

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. 1225/2016

Date of Institution ... 02.12.2016

Date of Decision ... 15.03.2019

Masal Khan, Ex-ASI Traffic Staff Peshawar. ... (Appellant)

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa Peshawar and two others. ... (Respondents)

Present.

Mr. Khalid Rahman,
Advocate. ... For appellant

Mr. Kabirullah Khattak,
Addl. Advocate General, ... For respondents.

MR. HAMID FAROOQ DURRANI, ... CHAIRMAN
MR. AHMAD HASSAN, ... MEMBER

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

1. The facts, as laid in the appeal in hand, are that the appellant was serving as an ASI in the Police Department and during the relevant days he was posted as Naib Court with learned Addl. Sessions Judge-VII, District Peshawar. A charge sheet and statement of allegations was issued against

the appellant, wherein, it was alleged that he misplaced the case file in proceedings under FIR No. 580 dated 12.08.2010 U/S 324-PPC P.S Gulfat Hussain Shaheed, Peshawar and had made fake entry in the relevant register. A detailed reply was submitted by the appellant where-after an enquiry was conducted at the back of the appellant and copy of its findings was never provided to him despite repeated requests. Ensuing there-from, a final show cause notice was issued which was also replied to by the appellant in detail. On 17.3.2014, the appellant was awarded major penalty of removal from service. He preferred departmental appeal to respondent No. 2 but to no avail. Subsequently, a review petition was submitted before respondent No. 1 which was considered by the Review Board and decision was made on 03.11.2016. Resultantly, the petition of appellant was partially allowed and penalty of removal from service was converted into compulsory retirement, hence the appeal in hand.

2. We have heard learned counsel for the appellant, learned Addl. Advocate General on behalf of the respondents and have also gone through the available record.

It was the argument of learned counsel for the appellant that proceedings of enquiry taken against the appellant were in cursory manner and statements of necessary witnesses were not recorded. It was further contended that opportunity of personal hearing was also not provided to him. Similarly, copy of enquiry report was not provided to the appellant,

therefore, the proceedings were not in accordance with law and were liable for striking down. In the said regard he relied on judgments reported as PLD 2008-Supreme Court-412, 2016-SCMR-1641, 2006-PLC(C.S)1356 and 2003 PLC(C.S)1378. The learned counsel also brought into the notice of the Tribunal the fact that the misplaced file attributable to the appellant was subsequently located and proceedings in the trial continued thereafter. It was also stated that the penalty awarded to the appellant was not commensurate with the charge, hence, was not sustainable.

On the other hand, learned AAG, questioned the competency of appeal on the ground that the impugned order was passed against the appellant on 17.3.2014 while the departmental appeal was preferred in the year 2016. In the said manner the departmental appeal was clearly barred by time.

3. Before proceedings further in the matter, it shall be useful to note that on 08.10.2018 this Tribunal required production of original register containing the entry regarding return of case-file and entire record of enquiry proceedings on the next date of hearing. Today, the learned AAG submitted before the Tribunal copy of a report dated 20.02.2019, wherein, it was noted that the requisite register pertaining to the year 2010 was not traceable. Pertinently, it was the case of appellant that he had duly returned the case-file and entry to that effect was made in the relevant register.

4. We are not in agreement with the preliminary objection raised by learned AAG regarding competency of appeal in hand owing to the fact that the departmental appeal was preferred by appellant with delay of two years. The decision/order upon the said appeal suggests that the same was passed also regarding merits of the case of appellant. Furthermore, while deciding the review petition of appellant under Rule 11-A of Khyber Pakhtunkhwa Police Rules, 1975, the competent authority did not prefer to attend to such aspect of the case and was pleased to convert the awarded punishment into compulsory retirement.

5. The record before us, as appended by the respondents with their comments to the appeal, include the summary of allegations which contained that the appellant had intentionally misplaced the record mentioned here-in-before and that he had made fake/false entries in the relevant register to save his skin. Mr. Ali Muhammad Bogra DSP Cantt was, therefore, entrusted with the task of enquiry into the matter. On the other hand, the copy of charge sheet suggests that the allegation against the appellant was in terms that he was found absent from duty w.e.f. 27.04.2013 till the date of issuance of charge sheet without leave/permission of the competent authority. Similarly, in a very brief departmental enquiry report dated 08.03.2013, it was categorically noted that the proceedings against the appellant were regarding misplacement/intentionally losing the file for some ulterior motives. The enquiry officer went on recapitulating further the reply of the appellant which formed

major part of the report. The report also suggested that constable Mukammil Khan No. 2159 was a witness in the matter although his statement never became part of the record what to speak of opportunity of cross-examination by the appellant of such witness. It is also a fact that despite the written defence of appellant, wherein, it was claimed that the missing file was duly entered in the "Wapsi Murasila Register", no effort was made by the enquiry officer in having resort to such register.


Reverting back to the discrepancies regarding allegation against the appellant referred to here-in-before, it is also worth-noting that the accusation of absence from duty was never contained in the show cause notice received by the appellant on 21.3.2013. On the contrary, the contents of impugned order dated 17.3.2014 clearly transpire that the appellant was penalized not only on account of misplacing the record and making fake/false entries in the relevant register but also due to his absence from duty. The said fact clearly suggests that the allegation of absence from duty was introduced for the first time in the impugned order while the appellant was never confronted with such allegation during proceedings prior to its passing.

6. In view of the above discussion, we consider it appropriate to allow the appeal in hand. Decision accordingly. The respondents shall, however, be at liberty to conduct proper/denovo enquiry against the appellant but only in accordance with law and the rules. Such exercise, if undertaken by



the respondents, shall be concluded positively within ninety days from the receipt of copy of instant judgment. The issue of back benefits in favour of the appellant shall follow the outcome of denovo proceedings.

Parties are left to bear their respective costs. File be consigned to the record room.



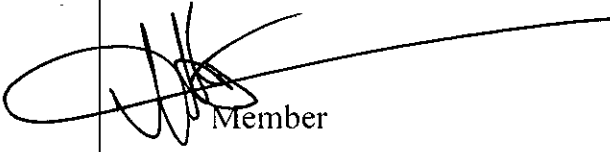

(AHMAD HASSAN)
MEMBER



(HAMID FAROOQ DURRANI)
CHAIRMAN

ANNOUNCED
15.03.2019

1225/2016

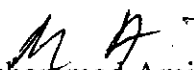
S.No.	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	15.3.2019	<p><u>Present.</u></p> <p>Mr. Khalid Rahman, .. For appellant Advocate</p> <p>Mr. Kabirullah Khattak, ... For respondents Addl. Advocate General</p> <p>Vide our detailed judgment of today, we allow the appeal in hand. The respondents shall, however, be at liberty to conduct proper/denovo enquiry against the appellant but only in accordance with law and the rules. Such exercise, if undertaken by the respondents, shall be concluded positively within ninety days from the receipt of copy of instant judgment. The issue of back benefits in favour of the appellant shall follow the outcome of denovo proceedings.</p> <p>Parties are left to bear their respective costs. File be consigned to the record room.</p> <p> Member</p> <p> Chairman</p> <p><u>ANNOUNCED</u> 15.3.2019</p>

08.10.2018

Appellant with counsel present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Farman Gul, S.I for the respondents present. During the course of arguments learned Additional AG read out statement of one Bahadar Khan H.C at the bar, wherein he had denied receipt of record of FIR No. 580 dated 12.08.2010. Respondents are directed to produce original Register, Wapsi Amsilajat and entire record of inquiry proceedings on or before the next date of hearing. Adjourned. To come up for record and arguments on 15.11.2018 before D.B.



(Ahmad Hassan)
Member



(Muhammad Amin Kundi)
Member

15.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 04.01.2019.



READER

04.1.2019

Counsel for the appellant and Mr. Ziaullah, DDA alongwith Ali Gohar, S.I for the respondents present.

The representative of the respondents undertakes to produce the record noted in the order dated 18.10.2018 on the next date of hearing positively. Adjourned to 15.03.2019 for arguments before the D.B.



Member



Chairman

11.05.2018

Due to retirement of the worthy Chairman, the Tribunal is incomplete, therefore the case is adjourned. To come up for the same on 26.07.2018.


Reade

26.07.2018


Due to sickness of learned Member (Executive), further proceedings could not be conducted. Adjourned. To come up for arguments on 27.08.2018 before D.B.


Member

27.08.2018

Clerk of the counsel for appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Clerk of the counsel for appellant requested for adjournment. Adjourned. To come up for arguments on 08.10.2018 before D.B.



(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member

27.10.2017

Appellant in person present. Mr. Kabirullah Khattak, Additional AG for the respondents also present. Appellant requested for adjournment on the ground that his counsel is not available today. Adjourned. To come up for arguments on 15.01.2018 before D.B.


(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member

15.01.2018


Clerk of the counsel for appellant present. Mr. Zia Ullah, DDA alongwith Mr. Bashir Ahmad, SI (Legal) for the respondents present. Lawyer community on strike on the call of Khyber Pakhtunkhwa Bar Council. Adjourned. To come up for arguments on 14.03.2018 before D.B.

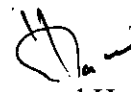

(Gul Zeb Khan)
Member


(M. Hamid Mughal)
Member

14.03.2018

appellant absent. Learned counsel for the appellant is also absent. However, junior to learned senior counsel for the appellant present and seeks adjournment. Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Adjourned. To come up for arguments on 11.05.2018 before D.B.


(Muhammad Amin Khan Kundi)
Member


(Muhammad Hamid Mughal)
Member

03.04.2017

Appellant in person and Mr. Bashir Ahmad, ASI alongwith Addl. AG for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing on 24.05.2017.


Chairman

24.05.2017

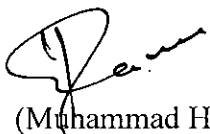
Counsel for the appellant and Mr. Shabir Ahmad ASI alongwith Muhammad Jan Deputy District Attorney for the respondent present. Counsel for the appellant requested for time to file rejoinder. Request accepted. To come up for rejoinder and arguments on 06.09.2017 before D.B.


(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member

06.09.2017


Clerk of the counsel for appellant present. Mr. Muhammad Adeel Butt, Additional AG alongwith Bashir Ahmad, SI for respondent present. Arguments could not be heard due to incomplete bench. To come up for arguments on 27.10.2017 before D.B.


(Muhammad Hamid Mughal)
Member

03.01.2017


Counsel for appellant present. Preliminary arguments heard. Learned counsel for appellant contended that the appellant was serving as Naib Court with learned ASJ-VII Peshawar when he was dismissed from service vide impugned order dated 17.03.2014 on the allegation of misplacing of the case file in case FIR No. 580 dated 12.08.2010 and making fake entry in the relevant register. That against the impugned order appellant preferred departmental appeal which was rejected vide impugned appellate order dated 27.06.2016 and hence the instant service appeal.

Points urged needs consideration. The appeal is admitted for regular hearing subject to deposit of security and process fee within 10 days. Notices be issued to the respondents for written reply/comments for 09.02.2017 before S.B.


(ASHFAQUE TAJ)
MEMBER

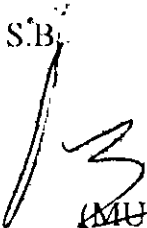
09.02.2017

Agent to counsel for the appellant and Addl: AG for respondents present. Written reply not submitted. Requested for further time adjournment. To come up for written reply/comments on 08.03.2017 before S.B.


(ASHFAQUE TAJ)
MEMBER

08.03.2017




Counsel for the appellant and Addl: AG for respondents present. Written reply not submitted. Requested for adjournment. To come up for written reply/comments on 03.04.2017 before S.B.


(MUHAMMAD AAMIR NAZIR)
MEMBER

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1225/2016

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	09/12/2016	<p>The appeal of Mr. Masal Khan resubmitted today by Mr. Khaled Rehman Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	14-12-2016	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>21-12-2016</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
21.12.2016		<p>Counsel for the appellant present. Requested for adjournment. Request accepted. To come up for preliminary hearing on 03.01.2017 before S.B.</p> <p style="text-align: right;"> (MUHAMMAD AAMIR NAZIR) MEMBER</p>

The appeal of Mr. Mashal Khan ASI Traffic Staff Peshawar received today i.e. on 02.12.2016 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Annexures of the appeal may be attested.
- 3- Annexures of the appeal may be flagged.
- 4- Annexures-D & H of the appeal are illegible which may be replaced by legible/better one.
- 5- Wakalat Nama in favour of appellant is not attached with the appeal which may be placed on it.
- 6- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 2074 /S.T,

Dt. 5/12 /2016

Mr. S. S. S. S.
REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Khaled Rehman Adv. Pesh.

*Report of BU
Submitted after
completion*
[Signature]

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1225 /2016

Masal Khan Ex.ASI

.....Appellant

Versus

The PPO and others

.....Respondents

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4.	Show cause notice		C	0-12
5.	Impugned order	17.03.2014	D	0-13
6.	Departmental appeal		E	14-15
7.	Appellate order	27.06.2016	F	0-16
8.	Review before Respondent No.1		G	17-19
9.	Order in review	03.11.2016	H	0-20
10.	Wakalatnam			

Through

Appellant

Khaled Rahman
Advocate, Peshawar
3-D, Haroon Mansion,
Khyber Bazar, Peshawar
Cell # 0345-9337312

Dated: 02 / 12 / 2016

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1225 /2016

Masal Khan, Ex-ASI,
Traffic Staff Peshawar.....Appellant

Versus

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 1251

Dated 02-12-2016

1. The Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
2. The Capital City Police Officer Peshawar.
3. The Senior Superintendent of Police
Peshawar.....Respondents

**SERVICE APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE TRIBUNALS
ACT, 1974 AGAINST THE IMPUGNED ORDER
DATED 03.11.2016 PASSED BY RESPONDENT NO.1
WHEREBY THE PETITION OF THE APPELLANT
WAS PARTIALLY ACCEPTED BY CONVERTING HIS
REMOVAL FROM SERVICE INTO THAT OF
COMPULSORY RETIREMENT AND AGAINST THE
ORDER DATED 27.06 2016 PASSED BY RESPONDENT
NO.2 WHEREBY THE DEPARTMENTAL APPEAL OF
THE APPELLANT AGAINST THE ORDER DATED
17.03.2014 PASSED BY RESPONDENT NO.3 WAS
UNLAWFULLY REJECTED.**

Filed to day
[Signature]
Registrar

**Re-submitted to -day
and filed.**

[Signature]
Registrar
9/12/16

PRAYER:

On acceptance of the instant appeal, the impugned order dated 03.11.2016 passed by Respondent No.1 and the impugned order dated 27.06.2016 passed by Respondent No.2 and that Respondent No.3 Dated 17.03.2014 may graciously be brushed aside and appellant be re-instated into service with all back benefits.

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. That appellant was the employee of Police Department serving as ASI. He has served for 23/24 years in the Force to his utter efficiency and dedication. During the relevant days appellant was posted as Naib. Court with Learned ASJ-VII Peshawar when he was issued a Charge-sheet and Statement of Allegations alleging therein the misplacing of the Case File in case FIR No 580 Dated 12.08.2010 and making fake entry in the relevant Register.
2. That since the charges were unfounded, misplaced therefore, appellant denied the same and made a detailed reply thereto thereby explaining his position before the Competent authority. Copy of the reply may be considered as part of this appeal.
3. That thereafter a summary and fact finding enquiry was conducted by the enquiry officer at the back of the appellant and the report was then submitted to the competent authority. Even the copy of the

report was not provided to the appellant in spite of his repeated requests.

4. That on the basis of the illegal and incorrect findings, the competent authority issued the appellant a final show cause notice which too was replied in detail thereby appellant explained his position before the Competent authority. Reply to the show cause notice may also be considered as part of the appeal.
5. That thereafter vide impugned order dated 17.03.2014 appellant was imposed upon the major penalty of removal from service in an arbitrary manner.
6. That being aggrieved of the impugned order *ibid*, appellant preferred departmental appeal to Respondent No.2 but the same was also summarily rejected vide impugned appellate order dated 27.06.2016.
7. That later on appellant approached Respondent No.1 under the law against the order *ibid*, and the matter was considered in the Review Board and vide impugned order dated 03.11.2016, the petition of the appellant was partially allowed and the penalty of the removal from service was converted to compulsory retirement.
8. That now appellant being aggrieved of the impugned orders *ibid*, hence challenges the same

through this appeal inter alia on the following grounds,

Grounds:

- A. That Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned orders, which are unjust, unfair and hence not sustainable in the eye of law.
- B. That the charges of misplacing the case file as well as making false entry into the Register is totally misplaced accusations and appellant has fully explained his position in that respect before the Competent authority but no heed was given to the explanation offered by the appellant.
- C. That the charge of absence from duty was also ill-founded and not based on facts but mala fide added at later stage which is not part of the charge sheet. It may also be added that appellant has not been issued any separate charge sheet regarding the absence from duty not is he aware of any other enquiry proceedings in that regard nor any show cause notice was given to him. Hence the charge of absence is also untenable baseless and accordingly all the impugned orders are not legally sustainable under the law and are liable to be set aside.

- D. That appellant has been imposed upon the major penalty on the basis of no evidence. Not an iota of material has been brought to prove the allegations leveled against the appellant; therefore, the impugned orders are arbitrary, unlawful and hence not sustainable in the eye of law.
- E. That instead of a regular enquiry, an irregular, fact finding enquiry was conducted in a highly prejudicial manner and without any evidence the conclusion was jumped upon suddenly on the basis mere surmises and conjectures declaring charges as proved in utter deviation of the procedure and Rules on the subject which has resulted into serious miscarriage of justice.
- F. That it is a settled legal principle that where major penalty is proposed then only a regular enquiry is to be conducted wherein the accused must be associated with all stages of the enquiry including the collecting of oral and documentary evidence in his presence and he must be confronted to the same and must be afforded an opportunity of cross-examining the witnesses. In the case in hand a summary enquiry was concluded in an irregular manner and appellant was illegally found guilty without any evidence. Thus the impugned enquiry being irregular and the impugned orders based thereupon are nullity in the eye of law and hence liable to be set aside.
- G. That the controversy was indeed factual in nature and the same could only be resolved by holding a

regular enquiry. It is also a settled legal principle that in such eventuality where factual controversy is involved then only alternative left with the competent authority is to hold a regular enquiry into the allegations. Since no such enquiry had been contemplated, therefore, the direct and abrupt conclusion arrived at by the Enquiry Officer is ill-founded and therefore not maintainable.

- H. That not only appellant was denied association with enquiry proceedings but even copy of the same not provided to him to prepare his defense and thus appellant was rendered defenseless in an illegal manner.
- I. That no opportunity of personal hearing was afforded to the appellant neither by the competent authority, nor by the Enquiry Officer nor even by the appellate authority which are the mandatory requirements of law. Thus appellant was condemned unheard as the action has been taken at the back of the appellant which is against the principle of natural justice.
- J. That the appellant has served the Department for about 23/24 years and has consumed his precious life in the service and keeping in view his longstanding unblemished service the imposition of the major penalty in peculiar facts and circumstances of the case is harsh, excessive and does not commensurate with the guilt of the appellant.

K. That appellant would like to offer some other additional grounds during the course of arguments when the stance of the Respondents is known to the appellant.

It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.

Through

Appellant

Khaled Rahman,
Advocate, Peshawar.

Dated: 02 / 12 / 2016

Annex "A"

8

CHARGE SHEET

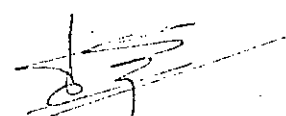
1. WHEREAS I am satisfied that a formal enquiry as contemplated by Police Rules 1975 is necessary and expedient.
2. AND whereas, I am of the view that the allegations if established would call for major/minor penalty, as defined in Rule-3 of the aforesaid Rules.
Now therefore, as required by Rule 6 (1) (a) of the said Rules, I, **ASIF IQBAL MOMAND**, Senior Superintendent of Police, Traffic, Peshawar hereby charge you **SI Masal Khan No.3390** of Traffic Staff, Peshawar on the basis of following allegations:-

a). That while posted as Naib Court of the learned ASJ-VII, Peshawar you have intentionally misplaced the record of Case FIR No.580, dated 12.08.2010 U/S 324/PPC, Police Station Gulfat Hussain Shaheed (Hashtnagri).

b). That you also made fake/false entry in the relevant register to save your skin and blamed others for your misconduct.

3. By doing this you have committed gross misconduct on your part.
4. AND I hereby direct you further under Rule 6 (I) (b) of the said Rules to put in written defence within 07-days of the receipt of this Charge Sheet as to why the proposed action should not taken against you and also state whether you desire to be heard in person.
5. AND in case your reply is not received within the stipulated period, it shall be presumed that you have no defence to offer and in that case, ex-parte action will be taken against you.

Attested to be
True Copy
ATTESTED


(ASIF IQBAL MOMAND) PSP
Senior Superintendent of Police,
Traffic, Peshawar.

(COMPETENT AUTHORITY)


9

SUMMARY OF ALLEGATIONS

1. a). That while posted as Naib Court of the learned ASJ-VII, Peshawar he (**SI Masal Khan No.3390**) has intentionally misplaced the record of Case FIR No.580, dated 12.08.2010 U/S 324/PPC, Police Station Gulfat Hussain Shaheed (Hashtnagri).
b). That he made fake/false entry in the relevant register to save his skin and blamed others for his misconduct.
2. By doing this he committed gross misconduct on his part.
3. For the purpose of scrutinizing the conduct of the said accused official with reference to the above allegations, an Enquiry Committee comprising of the following officer(s) is constituted:-
 - a. **Mr. Ali Muhammad Bogra, DSP/Cantt.**
 - b. _____
4. The enquiry committee/officer shall in accordance with the provision of the Police Rules 1975 provide reasonable opportunity of hearing to the accused officer/official and make recommendations as to punishment or any other appropriate action against the accused.


(**ASIF IQBAL MOMAND**) PSP
Senior Superintendent of Police,
Traffic, Peshawar.

(*COMPETENT AUTHORITY*)


Attested to be
True Copy

ATTESTED

Annex "B"

10

To,

Senior Superintendent of Police
Traffic, Peshawar

Subject: - REPLY OF CHARGE SHEET DATED NIL

1. That the undersigned was attached to the Court of Mrs. Munira Abbasi ASJ-VII, Peshawar
2. That whenever the Court decided any case usually passed an order to consign the file to record room, and handed over the file to Moharrir of the Court.
3. That the Moharrir of concerned Court consign the relevant file to record room, while return police file/record to the undersigned.
4. That the undersigned received the files from Moharrir of the Court and then mentioned the same in registrar "Register Wapsi Amsilajat".
5. That the undersigned received the case records mentioned herewith:-
 - (i) Copy of Zimni No 5, FIR No 77 dated 29-9-2010 under Section 380/ 14 Islamic Law P.S Hashtnagri
 - (ii) FIR No 846 dated 23-10-2010 under Sections 302/34 P.S Hashtnagri
 - (iii) FIR No 900 dated 11-11-2010 under Sections 419/420/468/471 P.S Hashtnagri
 - (iv) FIR No 929 dated 01-12-2010 under Section 324 P.S Hashtnagri
 - (v) FIR No 935 dated 06-12-2010 under Section 489-F P.S Hashtnagri
 - (vi) FIR No 580 dated 12-08-2010 under Section 324/512 P.S Hashtnagri

On 13-01-2011 the FC viz Bahadur attached to P.S Hashtnagri "Investigation Branch received all the above mentioned records including record of FIR No 580 dated 12-8-2010 under Section 324 PPC of P.S Hashtnagri from undersigned and sign the relevant register "Register "Register Wapsi Amsilajat" as a token of correctness.

6. That the JMIC Mr. Shoukat Khan peruse the photocopy of relevant register and requisitioned the original register, in which record pertaining FIR No 580 was correctly mention.

Attested to be
ATTESTED
True Copy

7. That the Court concern or DPP Office so many time make call to P.S Hashtnagri for requisitioning file of FIR No 580, but the Moharrir of P.S replied that plethora of file are kept by them in P.S, so he seeks time for submission.

It is therefore, humbly prayed that the undersigned correctly mentioned pertaining to FIR No 580 in the relevant register and then handed over to FC of P.S Hashtnagri. Moreover, no manipulation for fake entry made by the undersigned in the register, further his job has never unturned any stone to fulfill his duty. So, the charge sheet may kindly be withdraw.

Sincerely yours

(MASAL KHAN)

ASI

No 3390

Traffic Police Peshawar

Dated: - 16th Feburary, 2013

Attested to be
ATTESTED

ANNEX 'C'

12

FINAL SHOW CAUSE NOTICE

I, ASIF IQBAL MOMAND, Senior Superintendent of Police, Traffic Peshawar as competent authority under Police Disciplinary Rules (amended in 1975), do hereby serve you **ASI Masal Khan No.3390** of Traffic Staff, Peshawar as follows;

a). That while posted as Naib Court of the learned ASJ-VII, Peshawar you have intentionally misplaced the record of Case FIR No.580, dated 12.08.2010 U/S 324/PPC, Police Station Gulfat Hussain Shaheed (Hashtnagri).

b). That you also made fake/false entry in the relevant register to save your skin and blamed others for your misconduct. That consequent upon the completion of enquiry conducted against you by DSP/Cantt, Traffic Peshawar for which you were given full opportunity of hearing but you failed to satisfy the enquiry officer.


I. On going through the finding and recommendation of the enquiry officer, the material available on record, I am satisfied that you have committed the omission/commission specified in Police Disciplinary Rules (amended in 1975).

2. As a result therefore, I, **ASIF IQBAL MOMAND**, Senior Superintendent of Police, Traffic Peshawar as competent authority have tentatively decided to impose major penalty upon you including dismissal from service under Police Disciplinary Rules (amended in 1975).

3. You are therefore, directed to show cause as to why the aforesaid penalty should not be imposed upon you.

4. If no reply to this show cause notice is received within seven days of its delivery in the normal course of circumstances, it shall be presumed that you have no defense to put and in that case an ex-parte action shall be taken against you.

5. A copy of the finding of the Enquiry Officer is enclosed.


(**ASIF IQBAL MOMAND**) PSP
Senior Superintendent of Police,
Traffic, Peshawar.

(COMPETENT AUTHORITY)

Attested to be
True Copy


ATTESTED

Better Copy

ANNEX "D"

13

ORDER

This is an order on the departmental enquiry initiated against ASI Masal Khan No.3390 for misplacing the record of case FIR No.580, dated 12.08.2010 U/S 324 PPC, PS Gulfat Hussain Shaheed (Hashtnagri) while posted as Naib Court of the learned ASJ-VII, Peshawar. He also made fake/false entry in the relevant register to save his skin and blamed others for his misconduct. Departmental proceedings was initiated against the accused ASI on the recommendation of SSP/operation received vide his office Memo: No.28/PA, dated 28.01.2013 and DSP Traffic Muhammad Ali Bogra was nominated as Enquiry Officer into the matter under Police Rules 1975.

During the course of enquiry, the accused ASI failed to produce any solid reason in support to the allegations leveled against him. After recording statement of other relevant officials and perusal of the case file, the Enquiry Officer held him responsible for committing the misconduct thus recommended him for major punishment.

The accused ASI Masal Khan No.3390 was issued Final Show Cause Notice which he received on 21.03.2013. He submitted written reply to the Final Show Cause Notice on 26.03.2016 but the case was not found satisfactory, therefore, he was called for personal hearing. He was called time and again to produce cogent reasons in support of the allegations but failed to do so. The accused ASI was also absented himself from duty w.e.f. 27.04.2013 and still at large, therefore, he was again charge sheeted for absenting himself from duty without any leave/permission of the competent authority. Mr. Tariq Sohail, SP/Traffic was nominated as Enquiry Officer regarding his continuous absence but the accused ASI failed to attend the departmental proceedings regarding and prolonged and continuous absence. The Enquiry Officer also recommended ex-parte action to be taken against him for not attending the enquiry proceedings.

Keeping in view the recommendations of both the Enquiry Officers as well as his irresponsible behavior and attitude towards duty, ASI Masal Khan No.3390 is awarded major punishment of removal from service under Police Rules-1975 from the date of his continuous absence i.e. 27.04.2013.

Order Announced.

Sd/-

(SYED KHALID HAMDANI) PSP
Senior Superintendent of Police,
Traffic, Peshawar

No.1049-54/PA

Dated Peshawar the 17.03.2014

Copies for information and necessary action to the:-

1. SSP/Operation. CCP, Peshawar
2. DSP/Hqrs. Traffic, Peshawar
3. Accountant
4. E.C
5. OSI
6. SRC (Along-with complete enquiry files)

Attested to be
True Copy

(SYED KHALID HAMDANI) PSP
Senior Superintendent of Police,
Traffic, Peshawar

Attested to be True Copy

(SYED KHALID HAMDANI) PSP
Senior Superintendent of Police,
Traffic, Peshawar.

- 1. SSP/Operation, CCP, Peshawar.
 - 2. DSP/Hqs. Traffic, Peshawar.
 - 3. Accountant.
 - 4. EC.
 - 5. OSI.
 - 6. SRC (along-with complete enquiry files).
- Encl: 80.1 & 80.5

17/3/2014
Copies for information and necessary action to the:-
(SYED KHALID HAMDANI) PSP
Senior Superintendent of Police,
Traffic, Peshawar.

Order announced

Keeping in view the recommendations of both the enquiry officers as well as his irresponsible behavior and attitude towards duty, ASI Masal Khan No.3390 is awarded major punishment of Removal from Service under Police Rules 1975 from the date of his continuous absence i.e. 27.04.2013.

also recommended ex-parte action to be taken against him for not attending the enquiry proceedings. Enquiry officer regarding his continuous absence but the accused ASI failed to attend the departmental proceedings regarding his continuous absence and prolonged absence. The enquiry officer still at large therefore, he was again in charge sheeted for, absenting himself from duty on 26.03.2013 but the same was called time and again to produce cogent reasons in support of the allegations hearing. He was called time and again to produce satisfactory, therefore, he was called for personal received on 21.03.2013. He submitted written reply to the final show Cause Notice which he

The accused ASI Masal Khan No.3390 was found that show Cause Notice which he thus recommended him for major punishment.

During the course of enquiry, the accused ASI failed to produce solid reason in support of the allegations leveled against him. After recording statement of other relevant officials and perusal of the case file, the enquiry officer held him responsible for committing the misconduct and DSP Traffic, Mohammad Ali Bogra was nominated as enquiry officer into the matter under Police Rules 1975.

This is an order on the departmental enquiry initiated against ASI Masal Khan No.3390 for misplacing the record of case FIR No.580, dated 12.08.2010 U/S 324 PPC, PS Gulifat Hussain Shaheed (Hashnagiri) while posted as Naib Court of the learned ASJ-VII, Peshawar. He also made fake/false entry in the relevant register to save his skin and blamed others for his misconduct. Departmental proceedings were initiated against the accused ASI on the recommendation of SSP/operation received vide his office memo No.28/PA, dated 28.01.2013 and DSP Traffic, Mohammad Ali Bogra was nominated as enquiry officer into the matter under Police Rules 1975.

ORDER

13
"D"
Ammar

The worthy CCPO Peshawar

Subject: Departmental appeal against
the impugned order dated 17³/₂₀₁₄.
Passed by SSP traffic Peshawar
Communicated to the appellant 20³/₁₆.

Respected Sir

1. That for the misplacing of case record the enquiry was set up against the appellant, where the appellant appeared before the enquiry and submitted the reply of show cause notice but after that for further proceeding the collection of evidence. The appellant was not provided any opportunity, neither the appellant have been summoned nor heard and was proceeded ex parte, so far as concerned with the record allegation of wrongful absence, the appellant was neither summoned for enquiry, nor any show cause notice has been served upon the appellant which is contrary to law and against the doctrines of natural justice, neither the appellant was involved in the misplacing of record nor the blame was proved against the appellant, even the record in respect of which the enquiry was set up was

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also procured in the court.
That neither the appelland was warned
from the impugned decisions of removal
from service nor any codal formalities
were observed by the enquiry officer.
That neither opportunity of hearing was
provided to the appelland for cross
examination, nor the witnesses were
confronted with the appelland.

That apart from the instant appeal
the appelland filed appeal before the
worthy inspector general of Police, which
has already been referred to your
good office for decision may kindly
consider the same as the appelland
have no source of income instead of
service and have small kids and
his education and others things.

It is therefore most humbly
prayed that on the acceptance of
this appeal may kindly be
accepted this appeal and re-instate
the appelland with back benefits,
Masal Khan ASI 3390

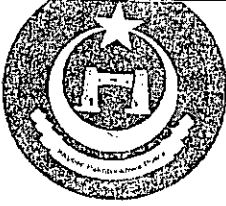
Red
4/2/06

Res owner police

Attached to be
114

250

100



Annex F-31

OFFICE OF THE
CAPITAL CITY POLICE OFFICER,
PESHAWAR

Phone No. 091-9210989
Fax No. 091-9212597

16

ORDER

This order will dispose off departmental appeal preferred by ex-ASI Masal Khan who was awarded the major punishment of **Removal** from service under Police Rules-1975 vide No. 1049-54/PA dated 17.3.2014 by SSP/Traffic Peshawar on the charges mentioned below:-

- i. He while posted as Niab Court of the learned ASJ-VII Peshawar, misplacing the record of case FIR No. 580 dated 12.8.2010 u/s 324 PS Shaheed Gulfat Hussain (Hashtnagri). He also made fake/false entry in the relevant register to save his skin and blamed others for his misconduct.
- ii. Absence from lawful duty w.e.f 27.4.2013 till his removal from service i.e 17.3.2014 (total 10 months & 20 days).

2- Two separate departmental proceedings were initiated against him and Muhammad Ali Bogra, DSP/Traffic Cantt: and Tariq Sohail, SP-Traffic, MLA Peshawar were appointed as E.Os. Both the EOs found him guilty of the allegations levelled against him. On receipt of the findings of the E.Os, the delinquent ASI Masal Khan was issued Final Show Cause Notice to which he replied. The same was perused and found unsatisfactory by the SSP-Traffic, Peshawar as such awarded him the above major punishment.

3- He was called in O.R. on 24.6.2016, and heard in person. Enquiry file was thoroughly examined. He was provided full opportunity to defend himself but he failed to give plausible explanation in his favour. The allegations levelled against him stand proved. Besides, the appeal is time barred for 2 years. Therefore, the order passed by SSP-Traffic Peshawar is upheld and his appeal for re-instatement in service is rejected/ filed.

(MUBARAK ZEB)
CAPITAL CITY POLICE OFFICER,
PESHAWAR

27.6 /2016.

Attested to be
True Copy

No. 1369-75 /PA dated Peshawar the

Copies for Information and n/a to the:-

1. SSP/Traffic, Peshawar.
2. PO/AS/EC-I/EC-II along with S.Roll+S.Book for making necessary entry in his S.Roll.
3. FMC along with FM
4. Official concerned.

(17)

Before the worthy Inspector general
Khyber Pakhtunkhwa Annex "G"

Masal Khan ASI Peshawar police.

Subject. Departmental Review against
the order of worthy C.P.O.,
Dated 27/06/2016.

Respected Sir,

I, That the applicant has filed departmental Representation for the cancellation of order 17/3/2014 passed by SSP traffic Peshawar. and the said Representation have been turn down by the worthy C.P.O Peshawar on his appellate authority. (Copy of Representation and order is attached)

II, That the allegation against applicant is misplacing of case record, the enquiry was set up against the applicant, where as the applicant appear before the enquiry officer and submitted the Reply & Show Cause Notice but after that for further proceeding like collection of the applicant was neither provided opportunity of defence or cross-examination over the witnesses nor have summoned to associate with further proceeding. even the applicant was neither heard, nor provided any opportunity or information and was proceeded

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ex. santee, so far as concerned with the record of
allegation of willful absentee, the applicant was
on service, but due to malafide intention
his attendance was mispleaded by the authority
in this connection with some ulterior motives, further
more in this respect the applicant was not charge
sheeted, the same rules of the respondent enquiry
officer is contrary to law, and against the
doctrine of natural Justice, neither the
applicant was found involved in the mispleading
of record nor the same was proved against
him, even the record in respect of it
the enquiry was set up, was also produced
in the Court.

III. That neither the applicant was awarded any responsibility
of mispleading of record by any witnesses.
Further more the applicant have no connection
with the alleged allegation levelled against
him.

IV. That neither the appellant was awarded from
the impugned decision of removal from service
nor any codal formalities were observed
by the enquiry officer, that neither opportunity
of hearing was provided to the applicant
for cross examination nor the witnesses
were confronted with the applicant
being mandatory in case of
major punishment.

18
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That apart from the Instant Review (19)
petition the applicant filed departmental
appeal before the worthy CPO, Peshawar
which has been decided on 07/6/2016
by CPO Peshawar and upheld
the order of worthy SSP Traffic
Peshawar vide dated 17/3/2016.

It is therefore most humbly
prayed that on the acceptance
of this Review petition the
applicant may kindly be
reinstated with all back
benefits and all the
imposed orders may kindly
be set aside.

Applicant

Masud Khan A/S
Nulle 4/7/16
Peshawar Police

0333-9326966
0336-4000930

Attested to be
True Copy

Better Copy

ANNEX 'A'

20

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA,
Central Police Office, Peshawar

No.S/6894-6903/16, dated Peshawar the 03.11.2016

ORDER

This order is hereby passed to dispose of the departmental appeal under Rule 11-a of Khyber Pakhtunkhwa Police Rules-1975 submitted by **ex-Assistant Sub-Inspector Masal Khan**. The appellant was awarded major punishment of removal from service by the SSP/Traffic, Peshawar vide order Endst: No.1049-54/PA, dated 17.03.2014, on the charges that he while posted as Naib Court of the learned ASJ-VII, Peshawar, misplaced the record of case FIR No. 580, dated 12.08.2010 U/S 324 PPC, PS Gulfat Hussain Shaheed (Hashtnagri). He also made fake/false entry in the relevant register to save his skin and blamed others for his misconduct. The appellant also absented himself from duty for a period of 10-months and 20 days till his removal from service.

Meeting of Review/Appeal Board was held on 19.10.2016, wherein the appellant appeared and heard in person and also examined the record. The charges against the petitioner are proved, however, in view of the long service of 23-years at the credit of petitioner, the Board recommends that penalty of removal from service may be converted into compulsory retirement from service.

Therefore, the Board is recommended that the major punishment of removal from service awarded to ex-ASI Masal Khan is hereby converted into punishment of compulsory retirement from service.

This order is issued with the approval by the competent authority.

Sd/-
(MUHAMMAD ASLAM SHINWARI)
DIG/HQrs.
For Inspector General of Police
Khyber Pakhtunkhwa, Peshawar

Endst: No. & date even

Copy of the above is forwarded to the:-

1. Capital City Police Officer, Peshawar
2. Senior Supdt: of Police Traffic, Peshawar
3. PSO to IGP/Khyber Pakhtunkhwa, CPO, Peshawar
4. PRO to IGP/Khyber Pakhtunkhwa, CPO, Peshawar
5. PA to Addl: IGP/Hqrs: Khyber Pakhtunkhwa, Peshawar
6. PA to AIG/Establishment CPO, Peshawar
7. Office Supdt: CB Branch, CPO, Peshawar
8. Office Supdt: E-III & E-IV, CPO, Peshawar
9. Central Registry, CPO, Peshawar

Attended to be
True Copy

Annex "H"

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar

20

No. S76894-6903/16, Dated Peshawar the 05/11/2016.

ORDER

This order is hereby passed to dispose of departmental appeal under Rule 11-a of Khyber Pakhtunkhwa Police Rule-1975 submitted by Ex-Assistant Sub-Inspector Masal Khan. The appellant was awarded major punishment of Removal from service by the SNP/Traffic, Peshawar vide order endst. No. 1049-54/PA, dated 17.03.2014 on the charges that he while posted as Naib Court of the learned ASI-VII Peshawar, misplaced the record of case FIR No. 580 dated 12.08.2010 u/s 324 PS Shaheed Gulfar Hussain (Hashnagri). He also made fake/false entry in the relevant register to save his skin and blamed others for his misconduct. The appellant also absented himself from duty for a period of 10 months and 20 days till his removal from service.

Meeting of Review/Appeal Board was held on 19.10.2016, wherein the appellant appeared and heard in person and also examined the record. The charges against the petitioner are proved, however, in view of the long service of 23 years at the credit of petitioner. The Board recommends that penalty of removal from service may be converted into major punishment of compulsory retirement from service.

Therefore, the Board is recommended that the major punishment Removal from service awarded to Ex-ASI Masal Khan is hereby converted into punishment of Compulsory Retirement from Service.

This order is issued with approval by the Competent Authority.

(MUTAMMAD AJAM SUHWARD)
DIG/IQs
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

Endst. No. & date even

Copy of the above is forwarded to the

1. Capital City Police Officer, Peshawar.
2. Senior Supdt. of Police, Traffic, Peshawar.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. PRO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
5. PA to Addl. IGP/IQrs. Khyber Pakhtunkhwa, Peshawar.
6. PA to AIG/Establishment CPO, Peshawar.
7. Office Supdt. CB Branch CPO Peshawar.
8. Office Supdt. I-III & E-IV, CPO Peshawar.
9. Central Registry CPO Peshawar.

Attested to be
True Copy

WAKALAT NAMA

IN THE COURT OF KPK Service Tribunal Peshawar

Masal Khan

Appellant(s)/Petitioner(s)

VERSUS

The PPO and others

Respondent(s)

I/We Appellant do hereby appoint **Mr. Khaled Rehman, Advocate Supreme Court of Pakistan** in the above mentioned case, to do all or any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

AND hereby agree:-

- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this _____

Attested & Accepted by

Khaled Rehman,
Advocate,
Supreme Court of Pakistan

3-D, Haroon Mansion
Khyber Bazar, Peshawar
Off: Tel: 091-2592458

Signature of Executants

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 1225/2016.

Masal Khan.....(Appellant)

VERSUS

Provincial Police Officer, KPK, Peshawar and others.....Respondents)

Subject:- COMMENTS ON BEHALF OF RESPONDENTS.

Preliminary Objections:-

- a) The appellant has no cause of action or locus standi.
- b) The appeal is not maintainable in the present form.
- c) The appeal is bad for mis-joinder and non-joinder of necessary parties.
- d) The appellant is estopped to file the appeal by his own conduct.
- e) The appeal is barred by law and limitation.
- f) The appellant has not come to the Honorable Tribunal with clean hands.

FACTS:-

1. Correct to the extent that appellant was serving Police department in the rank of ASI. He was charge sheeted on the score of allegations that he while posted as Court orderly misplaced record of case FIR No. 580 dated 12.08.2010 under section 324 PPC Police Station Gulfat Hussain Shaheed Peshawar and making false and bogus entry in the register. Proper enquiry was conducted into the above allegations levelled against appellant and enquiry officer found him guilty of the charges. Final show cause notice was issued to appellant. He was summoned for personal hearing but he absented himself with effect from 27.04.2013. Another charge sheet based on allegations of absence from duty was issued to appellant proper inquiry was conducted and he did not join enquiry proceedings. However, appellant found guilty of charges in both inquiries. Therefore, consolidated order dated 17.03.2014 was passed in both the departmental charges. Copies of the charge sheet, statement of allegations, enquiry reports and show cause notice are enclosed as Annexure- A to G.
2. Incorrect, the reply submitted by appellant in response to the charge sheet based on allegations of misplacing record of attempted murder case and making false and bogus entry in the register was found unsatisfactory. He did not submit any reply in response to the charge sheet based on allegations of absence from duty.

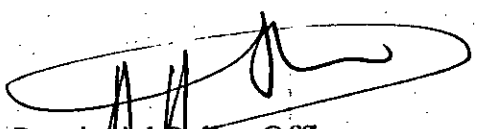
3. Incorrect, proper inquiries were conducted by two different officers and after fulfilling all the codal formalities, the appellant proud guilty, final show cause notice was issued to appellant and he submitted reply in response to final show cause notice.
4. Incorrect, the reply submitted by appellant in response to show cause notice was found unsatisfactory and he failed to rebut the charges levelled against him. He did not appear for personal hearing.
5. Correct to the extent that appellant was dismissed from service on charges of misplacing record of criminal case, making false entry in the register and wilfull absence from duties.
6. Correct to the extent that the departmental appeal of appellant was rejected vide speaking and elaborate order.
7. Correct to the extent that the respondent No.1 converted dismissal from service order into compulsory retirement service in view of long service of appellant.
8. Incorrect, the appeal of the appellant is not tenable on the given grounds.

GROUNDS:-

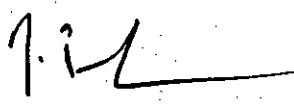
- A. Incorrect, the appellant was treated in accordance with law and rules and the impugned orders are just, legal.
- B. Incorrect, appellant failed to rebut the charges during enquiry proceedings and in his written statements submitted in response to the charge sheet and final show cause notice. He deliberately absented himself from duty and did not appear for personal hearing.
- C. Incorrect, separate charge sheet based on allegations of absence from duty was issued to appellant and he did not appear till passing the impugned order of dismissal from service dated 17.03.2014.
- D. Incorrect, all the three charges of misplacing record of criminal case, making false entry in the register and deliberate absence from duties were proved against appellant.
- E. Incorrect, regular enquiry was conducted, charge sheet was issued to appellant, enquiry officer was appointed and final show cause notice was issued to appellant.
- F. Incorrect, as explained in reply to Para-E of the ground of the appeal that regular enquiry was conducted.
- G. Incorrect, almost all the allegations levelled against appellant were properly enquired into through responsible enquiry officers. The orders were passed in the light of finding report.

- H. Incorrect, copy of the enquiry report was supplied to appellant as evident from final show cause notice already enclosed with the original appeal as Annexure-C.
- I. Incorrect, appellant did not appear before the first authority for personal hearing rather absented from duty. He was hard by appellate authority as evident from the order already enclosed with original appeal as Annexure-F.
- J. Incorrect, appellant was compensated by respondent No. 1 who converted the dismissal from service order into compulsory retirement from service in view of long service of appellant. Copy of the order of respondent No. 1 is already enclosed with original appeal as Annexure-H.
- K. The respondents may also be allowed to raise other grounds during hearing of the case.

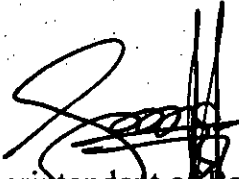
It is therefore, prayed that the appeal of appellant may be dismissed with costs.



Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 1)



Capital City Police Officer,
Peshawar
(Respondent No. 2)



Superintendent of Police,
Traffic Peshawar
(Respondent No. 3)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No.1225/2016.

Masal Khan EX-ASI Traffic Warden Police Peshawar.....Appellant.

VERSUS

Provincial Police officer, KPK, Peshawar and others.....Respondents

APPIDAVIT

We respondents No.1,2 & 3 do hereby solemnly affirm and declare that the contents of the written reply ate true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal.


**Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.**


**Capital City Police Officer,
Peshawar.**


**Senior Superintendent of Police,
Traffic, Peshawar.**

(14)

CHARGE SHEET

1. WHEREAS I am satisfied that a formal enquiry as contemplated by Police Rules 1975 is necessary and expedient.
2. AND whereas, I am of the view that the allegations if established would call for major/minor penalty, as defined in Rule-3 of the aforesaid Rules.
Now therefore, as required by Rule 6 (1) (a) of the said Rules,
I, **ASIF IQBAL MOMAND**, Senior Superintendent of Police, Traffic, Peshawar hereby charge you **ASI Masal Khan, No.3390** of Traffic Staff, Peshawar on the basis of following allegations:
 - i) That you were found absent from duty w.e. from 27.04.2013 till date without leave/permission of the competent authority.
3. By doing this you have committed gross misconduct on your part.
4. AND I hereby direct you further under Rule 6 (I) (b) of the said Rules to put in written defence within 07-days of the receipt of this Charge Sheet as to why the proposed action should not be taken against you and also state whether you desire to be heard in person.
5. AND in case your reply is not received within the stipulated period, it shall be presumed that you have no defence to offer and in that case, ex-parte action will be taken against you.

(**ASIF IQBAL MOMAND**) PSP
Senior Superintendent of Police,
Traffic, Peshawar.

(**COMPETENT AUTHORITY**)

SUMMARY OF ALLEGATIONS

1. a). That while posted as Naib Court of the learned ASJ-VII, Peshawar he (SI Masal Khan No. 3390) has intentionally misplaced the record of Case FIR No. 580, dated 12.09.2010 U/S 324/PPC, Police Station Gulfat Hussain Shaheed (Hashnagri).
 - b). That he made fake/false entry in the relevant register to save his skin and blamed others for his misconduct.
2. By doing this he committed gross misconduct on his part.
3. For the purpose of scrutinizing the conduct of the said accused official with reference to the above allegations; an Enquiry Committee comprising of the following officer(s) is constituted:
 - a. Mr. Ali Muhammad Bagra, DSP/Cantt.
 - b. _____
4. The enquiry committee/officer shall in accordance with the provision of the Police Rules 1975 provide reasonable opportunity of hearing to the accused officer/official and make recommendations as to punishment or any other appropriate action against the accused.

(ASIF IQBAL MOMAND) PSP
Senior Superintendent of Police,
Traffic, Peshawar.

(COMPETENT AUTHORITY)

From: The Dy: Superintendent of Police,
Traffic Cantt., Peshawar.

To : The Senior Superintendent of Police,
Traffic, Peshawar.

No. 09 / , dated Peshawar the 08 /03/2013.

Subject: **DEPARTMENTAL ENQUIRY AGAINST ASI MASAL KHAN
NO.3390 OF TRAFFIC STAFF PESHAWAR.**

Memo:

Reference attached in original

2. Brief of the case is that according to record, on 19-09-2012 accused Amin Jan submitted an application for requisition of record for trial. It was noticed that record was received by Masal Khan the then Naib Court but was not readily available.

3. The Court reported the matter to Peshawar Police and enquiry was conducted by DSP/Investigation City Division-I, Peshawar.

4. According to the conclusion, it transpired that Masal Khan No.3390 the then Naib Court has intentionally lost the file for some ulterior motive and recommended proper departmental enquiry against him.

5. Keeping in view ASI Masal Khan was charge sheeted and summons issued and allegation was issued to him. As per order of SSP/Traffic, Peshawar, undersigned was nominated to conduct formal departmental proceeding against Masal Khan No.3390.

6. To proceed further into the matter, ASI Masal Khan No.3390 Constable Mukamil Khan No.2159, Naib Court, ASJ-VII were summoned and their statements were recorded.

7. ASI Masal Khan No.3390 of Traffic Police Peshawar submitted written statement, which is reproduced as under :-

- i. That he was attached to the Court of Mr. Munir Abbasi ASJ-VII Peshawar.
- ii. That whenever the court decided any case usually passed an order to consign the file to record room and handed over the file to Moharrar of the court.
- iii. That the Moharrar of concerned court consign the relevant file to record room while return police file/record to the him.
- iv. That he received the files from Moharrar of the court and then mentioned the same in register "Register Wapasi Amsilajat".

- (25)
- v. That he received the case records mentioned herewith :-
1. Copy of Zimni No.5, FIR No.77 dated 29-09-2010 u/s 380/ Islamic Law Police Station Hashtnagri.
 2. FIR No.846 dated 23-10-2010 u/s 302/324 Police Station Hashtnagri.
 3. FIR No.900 dated 11-11-2010 u/s 419/420/468/471 police station Hashtnagri.
 4. FIR No.929 dated 01-12-2010 u/s 324 police station Hashtnagri.
 5. FIR No.935 dated 06-12-2010 u/s 489-F police station Hashtnagri.
 - ✓ 6. FIR No.580 dated 12-08-2010 u/s 324/512 police station Hashtnagri.

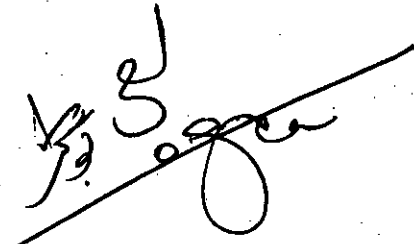
- On 13-01-2011, the FC viz Bahader attached to police station Hashtnagri Investigation Branch received all the above mentioned records including record of FIR No.580 dated 12-08-2010 u/s 324 PPC of police station Hashtnagri from undersigned and signed relevant register "Register Wapasi Amsilajat" as a token correctness.
- vi. That the JMIC Mr. Shoukat Khan peruse the photocopy of relevant register and requisitioned the original register in which record pertaining FIR No.580 was correctly mentioned.
- vii. That the court concern or DPP office so many time make call police station Hashtnagri for requisitioning file of FIR No.580 but Moharrar of police station replied that plethora of file are kept them in police station so he seeks time for submission.

8. Constable Mukamil Khan No.2159, Naib Court in his statement stated that case FIR No.580, date 12-08-2010, u/s 324 PPC Police Station Shahe Gulfat Hussain was entered in the register. A copy of receipt of register was given to Ex Naib Court ASI Masal Khan No.3390. Later-on, original register was presented to Mr. Shoukat Ahmad Magistrate. XX with elland

Conclusion.

After perusal of the record and discussion with concerned, it has been proved that ASI Masal Khan No.3390, the then Naib Court misplaced the file for some malafide purpose. During the course of enquiry, he could not produce any solid proof/evidence in his defence, hence major punishment is recommended for his misconduct.

.Enclrs: As Above.


(ALI MUHAMMAD BOGRA
Deputy Superintendent of Police
Cantt: Peshawar.

From: The Superintendent of Police,
Traffic/MLA, Peshawar.

To: The Senior Superintendent of Police,
Traffic, Peshawar.

No: 119 /R, dated Peshawar the 21/08/2013.

Subject: -

**DEPARTMENTAL ENQUIRY AGAINST ASI
MASAL KHAN.**

Memo:

Please refer to your Office Order No.1259/PA,
dated 29.05.2013.

It is submitted that ASI Masal Khan was directed
time & again to appear before the undersigned for recording his
statement but he did not appear before the undersigned despite of
repeated notices issued to the delinquent on frequent occasion.

Keeping in view of the above facts, he is
recommended to take ex-parte action under the Police Rules 1975.

Submitted please.

(TARIQ SOHAIL MARWAT)
SUPERINTENDENT OF POLICE,
TRAFFIC/MLA, PESHAWAR.

P.A.

Issue him
Final Show Cause
notice Najib

Senior Superintendent of Police
Operation Peshawar.

23

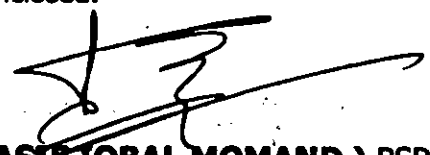
FINAL SHOW CAUSE NOTICE

I, ASIF IQBAL MOMAND, Senior Superintendent of Police, Traffic Peshawar as competent authority under Police Disciplinary Rules (amended in 1975), do hereby serve you **ASI Masal Khan No.3390** of Traffic Staff, Peshawar as follows;

a). That while posted as Naib Court of the learned ASJ-VII, Peshawar you have intentionally misplaced the record of Case FIR No.580, dated 12.08.2010 U/S 324/PPC, Police Station Gulfat Hussain Shaheed (Hashtnagri).

b). That you also made fake/false entry in the relevant register to save your skin and blamed others for your misconduct. That consequent upon the completion of enquiry conducted against you by DSP/Cantt, Traffic Peshawar for which you were given full opportunity of hearing but you failed to satisfy the enquiry officer.

1. On going through the finding and recommendation of the enquiry officer, the material available on record, I am satisfied that you have committed the omission/commission specified in Police Disciplinary Rules (amended in 1975).
2. As a result therefore, I, **ASIF IQBAL MOMAND**, Senior Superintendent of Police, Traffic Peshawar as competent authority have tentatively decided to impose major penalty upon you including dismissal from service under Police Disciplinary Rules (amended in 1975).
3. You are therefore, directed to show cause as to why the aforesaid penalty should not be imposed upon you.
4. If no reply to this show cause notice is received within seven days of its delivery in the normal course of circumstances, it shall be presumed that you have no defense to put and in that case an ex-parte action shall be taken against you.
5. A copy of the finding of the Enquiry Officer is enclosed.


(**ASIF IQBAL MOMAND**) PSP
Senior Superintendent of Police,
Traffic, Peshawar.

(COMPETENT AUTHORITY)

Handwritten signature
21/3/13

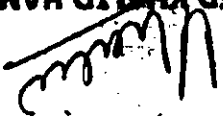
This is an order on the departmental enquiry initiated against ASI Masal Khan No.3390 for misplacing the record of case FIR No. 500, dated 12.08.2010 U/S 324 PPC, PS Gulfat Hussain Shehad (Hashnag) while posted as Naid Court of the learned ASJ-VII, Peshawar. He also made false entry in the relevant register to save his skin and blamed others for his misconduct. Departmental proceedings were initiated against the accused ASI on the recommendation of SSP/operation received vide his office memo: No.28/PA, dated 28.01.2013 and DSP Traffic Mohammad Ali Bogra was nominated as enquiry officer into the matter under Police Rules 1975.

During the course of enquiry, the accused ASI failed to produce solid reason in support of the allegations leveled against him. After recording statement of other relevant officials and perusal of the case file, the enquiry officer held him responsible for committing the misconduct thus recommended him for major punishment.

The accused ASI Masal Khan No.3390 was issued Final show Cause Notice which he received on 21.03.2013. He submitted written reply to the final show Cause Notice on 26.03.2013 but the same was not found satisfactory, therefore, he was called for personal hearing. He was called time and again to produce cogent reasons in support of the allegations but failed to do so. The accused ASI also absented himself from duty w.e. from 27.04.2013 and still at large therefore, he was again charge sheeted for absending himself from any leave/permission of the competent authority. Mr. Tariq Sohail, SP/Traffic was nominated as enquiry officer regarding his continuous absence but the accused ASI failed to attend the departmental proceedings regarding prolonged and continuous absence. The enquiry officer also recommended ex-parte action to be taken against him for not attending the enquiry proceedings.

Keeping in view the recommendations of both the enquiry officers as well as his irresponsible behavior and attitude towards duty, ASI Masal Khan No.3390 is awarded major punishment of Removal from Service under Police Rules 1975 from the date of his continuous absence i.e. 27.04.2013.

Order announced.



(SYED KHALID HAMDANI) PSP
Senior Superintendent of Police,
Traffic, Peshawar.
No. 1049-54/PA, Dated Peshawar the 17/5/2014
Copies for information and necessary action to the:-

1. SSP/Operation, CCP, Peshawar.
2. DSP/Hqrs. Traffic, Peshawar.
3. Accountant
4. EC
5. OSI
6. SRC (along-with complete enquiry file)

Encl: 02. leaves.

(SYED KHALID HAMDANI) PSP
Senior Superintendent of Police,
Traffic, Peshawar.

ORDER



**OFFICE OF THE
CAPITAL CITY POLICE OFFICER,
PESHAWAR**

Phone No. 091-9210989

Fax No. 091-9212597

ORDER

This order will dispose off departmental appeal preferred by ex-ASI Masal Khan who was awarded the major punishment of Removal from service under Police Rules-1975 vide No. 1049-54/PA dated 17.3.2014 by SSP/Traffic Peshawar on the charges mentioned below:-

- i. He while posted as Niab Court of the learned ASJ-VII Peshawar, misplacing the record of case FIR No. 580 dated 12.8.2010 u/s 324 PS. Shaheed Gulfat Hussain (Hashtnagri). He also made fake/false entry in the relevant register to save his skin and blamed others for his misconduct.
- ii. Absence from lawful duty w.e.f 27.4.2013 till his removal from service i.e 17.3.2014 (total 10-months & 20-days).

2- Two separate departmental proceedings were initiated against him and Muhammad Ali Bogra, DSP/Traffic Cantt: and Tariq Sohail, SP-Traffic, MLA Peshawar were appointed as E.Os. Both the EOs found him guilty of the allegations levelled against him. On receipt of the findings of the E.Os, the delinquent ASI Masal Khan was issued Final Show Cause Notice to which he replied. The same was perused and found unsatisfactory by the SSP-Traffic, Peshawar as such awarded him the above major punishment.

3- He was called in O.R. on 24.6.2016, and heard in person. Enquiry file was thoroughly examined. He was provided full opportunity to defend himself but he failed to give plausible explanation in his favour. The allegations levelled against him stand proved. Besides, the appeal is time barred for 2 years. Therefore, the order passed by SSP-Traffic Peshawar is upheld and his appeal for re-instatement in service is rejected/filed.


(MUBARAK ZEB)
CAPITAL CITY POLICE OFFICER,
PESHAWAR

No. 1369-75 /PA dated Peshawar the 28/06/2016.

Copies for Information and n/a to the:-

1. SSP/Traffic, Peshawar.
2. PO/AS/EC-I/EC-II along with S.Roll+S.Book for making necessary entry in his S.Roll.
3. FMC along with FM
4. Official concerned.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**Service Appeal No. 1225 /2016**

Masal Khan Appellant

Versus

The PPO and others.....Respondents

**REJOINDER ON BEHALF OF APPELLANT IN RESPONSE
TO REPLY FILED BY RESPONDENTS.**

Respectfully Sheweth,

Preliminary Objections:

Preliminary objections raised by answering respondents are erroneous and frivolous. The appellant has got cause of action to file the instant appeal which has been filed within time in its correct form and shape with all the parties arrayed as Respondents. And appeal is maintainable in its present forum.

Facts:

1. Incorrect. False allegations and charges have been leveled against the appellant no proper inquiry was conducted into said allegations and without hearing the appellant the inquiry officer give his recommendations based on false statements. Moreover, both the orders were passed in hasty manner without perusal of the relevant facts.
2. Incorrect. The appellant properly replied to the show cause notices and clear denied the charges in his reply.

3. Incorrect. The inquiries were not conducted in accordance with the spirit of law and the appellant were not associated in the inquiry.
4. Incorrect. The appellant submitted a detail reply to the final show cause notice which was based on illegal and incorrect findings. Moreover, the appellant comprehensively explained his position to the competent authority and satisfactorily proved to have rebutted all the charges leveled against the appellant. Further, the appellant have not been provided the opportunity of personal hearing.
5. Incorrect. The charges on which the appellant have been dismissed from service were not correct and have not been proved against the appellant.
6. Incorrect. The departmental appeal of the appellant was not thoroughly perused and evaluated and was rejected summarily without recoding any proper reasons hence, the order dated 27.6.2016 is not a speaking order.
7. Incorrect. The reviewed Board converted the removal of the appellant into compulsory retirement but even compulsory retirement is a harsh punishment and the appellant do not deserved such harsh punishment.
8. Incorrect. The grounds on which the appellant filed the present appeal are very much genuine and solid.

Grounds:

- A. Incorrect. The appellant was not treated accordance with law rules on the subject and the impugned orders illegal.

- B. Incorrect. The appellant clearly denied and rebutted all the charges leveled against him and the appellant further proved that all the charges are fake. Moreover, no opportunity of personal hearing was provided to the appellant.
- C. Incorrect. The appellant have not been issued any separate charge sheet for absence from duty. He was neither issued any show cause notice in this regard nor aware of any inquiry proceedings so, the charges of absence of totally wrong and hence all the impugned orders were not legally sustainable.
- D. Incorrect. The Respondents did not bring any evidence against the appellant and passed the order without proving the charges.
- E. Incorrect. The inquiry was not conducted in accordance with law and consequently all the steps taken against the appellant in illegal manner
- F. Incorrect. The inquiry was conducted in accordance with law.
- G. Incorrect. False allegations have been leveled against the appellant and moreover, respondents failed to enquire and proved the said allegations against the appellant.
- H. Incorrect. A copy of inquiry report not provided to the appellant.
- I. Incorrect. No opportunity of personal hearing was provided to the appellant and inquiry was conducted at the back of appellant therefore, condemned unheard.
- J. Incorrect. The appellant have never been compensated, rather he was punished severely by the respondents.

K. Incorrect. The appellant may be allowed to raise additional objections and grounds during the hearing of the appeal.

It is, therefore, humbly prayed that the reply of answering Respondents may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

Through

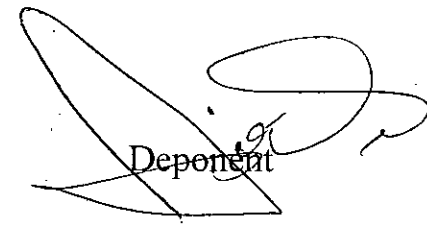
Appellant


Khaled Rahman
Advocate, Peshawar

Dated: 06/09/2017

Verification

Verified that the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.


Deponent