

FORM OF ORDER SHEET

Court of _____

Appeal No.

255/2024

S.No.

Date of order
proceedings

Order or other proceedings with signature of judge

1

2

3

1

12/02/2024

The appeal of Mr. Shahzad Masih resubmitted today by Mr. M. Kamran Ihsanullah Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____ Parcha Peshi is given to counsel for the appellant.

By the order of Chairman



REGISTRAR

The appeal of Mr. Shahzad Masih received today i.e on 01.02.2024 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days

- 1- Copy of reply to charge sheet mentioned in para-3 of the memo of appeal is not attached with the appeal be placed on it. ✓
- 2- Departmental appeal is unsigned. ✓
- 3- Annexures of the appeal are unattested. ✓
- 4- Appeal has not been flagged/marked with annexures marks. ✓

No. 221 /S.T.

DL 2/2 /2024.



REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

M. Kamran Ihsanullah Adv.
High Court at Peshawar.

Note: The above mentioned objections
has been removed accordingly.

Muhammad Kamran
Muhammad Kamran Advocate.

12-02-24.

Before the KP Services Tribunal, Peshawar.

In Ref: Service Appeal No. 255 of 2024

Shahzad Masih

Versus

Inspector General of Police, KP, Peshawar Etc.

Index

S.NO	Description of Documents	Annexure	Page No.
1	Service appeal & Affidavit	--	1-4
2.	Regularization order dated 02.12.2005	A	5-7
3.	Copy of Charge sheet etc	B	8-9
4.	Copy of final show-cause, reply, and dismissal order dated 24.10.2023	C	10-16
4	Copy of departmental representation and order dated 05.01.2024	D	17-18
3.	Wakalatnama	E	--

Shahzad Masih
Appellant

Through

Muhammad Kamran Ihsanullah
Muhammad Kamran Ihsanullah
Advocate, Peshawar

Dated: 01.02.2024

Before the KP Services Tribunal, Peshawar.

In Ref: Service Appeal No. 255 of 2024

Shahzad Masih son of Niamat Masih, ex-sweeper, office of the Deputy Inspector General, KP, Peshawar.

Appellant

Versus

1. Inspector General of Police, KP, Peshawar.
2. Additional Inspector General of Police, KP, Peshawar.
3. Senior Superintendent of Police Admin, Special Branch, KP, Peshawar.

Respondents

Appeal under Section 4 of the Khyber Pakhtunkhwa Services Tribunal Act, 1964, regarding the dismissal of the appellant.

Prayer:

On acceptance of this appeal, all the proceedings conducted, being violative of law, rules and regulations, may kindly be set-aside, along with order dated 24.10.2023 and that of 05.01.2024, the appellant may be reinstated with all back benefits - permissible per law and rules. With grant of additional relief, not specifically prayed for, but is available for the appellant to avail, in the ends of justice.

Respectfully Sheweth:

1. At very intrinsic, the appellant vide order dated 02.12.2005, the status of the appellant being contractual, was regularized by extending the benefits as Civil Servant. (Copies are annexed as Annexure A).
2. Since the appointment till date, the appellant has no adverse history to attract affection over the status of the appellant, who has always performed his duties with zeal and complacency, till the final orders of termination.
3. Having faced false allegations for an unlawful offense vide F.I.R No. 1266 dated 07.09.2023 under Section 377 PPC, read with Section 53 of the CPA, which caused the issuance of charge sheet with statement of allegations, which were duly replied. (Copies are annexed as Annexure B).
4. None to meet with the fate of the matter - being ambiguous and baseless, rather the release of the appellant on bail caused the respondents to issue a final show-cause notice on 11.10.2023, with a self-concocted inquiry and thereafter, an order was passed towards the dismissal of appellant from service with immediate effect vide order No. 01-9/C&E Desk, Peshawar, on 24.10.2023. (Copies are annexed as Annexure C).
5. Against the said order dated 24.10.2023, departmental representation was made on 02.11.2023, but the same was dismissed vide departmental order No. 12-9/C&E, Desk, Peshawar, dated 05.01.2024. (Copy is annexed as Annexure D).
6. Since the order is illegal and not maintainable as per law and facts, hence this appeal on the following grounds inter-alia.

Grounds:

- A. Both the impugned orders of the respondents are against law, facts, circumstance, the same are without lawful authority, of no legal effect and ineffective upon the valid and legal rights of the appellant, therefore, the same are not maintainable and are liable to be set-aside.
- B. The incarceration of the appellant in the criminal case, having a probe for further, caused the appellant to be released on bail, yet he is to be named as offender, if proved or convicted, otherwise a person, if not proved as offender, cannot be punished, though the allegations are in existence but the appellant is innocent, hence recording the entire proceedings with orders of dismissal and a subsequent dismissal through the department representation - are void ab initio, not sustainable and are not legal, per law.
- C. It is established that the matter, if inquired, is to be conducted in accordance with law, and at least the appellant is to be given a chance of personal hearing, but the appellant has not been given any chance of personal hearing - which makes the inquiry dubious and illegal.
- D. The respondents, while acting as superiors, have never adopted legal ways for dismissing the appellant.
- E. It is established that the appellant has not committed any offense, and all the proceedings have been conducted only on the assertions and oral statement of the father of the victim, hence the orders impugned are not maintainable per law.
- F. Law, facts, circumstances and justice duly incline in favor of the grant of this appeal.
- G. The appellant seeks leave of this Hon'ble Court - to raise/argue additional grounds, at the time of arguments.

It is, therefore, prayed that, on acceptance of this appeal, all the proceedings conducted, being violative of law, rules and regulations, may kindly be set-aside, along with order dated 24.10.2023 and that of 05.01.2024, the appellant may be reinstated with all back benefits – permissible per law and rules. With grant of additional relief, not specifically prayed for, but is available for the appellant to avail, in the ends of justice.

شہزاد
Appellant

Through

Muhammad Kamran Ihsanullah

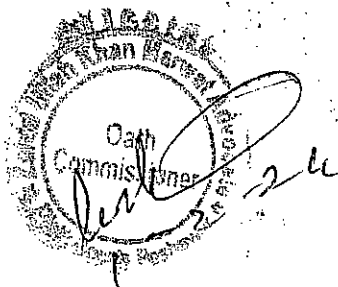
Muhammad Kamran Ihsanullah
Advocate, Peshawar

Dated: 01.02.2024

Affidavit

I, Shahzad Masih, son of Niamat Masih, do hereby solemnly affirm declare on oath, that the contents of this appeal are true and correct to the best of my knowledge and belief, and nothing has been concealed from this Hon'ble Court.

شہزاد
Deponent:



Annexure - A

(5)

ORDER.

The following persons have been appointed in the prescribed manner as Class-IV on contract basis in this Estt: on the dates mentioned against their names :-

- | | |
|-------------------------|----------|
| 1. Zahid Khan Behishti | 1.11.03. |
| 2. Jaffar Shab " | " |
| 3. Mir Hassan " | " |
| 4. Naeem Rahmat Sweeper | " |
| ✓ (5) Shabzad Masih " | 5.11.03 |
| 6. Tariq Jamal Mali | 1.11.03. |

According to rule 19 of NWFP Civil servants Act amended by Act No. IX of 2005, a person though selected for appointment in the prescribed manner to a service or post on or after 1st July/2001 till the commencement of this Act, but appointed on contract basis shall be w.e. from the commencement of this Act, as deemed to have been appointed on regular basis. All such persons for all purposes be civil servant except for the purpose of pension and gratuity.

In the light of this Act the services of the above mentioned 06 Class-IV employees are hereby regularized from the dates of their appointment.

M. A. Khan

SP/ADMN:

for Dy: Inspector General of Police,
Spl: Branch NWFP, Peshawar. *D. A. Khan*

5425-32/88

02-12-2005

to the:-

Copy forwarded for information and n/a

1. Acctt:/SB
2. EA/SB

- 1- Name (نام) Shahzad Masih
- 2- Nationality and Religion Pakistani / Christian
(قومیت اور مذہب)
- 3- Residence T.V Colony Swabi Pataki Peshawar (C.H. Office)
(مستقل رہائش)
- 4- Father's name and residence Mamut Masih (as above)
(والد کا نام اور پتہ)
- 5- Date of birth by Christian era as 16.05.1982
nearly as can be ascertained
(تاریخ پیدائش مطابق سن عیسوی)
- 6- Exact height by measurement 5-6
(قد و قامت)
- 7- Personal mark of identification Scar on Rt. eyebrow
(نشان شناخت)

Signature and hand/right hand thumb and finger-impressions of (Non-gazetted officer)

(مرد کی صورت میں بائیں اور عورت کی صورت میں دائیں ہاتھ کی انگلیوں کے نشانات)

Finger (چھنگلیا) Ring (چھنگلیا کے ساتھ کی انگلی) Middle (انگشت میانی) Thumb (انگوٹھا)
 (انگشت شہادت) (سرکاری ملازم کے دستخط)

Signature and designation of the Head of the Office or other Attesting officer

(تصدیق کنندہ افسر کے دستخط اور نام)

The entries in this page should be renewed or re-attested at least every five years and the signature in lines 9 and 10 should be dated. Finger prints need not be taken after every 5 years under this rule.

اس صفحہ کے مندرجات کم از کم پانچ سال بعد تصدیق ہونا ضروری ہیں اور نمبر 9 اور 10 میں دستخطوں کے نیچے تاریخ لکھنی چاہئے۔
انگلیوں کے نشانات کے لئے ہر پانچ سال کے بعد تصدیق کی ضرورت نہیں۔

7

11	12	13		14	15
reason of termination (such as promotion, transfer, dismissal etc.)	Signature of the head of the office or other Attesting officer	Nature and duration of leave taken	Allocation of period of leave of average pay up to four months (or earned leave not exceeding 120 days) to which leave salary is debitable to another Government		Reference to any recorded punishment or censure, or reward or praise of the Government servants
وجہات انقطاع ملازمت ترقی جواز یا برطرف	دستخط افسر مجاز	رخصت کی طبعیت و مہاجرت	Period مہ	Government to which debitable گورنمنٹ سے ادائیگی	سزا یا جزا غیر مناسب کارکردگی کا ریکارڈ
Regularization order 2					
<p>According to Rule 19 of 1952 Civil Servants Act amended by Act No IX of 2000 His services are hereby Regularized, vide order Enclt No. 5425-32/123, dt: 2/12/05 (Copy enclosed)</p> <p>For Dy. Inspector General of Police Est. Branch N. S. F. S. Police</p>					

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ابتدائی اطلاعی رپورٹ نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زبردقہ 154 مجموعہ ضابطہ فوجداری

تاریخ وقت وقوع: 07-09-2023 03:15 PM

نمبر: 1266/23 قائد: PS. TBHKAL ضلع: Peshawar ای ٹیک نمبر: THK-09/07/2023-1266

1	تاریخ وقت رپورٹ	تعداد سے روایت کی تاریخ وقت	6	تعداد سے روایت کی تاریخ وقت	6
2	نام و سکونت اطلاع دہندہ مستفیض	شیاء الدین ولد ثواب گل، چو: افغانستان حال شہید آباد، موجودہ چو: شہید آباد فون نمبر: 03059792041			
3	مختصر کیفیت جرم (مردہ واقعہ) عدال اگر کچھ کو گیا ہے	بجریہ:			
4	جائے وقوعہ و فاصلہ قائد سے اور سمت	اراضیات شہید آباد			
5	کارروائی متعلقہ تفتیش اگر اطلاع درج کرنے میں کچھ توقف ہو اور تو اس کی وجہ بیان کی جاوے	بہ رسیدگی مراحل پر چو درج رجسٹرڈ کیا جاتا ہے۔			

03005982507

ٹیلی فون نمبر:

ASI

عہدہ:

453/P

بیٹ نمبر:

SAID MUHAMMAD

دستخط:

(ابتدائی اطلاع نیچے درج کریں)

یوقت صدر پر ایک تحریری مراحل منجانب بلال خان ASI سے بدست کنسٹیبل حسین 6700 موصول ہو کر درج ذیل ہے۔ بخدمت جناب SHO صاحب قائد تہکال حسب اطلاع KTH آکر KTH میں شیاء الدین ولد ثواب گل عمر 28/29 سال ساکن افغانستان حال شہید آباد نے پر ام طفل بلال عمر 10/11 سال جو کہ پیش کر کے جو کہ بلال زبان سے گونگا اور کانوں سے بہ رہے اشاروں کے زبان سے سمجھتا ہے جو کہ اشاروں کی زبان سے والد اش بخوبی واقف ہے۔ کو سمجھا کر والد یوں رپورٹ کرتا ہے کہ پر ام طفل بلال گونگا بہرہ سکول حیات آباد سے واپس آکر اشاروں کی زبان سے بتایا کہ بعد فراغت سکول سے واپس آتا ہوا جبکہ اراضیات شہید آباد پہنچا تو ایک شخص مشبوہ بدن داڑھی سنڈا تاتا ہوا موٹھی رکھے ہوئے تھے نے پکڑ کر اراضیات جس میں شکل منافع اتادہ ہے لے جا کر مجھ سے زبردقہ فعلی کی اور شخص مذکورہ کو شکل سے پہچانتا بھی ہے پر ام طفل کے ساتھ بد فعلی کرنے کا برخلاف اسم مسکن نامعلوم ملام دعویہ اراہوں (انگوٹھ) کارروائی پولیس حسب گفتہ مسائل رپورٹ حرف بہ حرف درج بالا ہو کر پڑھ کر سنائی درست تسلیم کر کے ذریعہ بیان خود انگوٹھا ختم کر کے جسکی میں تصدیق کرتا ہوں طفل بلال بھی اشاروں سے اپنے ساتھ بد فعلی بیان کرتا ہے جس کا نقشہ ضرر مرتب کر کے بدیں وچ حوالہ CMO صاحب کیا کہ بدی مقدمہ نے نقل از میں پھر جمنی چھٹی حاصل کی ہے جو کہ جناب ڈاکٹر صاحب نے KMC ریفز کرنے کا تحریر کر کے ذریعہ حفاظت کنسٹیبل شیر زاہد KMC2119 روانہ کیا حالات واقعات سے صورت جرم بالا کا پایا جا کر مراحل بدست کنسٹیبل حسین 6700 ار سال قائد ہے مقدمہ درج رجسٹرڈ کر کے البتہ تفتیش سٹاف کو مامور تفتیش کیا جاوے، دستخط انگریزی بلال خان ASI مورخہ 07.09.2023 کارروائی قائد آمدہ تحریری مراحل حرف بہ حرف درج بالا ہو کر پرچہ جرم بالا چاک کیا گیا فتویٰ پرچہ جات بغرض تفتیش حوالہ ایکٹر علی اکبر خان OII کے جاتے ہیں پرچہ گزارش ہے۔

Coaching Agency (R.W) ASI SAID MUHAMMAD
Legal Branch
Peshawar
07-09-2023

Amendment - B

CHARGE SHEET

8

I. Khan Akbar, SSP/Admn: Special Branch, Khyber Pakhtunkhwa Peshawar, as a competent authority, under Rule 5 (b) of Khyber Pakhtunkhwa, Govt Servants (Efficiency & Discipline) Rules, 2011 hereby charge you Sweeper Shahzad Masih as follows: -

- 2) That you while posted at SB/Hqrs allegedly involved in case FIR vide No.1266, dated 07-09-2023 under section 377/PPC, 53/CPA at Police Station Tehkal Bala Peshawar.
- 3) You're this act amounts to gross misconduct and speaks highly adverse on your part warranting stern disciplinary action against you under the relevant Rules of Khyber Pakhtunkhwa, Government Servants (Efficiency and Discipline) Rules,2011.
- 4) By reasons of the above, you appear to be guilty of misconduct under Rule 4 of Khyber Pakhtunkhwa Govt. servants (Efficiency and Discipline) Rules, 2011 and has rendered you liable to all or any of the penalties specified in the Rules ibid.
- 5) You are, therefore required to submit your written defense within **Seven days** of the receipt of this charge sheet to the Enquiry Committee/Enquiry Officer as the case may be.
- 6) Your written defense, if any, should reach the Enquiry Officer / Enquiry committee within the specified period, failing which it shall be presumed that you have no defense to put in and in that case and ex-parte action shall follow against you.
- 7) Intimate whether you desire to be heard in person.
- 8) A statement of allegations is enclosed.

(Khan Akbar)

SSP/Admn:

Special Branch Khyber Pakhtunkhwa,
Peshawar.

o/c

Encs (7)

for the Bn/Hq

DIG/SB

PA to SP/B

07-09-2023

2023

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DISCIPLINARY ACTION.

I, Khan Akbar, SSP/Admn: Special Branch, Khyber Pakhtunkhwa Peshawar, am of the opinion that Sweeper Shahzad Masih while posted to this Establishment rendered himself liable to be proceeded against departmentally, as he has committed the following acts / omissions within the meaning of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS

- 2) That he while posted at SB/Hqrs, allegedly involved in case FIR vide No.1266, dated 07-09-2023 under section 377/PPC, 53/CPA at Police Station Tehkal Bala Peshawar.
- 3) This act amounts to gross misconduct and speaks highly adverse on his part warranting stern disciplinary action against him under the relevant Rules of Khyber Pakhtunkhwa, Government Servants (Efficiency and Discipline) Rules, 2011.
- 4) For the purpose of enquiry against the said accused with the reference to the above allegation **Mr. Aftab Ahmad Mehsud DIG Special Branch** is appointed as Enquiry Officer to conduct enquiry under Rule 10 (1) (a) of the ibid rules.
- 5) The Enquiry Officer / Enquiry Committee shall, in accordance with the provision of the said Rules, provide reasonable opportunity of hearing to the accused, record and submit its findings and make within 30-days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused officer.
- 6) The defaulter official is directed to attend the proceedings on the date, time and place fixed by the Enquiry Officer.

(Khan Akbar)

SSP/Admn:

Special Branch Khyber Pakhtunkhwa,
Peshawar.

No. 8953-54

/EB: dated Peshawar the, 11 /09/2023.

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

1. The Enquiry Officer.
2. Sweeper Shahzad Masih

9/A

To,

Enquiry officer in the case of Sweeper Shahzad Masih
Mr. Aftab Ahmed Mehsood,
DIG Special Branch, KP, Peshawar.

Subject: Departmental Representation / Written defense to the Charge Sheet / allegations leveled against Shahzad Masih in a letter No. 8953-54, dated 11.09.2023 issued by Khan Akbar, SSP/ Admn; Special Branch Khyber Pakhtunkhwa, Peshawar.

Respected Sir,

- 1) That the appellant had been working in Special Branch, Khyber Pakhtunkhwa, Peshawar for the last 22 years and performed his duties with honest and efficient manner and remained unblemished throughout his entire service.
- 2) That during this service, the appellant performed his duties with zest and dedication but unfortunately some hearsay allegations has been leveled against him and disciplinary action has been proceeded against him.
- 3) That the appellant is asked to submit the written defense to the allegations that he has been Involved in a case FIR No. 1266, Dated: 07.09.2023 at Police Station Tehkal, Peshawar.
- 4) That now the appellant seeks the cancellation of Office Order No. 8953-54 dated 11.09.2023 on the following grounds amongst others.

GROUNDS

- A. That the word "Involved" is used here against the appellant in the instant explanation called from him, where as he is only allegedly accused of the offence and not convicted by a competent court so there is no question of him being involved in this case at this moment.
- B. That the allegations leveled against him in the instant case are not even direct as he is not directly charged in the FIR mentioned above, but the police officials later on included his name in the case due to Mala-fide and reasons known to them.
- C. That at the time of alleged occurrence, the appellant was not even in the locality, but was in Hayatabad, at the house of Mr. Iqbal Khan, Retd. Commissioner, where he is posted currently. And Iqbal Khan is also a witness to this fact and he

(9/B)

is willing to witness the same before any court or forum, that Shehzad was at his house from 11 am till 4:30 Pm.

- D. That Mr. Iqbal witnesses the presence of the accused person shehzad, being at his home till 4:30 Pm and left after that for Tehkal, whereas, the occurrence is of 3:30 pm in Tehkal on the same day i.e. 07.09.2023, which is impossible for single person to do.
- E. That it is a well settled principle of law, that "*an Accused is presumed innocent until proven guilty by a competent court*", and here presuming Shahzad guilty of an offence, which has not been proven against him is negation to this law. He is not even directly charged in the FIR either but later on after 2 days, he was arrested by the local police and connected to this case due to Mala-fide.
- F. That currently Shahzad is behind the bars so he submits the instant reply to the charge sheet / allegations leveled against him through his brother namely SajjidMasih.

It is therefore, most humbly, requested that the departmental proceedings, initiated against Sweeper ShahzadMasih may kindly be stopped and no adverse action may be taken against him, as he is falsely being charged in the instant case and his guilt will be determined by a competent court after recording proper evidence. He is innocent at this point of time and should not suffer for mere allegations leveled against him.

M. Iqbal

Appellant Shahzad Masih

Through,

Sajjid
Sajjid Masih

Dated: 16.09.2023

Annexure C

(10)

No. 9785/EC(Enq)

Dated 11/10/2023

FINAL SHOW CAUSE NOTICE

1. I, **Aslam Nawaz**, SSP Admn: Special Branch, Khyber Pakhtunkhwa, Peshawar being competent authority under Rule 5(b) of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011, issue this Final Show Cause Notice to you **Sweeper Shahzad Masih** as follow: -
2. That, you while posted at SB/Hqrs allegedly involved in case FIR vide No.1266, dated 07-09-2023 under section 377/PPC, 53/CPA at Police Station Tehkal Bala Peshawar.
3. You were served with Charge Sheet and statement of allegation based on said charges vide 8953-54/EB, dated 11-09-2023. Mr.Aftab Ahmad Mehsood DIG Special Branch was nominated as enquiry officer to scrutinize your conduct with reference to the charges leveled against you. The enquiry officer after conduct of enquiry, found you guilty and recommended for a Major penalty of dismissal from service.
4. After going through the findings of the Enquiry Officer, the material available on record and other connected papers, I am satisfied that you have committed misconduct being defined under ibid rules. As a result, thereof, I Aslam Nawaz, SSP/Admn: Special Branch, Khyber Pakhtunkhwa, Peshawar as a competent authority have tentatively decided to impose upon you Major penalty of Dismissal from Service under ibid Rules.
5. You are therefore, directed through this Final Show Cause Notice to Reply within 07-days as why not punishment be imposed upon you.
6. In case your reply is not received within stipulated period, it shall be presumed that you have no defense to put and, in that case, an ex-parte action shall be taken against you.
7. Copy of findings of the Enquiry Officer is enclosed.



(Aslam Nawaz) PSP, UNPM
Senior Superintended of Police Admn:
Special Branch Khyber Pakhtunkhwa,
Peshawar

410

To

Mr Aslam Nawaz

SSP Admin Special Branch

KPK Peshawar

Subject: Reply To The Final Show Cause Notice.

Respected Sir,

Reply is submitted as under;

Earlier the show cause notice and statement of allegations, have been replied with detail. Specifying the innocence of the undersigned. The matter has not been inquired per rules and law as specified.

Pertinent to submit that at very intrinsic the FIR was lodged against unknown person latter on the undersigned was arrested on the very day and date, 7-09-2023 without any charge as on 09-09-2023 statement U/S 164 CRPC was recorded by father of the victim when the undersigned was in police custody.

Letter on, as the story and involvement of the undersigned as alleged was based on concoction and the matter was that of further inquiry the learned judge of the child protection court. was pleased to release the undersigned on bail on 28-09-2023, which gave further Probe of innocence to the accused Govt. servant.

The inquiry as conducted was not in accordance relevant law and regulations as to since 28-09-2023. The undersigned has not been allowed to participate in the

(12)

inquiry proceeding or he be heard personally, rather without conducting any inquiry the recommendation have been made over the statement of the father of the victim, no document has been examined even the medical report neglecting the status and stance as narrated by the investigating officer while conducting the case.

With utmost respect it is submitted the undersigned is innocent and falsely been implicated in case further to submit that the undersigned has enough service at has credit without and adverse attribution.

It is requested for Exhortation of the undersigned from the inquiry/ charge and be allowed to rejoin his service.

شہزاد

Thanking You

Name: Shahzad Masih

Resignation: Sweeper

Department: Special Branch

(13)

ENQUIRY REPORT

Subject: ENQUIRY AGAINST SHAHZAD MASIH S/O NAMIT MASIH, SWEEPER, SPECIAL BRANCH

An FIR bearing No. 1226 dated 07-09-2023 u/s-377-53 CPA was lodged by the Afghan Citizen namely Zia Ullah S/O Sawab Gul at Police Station Tehkal, Peshawar (Annex-I) against unknown with regard to commitment of unnatural offence and sexual molestation on 07-09-2023 with his 8/9 years minor son/victim namely Bilal being deaf and dumb. Upon the pointation of minor Bilal (the victim), the concerned police station thoroughly investigated the case and arrested the accused namely Shahzad Mashee S/O Namit Mashee which is now in Centre Jail, Peshawar.

Shahzad Mashee S/O Naimat Mashee is an employee of Special Branch, Peshawar who was appointed as Sweeper on 05-11-2003 on contract basis and later on his service regularized vide notification No. 2425-32/EB dated 02-12-2005. Upon the verbal direction of high-ups, Shahzad Mashee posted to Banglow of DIG Karim Khan on 01-01-2018 and till date he is working there. A copy of his profile is at (Annex-II).

As the above named accused is the employee of Special Branch, Peshawar, therefore, Charge Sheet was given to Shahzed Mashee and accordingly disciplinary proceeding was initiated vide order No. 8953-54/EB: dated 11-09-2023 and the undersigned has been nominated as inquiry officer to investigate the matter transparently. A copy of Charge Sheet and Disciplinary Action Order is at (Annex-III) respectively. It is further added that the accused has been suspended from the service vide this headquarter Order No. 8946-52/FB dated 11-09-2023 (Annex-IV).

PROCEEDING:

The undersigned collected the evidences and reports submitted at/by various tiers to conduct a transparent/impartially inquiry. In this regard, the victim's father Zia Ullah S/O Sawab Gul was called for personal hearing on 13-09-2023.

Upon inquiring the case and personal hearing, Zia Ullah, father of victim has put the following (a copy of his written statement is also attached as (Annex-V):

- i. That the he is an Afghan citizen and residing in a rented house located at Shaheed Abad, Tahkal Bala, Peshawar since 13 months and works as a Junk/Broker.
- ii. That his son namely Bilal (the victim) is 8/9 years of age who has deaf and dumb is studying at Hayatabad School.

(14)

- iii. He claimed that on 07-09-2023 when his son Bilal was coming to home from school a person committed unnatural offence and sexual molestation with his minor son. Later on, on the pointation of his minor son, an FIR was lodged in the Police Station Tahkal Bala, Peshawar.
- iv. He further informed that after inspection and interrogated the case, arrested Shahzad Mashee and his minor son being deaf and dumb narrated the story through sings and gestures that the above mentioned accused has committed the said offence.
- v. That he charged the accused Shehzad Mashee S/O Naimat Mashee for committing unnatural offence and sexual molestation with his minor son namely Bilal.

The accused cannot attend the inquiry proceeding as he arrested an in the custody of police, therefore, he submitted his written statement which is attached as (Annex-VI). In his written statement, Shahzad Mashee submitted the following points in his defence;

- i. That since 2002 he is an employee of Special Branch Headquarter, Peshawar and working approximately in the Banglow of Retired Ex-Commission Mr. Iqbal which is located at Hayatabad, Phase-II.
- ii. He added that he left to home around 04:30 PM and via BRT reached to BRT Station Tahkal around 05:30 PM. After that take some grocery and reach home at 06:10 PM.
- iii. He further added on 08-09-2023 around 10:00 AM he was in home when the Tahkal police arrested him on account of baseless allegation charged against him.

Upon the direction of High-ups, a Special Investigation Team of constituted by the SSP Investigation CCP Peshawar vide Order No. 4366-71/PA dated 08-09-2023 with an aim to arrested the real accused and investigate the case transparently/impartially. A copy of order of investigation team is at (Annex-VII). Therefore, to find out the more factual position of the case, on the member from the above investigation team namely Mr. Ali Akber Khan (Inspector), OII Tahkal Police Station was also heard and he submitted his written statement which is placed at (Annex-VIII). His submissions with the regard to the instant case are as under;

- i. That upon the complaint of Zia Ullah father of victim Bilal, an FIR was lodged against the unknown person who committed unnatural offence and sexual molestation with minor Bilal. As the vitim is deaf and dumb, therefore, he narrated his story with signs and gesture and develop a map of the location/crime scene.

15

- ii. As per practices in involves in such cases, the concerned police visited the crime scene and after thorough investigation, arrested the culprit which named as Shahzad Masih, an employee of Special Branch Headquarter, Peshawar.
- iii. Meanwhile, a copy of FIR/Report has been sent to KMC for medical examination/analysis, however, the report is not yet received and are pending at their part.
- iv. He revealed that accused was interrogated under the supervision of high level officers whereas the accused informed the officer that his wife is 7 months pregnant that's why he committed this act. The inspector further submitted that the accused 3 times accepted and committed all the charges leveled against him.
- v. In this regard, the inspector proposed suspension of the accused Shahzad Mashee S/O Naimat Mashee being a culprit.

FINDINGS:

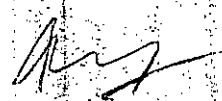
On perusing the record, hearing of the parties and getting information from the relevant stakeholders, the following findings are made;

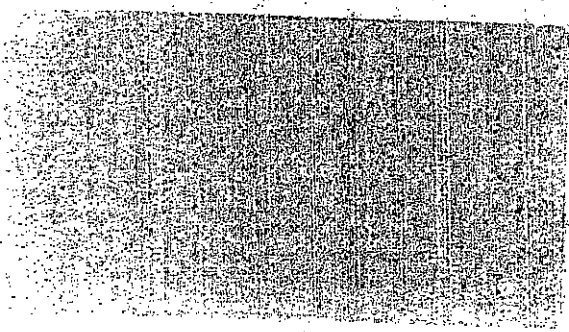
- i. It is evident from the record that the act of Shahzad Mashee S/O Naimat Mashee is an unjustified and the charges leveled against him are true and therefore, he found guiltiness.
- ii. The accused Shahzad Mashee S/O Naimat Mashee has been suspended on the account of involving in case FIR vide No. 1266 dated 07-09-2023.
- iii. The statement of Shahzad Mashee S/O Naimat Mashee (the accused) has completely denied because which is a baseless story and having no confirmation.

RECOMMENDATIONS:

As per inquiry proceedings and evidence in hand, the accused is liable to imposed him a major penalty of dismissal from services under Rule 4 (b) (iv) of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

(Enclosed = 11 pages)


(AFTAB AHMAD MEHSUD)^{PSP}
Deputy Inspector General of Police,
Special Branch, Khyber Pakhtunkhwa
Peshawar.



16

ORDER


This office order relates to the disposal of formal departmental enquiry against Sweeper Shahzad Masih (BPS 04) on the allegation/charges that while he was posted at Special Branch HQrs: Peshawar involved in criminal case vide FIR No.1266 dated 07.09.2023 u/s 377-PPC/53-CPA PS Tehkal Bala, Peshawar.

Accordingly, he was placed under suspension and closed to SB HQrs vide Order Endst: No.8946-52/EB dated 11.09.2023. He was also charge sheeted and issued summary of allegations in order to dig out the actual facts. Mr. Aftab Ahmed Mehsud DIG Special Branch Khyber Pakhtunkhwa Peshawar was appointed as Enquiry Officer. He conducted the enquiry proceedings against Sweeper Shahzad Masih and submitted his report/findings that the alleged official found guilty of the charges levelled against him. He further recommended that he shall be awarded major punishment of dismissal from service under Rules-4 (b) (iv) of the Khyber Pakhtunkhwa Government servants (Efficiency & Discipline) Rules.

Upon the findings of the Enquiry Officer, he was issued Final Show Cause Notice vide No.9785/EC(Inq) dated 11.10.2023 which he received and replied but found un-satisfactory/plausible. He was also called to be heard in person on 24.10.2023. During hearing he was badly failed to produce any cogent reason in self-defence regarding his involving in immoral criminal case. Moreover, he was also provided time for cross questions.

In view of the above facts, findings of the Enquiry Officer and other material available on record, the undersigned came to conclusion that charges/allegations levelled against the alleged official has been proved beyond any shadow of doubt and found guilty of misconduct being involved in immoral turpitude criminal case u/s 377-PPC/53-CPA which is stigma for department. He also defamed the image Police Department in the eyes of general public.

In exercise of the power vested to me under the Khyber Pakhtunkhwa (Efficiency & Discipline) Rules, I, Aslam Nawaz SSP Admn: Special Branch Khyber Pakhtunkhwa, being the competent authority awarded him major punishment of dismissal from service with immediate effect under the ibid rules.


(Aslam Nawaz) PSP

Sr: Superintendent of Police, Admn:
Special Branch, Khyber Pakhtunkhwa
Peshawar.

No. 01-9/EB, dated Peshawar the

24/10/2023.

Copy of above is forwarded to the:-

1. Addl: IG Special Branch, Khyber Pakhtunkhwa,
2. DIG International Accountability Branch, C/O.
3. DIG Special Branch, Khyber Pakhtunkhwa, Peshawar.
4. SSP Admin Special Branch, Khyber Pakhtunkhwa, Peshawar.
5. Establishment Section Special Branch, Khyber Pakhtunkhwa.
6. Account Branch, Special Branch, Khyber Pakhtunkhwa.
7. I/C SRC Special Branch, Khyber Pakhtunkhwa.
8. LO Special Branch, Khyber Pakhtunkhwa.
9. Officer Concerned.

Annexure -D

(17)

BEFORE THE DEPUTY INSPECTOR GENERAL OF
POLICE PESHAWAR

Subject:-

DEPARTMENTAL APPEAL

My Sir;

1. Order dated 24/10/2023 passed by DPO Peshawar is competent authority towards the dismissal of the appellant against the charges yet to be tried and proved. However having a further probe the appellant has been released on bail it is to submit that presently the appellant is innocent and there is no adverse material on the basis of which major penalty as dismissal from service can be recorded.
2. That appellant has not been subjected to any departmental enquiry as narrated in la nor been personally heard or any reply of the appellant has ever been considered.
3. It is, further to submit that the appellant has a blameless service at his credit nor there is any adverse entry in his service book on the basis of which any illegality or violation can be attributed to him, therefore the order of dismissal is infact nullity in the eyes of law.
4. The appellant has a family to support and the outcome as salary is the any source of their financial support.

It is, sympathetically requested that the order impugned, referred above may kindly be set aside and the appellant may kindly be reinstated with all back benefits in the ends of justice.

dated: 02/11/2023

Yours obediently

شہزاد

Shehzad Masih
Sweeper



(18)

dated: 7/9/2023

**OFFICE OF THE
ADDL: INSPECTOR GENERAL OF POLICE,
SPECIAL BRANCH KHYBER PAKHTUNKHWA
PESHAWAR**

No. 12-9 /C & E, Desk, Peshawar, the Dated, 05/01 /2024.

ORDER

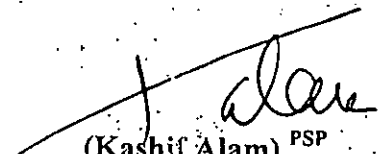
This order is passed to dispose of departmental appeal preferred by Ex-Sweeper Shahzad Masih (BPS 04) under Khyber Pakhtunkhwa Efficiency & Discipline Rules 2011 against his dismissal from service. Facts forming the background of the departmental appeal are as follow.

That Ex-Sweeper Shahzad Masih (hereinafter referred as appellant) while posted at SB/HQrs; got involved in criminal case vide FIR No. 1266 U/S 377/PPC, 53/CPA at police station Tehkal Bala, wherein he was charged for committing immoral and sexual offense with 8/9 years minor son/victim namely Bilal being deaf and dumb.

Proper departmental proceedings were initiated against the appellant under Khyber Pakhtunkhwa Efficiency & Discipline Rules 2011 by issuing charge sheet and Statement of Allegations wherein Mr. Aftab Ahmad Mehsud (DIG SB) was nominated to probe into the matter.

The enquiry officer accomplished enquiry and held the appellant guilty of committing immoral and sexual offense within the meaning of ibid rules hence dismissed from service by the competent authority.



His appeal was perused and detail along with the record of enquiry proceedings by the undersigned but found unsatisfactory having no substance. Further, he was given an opportunity for hearing in person in orderly room but the appellant did not convince the undersigned. Therefore, the appeal of the appellant is rejected and filed in the light of his involvement in serious immoral turpitude criminal case.


(Kashif Alam) PSP

Addl: Inspector General of Police,
Special Branch Khyber Pakhtunkhwa
Peshawar

Copy to the:-

1. PA to SSP/Admin SB
2. DSP HQrs SB
3. LO SRC EB & Accountant SB
4. Official Concerned

قیمت 50 روپے	11091	پشاور بار ایسوسی ایشن، خیبر پختونخواہ
ایڈوکیٹ: محمد فاضل احسان اللہ	بار کونسل ایسوسی ایشن نمبر: BC-21-3771	PESHAWAR BAR ASSOCIATION
رابطہ نمبر: 0346-9066680		
		

بعدالت جناب: Before the K.P. Service Tribunal, Peshawar.

Appellant:	مخائب:	دعویٰ:
Shahzad Masih		Service appeal
بنام		علت نمبر:
IG Police etc.		مورخہ:
		جرم:
		تھانہ:

باعت تبریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ آن مقام پشاور کیلئے محمد فاضل احسان اللہ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست ازہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سندرے

Accepted

(Signature)

المرقوم: 01/02/2024

مقام پشاور کے لئے منظور ہے۔

Shahzad Masih 50% Niamat Masih.