

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.1073 /2023.

Ex-Constable Muhammad Sikandar No. 2494 of CCP Peshawar..... **Appellant.**

VERSUS

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

I n d e x

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**DSP/Legal,
CCP, Peshawar.**

26/10

19-02-2024

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REPLY BY RESPONDENTS NO. 1, 2&3.

**Khyber Pakhtunkhwa
Service Tribunal**

Respectfully Sheweth:-

Diary No. 11220

PRELIMINARY OBJECTIONS:-

Dated 19-02-2024

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. Pertains to record. Further, present service appeal of the appellant is badly barred by law & limitation. The appellant was dismissed from service by the competent authority vide OB No.518 dated 14.02.2020 and departmental appeal was rejected by the appellate authority vide No.504-10/PA dated 21.05.2020.
2. Incorrect. The appellant was appointed as constable in the year 2007 in the respondent department. However, performance of the appellant during service was not up to the mark and earned 11 bad entries on different occasions during his short service. The appellant being a member of a disciplined force committed gross misconduct by involving himself in malpractices and taking illegal gratification from taxi drivers, hence his act brought a bad name for the entire force. (Copy of list is annexed as A)
3. Incorrect. The appellant while posted at Aman Chowk Nakabandi Police Station Michani Gate, Peshawar was proceeded departmentally on the charges of his involvement in malpractices and taking illegal gratification/money from taxi drivers and also absented himself from lawful duty. In this regard he was issued charge sheet with statement of allegations vide No.11/PA dated 02.01.2019. SDPO Hayatabad was appointed as Enquiry Officer. During the course of Enquiry he was provided full opportunity of personal hearing, recorded his written statement and also give him opportunity of verbally cross examination, but the appellant failed to rebut the charges leveled against him. The Enquiry Officer after thorough probe into the matter found appellant guilty of the charges vide No.39/E/Steno dated 13.06.2019. After receipt of findings, Final Show Cause Notice was issued to him vide No.1104/PA,SP/Cantt dated 14.06.2019, but failed to submit his written reply. After

observing all codal formalities, he was awarded major punishment of dismissal from service under Police Rules 1975 amended 2014.(copy of charge sheet, statement of allegations, enquiry report, FSCN are annexure as B,C,D,E)

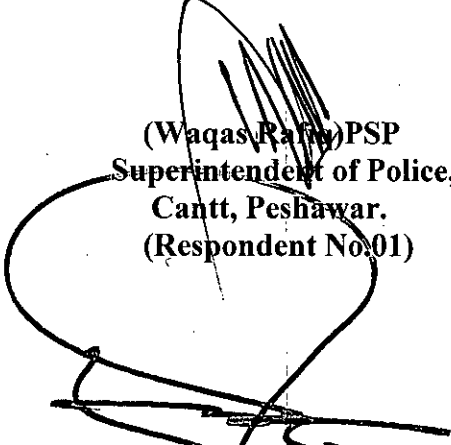
4. Incorrect. The appellant filed departmental appeal, which underwent thorough processing. The appellant was contacted on his cell phone no. 0313.9516384 and informed to appear in person on 20.05.2020, but he failed to appear before the appellate authority. Consequently, his appeal was rejected with cogent reasons.
5. That appeal of the appellant being devoid of merits and limitation may be dismissed on the following grounds.


REPLY ON GROUNDS:-

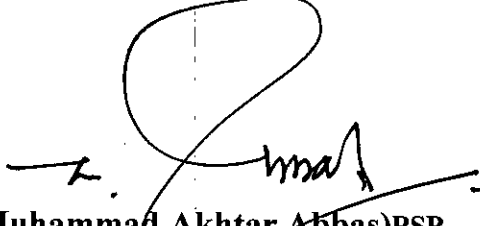
- A. Incorrect. Punishments orders are just legal, lawful and have been passed in accordance with law/rules and are liable to be upheld. The appellant being a member of disciplined force committed gross misconduct.
- B. Incorrect. Detail departmental enquiry was conducted against him in accordance with law/rules. Enquiry officer after detail probe into the matter reported that the charges against the appellant were proved. The appellant was provided full opportunity of defense to prove his innocence, but he failed to rebut the charges, hence he was rightly awarded the major punishment by the competent authority under the Rules.
- C. Incorrect. The appellant was issued charge sheet with summary of allegations, proper departmental enquiry was conducted against him. He was provided full opportunity of defense, but he failed to defend himself. After fulfilling of all codal formalities, he was found guilty, hence awarded major punishment of dismissal from service under the Rules.
- D. Incorrect. The competent authority before imposing the major punishment had completed all codal formalities by issuing him final show cause notice and an ample opportunity of self defense was provided to appellant, but he failed to prove himself innocence.
- E. Incorrect. Proper opportunity of personal hearing was provided to the appellant but he failed to prove his innocence. Furthermore, the august Apex court held number of dicta that accepting illegal gratification is a heinous offence for a civil servant who is found guilty on the offence, cannot be retained in the civil service.
- F. Incorrect. The appellant being a member of a disciplined force committed gross misconduct by involving himself in a heinous offence of getting gratification/bribe. During the course of enquiry, the enquiry officer called the appellant and his statement were recorded but he failed to rebut the allegations with cogent defense.
- G. Incorrect. Involvement in getting illegal gratification is a heinous offence and being a member of disciplined force he was liable to be proceeded departmentally hence after proven of charge, he was awarded penalty commensurate with his guilt/misconduct as per rules ibid.
- H. 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.


(Waqas Rafiq)PSP
Superintendent of Police,
Cantt, Peshawar.
(Respondent No.01)


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


(Dr. Muhammad Akhtar Abbas)PSP
DIG/Legal, CPO
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No.03)

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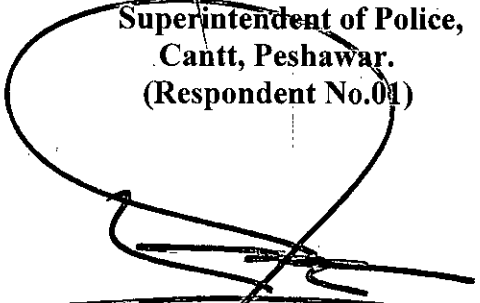
VERSUS

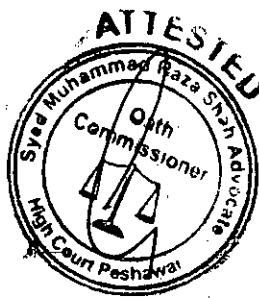
Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others.. **Respondents.**

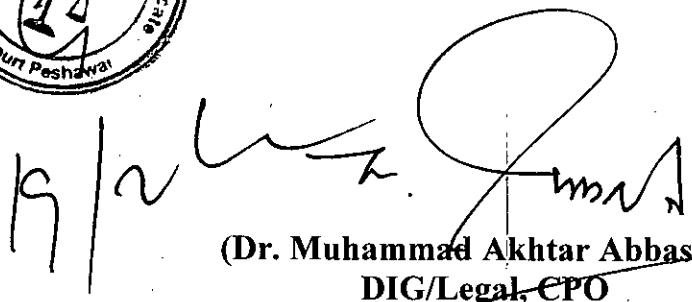
AFFIDAVIT.

We respondents No. 1, 2 & 3 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 Hon'ble 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.


(Waqas Rafiq)PSP
Superintendent of Police,
Cantt, Peshawar.
(Respondent No.01)


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



19/2/23

(Dr. Muhammad Akhtar Abbas)PSP
DIG/Legal, CPO
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No.03)

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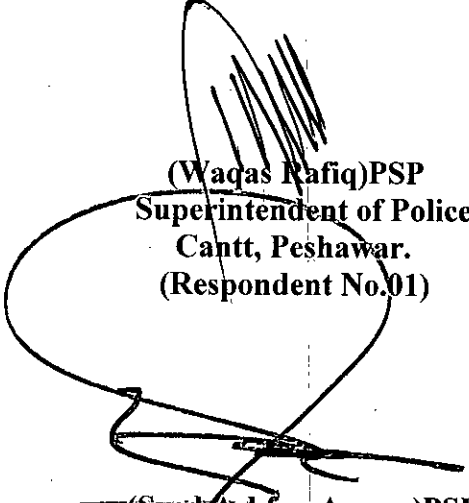
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VERSUS

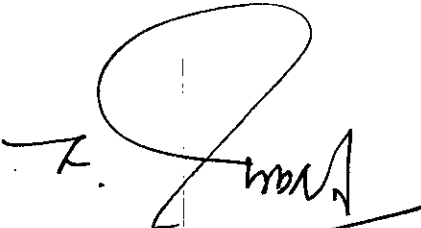
Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others.. **Respondents.**

AUTHORITY.

I, **Capital City Police Officer, Peshawar**, 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.


**(Waqas Rafiq)PSP
Superintendent of Police,
Cantt, Peshawar.
(Respondent No.01)**


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


**(Dr. Muhammad Akhtar Abbas)PSP
DIG/Legal, CPO
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No.03)**

- 1. Name of Official **MUHAMMAD SIKANDAR NO.2494 SO MUZAFAR SHAH**
- R/O Saduzai Kaga Wala PS Badaber Distt: Peshawar
- 2. Date of Birth 11.04.1989
- 3. Date of enlistment 25.07.2007
- 4. Education 10th
- 5. Courses Passed Recruit
- 6. Total qualifying service 12 years, 06 Months & 05 days.
- 7. Good Entries Nil
- 8. Punishment (previous)

Bad Entries (L.W.O Pay, E/Drill & Warning)

- 1. 09 days leave without pay vide OB No.465 dt: 30.06.2008
- 2. 02 days leave without pay vide OB No.157 dt: 28.02.2011
- 3. 03 days leave without pay vide OB No.1155 dt: 06.10.2011
- 4. 01 day E/drill vide OB No. 3222 dt: 24.10.2018
- 5. 01 day E/drill vide OB No. 3696 dt: 30.11.2018
- 6. 01 day E/drill vide OB No. 697 dt: 21.02.2019
- 7. Warning be careful in future vide OB No.1873 dt: 11.06.2019
- 8. 01 day E/drill vide OB No. 2017 dt: 25.06.2019
- 9. 01 day E/drill vide OB No. 1619 dt: 10.05.2019
- 10. 02 days E/drill vide OB No. 2592 dt: 17.08.2019
- 11. 02 days E/drill vide OB No. 3084 dt: 11.10.2019

Minor Punishment

Nil

Major Punishment

Nil

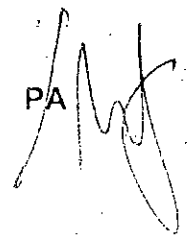
09. Punishment (Current)

- Awarded the major punishment dismissed from service on the charged of involved in malpractice and taking illegal gratification from taxi while posted in Aman Chowk Nakabandi PS Michani Gate vide OB No.518 dated 14.02.2020 by SP/Cantt: Peshawar.

10. Leave Account

| <u>Total leave at his credit</u> | <u>Availed leaves</u> | <u>Balance</u> |
|----------------------------------|-----------------------|----------------|
| 600 days | Nil | 600 Days |

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CHARGE SHEET

I, Superintendent of Police, Cantt., Capital City Police Peshawar, as a competent authority, hereby, charge that **FC Muhammad Sikander No. 2449** of Capital City Police Peshawar with the following allegations.

"It has been reported by SHO Michni Gate duly forwarded by SDPO Cantt that you **Constable Muhammad Sikander No. 2449 posted at Gora Qabristan Nakabandi** had involved in mal-practices and you taking illegal gratification from taxi. This brings bad name to police in general public and amounts to gross misconduct on his part and against the discipline of the force.

You are, therefore, required to submit your written defence within seven days of the receipt of this charge sheet to the Enquiry Officer committee, as the case may be:

Your written defence, if any, should reach the Enquiry Officer/Committee within the specified period, failing which it shall be presumed that have no defence to put in and in that case ex-parte action shall follow against you.

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.

Attested
[Signature]

[Signature]
(WASEEM RIAZ KHAN) PSP
SUPERINTENDENT OF POLICE,
CANTT, PESHAWAR

[Signature]
Asst. Supt. of Police
Cantt
26.11.2018

ISSUE
[Signature]
[Signature]
Sp/Cmt

24 C 8

DISCIPLINARY ACTION

I, Superintendent of Police, Cantt., Capital City Police Peshawar as a competent authority, am of the opinion that you **Constable Muhammad Sikander No. 2449** has rendered yourself liable to be proceeded against under the provision of Police Disciplinary Rules-1975.

STATEMENT OF ALLEGATION

"It has been reported by SHO Michni Gate duly forwarded by SDPO Cantt that **Constable Muhammad Sikander No. 2449 posted at Gora Qabristan Nakabandi** had involved in mal-practices and taking illegal gratification from taxi. This brings bad name to police in general public and amounts to gross misconduct on his part and 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 ASP H. A. Bad is appointed as Enquiry Officer.

2. The Enquiry Officer shall, in accordance with the provisions of the Ordinance, 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.

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call him in OP

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(WASEEM RIAZ KHAN) PSP
SUPERINTENDENT OF POLICE,
CANTT, PESHAWAR

No. 11 /E/PA, dated Peshawar the 02/01 /2019.

1. _____ is directed to finalize the aforementioned departmental proceeding within stipulated period under the provision of Police Rules-1975.
2. Official concerned.

Attested
[Signature]



ASSIST: SUPERINTENDENT OF POLICE,

HAYATABAD SUB-DIVISION, PESHAWAR.

No. 39 /E/Steno, dated Pesh: the 13 /06 /2019.

12

To The Superintendent of Police,
Cantt, Peshawar.

Subject; DEPARTMENTAL ENQUIRY

Please refer to your office Endt: No.11/E/PA, dated 02.01.2019 pertaining to departmental enquiry against Constable Muhammad Sikandar No. 2449

STATEMENT OF ALLEGATION

It has been reported by SHO PS Machini Gate duly forwarded by SDPO Cantt that constable Sikandar No. 2449 posted at gora qabristan nakbandi has involved in mal-practices and taking illegal gratification from taxi. This amounts to gross misconduct on his part and against the discipline of the force.

PROCEEDING

Enquiry officer provided reasonable opportunity to Constable Muhammad Sikandar No. 2449. Statement of hearing of allegation was served to him and his written reply was recorded. He was verbally cross examined too.

STATEMENT OF CONSTABLE MUHAMMAD SIKANDAR NO. 2449

Constable Muhammad Sikandar No. 2449 deposed in his statements that he was on duty at Aman Chowk and there was no facility of eatery. Therefore, he had given some cash to taxi driver to bring eatables like other constables. Later on, said taxi driver returned back and gave remaining cash to him. He further stated that allegation against him is baseless and requested for filing of enquiry.

FINDINGS

During enquiry, it transpired that Constable Muhammad Sikanader No. 2449 received bribe from a taxi driver in front of his other colleagues. He has not only shamed the Police department before Army officials standing over there but has also earned a wrath of public. He has confessed his guilt before undersigned as well.

Statement of allegations against Constable Muhammad Sikander No. 2449 is proved.

All relevant documents are attached herewith.

*Attestation
Zuo*

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*Issue final show
case notice*

Spence

CAPT ® NAJAM UL HASNAIN LIAQUAT (PSP)
Assist: Superintendent of Police,
Hayatabad: Sub-Division,
Peshawar

بیانہ آذانِ حق سے کنڈرینٹ اور بیٹے کو اس میں کس طرح لپٹا رہا

صاحب عالی

جو کہ کنڈرینٹ اور بیٹے کو لپٹا رہا۔ 20-11-19
 20-11-19
 جو کہ ناگہان سے لپٹا رہا تھا۔ اس ناگہان میں کھانے پکانے کا کونج
 بندھا ہوا تھا۔ اس سے بڑھ کر وہ ناگہان سے لپٹا رہا اور اس کا کونج
 دھڑکا رہا اور اس کا قسم دینا شروع کیا کہ کھانا دیکھ کر کھانے میں لپٹے
 اس کے بعد وہ کھانا دیکھ کر کھانے میں لپٹے اور کھانا دیکھ کر
 تو کسی سے دیکھ کر لپٹا رہا ہے اور نہ ہی کسی اور سے لپٹا رہا ہے۔
 جو لپٹا رہا ہے وہ لپٹا رہا ہے۔ لپٹا رہا ہے۔ لپٹا رہا ہے۔ لپٹا رہا ہے۔
 تاکہ حکم صادر فرما کر اس کو فرما دیں۔ یہی میرا بیان ہے۔

Shur

کنڈرینٹ اور بیٹے کو لپٹا رہا

0335-9249461

Attested
Law

FINAL SHOW CAUSE NOTICE

E10 Z

I Superintendent of Police, Cantt, Capital City Police, Peshawar as competent authority, under the provision of Police Disciplinary Rules 1975 do hereby serve you Constable Muhammad Sikander No. 2449 of Capital City Police, Peshawar as follows.

1 (i) That consequent upon the completion of enquiry conducted against you by the enquiry officer for which you were given opportunity of hearing.

(ii) On going through the findings and recommendation of the enquiry Officer, the material on record and other connected papers produced before the E.O.

I am satisfied that you have committed the following acts/omissions specified in Police Disciplinary Rules 1975 of the said Ordinance.

"That you Constable Muhammad Sikander No. 2449 while posted at Aman Chowk Nakabandi PS Michni Gate, Peshawar had involved in mal-practice and you taking illegal gratification from taxi. This brings bad name to police in general public and amounts to gross misconduct on your part and against the discipline of the force.

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of major punishment under Police Disciplinary Rules 1975.

3. 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.

4. If no reply to this notice is received within 7 days of its delivery, 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 be taken against you.

5. The copy of the finding of the enquiry officer is enclosed.

Waseem Riaz Khan
(WASEEEM RIAZ KHAN) PSP
SUPERINTENDENT OF POLICE,
CANTT: PESHAWAR

No. 1104 /PA, SP/Cantt: dated Peshawar the 14/6/2019.

Copy to official concerned

Attested
Zulfiqar

Waseem Riaz Khan
14/6/2019

