermore, Court proceedings and departmental proceedings are two different entities and can run side by side. Acquittal in a criminal case would not lead to exoneration of a civil servant in departmental proceedings. His act brought a bad name for the entire force. Similarly, the august Supreme Court of Pakistan in its judgment reported Dr. Sohail Hassan Khan and others vs. Director General (Research), Livestock and Dairy Development Department. Punjab, Lahore and others (2020 SCMR 1708), held that a civil servant cannot escape from departmental proceedings or consequences thereof on account of his acquittal/exoneration in a criminal charge arising out of the same impugned transaction; these two are entirely different jurisdictions with different standards of proof as well as procedures; criminal prosecution requires strict proof through a narrowly jacketed procedure and, thus, State's failure on criminal plane does not provide shield of double jeopardy to a delinquent officer. In the case of District Police Officer Mianwali and 2 others vs. Amir Abdul Majid 2021 SCMR 420 the august apex Court again held that a civil servant facing expulsive proceedings on departmental side on account of his indictment in criminal charge may not save his job in the event of acquittal as the department still may have reasons/material, to conscionably consider his stay in the service as inexpedient; there are additional reasons to disregard his acquittal inasmuch as criminal dispensation of justice involving corporeal consequences, comparatively, requires a higher standard of proof so as to drive home the charge beyond doubt, an exercise to be routed through a procedure stringently adversarial, therefore, factuality of the charge notwithstanding, procedural loopholes or absence of evidence, sufficient enough to sustain the charge, at times occasion in failures essentially to maintain safe administration of criminal justice out of abundant caution. Departmental jurisdiction, on the other hand, can assess the suitability of a civil servant, confronted with a charge through a fact finding method, somewhat inquisitorial in nature without heavier procedural riders, otherwise required in criminal jurisdiction to eliminate any potential risk of error, therefore, the Tribunal has undoubtedly misdirected itself in reinstating

the respondent, considering his acquittal as the sole criterion in isolation to the totality of circumstances where under he had succeeded to vindicate his position.

6. Incorrect. The appellant filed time barred departmental appeal, which was thoroughly processed and an ample opportunity of hearing was provided to the appellant by appellate authority but the appellant failed to defend himself with plausible/justifiable grounds, hence his appeal was rejected/filed on facts and limitation vide order No.2824-30/PA dated 23.08.2023.
7. Incorrect. The appellant then preferred revision petition before the Revision Board, which after due consideration was also filed/rejected because the charges leveled against him were proved beyond any shadow of doubt and it was also badly time barred vide No. S/2283/23 dated 05.09.2023.
8. The appellant being a member of a disciplined force committed gross misconduct by involving himself in a heinous offence. Moreover, appeal of the appellant being devoid of merits and limitation may be dismissed on the following grounds.

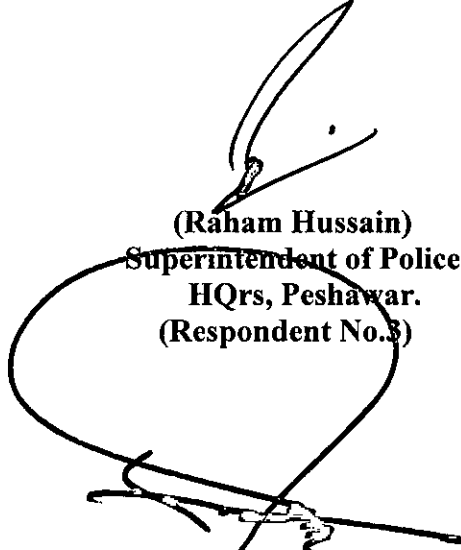
REPLY ON GROUNDS:-

- A. Incorrect. The appellant was treated as per law/rules. Furthermore, no violation of the Constitution of Pakistan 1973 has been done by the respondents and the punishment was in consonance with the gravity of misconduct. As per Khyber Pakhtunkhwa ESTA code, appellant shall be reprimanded as per quantum of misconduct committed by him and he was rightly punished as per his guilt.
- B. Para is totally incorrect and misleading as the appellant was issued charge sheet with statement of allegations due to involvement in the above mentioned allegations.
- C. Incorrect. Detailed departmental enquiry was conducted against him in accordance with law/rules. Enquiry officer after detailed probe into the matter reported that the charges against the appellant were proved. The appellant was provided full opportunity of defense to prove himself innocent, but he failed to prove himself innocent. Hence he was rightly awarded the major punishment.
- D. Incorrect. The appellant was issued Final Show Cause notice No.312-E/PA, SP/HQrs: dated 18.02.2022 and delivered on his home address which was received by his cousin, but he failed to appear and defend himself.
- E. Incorrect. The charges leveled against him got proved. The appellant being a member of a disciplined force, committed gross misconduct. Acquittal in a criminal case would not ipso facto lead to exonerate Civil Servant in departmental proceedings. Involvement in a criminal case of 9(D) KPCNSA is a heinous offence comes under the ambit of moral turpitude.
- F. Incorrect. Court proceedings and departmental proceedings are two different entities which can parallel as per dicta of august court of Supreme Court of Pakistan.
- G. Incorrect. The appellant availed the opportunity of personal hearing however, he failed to advance any plausible explanation in his defense.


- H. Incorrect. Detailed departmental enquiry was conducted against him in accordance with law/rules. Enquiry officer after detailed probe into the matter reported that the charges against the appellant were proved. The appellant was provided full opportunity of defense to prove himself innocent, but he failed to prove himself innocent. The appellant defamed the image of police department in the eyes of general public.
- I. Respondents also seek permission of this Hon'ble Tribunal to raise additional grounds at the time of arguments.

Prayers:-

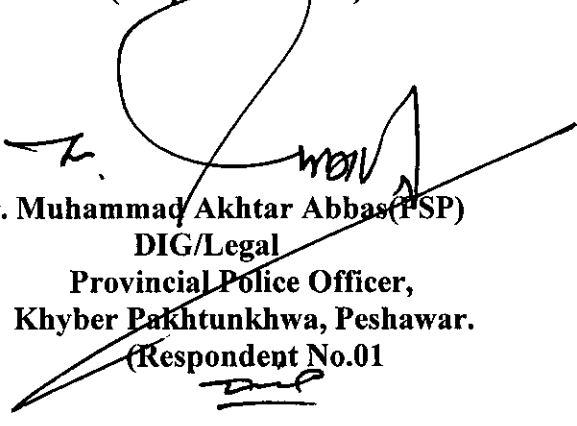
Keeping in view the above stated facts & reasons it is, most humbly prayed that the appeal of the appellant being devoid of merits and limitation, may kindly be dismissed with costs please.



(Raham Hussain)
Superintendent of Police,
HQrs, Peshawar.
(Respondent No.3)



(Syed Ashfaq Anwar)PSP
Capital City Police Officer,
Peshawar.
(Respondent No.2)



Dr. Muhammad Akhtar Abbas(PSP)
DIG/Legal
Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No.01)

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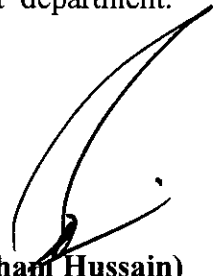
Ex-Constable Jehandad Khan No.2127 of CCP Peshawar..... **Appellant.**

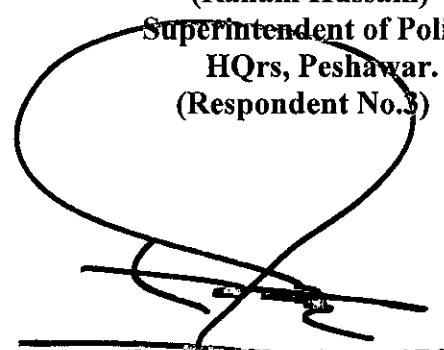
VERSUS

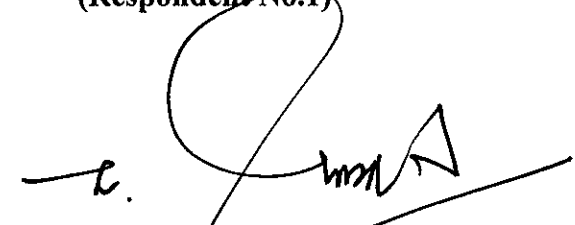
Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others.....**Respondents.**

AUTHORITY.

We respondents are hereby authorize **Mr.Inam Ullah** DSP legal of Capital City Police, Peshawar to attend the Hon'ble Court and submit written reply, statement and affidavit required for the defense of above service appeal on behalf of respondent department.


(Raham Hussain)
Superintendent of Police,
HQrs, Peshawar.
(Respondent No.3)


(Syed Ashfaq Anwar)PSP
Capital City Police Officer,
Peshawar.
(Respondent No.1)


Dr. Muhammad Akhtar Abbas(PSP)
DIG/Legal, CPO
For Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No.02)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.1956/2023.

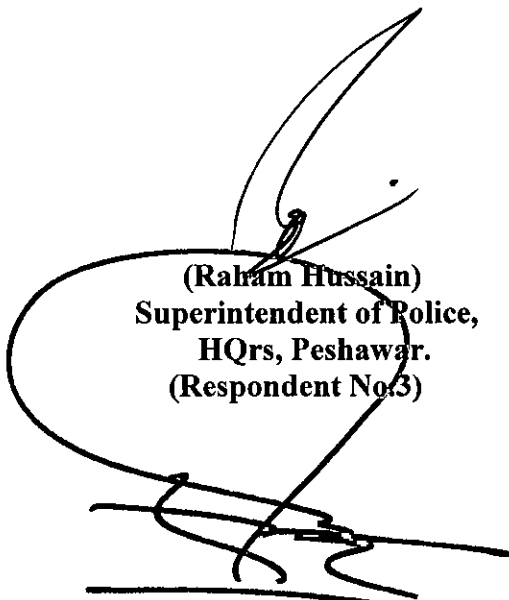
Ex-Constable Jehandad Khan No.2127 of CCP Peshawar..... **Appellant.**

VERSUS

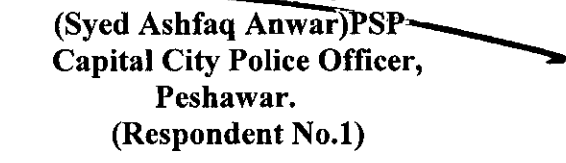
Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others.....**Respondents.**

AFFIDAVIT.

We respondents do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal. It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense have been struck off. /cost



**(Raham Hussain)
Superintendent of Police,
HQrs, Peshawar.
(Respondent No.3)**



**(Syed Ashfaq Anwar)PSP
Capital City Police Officer,
Peshawar.
(Respondent No.1)**

ATTESTED


Distt: Courts
★ OATH COMMISSION ★
Peshawar.

25/1/2024

① ②

⑦

CHARGE SHEET

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, do hereby, charge you Constable Jehandad Khan No.2127 of Capital City Police Peshawar with the following allegation.

"It has been reported by DC/Commandant Malakand Levies Malakand vide letter No.9487/LC dated 14.12.2021 that you Constable Jehandad Khan No.2127 were arrested by Malakand Levies with illegal substance & FIR No.125 dated 11.12.2021 u/s 9(D)KPCNSA, Levy Post Thana were registered against you. This amounts to gross misconduct on your part and is against the discipline of the force."

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

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

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

Attested


DISCIPLINARY ACTION

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, am of the opinion that Constable Jehanda No. 2127 has rendered him-self liable to be proceeded against under the provision of Police Disciplinary Rules-1975

STATEMENT OF ALLEGATION

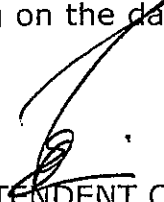
"It has been reported by DC/Commandant Malakand Levies Malakand vide letter No.9487/LC dated 14.12.2021 that Constable Jehanda Khan No.2127 was arrested by Malakand Levies with illegal substance & FIR No.125 dated 11.12.2021 u/s 9(D)KPCNSA, Levy Post Thana were registered against him. This amounts to gross misconduct on his part and is against the discipline of the force."

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

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

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

*Attested
Zain*


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 312 /E/PA, dated Peshawar the 27/12 /2021

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

2. Official concerned



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



NO. 46 /PA,

DATE: 19/01/2022

To: The Superintendent of Police HQrs.,
Peshawar.

Subject:- ENQUIRY AGAINST CONSTABLE JEHANDAD KHAN NO. 2127

Memo:

Kindly refer to your office Dy: No. 312/E/PA, dated 27/12/2021 on the subject cited above.

*No. 312-E
312-1-21*

ALLEGATIONS:-

"It has been reported by DC/Commandant Malakand Levies Malakand vide letter No. 9487/LC dated 14.12.2021 that constable Jehandad Khan No. 2127 was arrested by Malakand Levies with illegal substance & FIR No. 125 dated 11.12.2021 u/s 9(D) KPCNSA, Levy Post Thana were registered against him. This amounts to gross misconduct on his part and is against the discipline of the force".

PROCEEDINGS:-

To dig out the real facts, the alleged Constable Jehandad Khan No. 2127 was called through summon/parwana but he did not appear to the office of undersigned for hearing and failed to submit written statement in his defense.

STATEMENT OF MASI POLICE LINES:-

MASI Police Lines stated that alleged constable Jehandad No. 2127 was contacted time by time on his cell No. 0315-9016004 but switched off and then his brother namely Shihriyar was contacted on his cell No. 0302-5582683 and informed about the enquiry and in response that he will be inform him.

RECOMMENDATION:-

Keeping in view of the above facts, figure, it came to light that alleged FC Jehandad No. 2127 was contacted time and again but he didn't appear the before the undersigned for hearing. His Brother Shahriyar was contacted by his cell No. 0302-5582683 from this office land line and informed about the enquiry and he replied that he will inform him but till date he not appeared before the undersigned for hearing. It is therefore, the undersigned is of the opinion that alleged FC Jehandad No. 2127 may kindly be recommended for ex-parte proceedings, if agreed please.

Submitted Please.

Encl: (15 pages)

Sayed
DEPUTY SUPERINTENDENT OF POLICE
COMPLAINT & ENQUIRY
CAPITAL CITY POLICE PESHAWAR

*Call him in
Dsp/Levy
For opinion.*

Superintendent of Police
HQrs: CCP Peshawar.

*Sp. HQrs.
As per telephonically
conversation FC Jehandad
Khan 2127 released with
in one month after the registration
of Fir*

*B.O
Is the accused
Released from
custody?*

2022

*Arrested
2022*

(10)

(3)

FINAL SHOW CAUSE NOTICE

I Superintendent of Police, Headquarters, Capital City Police Peshawar, as competent authority, under the provision of Police Disciplinary Rules 1975 do hereby serve upon you, Constable Jehandad Khan No.2127 the final show cause notice.

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

And whereas, the undersigned is satisfied that you Constable Jehandad Khan No.2127 deserve the punishment in the light of the above said enquiry report.

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

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

SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 312-E/PA, SP/HQrs: dated Peshawar the 18/2 2022.

Copy to official concerned

Accepted
Rana