

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1426/2019

Date of Institution ... 25.10.2019

Date of Decision ... 31.01.2022

Aman Ullah Ex-Sub Inspector R/o Tehsil & District Karak Rehmat Abad.
... (Appellant)

VERSUS

Inspector General of Police Khyber Pakhtunkhwa Police Peshawar and others.
... (Respondents)

Syed Mudassir Pirzada,
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 Sub-Inspector in Police Department was proceeded against on the charges of misconduct and was ultimately awarded with major punishment of dismissal from service vide order dated 20-6-219. Feeling aggrieved, the appellant filed departmental appeal dated 08-07-2019, which was rejected vide order dated 03-10-2019, hence the instant service appeal with prayers that the impugned orders dated 20-06-2019 and 03-10-2019 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, hence his rights secured under the law has badly been violated; that no proper inquiry was conducted nor the appellant was afforded opportunity to defend himself; that the allegation so leveled were

flimsy in nature and were never proved against the appellant; that the appellant has been penalized on the basis of surmises and presumptions, which is illegal and unlawful, hence is liable to be set aside.

03. Learned Additional Advocate General for the respondents has contended that the appellant was proceeded against on the charges of cowardice, who did not retaliate when his raid party was ambushed by miscreants; that on the same very charges, the appellant was proceeded against by issuing him proper charge sheet/statement of allegation; that inquiry to this effect was also conducted and the appellant was afforded opportunity of defense, but the appellant failed to prove his innocence; that the charges leveled against the appellant proved beyond any shadow of doubt and upon recommendation of the inquiry officer, the appellant was dismissed from service.

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


05. Record reveals that a police party including the appellant, after return from raid, were ambushed at 21:25PM and the leading car, in which SHO alongwith his gunners were on board was hit, which resulted into death of four of the police officials including SHO. Appellant was in the last vehicle and until reaching the spot, the miscreants fled away in the darkness of night. Allegations contained in the charge sheet are that the appellant did not retaliate, whereas the appellant claims that he did retaliate, that is why the miscreants fled away. In order to resolve such mystery and to establish such charges, regular inquiry was required to be conducted by the respondents, but in order to pacify public sentiments, the appellant alongwith others, were hastily proceeded against without adhering to the method prescribed in law and were dismissed from service. The august Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter


and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice. Placed on record is re-instatement orders of three co-accused who were also present in that raid alongwith appellant, have been re-instated in service vide order dated 12-07-2019, hence the appellant has been discriminated.

06. Record would suggest that the appellant was not afforded opportunity of defense. It is a cardinal principle of natural justice of universal application that no one should be condemned unheard and where there was likelihood of any adverse action against anyone, the principle of Audi Alteram Partem would require to be followed by providing the person concerned an opportunity of being heard. Available record would suggest that the competent authority mainly relied on hearsay with no solid evidence against the appellants. Mere reliance on hearsay and that too without confronting the appellant with the same had no legal value and mere presumption does not form basis for imposition of major penalty, which is not allowable under the law.

07. We are of the considered opinion that the appellant has not been treated in accordance with law, as the appellant has been penalized without proving the charges leveled against him, which however, was not warranted. In view of the situation, we are inclined to accept the instant appeal. The impugned orders dated 20-06-2019 and 03-10-2019 are set aside and the appellant is re-instated in service. The intervening period is treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
31.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


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

ORDER

31.01.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for respondent present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, we are inclined to accept the instant appeal. The impugned orders dated 20-06-2019 and 03-10-2019 are set aside and the appellant is re-instated in service. The intervening period is treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

31.01.2022



(AHMAD SULTAN TAREEN)
CHAIRMAN

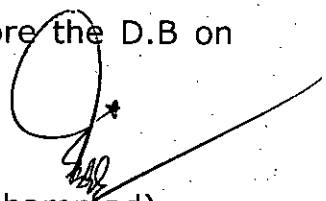


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

17.11.2021

Clerk of learned counsel for the appellant present.
Mr. Arif Saleem, Steno alongwith Mr. Noor Zaman Khattak,
District Attorney for the respondents present.


The learned Member (Judicial) Mr. Salah-ud-Din is
on leave, therefore, arguments could not be heard.
Adjourned. To come up for arguments before the D.B on
25.01.2022.


(Mian Muhammad)
Member (E)

25.01.2022

Appellant in person present. Mr. Naseer-ud-Din
Shah, Assistant Advocate General for respondents
present.

Appellant requested for adjournment on the ground
that his counsel is not available today, due to general
strike of the Bar. Adjourned. To come up for arguments
before the D.B on 31.01.2022

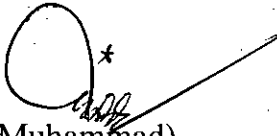

(Atiq-Ur-Rehman Wazir)
Member (E)


Chairman

24.02.2021

Appellant in person and Mr. Asif Masood, DDA
alongwith Mr. Arif Saleem, Steno for respondents present.

Former has submitted rejoinder to the comments by
respondents. Placed on record. To come up for arguments on
01.06.2021 before D.B.



(Mian Muhammad)
Member (E)



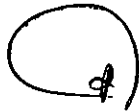
Chairman

01.06.2021

Counsel for appellant present.

Muhammad Adeel Butt learned Additional Advocate
General for respondents present.

Counsel for appellant seeks adjournment. Granted.
To come up for arguments on 27.09.2021 before D.B.



(Rozina Rehman)
Member (J)



Chairman

27.9.21

D B is on Tour case to come up
For the same on. Dated, 17-11-21

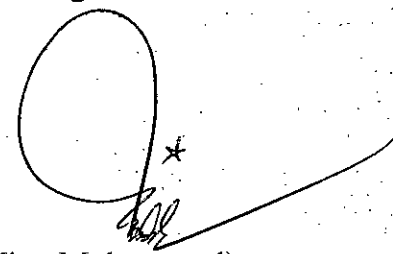
\$
Reader

17.08.2020

Appellant in person present. Mr.Ziaullah, DDA
alongwith Mr. Jehanzeb Awan, Supdt for respondents
present.

Representative of the respondents has submitted
written reply which is placed on file.

To come up for rejoinder and arguments on
19.10.2020 before D.B.

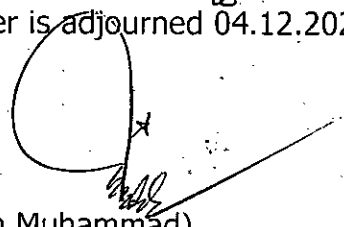


(Mian Muhammad)
Member(E)

19.10.2020

Junior to counsel for the appellant and Zara Tajwar,
DDA for the respondents present.

The Bar is observing general strike today, therefore,
the matter is adjourned ^{to} 04.12.2020 for hearing before the
D.B.



(Mian Muhammad)
Member

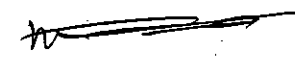


Chairman

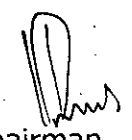
04.12.2020

Appellant in person and Addl. AG alongwith Arif
Saleem, Steno for the respondents present.

Former requests for adjournment as his learned
counsel has not ^{turned} come up from Kohat. Adjourned to
24.02.2021 for hearing before the D.B.



(Mian Muhammad)
Member(E)



Chairman

26.02.2019

Learned counsel for the appellant present. Preliminary arguments heard.

The appellant (Ex-Sub Inspector) has filed the present service appeal being aggrieved against the order dated 20.06.2019 whereby major penalty of dismissal from service was imposed upon him. Departmental appeal filed by the appellant was rejected vide order dated 02.10.2019.

Submissions made by the learned counsel for the appellant, need consideration. The present service appeal is admitted for regular hearing subject to all just legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 14.04.2020 before S.B.

Appellant Deposited
Security & Process Fee


Member

14.04.2020

Due to public holiday on account of COVID-19, the case is adjourned to 08.07.2020 for the same. To come up for the same as before S.B.



Reader

08.07.2020

Appellant in person present.

Mr. Kabir Ullah Khattak learned Additional Advocate General for the respondents present.

Written reply was not submitted. Learned AAG requested for time in order to submit written reply/comments; granted. To come up for written reply/comments on 17.08.2020 before S.B.




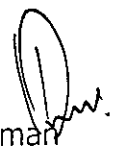

Member (J)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1426/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	25/10/2019	<p>The appeal of Mr. Amanullah presented today by Syed Mudasir Pirzada Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR 25/10/19</p>
2-	28/10/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>09/12/19</u>.</p> <p> CHAIRMAN</p>
	09.12.2019	<p>Nemo for appellant.</p> <p>Notices be issued to appellant/counsel for preliminary hearing before S.B on 14.01.2020.</p> <p> Chairman</p>
	14.01.2020	<p>Appellant present in person.</p> <p>Requests for adjournment due to general strike of the Bar. Adjourned to 26.02.2020 before S.B.</p> <p> Chairman</p>

BEFORE THE KHYBER PAKHTOON KHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal 1426 2019

Aman ullah Ex-Sub -Inspector R/o Tehsil & District Karak Rehmat Abad

(Appellant)

VERSUS

1. INSPECTOR GENERAL OF KPK POLICE PESHAWAR.
2. DEPUTY INSPECTOR GENERAL OF POLICE KOHAT REGION KOHAT
3. DISTRICT POLICE OFFICER KOHAT.

(Respondent)

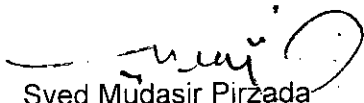
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6	Copy of Departmental appeal and rejection order <i>E, Reply's</i>	C	11-16
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Appellant

Through

Date 25/10/19


Syed Mudasir Pirzada
Advocate HC
0345-9645854

BEFORE THE KHYBER PAKHTOON KHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal 1426 2019

Aman ullah Ex-Sub –Inspector R/o Tehsil & District Karak Rehmat Abad

(Appellant)

VERSUS

**Khyber Pakhtukhwa
Service Tribunal**

Diary No. 1511

Dated 25/10/2019

1. INSPECTOR GENERAL OF KPK POLICE PESHAWAR.
2. DEPUTY INSPECTOR GENERAL OF POLICE KOHAT REGION KOHAT
- ✓ 3. DISTRICT POLICE OFFICER KOHAT.

(Respondent)

APPEAL UNDER SECTION 4 OF KPK SERVICE TRIBUNAL ACT AGAINST THE
IMPUGNED ORDER OF RESPONDENT No-3 IN WHICH THE UPON THE FINDINGS OF
ENQUIRY OFFICER DIRECTLY IMPOSED THE MAJOR PUNISHMENT OF DISMISSAL
FROM SERVICE WITH IMMEDIATE EFFECT AND APPELLANT PREFERED
DEPARTMENTAL REPRESENTATION ON DATED 08-07-2019 WHICH WAS NOT
NOT CONSIDER AND WAS REJECTED ON 02-10-2019.

Respectfully Sheweth,

With great veneration the instant appeal is preferred by the appellant on the following grounds:-

Facts:

Filed to-day

Registrar

25/10/19 Briefly facts are that the appellant while serving in department on 21-05-2017 vide DD No 27 PS Lachi the appellant along with Police Contingent accompanied with S.I Khan ullah SHO PS Lachi in official vehicle for raid on wanted P.O in case FIR No.35 dated 12-02-2017 U/s 302 PPC PS Lachi.

That at vicinity of Mohsin Khel the miscreants attacked on the vehicle of SHO due to which three official martyred and the allegation imposed upon the appellant that the appellant did not retaliated and exhibited cowardice due to which the miscreants safely succeeded to escape .

That the appellant properly retaliate with the miscreant and attacked and properly register the criminal case against the accused as the incident was committed at 21:25 PM

That the appellant submitted the reply to the charge sheet but the same was not consider hence the impugned order were issued.(Copy impugned order & charge sheet is annexed as annexure A)

That the appellant is very dedicated keen and apprehensive towards his assign duty but this factor has not been appreciated while appellant was blessed with impugned order.

That the appellant feeling aggrieved from the impugned order and preferred departmental representation which was too rejected and appellant having no alternate remedy except this honorable tribunal on the following grounds:-

GROUNDS

1. That the allegations never practice by the appellant and there is nothing on record which connect the appellant with the allegation.
2. That the appellant always earned the good name for department and portray a excellent image towards the public.
3. That it is the settle principle of justice that no one should be condemn un heard but in the case of appellant no proper enquiry has been conducted to enquire the allegation, and the charge sheet was issued in the year of 09-07-2017 and the different inquiry officers were appointed to conducted the inquiry in the same charge sheet but there inquiry findings were not supplied to the appellant and impugned order served to the appellant in 2019.
4. That again an unjust has been done with the appellant by not giving ample opportunity of cross examination as well as not heard in person nor properly enquired the allegation nor provided the enquiry findings report to the appellant and held guilty the appellant without following the prescribed rules relating to enquiry proceedings as per Police Rules 1975 (amended 2014).
5. That nothing has been proved beyond any shadow of doubt that the appellant has committed any mentioned allegation due to which incident took place.
6. That without issuing the show cause notice the appellant has been dismissed from service which is against to the enquiry rules.
7. That the appellant has properly retaliated and there were exchange of cross firing with miscreants if the appellant had not retaliated then the appellant were not alive .
8. That while awarding the impugned order none from the general public was examined in support of the charges leveled against the appellant. No allegation

mentioned above are practiced by the appellant nor proved against any cogent reason against the appellant.

9. That the offence against the person are in inevitable and or beyond the control of human being control on crimes against property is the main criteria for judging the efficiency of police officer, appellant and the appellant quickly responded to call for duty and arrested the accused wanted in the case and recovered the case property. (Copy of FIR is annexed as annexure B)
10. That the whole departmental file has been prepared in violation of disciplinary rules and appellant was not properly associated with the inquiry proceedings and findings were not supplied to the appellant the defense advanced by the appellant was not considered, therefore the impugned order is worth set a site. (Copy of departmental representation and rejection order is annexed as annexure C)
- 11: That the award of the penalty dismissal from service amount to award of punishment to all the member of the family of police officer.
- 12:- That again and unjust has been done with the appellant by not considering the departmental representation by respondent No: 2 and the same were rejected without any cogent reason and without any law full justification which is against to the gracious guidelines of the superior courts.
- 13:- That the appellant is honest and dedicated one and leave no stone unturned to discharge his duties.
14. That as per universal declaration of human rights 1948 prohibits the arbitral / discretion.
15. That the DPO Kohat has acted whimsically and arbitrary, which is apparent from the impugned order.
- 16:-That the impugned order is not based on sound reasons and same is not sustainable in the eyes of law. The same is based on wrong assumption of facts.
- 17:-That the impugned order is outcome of surmises and conjecture.

Pray:

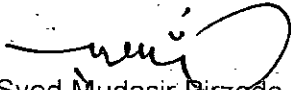
In the view of above circumstances it is humbly prayed that the impugned order of Respondent No:-3 Kohat may please be set aside for the end of justice and the appellant may please be graciously re-instated in service with all back benefits.

Date: / /2019


Appellant

Through

Date 25/10/19


Syed Mudasir Pirzada
Advocate HC
0345-9645854

Certificate:-

Certified that no such like appeal has earlier been filed in this Hon able Service tribunal as per instruction of my client .

List of Books

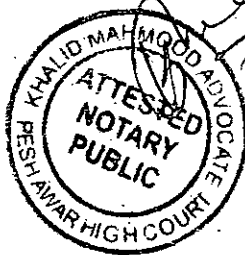
- 1:- Constitution of Pakistan 1973
- 2:- Police Rules
- 3:- Case Law according to need.

BEFORE THE KHYBER PAKHTOON KHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal _____ 2019

AFFIDAVIT

I, Syed Mudasir Pirzada Advocate, as per instruction of my client do here by solemnly affirm and declare that all the contents of accompanying service appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this honourable Tribunal



Advocate

BEFORE THE KHYBER PAKHTOON KHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal _____ 2019

Aman ullah Ex-Sub –Inspector R/o Tehsil & District Karak Rehmat Abad

(Appellant)

VERSUS

1. INSPECTOR GENERAL OF KPK POLICE PESHAWAR.
2. DEPUTY INSPECTOR GENERAL OF POLICE KOHAT REGION KOHAT
3. DISTRICT POLICE OFFICER KOHAT.

ADDRESS OF THE PARTIES

APPELLANT :-

Aman ullah Ex-Sub –Inspector R/o Tehsil & District Karak Rehmat Abad

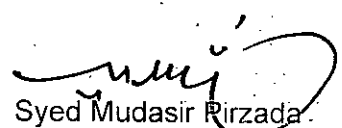
RESPONDENTS

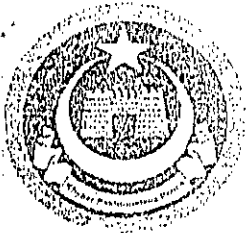
1. INSPECTOR GENERAL OF KPK POLICE PESHAWAR.
2. DEPUTY INSPECTOR GENERAL OF POLICE KOHAT REGION KOHAT
3. DISTRICT POLICE OFFICER KOHAT.


Appellant

Through

Date 25/10/19


Syed Mudasir Pirzada
Advocate HC
0345-9645854



Attested by
Council

Annexure A
P-(8)

OFFICE OF THE
DISTRICT POLICE OFFICER,
KOHAT

Tel: 0922-9260116 Fax 9260125

No. _____ /PA dated Kohat the _____ / 2019

ORDER

This order will dispose of departmental proceedings initiated against SI Aman-Ullah of Investigation Staff Kohat under the Khyber Pakhtunkhwa, Police Rules, 1975 (amendment 2014).

The essential facts arising of the case are that on 21.05.2017 vide DD No. 27 PS Lachi SI Aman Ullah Khan alongwith Police contingent accompanied with SI Khan Ullah SHO PS Lachi (Now martyred) in official vehicle for raid on wanted P.O in case FIR No. 35 dated 12.02.2017 u/s 02 PPC PS Lachi.

On the way at Mohsin Khel the miscreants attacked/ambushed vehicle of SHO reportedly, SHO alongwith other three official martyred, he and other official did not retaliated and exhibited cowardice, due to which the miscreants safely succeeded to escape. This act shows gross misconduct on his part.

He was served with Charge Sheet & Statement of Allegations. Superintendent of Police, Operations Kohat was appointed as enquiry officer to proceed against him departmentally. Enquiry officer submitted finding report and stated that the defaulter officer was given full opportunity for his defense but he failed and could not produce any satisfactory reply therefore, he is recommended for punishment.

The defaulter officer was called in O.R on 20.06.2019 and heard in person, but he failed to advance any plausible explanation.

In view of the above and available record, I reached to the conclusion that the charged leveled against the accused officer is established beyond any shadow of doubt and retention of such like element in a discipline force is not desirable and earned bad name to Police. Therefore, in exercise of powers conferred upon me under the rules *ibid* in Capt. ® Wahid Mehmood, District Police Officer, Kohat impose a major punishment of dismissal from service with immediate effect.

Announced
20.06.2019

DISTRICT POLICE OFFICER,
KOHAT 20/6

OB No. 715
Date 20-6-2019

No. 7520/24/PA dated Kohat the 20-6-2019.

Copy of above is submitted for favour of information to the:-

1. Regional Police Officer, Kohat.
2. SP Investigation Wing Kohat.
3. R.I Police Lines is hereby directed to collect kit etc from accused official and report.
4. Reader/SRC/OHC/Pay Officer for necessary action.

DISTRICT POLICE OFFICER,
KOHAT 20/6

Attested by
Council
[Signature]

(9)

CHARGE SHEET.

JAVED IOBAL, DISTRICT POLICE OFFICER, KOHAT

competent authority, hereby charge you SI Aman Ullah Investigation Station
Under Khyber Pakhtunkhwa, Police Rules, 1975 (Amendment 2014) as you
have committed the following illegal act.

- i. That on 21.02.2017 vide DD No. 35 PS Lachi you SI Aman Ullah Khan alongwith Police contingent accompanied with SI Khan Ullah SHO PS Lachi (Now martyred) in official vehicle for raid on wanted P.O in case FIR No. 35 dated 12.02.2017 u/s 302 PPC PS Lachi.
- ii. On the way at Mohsin Khel, the miscreants attacked ambushed vehicle of SHO, reportedly, SHO alongwith other three official martyred, you and other official did not retaliated and exhibited cowardice, due to which the miscreants safely succeeded to escape. Your this act shows gross misconduct on your part.

2. By reasons of the above, you appear to be guilty of misconduct as defined in Rule 2 (i) of Police Disciplinary Rules, 1975 and have rendered yourself liable to all or any of the penalties explained in rule 04 of the said rules.

You are, therefore, required to submit your written statement within 07days of the receipt of this Charge Sheet to the enquiry officer.

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

A statement of allegation is enclosed.

(2)
DISTRICT POLICE OFFICER,
KOHAT
[Signature] 7/6

Attest
7/11/17

DISCIPLINARY ACTION

1. I, JAVED IQBAL, DISTRICT POLICE OFFICER, KOHAT as competent authority, am of the opinion that you SI Aman Ullah Investigation Staff have rendered yourself liable to be proceeded against departmentally under Khyber Pakhtunkhwa Police Rule 1975 (Amendment 2014) as you have committed the following acts/omissions.

STATEMENT OF ALLEGATIONS

- i. That on 21.02.2017 vide DD No. 35 PS Lachi you SI Aman Ullah Khan alongwith Police contingent accompanied with SI Khan Ullah SHO PS Lachi (Now martyred) in official vehicle for raid on wanted P.O in case FIR No. 35 dated 12.02.2017 u/s 302 PPC PS Lachi.
- ii. On the way at Mohsin Khel the miscreants attacked/ambushed vehicle of SHO reportedly, SHO alongwith other three official martyred, you and other official did not retaliate and exhibited cowardice, due to which the miscreants safely succeeded to escape. Your this act shows gross misconduct on your part.

2. For the purpose of scrutinizing the conduct of said accused with reference to the above allegations Addl: SP Kohat is appointed as enquiry officer. The enquiry officer shall in accordance with provision of the Police Disciplinary Rule-1975, provide reasonable opportunity of hearing to the accused official, record its findings and make, within twenty five days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused official.

The accused official shall join the proceeding on the date, time and place fixed by the enquiry officer.

~~DISTRICT POLICE OFFICER,~~
~~KOHAT~~

No. 5234-35/PA, dated 07-07-2017.

Copy of above is forwarded to:-

1. Addl: SP Kohat:- The Enquiry Officer for initiating proceedings against the accused under the provisions of Police Rule-1975.
2. SI Aman Ullah Investigation Staff:- The concerned official/officer's with the directions to appear before the Enquiry officer, on the date, time and place fixed by the enquiry officer, for the purpose of enquiry proceedings.

*Arrested
by Council*

*Amesone (C)
P- 11*

BEFORE THE DEPUTY INSPECTOR GENERAL OF POLICE KOHAT REGION KOHAT

[Signature]

SUBJECT: APPEAL AGAINST THE IMPUGNED ORDER OF DPO KOHAT VIDE DATED 20-06-2019, OB NO:-715 NO 7520-24 IN WHICH UPON THE FINDINGS OF ENQUIRY OFFICER DIRECTLY IMPOSED THE MAJOR PUNISHMENT OF DISMISSAL FROM SERVICE WITH IMMEDIATE EFFECT:

Respectfully Sheweth,

With great veneration the instant appeal is preferred by the appellant on the following grounds:-

Facts:

Briefly facts are that the appellant while serving in department on 21-05-2017 vide DD No 27 PS Lachi the appellant alongwith Police Contingent accompanied with SI Khan ullah SHO PS Lachi in official vehicle for raid on wanted P.O in case FIR No.35 dated 12-02-2017 U/s 302 PPC PS Lachi.

That at vicinity Mohsin Khel the miscreants attacked on the vehicle of SHO due to which three official martyred and the allegation imposed upon the appellant that the appellant did not retaliated and exhibited cowardice due to which the miscreants safely succeeded to escape .

That the appellant submitted the reply to the charge sheet but the same was not consider hence the impugned order were issued.(Copy annexed)

That during serving the worthy officers were satisfied with the performance of the appellant and the appellant was awarded a cash rewards (Copy annexed)

That the appellant is very dedicated keen and apprehensive towards his assign duty but this factor has not been appreciated while appellant was blessed with impugned order.(Copy annexed)

That the appellant feeling aggrieved from the impugned order and submit the representation on the following grounds:-

Grounds:-

Affected

1. That the allegations never practice by the appellant and there is nothing on record which connect the appellant with the allegation.
2. That the appellant always earned the good name for department and potray a excellent image towards the public.
3. That it is the settle principle of justice that no one should be condemn un heard but in the case of appellant no proper enquiry has been conducted to enquire the allegation .
4. That again an unjust has been done with the appellant by not giving ample opportunity of cross examination as well as not heard in person nor properly enquired the allegation held guilty the appellant without following the prescribed rules relating to enquiry proceedings as per Police Rules 1975 (amended 2014).
5. That nothing has been proved beyond any shadow of doubt that the appellant has committed any mentioned allegation due to which incident took place.
6. That without issuing the show cause notice the appellant has been dismissed from service which is against to the enquiry rules.
7. That the appellant has properly retaliated and there were exchange of cross firing with miscreants if the appellant had not retaliated then the appellant were not alive .
8. That while awarding the impugned order none from the general public was examined in support of the charges leveled against the appellant. No allegation mentioned above are practiced by the appellant nor proved against any cogent reason against the appellant.
9. That the appellant is honest and dedicated one and leave no stone unturned to discharge his duties.
10. That as per universal declaration of human rights 1948 prohibits the arbitral / discretion.
- 11:- That the DPO Kohat has acted whimsically and arbitrary, which is apparent from the impugned order.

Sheet 13

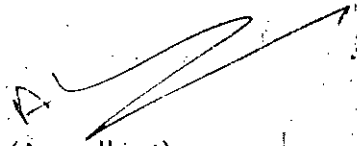
12:-That the impugned order is not based on sound reasons and same is not sustainable in the eyes of law. The same is based on wrong assumption of facts.

13:-That the impugned order is outcome of surmises and conjecture.

Pray:

In the view of above circumstances, it is humbly prayed that the impugned order of DPO Kohat may please be set aside for the end of justice and the appellatant may please be graciously re-instated with all back benefits.

Date: 8/7/2019


(Appellant)

Ex-Si Aman ullah

ORDER.

Attest 14

This order will dispose of a departmental appeal, moved by Ex-Sub-Inspector Aman Ullah of Kohat district against the punishment order, passed by DPO Kohat vide OB No. 715, dated 20.06.2019 whereby he was awarded major punishment of dismissal from service for the allegations of exhibiting cowardice and did not make any retaliation during attack of miscreants on the vehicle of SHO PS Lachi.

Facts are that on 20.05.2017, the appellant while posted at PS Lachi alongwith other Police contingent accompanied SI Khan Ullah (Shaheed), SHO PS Lachi, in official vehicle in connection with raid on PO wanted in case FIR No. 35 dated 12.04.2017 u/s 302 PPC PS Lachi. On 21.05.2017, miscreants started indiscriminate firing at vehicle of SI Khan Ullah, resultantly, he alongwith SI Tahir Mehmood, HC Tanveer Hussain & HC Abid Khan were martyred, while the appellant and other contingent were not hit by the miscreants. The appellant alongwith other Police contingent did not make any retaliation and miscreants / accused made their good escape from the place of occurrence. Hence, the appellant exhibited cowardice. The incident was reported by the appellant vide DD No. 27, dated 21.05.2017 and a case vide FIR No. 09, 20.05.2017 U/Ss 302, 324, 353, 427, 148, 149, 34 PPC, 15-AA, 7-ATA PS CTD was registered against the accused.

He preferred an appeal to the undersigned upon which comments were obtained from DPO Kohat and his service record was perused. He was also heard in person in Orderly Room, held on 02.10.2019. During hearing, he did not advance any plausible explanation in his defense.

I have gone through the available record and came to the conclusion that the allegations leveled against the appellant are proved beyond any shadow of doubt and the same has also been established by the E.O in his findings. Therefore, his appeal being devoid of merits is hereby rejected.

Order Announced
02.10.2019

JH Ce
(TAYYAB HAFEEZ) PSP
Region Police Officer,
Kohat Region.

No. 8844 /EC, dated Kohat the 3/10 /2019.

Copy to DPO Kohat for information and necessary action w/r to his office Letter No. 13896/LB, dated 01.08.2019. His Service Record containing 02 Service Books, 01 Service Roll & Enquiry File is returned herewith.

ATTESTED

3/10/2019
(OFFICE SUPERINTENDENT)
Dy: Inspector General of Police,
Kohat Region, Kohat.

JH Ce
(TAYYAB HAFEEZ) PSP
Region Police Officer,
Kohat Region.

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

**Service Appeal No. 1426/2019
Aman Ullah Ex-Sub Inspector**

..... **Appellant**

VERSUS

**Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar and others**

..... **Respondents**

PARAWISE COMMENTS, REPLY BY RESPONDENTS.

Respectively Sheweth:-

Parawise comments on behalf of Respondents are submitted as under:-

Preliminary Objections:-

- i. That the appellant has got no cause of action.
- ii. The appellant has got no locus standi.
- iii. The appellant is estopped to file the present appeal due his own act.
- iv. That the appellant has not come to this Hon: Tribunal with clean hands.
- v. That the appeal is barred by law and limitation.

FACTS:-

Pertains to record, however, it is submitted that the appellant alongwith SI Khan Ullah SHO, SI Tahir Khan, Additional SHO, HC Tanvir Hussain, Constable Abid and other Police officials of Police station Lachi, had proceeded to conduct raid on criminals, vide DD No. 23 dated 20.05.2017.

On the way at village Mohsin Khel, hardened criminals of Anwar Hayat group assaulted / attacked Police party, resultantly, 04 Police officers were martyred. The appellant (senior Police officer) had sufficient Police strength, but deliberately did not retaliate and showed cowardice, due to which the culprits succeeded to escape from the spot after the commission of heinous offence. The appellant had drafted murasla, upon which a case vide FIR No. 9 dated 20.05.2017 u/ss 302, 324, 353, 427, 148, 149, 34 PPC, 15AA, 7ATA, Police station CTD Kohat Region was registered against unknown accused, despite facts that the appellant had identified the accused. Copy of FIR is **annexure A**.

Incorrect, the appellant being senior officer of the contingent had neither himself retaliate, nor ordered his subordinates for retaliation, due to this cowardice act of the appellant, the accused succeeded to decamp safely after the commission of offence.

For the reasons above, the appellant was proceeded with departmentally by respondent No. 3. The charges / allegations leveled against the appellant were established and the proceedings culminated into his dismissal from service vide order dated 20.06.2019.

Incorrect, the appellant had exhibited cowardice on the eventful time, due to which 04 Police officers were martyred and accused succeeded to escape from the spot after the commission of offence. It is added that all the arrested accused were acquitted due to contradicted statement of appellant recorded before the court.

The departmental appeal of the appellant was devoid of merits and correctly rejected on merits by respondent No. 2. Furthermore, the appellant is estopped to file the instant appeal for his own act.


GROUND:-

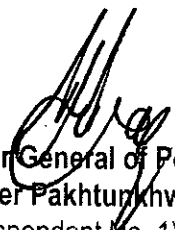
1. Incorrect, the appellant alongwith sufficient strength duly armed with weapons and protective gears neither retaliated on the eventful day, nor charged the accused in his report. Furthermore, the appellant had exhibited cowardice due to which 04 Police officers were martyred and accused succeed to escape.
2. Incorrect, the act of appellant has been described in above paras and charges / allegations to this effect have been established during the course of departmental inquiry beyond any shadow of doubt.
3. Incorrect, the appellant was associated with inquiry proceedings, wherein he submitted replies to the charge sheet and afforded him ample opportunity of defense. Therefore, all codal formalities were fulfilled in departmental proceedings conducted against the appellant.
4. Incorrect, legal proceedings were conducted against the appellant for his gross misconduct referred in charge sheet and statement of allegations.
5. Incorrect, the charges / allegations leveled against the appellant have been established / proved beyond any shadow of doubt.
6. Incorrect, all codal formalities were fulfilled according to relevant rules.
7. Incorrect, detail reply is submitted in above paras.
8. Incorrect, as examination of general public in the departmental proceeding is irrelevant and evasive.
9. Irrelevant. Para No. 9 of the appeal is unjustified as what does the appellant attempt to submit.
10. Incorrect, the appellant was proceeded departmentally in accordance with the rules, all codal formalities were fulfilled during the course of proceedings and he was awarded / punishment commensurate to the charges established against him.

11. The appellant was awarded appropriate punishment in accordance with law / rules for his own gross misconduct which was established against him beyond any shadow of doubt.
12. Incorrect, the departmental appeal of the appellant was found devoid of merits and correctly rejected by respondent No. 2.
13. Irrelevant, question of honesty is not involved in departmental proceedings conducted against the appellant, but he was proceeded departmentally on the score of charges detailed in the charge sheet.
14. Incorrect, departmental proceedings were conducted against the appellant under the relevant rules.
15. Incorrect, reply is submitted in the above para.
16. Incorrect, legal and speaking orders were passed in accordance with the rules, evidence available on file and inquiry report.
17. Incorrect, reply is submitted in the above para.

Prayer:-

In view of the above, factual, legal and limitation, it is prayed that the appeal is devoid of legal force may kindly be dismissed with costs.


Dy: Inspector General of Police /RPO
Kohat,
(Respondent No. 2)


Inspector General of Police,
Khyber Pakhtunkhwa,
(Respondent No. 1)


District Police Officer,
Kohat
(Respondent No. 3)

کاروان خانہ، اولہ درلم دفہ، حرف درجم بالہ، درجم جلم اللہ جاکل سورتن بجم ۳
درلم نثرین نقتن معتزین انظر 0340-9851513 رولم ما جاتا ہے، برجم الجور
سبل رایت نثرین ہے

برکت سہاہ السیر 5110 نقتن ۱۷
20
03489414852

دستخط

عہدہ

اطلاع کے نیچے اطلاع دہندہ کا دستخط ہوگا یا اس کی مہر یا نشان لگایا جائے گا۔ اور اس فرسٹ تحریر کنندہ ابتدائی اطلاع کا دستخط بطور تصدیق ہوگا۔ حروف الف یا ب سرخ روشنائی سے بالمقابل نام پر ایک لازم یا مشترکہ علی الترتیب واسطے باشندگان علاقہ غیر یا وسط ایشیا یا افغانستان جہاں موزوں ہوں، لکھنا چاہئے۔

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1426/2019
Aman Ullah Ex-Sub Inspector

..... Appellant

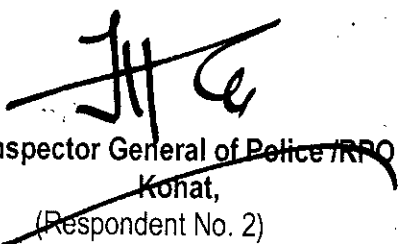
VERSUS

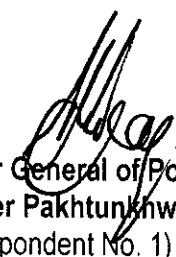
Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar and others

..... Respondents

COUNTER AFFIDAVIT

We, the below mentioned respondents, do hereby solemnly affirm and declare on oath that contents of parawise comments are correct and true to the best of our knowledge and belief. Nothing has been concealed from this Hon: Tribunal.


Dy: Inspector General of Police/RPO
Kohat,
(Respondent No. 2)


Inspector General of Police,
Khyber Pakhtunkhwa,
(Respondent No. 1)


District Police Officer,
Kohat
(Respondent No. 3)

BEFORE THE HONOABLE KPK SERVICE TRIBUNAL PESHAWAR.

Service Appeal No 1426/2019

Aman ullah Ex-Sub-Inspector R/o of District Karak Rehmat Abadd

Appellant.s

Versus

The Inspector General of Police KPK Peshawar

Deputy Inspector General of Police Kohat.

The District Police Officer Kohat.

Respondent.

Rejoinder for and on behalf of appellant to the comments ,filed by respondents

Respected Sheweth,

Rejoinder to the comments of respondent are as under.

Reply to Preliminary Objection :-

- 1:- That Para No-1 in preliminary Objection is incorrect because the appellant has good cause of action and balance of convenience is also in favour of present appellant
- 2:-That Para No-2 is incorrect to the extent that the appellant is aggrieved from the impugned order.
- 3:-That Para No-3 is incorrect ,the appellant has properly file departmentally appeal to the respondent above but in vain having no other alternate remedy except the instant appeal .
- 4:- That the Para No-4 is incorrect ,the appeal of the present appellant is with in time .
- 5:-That Para No-5 is incorrect the appeal of the appellant is good prima fascia case.

Facts Reply:-

1:-Facts of Para No- 1 comments of the respondent is correct to the extent that vide DD No: 23 the appellant were accompanied for raid but no particular specification mentioned in the said DD 23 that the plane of the raid not specifically explained, that the appellant was also accompanied the police contingency and the appellant were properly retaliated upon the criminals and identified the criminals by face but not known the names of the criminals and later on by virtue of the appellants hectic efforts the criminals were apprehended and were charged for the commission of the heinous offence and properly retaliated vide DD No: 27 and the appellant leave no stone unturned to discharge his liability.

2:-That Para No: 2 of the fact of the comments respondents is incorrect the appellant vide DD No: 27 properly retaliated and caution to the subordinate contingent to retaliation and due to the retaliation the criminals luckily escaped as there were dark gloomy night and if the appellant neither retaliated then the appellant were not alive today as well as were not become the witness of the occurrence but one think does not appeal to a prudent. mined that the appellant was present on the eventful day of the occurrence and no other witness were available on the said day except of appellant how the enquiry officer comes to the conclusion that the appellant had shown cowardice as such there were no witness to the occurrence except the rest of the police officials who did not speak about cowardice.

3:- That Para No-3 of the Fact of the comments of the respondent is incorrect no proper enquiry conducted against the appellant and only on the basis of self assumption without any cogent evidence directly award the major punishment as the coordinial rules of enquiry violated by the respondents while awarded the major impugned punishment and the charge sheet were issued in the year 09.07.2017 and impugned order were issued on 20.06.2019 and the delay in the enquiry is not explained by the respondents above and there is a contradiction in the impugned order and an enquiry proceedings which would be agitated at the time of arguments.

4:- That Para No-4 of the Fact of the comments of the respondents is incorrect already discussed above. Hence need no comments while the acquittal of the accused is concern that is legal and no contradictory statement were recorded by the appellant and nor the same were mentioned in the charge sheet as well as appellant feeling aggrieved from the impugned order prefer departmental representation which were not properly examined and the same were rejected having no alternate remedy except the Hon'able service tribunal for justice.

Reply to reply of grounds:-

1:- That, Para No-1: of the grounds of respondents is incorrect that the appellant duly retaliated upon the criminals and if the appellant neither retaliated so the appellant were not alive to day

2:- That Para No-2: of the grounds of respondents is incorrect as no such proper departmental enquiry has been initiated against the appellant and according to rules the enquiry against the appellant not conducted in true sprit and also not concluded within time and the material facts in this regard will be agitated in the time of arguments.

3:- That Para No-3: of the grounds of respondents is incorrect no proper enquiry were conducted against the appellant which would be self explanatory and agitated at the time of arguments..

4:- That Para No-4: of the grounds of respondents in incorrect as no roper enquiry were conducted nor the misconduct were explained in the impugned order as no codal formalities were observed only on the basis of charge sheet the service o the appellant were dismissed.

5:- That Para No-5, 6 & 7 of the grounds of respondents is discussed above and are incorrect . Hence need no comets

6:- That Para No-8: of the grounds of respondents is incorrect in so many other cases. It has been observed that any event which were occurred and witnessed by any person may assist to concern quarters if required.

7:- That Para No-9: of the grounds of respondents is not explained by the respondent which shows that the appellant had lack of knowledge. Hence the same would be discussed at the time of arguments.

8:- That Para No-10: of the grounds of respondents is incorrect already discussed above. Hence need no comments.

9:- That Para No-11: of the grounds respondent is incorrect no proper enquiry were conducted and the respondents violate the enquiry rules which would be agitated at the time of arguments

10:- That Para No-12: of the grounds of respondents is incorrect the material facts mentioned in the representation were not thoroughly examined and directly reject the said which is against to the law and constitution which speaks , that free and fair enquiry with full opportunity of hearing were not given to the appellant to explain the actual crux.

11:- That Para No-13: of the grounds of respondents is incorrect and not properly explained that what does the respondents attempt to submit

12:- That Para No-14: of the grounds of respondents is incorrect no proper enquiry proceeding were conducted against the appellant it is pertinent to mention here that if the enquiry is conducted according to rules then why the appellant claiming that the enquiry is conducted according to rules.

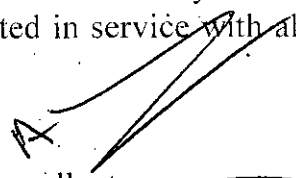
13:- That Para No-15: of the grounds of respondents is not explained by the respondents which means the respondent above had nothing to speak. Hence need no comments.

14:- That Para No-16: of the grounds of respondents is incorrect as without any cogent evidence and without properly examine the allegations the appellant were dismissed which is against to the cannon of law as well as against to the principal of natural justice.

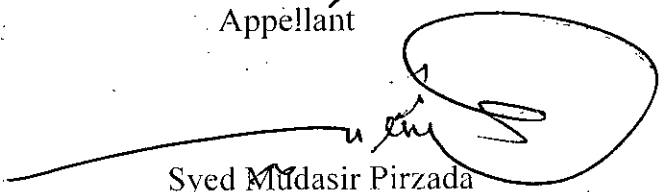
15:- That Para No-17: of the grounds of respondents is not explain by the respondents as respondents has nothing to adduced material fact.

Prayer of Rejoinder:-

It is humbly prayed that the comments submitted by the respondents 1,2,3 may graciously be set a side and the appellant may also reinstated in service with all back benefits as the appellant is innocent.


Appellant

Through



Syed Mudasir Pirzada
Advocate HC
0345-9645854

Dt:- 24-2-2021



Office of the Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar



No. 1587/2019-77
JEF

Dated 21/07/2019

ORDER

The following Lower Subordinates of Elite Force were awarded major punishment on the ground while they were on raid duty of wanted PO. in case FIR No.35, dated 12.02.2017 at's 302 PPC PS Lachi. During the raid in Mohsin Khel miscreants attacked the vehicle of S/O along with the said officials but they did not retreated and exhibited cowardice due to which the miscreants safely succeeded in escaping S/O along with other officials embraced martyrdom, but these officials did not responded on time.


1. LHC Zafran Ullah No. 26
2. FC Sajid Iqbal No. 5160
3. FC Ansa No. 3133

They were departmentally proceeded and the enquiry officer recommended them for suitable punishment and the DPO Kohat dismissed them on 20.06.2019. Later on dismissal orders withdrawn on the request of this office, as DPO is not competent authority for issuing such like orders as per Standing Order 02/2011.

The matter was re-enquired through SP Elite Force HQrs and DSP Elite Force Kohat. The Enquiry Committee recorded all statements and submitted findings. The Enquiry Committee reported that during encounter the Elite Force personnel exhibited cowardice due to which the miscreant safely succeeded in escaping. Therefore, the Enquiry Committee recommended that the annual increment of the delinquent officials may be forfeited and be repatriated to their parent districts.

Therefore, I, Muhammad Hussain, Deputy Commandant, Elite Force Khyber Pakhtunkhwa Peshawar as competent authority, keeping in view of the above facts, impose major punishment of "TIME SCALE" for two year.

Order announced


MUHAMMAD HUSSAIN)PSP
Deputy Commandant
Elite Force Khyber Pakhtunkhwa
Peshawar.

Copy of the above is forwarded to the:-

1. District Police Officer, Kohat w/r to his office memo No. 12673/PA dated 12/07/2019.
2. Superintendent of Police, Elite Force HQrs.
3. Deputy Superintendent of Police, Elite Force Kohat.
4. RI, Elite Force Khyber Pakhtunkhwa Peshawar.
5. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
6. SRC/OHC, Elite Force Khyber Pakhtunkhwa Peshawar
7. FMC, Elite Force along with complete enquiry file Encls: (87) pages



**KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

No. 914 / ST

Dated: 13-4-2022

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

To

The District Police Officer,
Government of Khyber Pakhtunkhwa,
Kohat.

Subject: JUDGMENT IN APPEAL NO. 1426/2019, MR. AMAN ULLAH

I am directed to forward herewith a certified copy of Judgement dated 31.01.2022 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR

KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR