

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2091/2023

Mushtaq Ahmad Constable No 1007 District Buner.

.....APPELLANT

Versus

1. Regional Police Officer/DIG Malakand Division at Saidu Sharif Swat.
2. District Police Officer Buner.

.....Respondents

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(ZAHIR SHAH)

SI Legal Buner

(Representative of Police Deptt:)

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2091/2023

Mushtaq Ahmad Constable No. 1007 District Buner.

.....APPELLANT

Khyber Pakhtunkhwa
Service Tribunal

Versus

Diary No. 11463

Dated 28/2/24

1. Regional Police Officer/DIG Malakand Division at Saidu Sharif Swat.
2. District Police Officer Buner.

.....Respondents

PARA-WISE COMMENTS ON BEHALF OF RESPONDENTS

Respectfully sheweth:-

Preliminary objections: -

1. That the service appeal of the appellant is badly time barred by law and limitation.
2. That the service appeal is not maintainable in its present form.
3. That the appellant has not come to this honorable Tribunal with clean hands.
4. That the appellant has concealed the material facts from this honorable Tribunal.
5. That the appellant has been estopped due to his own conduct.
6. That the Instant Service Appeal is bad due to miss-joinder and non-joinder of the necessary parties.
7. That the appellant has got no cause of action and locus-standi to file the instant appeal.

FACTS

1. Incorrect: The service history of appellant is tainted with several bad entries including major punishment dismissal from service in which he was re-instated into service as per the honorable tribunal orders but conditionally subject to the outcome of CPLA (copies of bad entries are attached as Annexure (A))
2. In correct: - proper enquiry was initiated on the basis of FIR registered against the appellant u/s 419 420 PPC PS Hayatabad Peshawar in the year of 2016. However, the same enquiry was kept pending till the decision of trial court.
3. The appellant didn't mend his ways and once again found being involved in smuggling of NCP vehicle crossing thereby Check Post Kingargalai vide DD report No 15 dated 23-05-2016. So another enquiry was initiated against the appellant through SDPO Pir Baba. He (EO) submitted his finding, recording therein, that the appellant was criminal minded and found in smuggling of NCP vehicles. The appellant was issued show cause notice, the reply of which was not satisfactory. The appellant was called in OR on 2-8-2016 and heard in person, but he could not produced any substantial evidence in his defense. The competent authority reached to the conclusion that the appellant actually founded involved in smuggling of NCP vehicles, therefore decided to be dismissed from service but took lenient view and awarded major punishment reduction in pay to lower stage of time scale for a period of five years. Excluding dismissal conditionally i.e. during one year any misconduct, inefficiency and negligence against the appellant if reported the defaulter constable shall be considered as dismissed from service. (copy of show cause notice DD report No. 15 dated 23.05.2016 office order No. 75 dated 08.10.2016 are attached as annexure B, C & D respectively).
4. Incorrect: - the appellant absented himself from his lawful duty vide DD report No.57 Dated 21.02.2017 and did not report his arrival. Therefore, he was proceeded departmentally through DSP HQRS who recommended him for major punishment. His service record also tainted with 18 penalties including major punishment of reduction in pay to lower stage of time scale for period of five years (copy of departmental inquiry is attached as annexure "E"). The competent authority in exercise of power

(2)

under Police Disciplinary Rules, awarded major punishment i.e. dismissal from service. Furthermore, the appellant filed Service Appeal No. 624/2018 which was decided on 28.01.2022 where the honorable Tribunal converted the major punishment into minor punishment of stoppage of annual increments for two years and the intervening period was treated as leave without pay (**copy of judgment order dated 28.01.2022 is attached as annexure "F"**). However, CPLA No. 478-P /2022 was filed against the said judgment orders which is still pending, before the Apex Court and the appellant was conditionally reinstated into service but subject to the outcome of CPLA. (**copy of Re-instatement order dated 01.08.2022 as attached is Annexure "G"**)

5. Incorrect: - The appellant filed departmental appeal in 2023 against the office order passed in 2016 in which the departmental Appellate Authority called him in OR on 13.09.2023 and heard him in person but the appellant couldn't produce any cogent reason to ^{dispel} ~~depend~~ the charges leveled against him therefore, his appeal was ~~filed~~ ^{Dismissed}. Furthermore, it is misleading that the appellant has submitted an application for provision of show cause notice in departmental appeal (**copy of show cause notice and departmental appeal are attached herewith as desired**).
6. That the service appeal of the appellant may graciously be dismissed on the following grounds.

GROUND:

- a. Incorrect: - That the office order dated 21.09.2023 and 10.08.2016 are according to the law and justice.
- b. Incorrect: - As mentioned above regular inquiry has properly been conducted and the appellant has been crossly examined. The respondent's department has followed the relevant law and rules.
- c. Incorrect: - As explained above.
- d. That appellant had been placed under suspension upon his involvement in a criminal case under section 419/420/468 PPC PS Hayatabad Peshawar and inquiry was initiated which was kept pending till the final decision of trial court. However, the appellant was once again found while smuggling NCP vehicles in which another inquiry was conducted in the light of which major punishment of reduction in pay to lower stage for five years was awarded to the appellant.
- e. Incorrect: - The respondents have obeyed rules and law No violation of any provision of constitution of Islamic Republic of Pakistan has been committed.
- f. The appellant, punishment order dated 08.10.2016 was on the basis of his involvement in NCP vehicle's smuggling reported vide DD report no 15 dated 23.05.2016. This order was not related to criminal case registered against him at PS Hayatabad Peshawar.
- g. Incorrect: - The appellant was treated according to the law and rules.
- h. Incorrect: - As explained above in various paras.
- i. Incorrect: - Sufficient evidence has been collected and placed on inquiry files. He was rightly punished.
- j. Incorrect: - The appellant was given an opportunity of personal hearing but he couldn't produce any solid evidence in his defense.
- k. That the respondents also seek permission of this honorable tribunal to adduce more points/grounds at the time of arguments.

④

BEFORE THE KHYBER PAKHTUNKWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.2091 /2023

Mushtaq Ahmad Constable No.1007 District Buner

.....Appellant


Versus

1. Regional Police Officer/DIG Malakand Division at Saidu Sharif, Swat.
2. District Police Officer Buner


.....Respondents

AUTHORITY LETTER

We the above respondents do hereby authorize and allow Mr. Zahir Shah SI/legal Buner to file the accompany para wise comments on our behalf in the Honorable Service Tribunal vide service appeal mentioned above and do whatever is needed in the court.




District Police Officer Buner
(Respondent No.2)
Shah Hassan (PSP)
Incumbent


**District Police Officer
Buner**


Regional Police Officer,
Regional Police Officer, Malakand
(Respondent No.1)
Muhammad Ali Khan (PSP)
Incumbent

PRAYERS:

In view of the above detailed para wise comments /reply to facts /grounds, it is most humbly prayed that the instant Service Appeal of the appellant may graciously be dismissed with costs.


District Police Officer Buner
(Respondent No.2)
SHAH HASSAN (PSP)
Incumbent

District Police Officer
Buner


Regional Police Officer,
Regional Police Officer Malakand
Malakand Region,
(Respondent No.1)
MUHAMMAD ALI Khan (PSP)
Incumbent

Ne

5

BEFORE THE KHYBER PAKHTUNKWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.2091 /2023

Mushtaq Ahmad Constable No.1007 District Buner

.....Appellant

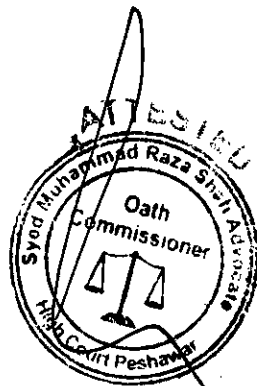
Versus

1. Regional Police Officer/DIG Malakand Division at Saidu Sharif, Swat.
2. District Police Officer Buner

.....Respondents

Affidavit

I the above respondents do hereby solemnly affirm and state on Oath that the whole contents of the a company para wise comments are true and correct to the best of our knowledge and belief and nothing has been concealed from this Honorable tribunal.



~~District Police Officer Buner~~
(Respondent No.2)
Shah Hassan (PSP)
Incumbent
District Police Officer
Buner

15. CENSURES AND PUNISHMENTS

(Continued)

⑥

SPDR's Absence from Duty 2 days with out
 Pay. OB No 40 DR 24 15
 18
 SPDR

ORDER

Suspended invited in case FIR No. 211 dated :-
 13/03/2016 U/S 419/400-PC PS Hayatabad Peshawar
 vide DPO OB No 28 dated 16/03/2016.

~~SPDR Invet~~

Change Absence
 pure absence. (11 days leave with out pay with out
 DPO order 5 dt. 12.1.2016.

~~SPDR Invet~~

Charge: Involved in case No. 1221 dated:
 13-2-2016, U/S 419/420-PC PS Hayatabad
 Peshawar.
 Punishment: Major Punishment i.e. Reduction
 in Pay to lower stage of time scale for a
 period of five years with immediate effect.
 Assessed
 DT: 10-08-2016.
 District Police Officer
 Buner

District Police Officer
 Buner

Ammer
 Bal-F

Charge Absence: himself from his
 regular duty 58 days leave with out
 pay. i.e. 01-08-2016 to 07-09-2016.
 Punishment: minor punishment
 i.e. fine Rs: 500/-

Order No: 108
 Dt: 25/10/16.

152
 1/12/17
 28 2/16 to 31/12/2016
 25 2/16
 Arrival of Pt & allowance in etc.
 paid Rs. 100644/- &
 Rs for the month 2/2017 actin
 through computer 2/2/17.

Dismissed from Service
 of DSP Dabga Saddique Akbar (E.O.)
 on recommendation

Superintendent of Police
 Investigation Buner.

This office Memo No. 12511/Invt

Dated: 23-08-2017

DPO 08 No. 108

Dt: 24-08-2017

Order No: 108

No 42/PJ

30/3/16

الوزير كيشن مامون

2452

213

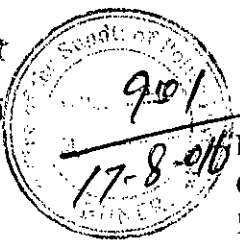
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Annexure
Office - 092

(1)

(12)



ORDER

This Order is hereby issued to dispose of Show Cause Notice issued under Rules 5 (3) of KPK Police Rules 1975 against Constable Majid Khan No.700 and Mushtaq Ahmad No.1007 of this District Police vide this Office 105 and 106 dated 13.07.2016.

Brief are that: Constables Majid Khan No.700 and Mushtaq Ahmad No.1007 of this District Police were found involved in Case FIR No.221 dated 13.02.2016 u/s 419/420-PPC PS Hayatabad, Peshawar. Therefore suspended; closed to Police Lines and proceeded against departmentally and hence served with Charge Sheets and Statement of Allegations under Police Disciplinary Rules 1975. Mr. Ghulam Muhammad Khan, SDPO Totalai, Buner was appointed as Inquiry Officer to conduct departmental proceedings against the defaulter official. The Enquiry Officer in its findings has recommended that the enquiry may be kept pending till the decision of Court. After the involvement in afore case, they again found/seen by DSP HQrs in Check Post Kingargali into two NCP vehicles. Therefore the DSP brought the same in the notice of the undersigned. The undersigned appointed SDPO Pir Baba for conducting an inquiry against both the delinquent Constables. The Enquiry Officer submit his finding and recommended that both the constable are criminal minded and found in the smuggling of NCP vehicles. Hence a Show Cause Notice were issued against them under Rules 5 (3) of KPK, Police Rules and served upon them. Their reply to the Show Cause Notice received and perused. Thereafter both were called in OR on 02.08.2016 and heard in person. Both the constable have not produce any substantial evidence in their defense. The undersigned reach the consultation that both the constable actually found involved in smuggling of NCP vehicles. Therefore decided to be dismissed from Service but take lenient view and awarded major punishment excluding dismissal conditionally i.e during one year any misconduct, inefficiency and negligence against both the Constables if reported, the defaulter Constables shall be considered as Dismissed from Service.

Alleshad
[Signature]

Therefore, I, Syed Khalid Mehmood Hamdani, District Police Officer, Buner as a competent authority and in exercise of the powers vested to me under Police Disciplinary Rules 1975 award both the Constables Major punishment i.e Reduction in Pay to lower stage of Time Scale for a period of five years with immediate effect.

1. Constable Majid Khan No.700
2. Constable Mustaq Ahmad No.1007

Order announced in the presence of delinquents.

(SYED KHALID HAMDANI)
PSP
District Police Officer,
Buner

PO
For m/c.

[Signature]
SPT/Buner
17-8-2016

OB NO 75
Dated 12/8/2016

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Handwritten notes in the upper middle section, including a date '13-05-2016' and some illegible text.

Handwritten notes in the middle section, including a signature 'M.H. P. ...' and a date '23-05-016'.

Main body of handwritten notes, including a signature 'Duan ...' and various illegible text.

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Vertical text at the bottom center: 'D.D-151' and 'Armeny'.

Handwritten numbers '23 016' and '05' at the bottom right.

13 MAY Enquiry, Dated Daggar the, 13/07 /2016

SHOW CAUSE NOTICE

(Under Rule 5 (3) KP/K Police Rules-1975)

1. WHEREAS you Constable Mushtaq No. 1007 while posted to Police Lines Daggar, (Under Suspension) District Buner have rendered yourself liable to be proceeded under Rule 5(3) of the Khyber Pakhtunkhwa Police Rules 1975 for following negligence/misconduct:-
2. You Constable Mushtaq No. 1007 while posted to Police Lines Daggar, District Buner have found involved in smuggling of NCP vehicles. In this connection, DSP HQrs entered a report against you vide DD No.15 dated 23.05.2016. Upon his report a preliminary enquiry was conducted by SDPO Pir Baba whereby you found guilty of smuggling of NCP vehicles. Prior to this, a case vide FIR No.221 dated 13.02.2016 u/s 419/420-PPC PS Hayatabad has been registered against you.
3. That by reason of above, as sufficient material is placed before the undersigned, therefore it is decided to proceed against you in general Police proceeding without aid of enquiry officer;
4. That the misconduct on your part is prejudicial to good order of discipline in the Police force;
5. That your retention in the police force will amount to encourage in efficient and unbecoming of good Police Officers;
6. That by taking cognizance of the matter under enquiry, the undersigned as competent authority under the said rules, proposes stern action against you by awarding one or more of the kind punishments as provided in the rules;
7. You are, therefore, called upon to show cause as to why you should not be dealt strictly in accordance with the Khyber Pakhtunkhwa Police Rules, 1975 for the misconduct referred to above.
8. You should submit reply to this show cause notice within 07 days of the receipt of the notice failing which an ex parte action shall be taken against you.
9. You are further directed to inform the undersigned that you wish to be heard in person or not.
10. Grounds of action are also enclosed with this notice.

Alleshael
[Signature]

(SYED KHALID AHMADANI)
PSP
District Police Officer,
Buner

Received by _____
Signature _____
Dated: / /2016.

RI Police Lines with the directions to serve the Show Cause Notice upon Constable and obtain his signature and returned to this Office as a token of receipt.

خبر ۲

تعمیرات کے لیے جاری آباد ڈسٹرکٹ بورڈ نے کہا ماسٹر پلان کے تحت ۱۰۰۰ کے بیان کی بنیاد پر وہ زمینوں کی تعمیرات کی اجازت دے گا۔ اور وہ زمینوں کی تعمیرات کی اجازت دے گا۔

شہر دار بھارہ اور اس کے اطراف میں زمینوں کی تعمیرات کی اجازت دے گا۔ اور وہ زمینوں کی تعمیرات کی اجازت دے گا۔

بجلی وغیرہ کی سہولیات کے ساتھ زمینوں کی تعمیرات کی اجازت دے گا۔ اور وہ زمینوں کی تعمیرات کی اجازت دے گا۔

زمین کی تعمیرات اور زمینوں کی تعمیرات کی اجازت دے گا۔ اور وہ زمینوں کی تعمیرات کی اجازت دے گا۔

زمین کی تعمیرات کی اجازت دے گا۔ اور وہ زمینوں کی تعمیرات کی اجازت دے گا۔

زمین کی تعمیرات کی اجازت دے گا۔ اور وہ زمینوں کی تعمیرات کی اجازت دے گا۔

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ان کو امیری جو کہ بیانات کے تحت زمینوں کی تعمیرات کی اجازت دے گا۔ اور وہ زمینوں کی تعمیرات کی اجازت دے گا۔

زمین کی تعمیرات کی اجازت دے گا۔ اور وہ زمینوں کی تعمیرات کی اجازت دے گا۔

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زمین کی تعمیرات کی اجازت دے گا۔ اور وہ زمینوں کی تعمیرات کی اجازت دے گا۔

USP/italain
30-3-06

Ali...

Annex
13/05/2016

13

فائنڈنگ رپورٹ

جناب عالی

بجوالہ انکوائیری کا عذات، رپورٹ DSP صاحب ہیڈ کوارٹر ضلع بونیر جناب DPO صاحب کے ہدایت پر

انکوائیری شروع کی گئی۔

اس سلسلے میں ہر دو کنسٹیبلان کے بیانات لیا جا کر حالات کچھ یوں پائے گئے۔

بمقام چیک پوسٹ کننگلی اس نے کنسٹیبلان ماجد 700، مشتاق 1007 جو کہ NCP گاڑیوں کو چلا رہے تھے۔ ان گاڑیوں کے علاوہ دو اور گاڑیاں بھی انکے پاس تھی۔ اس سلسلے میں اہلکاران متعینہ چیک پوسٹ چوکی کننگلی کے بیانات لئے گئے۔ انہوں نے اپنے بیان میں کہا کہ واقعی بروز وقوعہ ہر دو کنسٹیبلان NCP گاڑیوں میں سوار تھے۔ اور چیک پوسٹ کننگلی کو کراس کیا ہے۔ اسی طرح ہر دو اہلکاران پولیس معطل شدہ حال متعینہ پولیس لائن ڈگر کے بیانات سے بھی عیاں ہے۔ کہ ہر دو کنسٹیبلان الگ الگ گاڑیوں میں سوار تھے۔ اور چوکی کننگلی کے پھانک کو کراس کیا ہے۔ لہذا ہر دو معطل شدہ پولیس اہلکاران کے بیانات سے ان کی جرائیم پیشہ ذہنیت کی عکاسی ہوتی ہے۔ کیونکہ پہلے بھی ہر دو کنسٹیبلان کے خلاف تھانہ حیات آباد میں مقدمہ عدلت 221 مورخہ: 13/02/016 جرم 419/420 تھانہ حیات آباد درج رجسٹر ہو چکا ہے۔ جہاں تک علاقہ ہذا میں NCP گاڑیوں کی استعمال قانونی ہے۔ لیکن مذکورین پولیس آفسران چونکہ محکمہ پولیس کا حصہ ہے کے ساتھ نان کسٹم پیڈ، بلا نمبر گاڑیاں استعمال کرنا زیب نہیں دیتا۔

انکوائیری ہذا سے میں اس نتیجے پر پہنچا۔ کہ ہر دو کنسٹیبلان جرائیم پیشہ ذہنیت کے حامل ہیں۔ اور محکمہ پولیس کو بدنام کرنے کا سبب بنتا ہے لہذا مذکورین کو گنہگار پایا جا کر قانونی کارروائی کرنے کی سفارش کی جاتی ہے۔

SDPO PIR BABA

Attested
[Signature]

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Handwritten text at the bottom: 23 05, 15, 076

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Handwritten name

Handwritten date and location: *24.05.2016*
M.M. P. Daffar

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Handwritten name

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وہ 12۔ لاہور میں ہفت روزہ کے دفتر میں 23 اگست 1955ء کو
 7000 شتان 1000۔ 595۔ اسماعیل 116۔ سکرٹری
 جلال ڈیوٹی کے طالب کرنا اور لائسنس ہادم ملازم ہا کر سہولت
 غیر فائز تعلقہ میں ہیں۔ زور پر متعلق بیانات لیا جائے گا۔

منہ پائی

ذکی مغلوی (سٹیٹ)

P. C.

24-5-56

Attested
 Gh.

بیان قمری مشاہیر اجازت چوتی کنڈلٹی

منہ قمری مشاہیر اجازت چوتی کنڈلٹی حفاظت بیان تو، تھوڑا سا
 تہ میاں سوز؟ 19 تو چوتی کنڈلٹی میں محبت اجازت چوتی
 حاصر کرتے تھیں تھی ہی 19 تو چوتی کنڈلٹی میں ہر طرح پر ضلع ہذا
 میں داخل ہوتے ہوئے ہیں تھوڑا سا جہاں میں فوراً 23 کو کنڈلٹی
 ماہ 7 اور مئی 1957 کی تاریخ میں تھوڑا سا چوتی کنڈلٹی میں ہوا
 ہوا چوتی کنڈلٹی تو کراچی کے علاقے میں تھی جس میں داخل ہونے
 کا تعلق ہے تو اس روز کا ایک طرح میں تھا جس اجازت جناب
 SHO سے تھا جوڑ تھوڑا سا چوتی کنڈلٹی میں تھی چوتی کنڈلٹی میں
 آیا ہوں تھوڑا سا 23 کو چوتی کنڈلٹی میں تھی اور تھوڑا سا چوتی کنڈلٹی
 کی چوتی کنڈلٹی کراچی کے علاقے میں تھی جس میں تھوڑا سا امر
 ملک رہے تھے تہ تہ چوتی کنڈلٹی میں تھی اور تھوڑا سا چوتی کنڈلٹی میں
 جماع کر کے تھوڑا سا چوتی کنڈلٹی میں تھی اور تھوڑا سا چوتی کنڈلٹی میں
 روڈ تھی تھوڑا سا چوتی کنڈلٹی میں تھی اور تھوڑا سا چوتی کنڈلٹی میں
 دوپہر 11 بجے تک دوپہر 11 بجے تک چوتی کنڈلٹی میں تھی اور تھوڑا سا چوتی کنڈلٹی میں
 پر صبح کے شروع اور اور وقت کے چوتی کنڈلٹی میں تھی اور تھوڑا سا چوتی کنڈلٹی میں
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Dr. A. A. Khan

Alles

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بیان اذان میجر 7 خا

بیان ہے کہ میں چونکہ اکثری میں تقریباً 10 سال سے اذان
 ڈیوٹی فرسٹ اسٹیوڈی اور ایمان داری کیساتھ فریضہ انجام دے رہا ہوں
 مورخہ 23/7/20 سے 25/7/20 میں درود بامیخ ساتھ
 میں تھی۔ ڈیوٹی میں شامل ہونے پر ہر جگہ نماز پڑھوں اور سب کو اعلان دیکھ
 کرواؤں۔ اور خلیفہ نیز انکو اکثری پورے والے تمام اذان اور سب کو
 اس میں دوسرا سب سے پہلے جو میرا درود پڑھ کر اکثری میں شامل ہوا کرتا ہے
 وہ چپ کر رہا ہے۔ اسی روز اتنی پوائنٹ میں کنسٹبل میاں کفریہ
 نے ڈیوٹی دیا۔ صبح اپنے ڈیوٹی کے پورے وقت میں کونئی ایسا اعلان نہ کیا ہے
 جس میں کونئی پولیس اہلکار کبھی نہ پات یا بارودی بیروں سے اور میں
 بارے میں کونئی علم ہے۔ یہی سب بیان ہے۔

[Signature]
 23/7/20

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بیان ازان کٹی سٹریٹس 1113 چوٹی کنگڈمی

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بیانی حدیجہ فورم $\frac{5}{16}$ کو سٹریٹ ڈیوٹی عسافی ڈیوٹی بیرم
 10 تا 20 بجے تک عسافی گئی تھی۔ اور میں حسب منقول نامہ خدق
 پر موجود تھا۔ صاحب با بیوہ نے آپ کو ٹرانس فیر سٹریٹس
 سٹریٹ کوٹا کر کے جس میں کٹی ما جہ 700 پیسے ہوتے تھے۔ کٹاری کو
 کٹی کر کے کسی قسم کی عسافی انڈیا براؤن نہ ہوئی۔ دریاقت پر کٹیاں
 آج میں بھارت جا رہا ہوں کہ کتہہ کتہہ روڈ پر لیمائی نام ہو رہا ہے
 وہ بھی وہم سے روٹو ہو رہا ہے۔ میں وہم کٹیاں واسٹہ اختیار کرنا پڑا
 لہذا میں کوہا کٹی اور NCP ٹرانس فیر صاحب با بیوہ سے آنا ہوا کٹوا
 کر کے جس میں عسافی 1000 روپے ہوا تھا۔ کٹاری کو کٹیاں
 کر کے کتہہ۔ قسم کی ہندو سے براؤن ہو گیا۔ دریاقت پر کٹیاں کے کتہہ
 روٹو آ رہے۔ میں وہم اور قسم بھارت جانے لگے۔ اختیار کرنا
 پڑا۔ چونکہ در کتہہ نام کسٹم پیڈ کٹاریوں بھی ہر واسٹہ حد لگتا
 اچھی لگے استعمال کرتی ہے۔ کتہہ یا پتہ وہم سے بھی نہیں
 ہے اسلئے ہم روٹو کٹیاں کو لہذا کٹیاں عسافی احاطہ

دی ہے۔ میں جیسا کہ ہے۔ کتہہ دریاقت میں

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ANNEXURE
2018/2018

W

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 624/2018

Date of Institution ... 08.05.2018

Date of Decision ... 28.01.2022



Mushtaq Ahmad, Ex-Constable, No. 1007 Buner District. ... (Appellant)

VERSUS

The Regional Police Officer, Malakand Region, Swat and one another, ... (Respondents)

Uzma Syed, Advocate ... For Appellant

Muhammad Adeel Butt, Additional Advocate General ... For respondents

AHMAD SULTAN TAREEN ... CHAIRMAN
ATIQU-UR-REHMAN WAZIR ... MEMBER (EXECUTIVE)

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):-

Brief facts of the

case are that the appellant while serving as Constable in Police Department was proceeded against on the charges of absence from duty and was ultimately dismissed from service vide order dated 24-08-2017. Feeling aggrieved, the appellant filed departmental appeal dated 07-02-2018, which was not responded within the statutory period, hence the instant service appeal instituted on 08-05-2018 with prayers that the impugned order dated 24-08-2017 may be set aside and the appellant may be re-instated in service with all back benefits.

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[Signature]

Learned counsel for the appellant has contended that the impugned order is against law, facts and norms of natural justice, therefore not tenable and liable to be set aside; that the impugned order was passed with retrospective effect.

ATTESTED

[Signature]
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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which is void in the eye of law. Reliance was placed on 2002 SCMR 1129 and 2006 PLC CS 221; that no regular inquiry was conducted; rather the so called inquiry officer accepted his stance of illness of the appellant; that absence of the appellant was not intentional but was due to serious illness of the appellant, which does not constitute gross misconduct, hence the penalty so awarded is harsh and needs revision; that the appellant has been condemned unheard as no proper inquiry was conducted nor the appellant was associated with proceedings of the inquiry; that the appellant has not been afforded opportunity of personal hearing, hence was condemned unheard.

03. Learned Additional Advocate General for the respondent has contended that the appellant was earlier awarded with major punishment as well as minor punishments, but the appellant did not mend his ways and again absented from lawful duty, for which he was served with notices, but he did not respond either to notices or to the proceedings of the inquiry, hence he was awarded with major punishment of dismissal from service vide order dated 14-06-2018; that the appellant is a habitual absentee, neither the doctor advised him medical rest nor the appellant sent the medical documents to the department for information; that the appellant did not join the inquiry proceedings inspite of repeated reminders, hence he was rightly penalized in absentia.

04. We have heard learned counsel for the parties and have perused the record.

05. It is un-disputed that the appellant remained absent from duty for some time, but the respondents proceeded the appellant in absentia and did not take into consideration his illness. It otherwise is mandatory that regular inquiry is must before imposition of major penalty. The appellant was not treated as per law as in case of willful absence, the appellant was required to be proceeded against under Rule-9 of the Khyber Pakhtunkhwa Government Servants

Attested
[Signature]

ATTESTED

[Signature]
Khyber Pakhtunkhwa
Services Tribunal
Peshawar

(Efficiency & Discipline) Rules, 2011, but the respondents acted in arbitrary manner and dismissed the appellant.

06. The appellant was not guilty of charges of gross misconduct or corruption, therefore, extreme penalty of dismissal from service for the charge of absence is on higher side, hence, quantum of the punishment needs to be reduced. Reliance is placed on 2006 SCMR 1120. Charge against the appellant was not so grave as to propose penalty of removal from service, such penalty appears to be harsh, which does not commensurate with nature of the charge. The appellant has admitted his absence but such absence was not willful, which does not constitute gross misconduct entailing major penalty of removal from service. Competent authority had jurisdiction to award any of the punishments mentioned in law to the government employee but for the purpose of safe administration of justice such punishment should be awarded which commensurate with the magnitude of the guilt, Otherwise the law dealing with the subject would lose its efficacy. Reliance is placed on 2006 SCMR 1120.

07. In view of the foregoing discussion, the instant appeal is partially accepted. The penalty of removal from service is converted into minor penalty of stoppage of increments for two years and the intervening period is treated as leave without pay. Respondents however, are at liberty to conduct inquiry, if they so desire. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
28.01.2022

(Signature)
(Signature)
(AHMAD SULTAN TAREEN)
CHAIRMAN

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

Certified to be true copy

MEMBER
Khyber Pakhtunkhwa
Service Tribunal

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ORDER

Ex-Constable Mushtaq Ahmad was awarded major punishment of dismissal from service on 24.08.2017 as an outcome of departmental inquiry conducted against on account of absence from service. He instituted appeal against the impugned order in the Service Tribunal Peshawar. The Service Tribunal accepted the instant appeal by converting the major punishment into minor punishment of stoppage of increments for two years and the intervening period is treated as leave without pay vide Service Appeal No. 624/2018 dated 28.01.2022.


CPLA vide No. 478/P of 2022 has been filed in the Supreme Court of Pakistan against the said judgment, which is pending before the Apex Court but on the other hands the appellant has filed Execution Petition before the Service Tribunal Peshawar. Subsequently, this office approached CPO for guidance and consequently the CPO vide letter No. 3313/Legal dated 13.07.2022 has directed to implement the court judgment conditionally subject to outcome of CPLA.

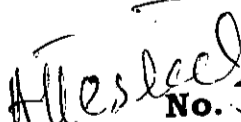
For going in view, I, **Abdur Rashid Khan (PSP)** District Police Officer Buner as Competent Authority in exercise of the power vested under Police Disciplinary Rules-1975, Constable Mushtaq Ahmad is conditionally reinstated into service from 01.08.2022 subject to outcome of CPLA. His Two increments are stopped for two years, while the intervening period is treated as leave without pay and he is allotted Constabulary No. 607.

Order announced.

OB # 114

Dated 01/08/2022


Abdur Rashid Khan (PSP)
DISTRICT POLICE OFFICER,
BUNER


No. 5578 / Enq, dated 01/08/2022.
✓ The District Accounts Officer, Buner.
✓ DSP HQr:
✓ Pay Officer / Establishment Clerk / OASI.

Enquiry, Dated Daggar the, 13/07 /2016

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SHOW CAUSE NOTICE

(Under Rule 5 (3) KPK Police Rules-1975)

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1. WHEREAS you Constable Mushtaq No. 1007 while posted to Police Lines Daggar, (Under Suspension) District Buner have rendered yourself liable to be proceeded under Rule 5(3) of the Khyber-Pakhtunkhwa Police Rules 1975 for following negligence/misconduct:-
2. You Constable Mushtaq No. 1007 while posted to Police Lines Daggar, District Buner have found involved in smuggling of NCP vehicles. In this connection, DSP IQs entered a report against you vide DD No. 15 dated 23.05.2016. Upon his report a preliminary enquiry was conducted by SDOPO Pir Baba whereby you found guilty of smuggling of NCP vehicles. Prior to this, a case vide FIR No. 221 dated 13.02.2016 u/s 419/420-PPC PS Hayatabad has been registered against you.
3. That by reason of above, as sufficient material is placed before the undersigned, therefore it is decided to proceed against you in general Police proceeding without aid of enquiry officer.
4. That the misconduct on your part is prejudicial to good order of discipline in the Police force;
5. That your retention in the police force will amount to encourage in efficient and unbecoming of good Police Officers;
6. That by taking cognizance of the matter under enquiry, the undersigned as competent authority under the said rules, proposes stern action against you by awarding one or more of the kind punishments as provided in the rules;
7. You are, therefore, called upon to show cause as to why you should not be dealt strictly in accordance with the Khyber Pakhtunkhwa Police Rules, 1975 for the misconduct referred to above.
8. You should submit reply to this show cause notice within 07 days of the receipt of the notice failing which an ex parte action shall be taken against you.
9. You are further directed to inform the undersigned that you wish to be heard in person or not.
10. Grounds of action are also enclosed with this notice.

(SYED KHALID HAMDANI)
PSP
District Police Officer,
Buner

Received by _____
Signature _____
Dated: / /2016.

RI Police Lines with the directions to serve the Show Cause Notice upon Constable and obtain his signature and returned to this Office as a token of receipt.

Allesheed
Hhr

کذبت ضابطہ دستاویز کو ایس جی کے لئے مندرجہ ذیل عدالتوں کو بھیج دیا گیا

ضابطہ عالی - خود بخود درج ہے۔ کہ مسائل محمد کو ایس میں 2015ء کے مطابق
شروع اور دوران وقوعی رینی ڈیوی انڈسٹری سے ارباب صابراہ

اور کبھی بھی رینی ڈیوی انڈسٹری کے مسائل کا وقوع نہیں ہوا ہے۔

دہشت سے 2016ء میں مسائل کو رینی ڈیوی انڈسٹری سے ارباب صابراہ
تعلق ہے۔ جس میں یاغ انڈسٹری کے لئے انڈسٹری سے ارباب صابراہ سے

آرڈر کی کاپی لف درخواست ہوا ہے۔ مسائل ایک متوسط گورنر سے

گنتی دیکھی ہے۔ اور رینی ڈیوی انڈسٹری کا ورک کون ہے۔ اور رینی ڈیوی انڈسٹری سے

باقی کوئی زائد نہیں ہے۔ مسائل کے مجموعے مجموعے ہیں۔

جو رینی ڈیوی انڈسٹری سے۔ رینی ڈیوی انڈسٹری کے بارہ روزہ حالی مسائل سے

دو چار ہیں۔ گورنر رینی ڈیوی انڈسٹری سے ارباب صابراہ کے

یاغ انڈسٹری جو رینی ڈیوی انڈسٹری کے لئے ہے۔ عالی کی اہلیت

صادر ہوا ہے۔ تو رینی ڈیوی انڈسٹری سے ارباب صابراہ سے

رینی ڈیوی انڈسٹری سے ارباب صابراہ سے 607

مسائل کو رینی ڈیوی انڈسٹری سے ارباب صابراہ سے

Attested
The

on P.O/PL

Process as per Rules.

In Forwarded
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