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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR


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Muharib Compilation


Incharge Judicial Branch

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Service Appeal No.7634/2021

Engr. Abdul Sattar
Superintending Engineer (Retired)

Appellant

Versus

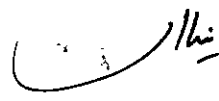
Govt of Khyber Pakhtunkhwa
through Chief Secretary Khyber Pakhtunkhwa
and others

Respondents

AFFIDAVIT

I, Zahid Ullah, Section Officer Litigation (BS-17) C&W Department, Peshawar hereby affirm and declare that all the contents of the Parawise comments are correct to the best of my knowledge and belief and nothing has been concealed.

Deponent



Zahid Ullah
Section Officer (Litigation)
C&W Department, Peshawar

[Faint handwritten notes and signatures at the bottom of the page]

Department

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1552/2023

BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER(E)

Yaseen Khan (Ex-Constable No. 549/1029) son of Bahadar Khan permanent resident village Kharkanai, Warsak Tehsil Adenzai, District Dir Lower, currently residing at House No. 1017, Nothia Jadid, Nasir Bagh, Mohallah Hafiz Minhaj Uddin, Peshawar. (Appellant)

Versus

1. Deputy Inspector General of Police, Telecommunication and Transport, Khyber Pakhtunkhwa, Police Lines Peshawar.
2. Superintendent of Police Telecommunication and Transport, Khyber Pakhtunkhwa, Police Lines Peshawar.
3. Muhammad Saeed Deputy Superintendent of Police, Telecommunication and Transport, Khyber Pakhtunkhwa, Police Lines Peshawar (Inquiry Officer).
4. Provincial Police Officer/Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
5. Government of Khyber Pakhtunkhwa through Secretary Home Peshawar. (Respondents)

Mr. Kashif Naseem,
Advocate ... For appellant

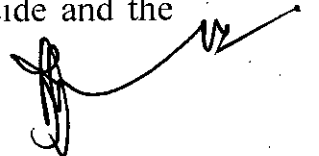
Mr. Asif Masood Ali Shah,
Deputy District Attorney ... For respondents

Date of Institution.....	24.07.2023
Date of Hearing.....	19.02.2024
Date of Decision.....	19.02.2024

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 10.07.2023 whereby departmental appeal of the appellant, filed against the order dated 02.06.2023 of his dismissal from service, was rejected. It has been prayed that on acceptance of the appeal, the impugned orders of respondents No. 1 & 2 might be set aside and the

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appellant might be reinstated into service from the date of his dismissal with all back benefits, alongwith any other remedy which the Tribunal deemed appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant ,was appointed as constable on 27.05.2013 in BPS- 07. He served in the Police Department for more than 10 years and during his service, he was not awarded any minor or major punishment and had unblemished service record. Initially he was deputed in Lower Dir and in the year 2022, he was transferred on deputation to Telecommunication and Transport Department and was serving in control room Dir Lower till his dismissal. After the incidents of 9th May, a person namely Jawad Ali S/O Badshah Zaman R/O Oski Loora Kharki, Ouch, District Lower Dir filed a complaint against the appellant that he had WhatsApp contact with him and through a message he told him that he had been nominated in the 9th May 2023 protest/incident. To exclude his name from the list of protestants, the appellant made an unlawful demand from him. On 31.05.2023, the appellant received a call from DPO office and was told that the DPO wanted to meet him. When he reached the office of the DPO Lower Dir, he was told by the DPO that a complaint had been filed against him and was detained in quarter guard. When the appellant asked for the details of the complaint, the DPO clearly stated that he did not know the details of the complaint. On the same day i.e. 31.05.2023, the cell phone of the appellant was taken into custody by the DSP Headquarter. The appellant was kept in illegal confinement in quarter guard till 02.06.2023. When he was brought out of the quarter guard,



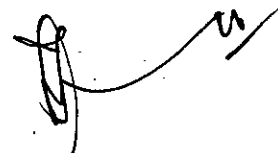
respondent No. 3 handed over charge sheet and statement of allegations to the appellant and was asked to give written reply to the same, however, complaint was not provided to him. He submitted his written reply and clarified his position. According to him, the complainant was involved in 9th May protest incident and his name was in the list of people involved in the protest and attacks on different installations and he asked the appellant to help in removing his name from that list. In response, the appellant told him that he was a constable and working in control room and had no authority to do the same. According to the appellant, being a neighbor he had brotherly relations with the complainant. The whole inquiry proceedings were carried out in 15 to 20 minutes and on the same day i.e 02.06.2023, in the evening, the appellant was set free from the quarter guard and order of his dismissal was handed over to him. Respondent No. 2 was also present at the time of inquiry with the Inquiry Officer. Feeling aggrieved, the appellant filed a departmental appeal on 06.06.2023 before the respondent No. 1 which was rejected on 10.07.2023; hence the instant service appeal.

3. Respondents were put on notice but they did not submit their written reply till the date fixed for hearing. On the request of the learned counsel for the appellant, the names of respondents No. 3 & 5, being unnecessary parties, were deleted from the panel of respondents and respondents No. 1, 2 and 4 were placed ex-parte vide order sheet dated 01.11.2023 on the ground that despite being served with notices, no one was present. Before initiating the process of hearing of the instant service appeal, an application No. 114/2024, dated 30.01.2024 was placed before the bench vide which a



request was made for setting aside the ex-parte proceedings. Even no one from the applicants of the said application bothered to put appearance. The learned Deputy District Attorney was also not aware of any such application, nor he had a copy of the same with him. As no one was present on behalf of the respondents and the application was not within time, the same was dismissed. However, the learned Deputy District Attorney was granted full opportunity to present, defend and argue the case which he availed and argued accordingly.

4. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned orders were arbitrary, whimsical, illegal, fanciful, and void ab-initio, hence not tenable in the eyes of law and liable to be set aside. He further argued that the appellant was neither served with any show cause notice nor was given any opportunity to be fully associated with the inquiry proceedings. Neither any statements were recorded on oath nor any opportunity was provided to him to cross examine the complainant or any other witnesses produced against him. Learned counsel contended that even the complaint was not provided to him and the whole proceedings were carried out in just 15-20 minutes in an extremely haphazard manner. He further argued that the appellant was kept in illegal confinement and was punished twice for one and the same offence and the whole proceedings were carried out at the time when he was detained in illegal custody and was not provided ample opportunity to present his defence. He requested that the appeal might be accepted as prayed for.

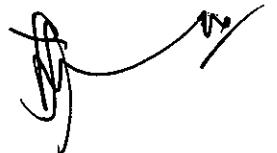


5. As the learned Deputy District Attorney neither had any record of the case with him, nor any departmental representative attended the Tribunal at the time of hearing, he relied on the record presented by the learned counsel for the appellant. He, however, supported the impugned order.

6. Arguments and record presented before us reveals that the appellant, in his capacity as Constable, while serving in the Telecommunication and Transport Department of the provincial police, was proceeded against departmentally on the basis of a complaint filed against him and was dismissed from service. When the complaint was received, the appellant was called by the District Police Officer Lower Dir on 31.05.2023 and was detained in the Quarter Guard. His cell phone was also taken into custody by the DSP Headquarter. On 01.06.2023, he was served with a charge sheet with the allegation as follows:-

"That Complainant Jawad Ali s/o Badshah Zaman r/o Oski Loora Kharki Ouch District Lower Dir submitted a complaint against you that you have whatapps Contact with him and through whatapps message you told him that you have been nominated in the 9th May 2023 protest/incident and to exclude his name from the list of protestant you have made unlawful demand from him."

He was given seven days to submit his written defence to the Inquiry Officer, Mohammad Saeed, DSP, Telecommunication and Transport Department. He submitted his reply to the charge sheet and on 02.06.2023, some inquiry was stated to have been conducted, the proceedings of which are however, not available on record nor produced and the appellant was dismissed from service on the same day. The order of dismissal from service

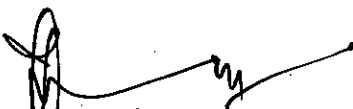


is silent whether any show cause notice was served upon him, which is mandatory under the rules. Moreover it also does not show that any opportunity of personal hearing was provided to the appellant by the Superintendent of Police Telecommunication & Transport before awarding the major punishment. Hence the legal requirements have not been fulfilled by the competent authority. It is quite strange that a major punishment has been awarded just within two days; on the first day, proceedings started and on the second day, major punishment of dismissal from service was awarded.

7. After going through the details of the case, it is evident that the respondents acted in an extremely arbitrary manner. They not only failed to fulfill the conditions of their own rules but also kept aside the requirements of a fair trial. They detained the appellant in the first instance and later on awarded major penalty of dismissal from service without proving the allegations against him. They failed to adopt the due process and the appellant was neither given a fair chance to present his case and defend himself nor any opportunity of cross examination was provided to him.

8. In view of the above discussion, the service appeal is allowed as prayed for. Cost shall follow the event. Consign:

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 19th day of February, 2024.*


(FAREEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman


SA 1552/2023

Order

19th Feb. 2024 01. Mr. Kashif Naseem, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the service appeal is allowed as prayed for. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 19th day of February, 2024.*


(FAREEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman


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Fazal Subhan PS

1st Nov. 2023

1. Learned counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General present.

2. Learned counsel for the appellant submitted that respondents No.3 & 5 are unnecessary party and were arrayed as an abundant precaution. He further submits that names of respondents No.3 & 5 might be deleted from the panel of respondents as the relief claimed in the appeal could be properly granted by the rest of the respondents. Therefore, names of respondents No.3 & 5 are deleted from the panel of respondents. Respondents No.1, 2 & 4 have been served, but they are not present, hence placed ex-parte. To come up for arguments on 19.02.2024 before D.B. P.P given to the parties.


(Kalim Arshad Khan)
Chairman

SCHEMATA
Peshawar

Muzam Shah

26 Sep, 2023

01. Learned counsel for the appellant present and heard.

02. Point raised need consideration. The appeal is admitted to full hearing subject to all just and legal objections by the other side. The appellant is directed to deposit security fee within 10 days. The respondents be summoned through TCS, the expenses of which be deposited by the appellant within three days. To come up for reply/comments on 01.11.2023 before the S.B. Parcha Peshi given to the learned counsel for the appellant.

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(FAREEHA PAUL)
Member (E)


Fazle Subhan, P.S

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FORM OF ORDER SHEET

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Court of _____

Appeal No. 1552/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	27/07/2023	<p>The appeal of Mr. Yasen Khan resubmitted to day by Mr. Kashif Naseem Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on <u>01-08-2023</u></p> <p style="text-align: right;">By the order of Chairman  REGISTRAR</p> <p>01.08.2023 Nemo for the appellant.</p> <p>On 25/09/2023, was appellant was informed telephonically for the date fixed (26/09/23)</p> <p>Notice be issued to the appellant and his counsel to attend the court on the next date.</p> <p>Adjourned. To come up for preliminary hearing on 26.09.2023 before S.B. Paracha Peshi given to junior of learned counsel for the appellant.</p> <p style="text-align: right;">(Muhammad Akbar Khan) Member (I)</p>

Mohamir

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The appeal of Mr. Yaseen Khan Ex-Constable no. 549/1029 District DP Lower Dir was today i.e on 24.07.2023 is incomplete on the following score which is returned to the appellant for the appellant for completion and resubmission within 15 days.

- 1- Copy of departmental appeal and its order are unattested.
- 2- In page no:2 of the memo of appeal some text are missing.
- 3- Annexures-B, C & F of the appeal are illegible.

No. 2034 /S.T.

DL 25/7 /2023.



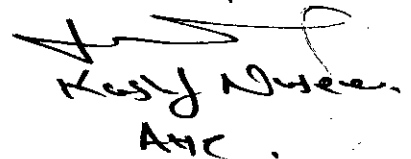
REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Kashif Naseem Adv.
High Court Peshawar.

27-7-2023

- 1) Copy of Departmental appeal & order is attached.
- 2) No text missing on Page No.2 Memo of Appeal as text of Para continues from Page No. 1 to Page No 2 in Sequence.
- 3) Better copies of Annex B, C & F attached with appeal.

Re Submitted After Removal of objections.



Kashif Naseem
Adv.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CHECK LIST

Case Title: Yaseen Khattak vs Deputy

S#	CONTENTS	YES	NO
1	This Appeal has been presented by:		
2	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	✓	
3	Whether appeal is within time?	✓	
4	Whether the enactment under which the appeal is filed mentioned?	✓	
5	Whether the enactment under which the appeal is filed is correct?	✓	
6	Whether affidavit is appended?	✓	
7	Whether affidavit is duly attested by competent Oath Commissioner?	✓	
8	Whether appeal/annexures are properly paged?	✓	
9	Whether certificate regarding filing any earlier appeal on the subject, furnished?		
10	Whether annexures are legible?	✓	
11	Whether annexures are attested?	✓	
12	Whether copies of annexures are readable/clear?	✓	
13	Whether copy of appeal is delivered to AG/DAG?	✓	
14	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15	Whether numbers of referred cases given are correct?	✓	
16	Whether appeal contains cutting/overwriting?		✓
17	Whether list of books has been provided at the end of the appeal?		
18	Whether case relate to this court?	✓	
19	Whether requisite number of spare copies attached?	✓	
20	Whether complete spare copy is filed in separate file cover?	✓	
21	Whether addresses of parties given are complete?	✓	
22	Whether index filed?	✓	
23	Whether index is correct?	✓	
24	Whether Security and Process Fee deposited? On		
25	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On		
26	Whether copies of comments/reply/rejoinder submitted? On		
27	Whether copies of comments/reply/rejoinder provided to opposite party? On		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name: KAMIE NASEEM
 Signature: [Signature]
 Dated: 24-7-2023

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Service Appeal No. 1552 of 2023

Yaseen Khan (Ex-Constable No.549/1029).....**Appellant**

VERSUS


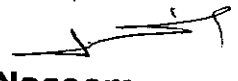
Deputy Inspector General of Police, Telecommunication
and Transport & others.....**Respondents**

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Dated:24/07/2023

Through Appellant



**Kashif Naseem
Abdul Jalil Faqir
Advocate High Court,
Peshawar.**

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 6668

Dated 24/07/23

Service Appeal No. 1552 of 2023

Yaseen Khan (Ex-Constable No.549/1029) Son of Bahadar Khan Permanent Resident Village Kharkanai, Warsak Tehsil Adenzai, District Dir Lower, Currently Residing at House No.1017, Nothia Jadid, Nasir Bagh, Mohallah Hafiz Minhaj Uddin, Peshawar Cantt.

..... **Appellant**

VERSUS

- 1- Deputy Inspector General of Police, Telecommunication and Transport, Khyber Pakhtunkhwa, Police Line Peshawar.
- 2- Superintendent of Police Telecommunication and Transport, Khyber Pakhtunkhwa, Police Line Peshawar. ✓
- 3- Muhammad Saeed Deputy Superintendent of Police, Telecommunication and Transport, Khyber Pakhtunkhwa, Police Line Peshawar (Inquiry Officer).
- 4- Provincial Police Officer /Inspector General of police Khyber Pakhtunkhwa Peshawar.
- 5- Govt of Khyber Pakhtunkhwa through Secretary Home Peshawar.

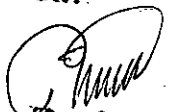
..... **Respondents**

Filed to -day

24/07/23

Registrar

Re-submitted to -day
and fixed.


Registrar
27/7/23

**APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974, AGAINST THE
IMPUGNED INDECISION OF RESPONDENT
NO.1 DATED 10/07/2023 WITH REGARD
TO DEPARTMENTAL APPEAL OF THE
APPELLANT AGAINST THE IMPUGNED**

ORDER OF RESPONDENT No.2 NO. 7213 / 23 / Tele /OASI DATED 02/06/2023 BY WHICH THE APPELLANT WAS DISMISSED FROM HIS SERVICE ON THE BASIS OF COMPLAINT FILED BY ONE JAWAD ALI S/O IQBAL ON INVOLVEMENT OF ILLEGAL DEMAND FROM HIM.

Prayer in Appeal:

On acceptance of this service appeal the impugned orders of the respondents No.1 and 2 be declare as illegal, arbitrary, whimsical, fanciful, void-ab-initio, null and void, without jurisdiction, without lawful authority, against law and be set aside and the appellant may kindly be reinstated in service from the date of his dismissal with all back benefits.

It is, further prayed that any other relief deems fit and proper in the circumstances of the case may graciously be granted.

Respectfully Sheweth:

- 1) That the appellant was appointed as constable on 27/05/2013 in BPS 7 and during the length of his service, the appellant has successfully completed the 09 months Training at Police Training Center Hangu.

- 2) That the appellant served in the police department for more than 10 years and during his service, the appellant was not awarded to any minor or major punishment and have unblemished record and on different occasions he was awarded with Commendation Certificates.(Copy of Certificates are attached as annexure A)
- 3) That initially the appellant was deputed in Lower Dir in operation and in the year of 2022, the appellant was transferred on deputation to Telecommunication and Transport department and was serving in control room Dir Lower till his dismissal.
- 4) That after the incidents of 9th May a person namely Jawad Ali S/o Badsha Zaman R/o Oski Loora Kharki, Ouch, District Lower Dir filed a complaint against the appellant that appellant have WhatsApp contact with him and through WhatsApp msg and appellant told him that he has been nominated in the 9th May 2023 protest/incident and to exclude his name from the list of protestants appellant has made a unlawful demand from him and appellant was charged in frivolous, false and concocted complaint.
- 5) That on 31/05/2023 the appellant received a call from DPO office and was told that the DPO Mr.Tariq Iqbal wants to meet appellant and when the appellant reached to the office of DPO Lower Dir he was told by the DPO that a compliant has

been filed against appellant and the DPO Lower Dir directed his staff to detain the appellant in Quarter Guard and when the appellant asked for the details of the complaint the DPO clearly said that he don't know the details of the complaint and on this occasion DSP Head Quarter Fakhary Alam was also present in the office of DPO Dir Lower, it's worth mentioning that on the same very day i.e. 31/05/2023 the cell phone of the appellant was taken into custody by DSP Head Quarter Fakhary Alam.

- 6) That the appellant was kept in illegal confinement in quarter guard till 02/06/2023 and was brought out of quarter guard and Respondent No.3 handed over Charge Sheet and statement of allegations to the appellant and was asked to give written reply of the same and when the appellant asked for the complaint he was not provided the same upon which the appellant submitted his written reply clearing his position according to the charge sheet, that the complainant was involved in 9th may protests incident and according to him his name was in list of people involved in people involved protest and attacks on different installations and he asked appellant to help in removing his name from that list and the appellant in response told him that he is a constable and working in control room and has no authority to do the same and being a neighbor he has brotherly relations with the complainant. As the written reply was written at the spot so the

copy of the same is not available with the appellant. It worth mentioning that the respondent No.2 was also present at the time of inquiry with the inquiry officer/respondent No. the 3 and whole inquiry proceedings were carried out in 15 to 20 minutes summarily and on the same very day i.e. 02/06/2023 in evening the appellant was set free from the quarter guard and order of his dismissal was handed over to him. (Copy of Charge sheet is attached as annexure B, Copy of Statement of allegations is attached as annexure C, Copy of impugned Order of dismissal of Respondent No.2 dated 02/06/2023 is attached as annexure, D Copy of Roznamcha of Quarter Guard dated 31/05/2023 & 02/06/2023 is attached as Annexure E)

- 7) That the appellant was neither served through any show cause notice nor was given any chance to associate with the inquiry Officer to explain his position and even of the complaint has not been handed over or shown to the appellant. The inquiry report was not served upon by the appellant and all the proceedings were carried out in haphazard without giving any opportunity to the appellant to present his defense and in all the departmental proceedings carried out against the appellant is in violation of settled principals of law and rules laid down which is evident from the charge sheet which is dated 01/06/2023 and there is no date on statement of allegations and on the next very date on 02/06/2023 the appellant was

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(6)

dismissed from the service and was awarded major punishment.

8) That on 02/06/2023 the appellant was dismissed by the Respondent No.1 vide impugned order, which is illegal, arbitrary, whimsical, and fanciful and against the law and the same is liable to be set-aside.

9) That after getting the order of dismissal from respondent No.1 the appellant filed a departmental appeal on 06/06/2023 before the respondent No.1 through Dy.No.2326 which has been dismissed by respondent No.1 vide order decided 10/07/2023 by the respondent No.2, hence the present appeal is being filed before this Hon'ble Tribunal on the following amongst other grounds. (Copy of grounds of departmental appeal along with impugned order dated 10/7/2023 is attached as annexure F)

GROUND:

A) That the impugned orders of respondents No.1 and 2 are arbitrary, whimsical, illegal, fanciful, void ab-initio, null and void and are against the law and fact, hence untenable and are liable to be set aside.

B) This is a fact that the appellant was kept in illegal confinement and by this act the appellant

has been punished twice for the same offence as he was kept in illegal custody for 2 nights on mere allegations and keeping him in custody is minor punishment, therefore the impugned orders are against the law which are liable to be set aside as against natural justice and this is not mere allegation but the same has been supported through documentary proof in shape of Roznamcha attached with the appeal.

- C) That the punishment is very harsh and there are sufficient reasons for taking lenient action in the case of the appellant keeping in view his previous clear record and lengthy service.
- D) That the appellant's performance during the entire service remained outstanding and no bad entry was earned.
- E) That the alleged complaint and the inquiry report has also not been served upon the appellant.
- F) That neither preliminary nor final show cause notice had been served upon the appellant nor the appellant.
- G) That though the removal from service (Special Power Ordinance 2000) is not applicable in the appellant case even otherwise the procedure adopted by the respondent No.1 and 2 is not according to the above Ordinance.

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- (8)
- H) That as the appellant has been dismissed which is major punishment and the procedure adopted for the same is against the rules and regulations and the impugned orders of the respondent No.1 and 2 are illegal, void ab-initio null and void which are liable to be set aside.
- I) That respondent No.1 while deciding the departmental appeal of the appellant did not considered the lacunas in conducting one sided inquiry and the summery procedure adopted by the inquiry officer/respondent No.3, therefore the same is liable to be set aside.
- J) That the proceedings carried out against the appellant amounts to un heard as the appellant was detained in illegal custody and was not provided ample opportunity to present his defense neither any statements were recorded on oath nor any opportunity was provided to the appellant to cross examine the witnesses if any or complainant himself.
- K) That during the whole service period the appellant was never awarded to any major or minor punishment and the appellant has an unblemished record.
- L) That an absolutely false, frivolous and concocted complaint has been filed against the appellant and the same has not been shown to the appellant and the proceedings carried out upon

the complaint in a hasty manner in violation of rules and regulations seems to be politically motivated act as the complainant has good relationship with the political figures of the area .Thus the impugned orders are liable to be set aside.

M) That it is also a fact the mobile phone of the appellant which was taken into custody on 31/05/2023 at the time when the appellant was sent to Quarter Guard is still in custody of respondents and when after dismissal of appellant moved an application for return of same On 06/06/2023 the appellant was told that the mobile phone is in process or recovery of Data etc. and cant be returned to appellant and if the process of data etc. is not recovered and it is under process then how come the appellant is punished without any solid proofs and evidences on mere allegations of complainant.(Copy of application for return of Mobile phone is attached as annexure G)

N) That the procedure adopted in an inquiry allegedly conducted is not in accordance with the provision of law and rules laid down in Police Rules 1975.

O) That provision of police rules 1934 and 1975 have not been adhered to.

P) That the provisions of NWFP Government Servant E&D Rules 1973 were not adhered to.

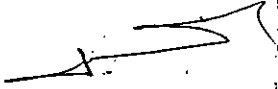
Q) That during his more than 10 years lengthy service, the appellant has not committed any act or omission.

It is, therefore, humbly prayed that on acceptance of this service appeal the impugned orders of the respondents No.1 and 2 be declare as illegal, arbitrary, whimsical, fanciful, void-ab-initio, null and void, without jurisdiction, without lawful authority, against law and be set aside and the appellant may kindly be reinstated in service from the date of his dismissal with all back benefits.

It is, further prayed that any other relief deems fit and proper in the circumstances of the case may graciously be granted.

Dated:24/07/2023


Appellant.
Through


**Kashif Naseem
Advocate High Court,
Peshawar.**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. _____ of 2023

Yaseen Khan (Ex-Constable No.549/1029).....**Appellant**

VERSUS

Deputy Inspector General of Police, Telecommunication and Transport & others.....**Respondents**

Affidavit

I, Yaseen Khan (Ex-Constable No.549/1029) Son of Bahadar Khan Permanent Resident Village Kharkanai, Warsak Tehsil Adenzai, District Dir Lower(Appellant) do hereby solemnly affirm and declare on oath that the contents of the accompanied service appeal are true and correct to the best of my knowledge and belief and nothing has been concealed or with held from this Hon'ble Tribunal.

Deponent

CNIC : 15307-9265159-3

Cell : 0344-9788151

Dated:24/07/2023



25

(12)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Service Appeal No. _____ of 2023

Yaseen Khan (Ex-Constable No.549/1029).....**Appellant**

VERSUS

Deputy Inspector General of Police, Telecommunication
and Transport & others.....**Respondents**

ADDRESSES OF THE PARTIES


Yaseen Khan (Ex-Constable No.549/1029) Son of Bahadar Khan
Permanent Resident Village Kharkanai, Warsak Tehsil Adenzai,
District Dir Lower, Currently Residing at House No.1017, Nothia
Jadid, Nasir Bagh, Mohallah Hafiz Minhaj Uddin, Peshawar Cantt.
..... **Appellant**

VERSUS

- 1) Deputy Inspector General of Police, Telecommunication and
Transport, Khyber Pakhtunkhwa, Police Line Peshawar.
- 2) Superintendent of Police Telecommunication and Transport,
Khyber Pakhtunkhwa, Police Line Peshawar.
- 3) Muhammad Saeed Deputy Superintendent of Police,
Telecommunication and Transport, Khyber Pakhtunkhwa, Police
Line Peshawar (Enquiry Officer).
- 4) Provincial Police Officer /Inspector General of police Khyber
Pakhtunkhwa Peshawar.
- 5) Govt of Khyber Pakhtunkhwa through Secretary Home Peshawar.
..... **Respondents**

Dated:24/07/2023


Appellant
Through


Kashif Naseem
Advocate High Court,
Peshawar.

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Service Appeal No. _____ of 2023

Yaseen Khan (Ex-Constable No.549/1029).....**Appellant**

VERSUS

Deputy Inspector General of Police, Telecommunication
and Transport & others.....**Respondents**

**Application for fixation and hearing of above titled
Service Appeal at Peshawar**

Respectfully Sheweth:

- 1) The above titled Service appeal has been filed in which no date of hearing has yet been fixed.
- 2) That the appellant is permanent resident of Dir Lower but after his dismissal has shifted to Peshawar along with family and currently residing in Peshawar on the address mentioned in the appeal.
- 3) That the appellant request that the appeal of the appellant be heard in Peshawar as it will be convenient as appellant is residing in Peshawar and all the respondents are also based in Peshawar.

In view of above it is therefore most humbly prayed that on acceptance of the instant application the appeal of the respondent be heard at Peshawar in the interest of justice.

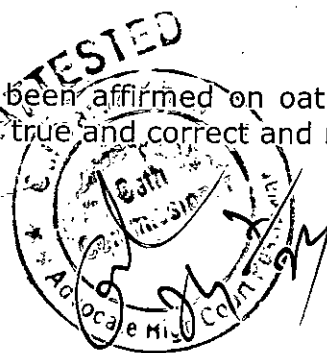
Applicant/Appellant
Through

Kashif Naseem
Advocate High Court,
Peshawar.

Dated:24/07/2023

Affidavit:

It is solemnly affirmed on oath that the contents of the instant application are true and correct and nothing has been concealed or mis stated.



Deponent

Yaseen Khan

Police No 107
Form No 15-3(C)



Initiated by
FIR Irfan ulahi Khan
P.S. P DPO Dir (L)

Arrested by
Kashif Naseem
Advocate High Court

COMMENDATION CERTIFICATE

CLASS III

Granted to Yaseen Khan No 1021/FC

Son of Bahadur Khan Village Mirpurkh 'L' (Khan) 'L' (Khan) 'L' (Khan)

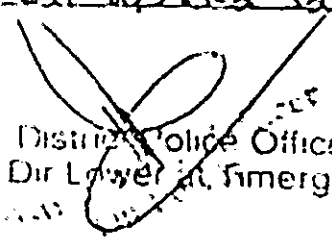
Police Station Talash District Dir Lower

in recognition of outstanding performance in arrest of accused with

weapon of offence vide in case FIR No 168 dated 16.11.02 U/S 302-304 PPC
P.S Talash

O.B.No: _____

Dated: _____


District Police Officer,
Dir Lower at Fimergara

ANUSARE A^u

27

(15)

Police No: 107

Form No 15-3(C)



Attested
Kashif Nasseem
Advocate High Court

COMMENDATION CERTIFICATE

CLASS III

Granted to MUHAMMAD YASEEN KHAN No 1025

Son of Bahardai Khan Village Wazirak / Baharkani Talab: A. 2020

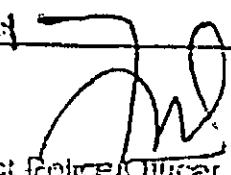
Police Station TALASH District DIR LOWER

in recognition of For his out standing performance

during surprise checking of the undersigned

O.B.No: _____

Dated: _____


District Police Officer,
Dir Lower at Imraha

Annex (B)

CHARGE SHEET

I, Muhammad Nisar Khan Superintendent of Police, Tele-communication Khayber Pakhtunkhwa, Peshawar a competent authority empowered under Khyber Pakhtunkhwa Police Act 1975 amended 2014 do hereby charge you Constable Yasen No 549/1029 of this unit on the following Charges as follows

Last Complaint lodged against you by Shah Zaman to Oskilloora Kharki Ouch District Police Dir submitted a complaint against you that you have whatsapp Contact with him and through whatsapp message you told him that you have been nominated in the 9th May 2023 protest incident and to exclude his name from the list of protestant you have made unlawful demand from him

By the reason of above, you appear to be guilty of misconduct under Khyber Pakhtunkhwa Police Rules, 1975 Amended 2014 and have rendered yourself liable to all or any of the penalties specified in the said Rules.

You are hereby directed to submit your written defence within seven (07) days of the receipt of this Charge Sheet to the Enquiry Officer

Your written defence 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 will be taken against you

You are directed to intimate whether you desire to be heard in person or otherwise

A statement of allegation is enclosed

Attested
Kashif Naseem
Advocate High Court

(Muhammad Nisar Khan)
Superintendent of Police

1/3/23

1-10 CASE dated Peshawar for 2/3/23

- 1. Copy of the above forwarded to the
- 2. Mr. Muhammad Yasen Enquiry Officer
- 3. Mr. ...
- 4. Mr. ...
- 5. Mr. ...

Better Copy No 16 (Annexure B)**CHARGE SHEET**

1. Muhammad Nisar Khan Superintendent of Police, Telecommunication Khyber Pakhtunkhwa, Peshawar as Competent Authority, empowered under Khyber Pakhtunkhwa Police Rules 1975(amended 2014) do hereby charge you Constable Yaseen No549/1029 of this unit on the allegation/Charges as follow:

That Complainant Jawad Ali s/o Had Shah Zaman to Oski loora Kharki Ouch District Lower Dir submitted a complaint ag ist you that you have whatapps Contact with him and through whatapps message you told him that you have been nominated in the 9 May 2023 protest/incident and to exclude his name from the list of protestant you have made unlawful demand from him.

By the reason of above, you appear to be guilty of misconduct under Khyber Pakhtunkhwa Police Rules, 1975(Amended -2014) and have rendered yourself liable to all or any of the penalties specified in the said Rules

You are therefore, directed to submit your written defence within seven (07) days of the receipt of this Charge Sheet to the Enquiry Officer,

Your written defence, if any, should reaches 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 will be taken against you.

You are directed to intimate whether you desire to be heard in person or otherwise.

A statement of allegation is enclosed

Attested
Kashif Naseem
Advocate High Court

(Muhammad Nisar Khan)
Superintendent of Police,
Telecommunication & Transport,
Khyber Pakhtunkhwa, Peshawar.

NO 7151-55/ TELE/OASI, dated Peshawar the 01/6/2023.

Copy of the above is forwarded to the.

1. Mr. Muhammad Saeed (Enquiry Officer)
2. OASI Tele Peshawar
3. LO Tele Peshawar.
4. Incharge Tele Lower Dir
5. Official concerned

Amir (C)

DISCIPLINARY ACTION

Muhammad Yasar Khan Superintendent of Police, Telecommunication Khyber Pakhtunkhwa Peshawar Competent Authority, empowered under Khyber Pakhtunkhwa Police Rules 1975 (amended 2014) do hereby charge you Constable Yaseen No. 849109001 on 20th with the allegation charges as follows:

STATEMENT OF ALLEGATIONS

The Complainant Exed Ali Sohal Shah Zaman PO O&T head Kandi Chak District Lower Dir submitted a complaint against him that he has whatapps contact with him and through whatapps message he told him that you have been nominated in the 9th May 2023 protest incident and to exclude his name from the list of protesters and he has made unlawful demand from him

For the purpose of scrutinizing the conduct of the said officer with reference to the above allegations, Muhammad Saeed DSP T&T is hereby nominated as Enquiry Officer under Khyber Pakhtunkhwa Police Rules 1975 (amended 2014).

The Enquiry Officer shall, in accordance with the provision of the said Rules, provide reasonable opportunity of hearing to Constable, record and submit its finding within stipulated period of the receipt of this order make recommendations as to punishment or other appropriate action against the accused constable

Attested
Kashif Naseem
Advocate High Court

(Muhammad Yasar Khan)
Superintendent of Police,
Telecommunication & Transport,
Khyber Pakhtunkhwa, Peshawar

BETTER COPY 17 (Annexure C)**DISCIPLINARY ACTION**

Mohammad Nisar Khan Superintendent of Police, Telecommunication Khyber Pukhtunkhwa, Peshawar as Competent Authority, empowered under Khyber Pakhtunkhwa Police Rules 1975 amended 2014) do hereby charge you Constable Yaseen No 50/19 of this unit on the allegation/charges as follow:

STATEMENT OF ALLEGATIONS

That Complainant Jawad Ali fad Shah Zaman to Oski loora Klaki uch District Lower Dir submitted a complaint against him that he has whatapps Contact with him and through whatapps me he told him that you have been nominated in the 9 May 2023 protest/incident and to exclude his name from the list of protestant he has made unlawful demand from him

For the purpose of scrutinizing the conduct of the said officer with reference to the above allegations, Muhammad Saeed DSP T&T is hereby nominated as Enquiry Officer under Khyber Pakhtunkhwa Police Rules 1975 (amended 2014).

The Enquiry Officer shall, in accordance with the provision of the said Rules, provide reasonable opportunity of hearing Constable, record and submit its finding **within stipulated period** of the receipt of this order make recommendations as to punishment or other appropriate action against the accused constable.

Attested
Kashif Naseem
Advocate High Court

(Muhammad Nisar Khan)
Superintendent of Police,
Telecommunication & Transport,
Khyber Pakhtunkhwa, Peshawar

ORDER

This order will dispose of the departmental enquiry initiated against Yaseen Khan NO: 549/1029 of Police Telecommunication unit.

The allegations are as under:-

That Constable Yaseen Khan No. 549/1029 of District Police Lower Dir presently serving at Police Telecommunication Unit while posted at Control Lower Dir, a complaint has received from Jawad Ali s/o Bad Shah Zaman r/o Oski Looza Kharki Ouch district Lower Dir against the constable concerned wherein "that he has WhatsApp Contact with the complainant through WhatsApp messages, constable Yaseen Khan told him that you are nominated in the 9th May, 2023 protest/incident and to exclude his name from the list of protestant, constable concerned have made unlawful demands from him" which is against the discipline and amount to gross misconduct. Therefore, he was issued Charge Sheet and Statement of Allegations vide No 7151/55/Tele/OASI, dated 01.06.2023 and Muhammad Saeed Deputy Superintendent of Police Telecommunication & Motor Transport KP, Peshawar was appointed as Enquiry Officer. He conducted proper departmental Enquiry collected evidence and recorded statement of Official concerned and Complainant. Enquiry Officer submitted his findings, wherein Constable Yaseen Khan No. 549/1029 found guilty for the gross misconduct and recommended him for major punishment.

On the recommendation of Deputy Superintendent of Police Telecomm. & Transport KP, Peshawar, I Muhammad Nisar Khan Superintendent of Police Telecomm. & Transport Khyber Pakhtunkhwa Peshawar awarded the major punishment of dismissed from service with immediate effect under the Police Rule 1975 amended 2014.

The cost of out standing Govt. Kit and other dues if any should be recovered from him and credit to the Government Treasury under the relevant head of Account.

(MUHAMMAD NISAR KHAN)
Superintendent of Police,
Telecommunication & Transport
Khyber Pakhtunkhwa, Peshawar.

No. 7213-23/Tele/OASI dated Peshawar the 02/06/2023.
Copies forwarded to following:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Malakand Region Swat.
3. District Police Officer, Lower Dir (Constable Yaseen Khan No. 549/1029 of District Police Lower Dir presently serving at Police Telecommunication Unit on deputation basis vide CPO Order No. 683-91/E-IV, dated 19.01.2022).
4. SP/ Telecomm & Motor Transport KP Peshawar.
5. DSP/Telecom. & MT Peshawar.
6. Accountant Tele Peshawar.
7. SRC/Tele Peshawar.
8. GSI/Tele Peshawar.
9. O/C Tele Lower Dir (with direction to disburse the said order to Constable Concerned and returned one spare copy duly signed by him).
10. Official Concerned.
11. CB/No 147/2023.

Attested
Kashif Naseem
Advocate High Court

(MUHAMMAD NISAR KHAN)
Superintendent of Police,
Telecommunication & Transport,
Khyber Pakhtunkhwa, Peshawar.


الحرف
شرفی کٹر گارڈ

عیا

7119 3105 وقت 18:30 بج 10.11 ہدیہ شیل محمد یالین 1029 شیخ دستگیر
 2023 کٹر گارڈ شرفی کٹر گارڈ جلال کٹر گارڈ
 متعلق افسر انما الاضاحان نے حکیم اربابیم کہ فر کورہ کو نوٹر گارڈ میں بنا کر
 سارا مدت خیر کورہ شیل کٹر گارڈ شرفی کٹر گارڈ میں بنا کر متروک ہوئی الوقت کو
 De کو تگرافی کہ بعد ایت آتلم

34

Annex


Attested
 Kashif Naseem
 Advocate High Court


Worthy
Deputy Inspector General (DIT)
Telecommunication Khyber Pakhtunkhwa
Peshawar

Annex F

Through Proper Channel

Subject DEPARTMENTAL APPEAL/ REPRESENTATION AGAINST THE IMPUGNED DEPARTMENTAL ORDER DATED: 02.06.2023 PASSED BY WORTHY OFFICE OF SP TELECOMMUNICATION & TRANSPORT, KHYBER PAKHTUNKHWA, PESHAWAR, WHEREBY, THE SERVICES OF THE APPELLANT WAS ORDERED TO DISMISSED WHILE ANNOUNCING MAJOR PUNISHMENT, IN BACKING OF THE THROUGHOUT DEPARTMENTAL PROCEEDINGS DETAILED BELOW;

PRAYER:

On acceptance of this Department I Appeal the impugned Departmental Order dated 02.06.2023 is declared illegal, unlawful, and consequently the appellant is kindly please be reinstated while restoring the services.

Respected Sir,

With profound veneration I hereby submit the present to the facts as per documentarily stated in the Charge Sheet and Statement of Allegation No.7151-55/Tele/OASI, dated: 01.06.2023 etc. The allegation leveled against the appellant in the above mentioned complaint filed by Jawad Ali S/o Badshah Zaman of Lower Division it has stated that appellant is demanding that the name of the above complainant from the element of 06 May, 2023 "The Black Do".

Attested
Kashif Naseem
Advocate High Court

As per explanation, the writer has been wronged in the behalf of the appellant by unveiling the true story thereof and rightly been agitated that the extra ordinary void privileges and advantages benefits have been avail by the different general public in backing of the black incident of 06 of May, 2023. Since that respect, the above complainant was one of those who misbehaved with financial intimidation, blackmailing to the appellant. As a result enough, submitted frivolous, frivolous and

Attested


Kashif

complaint against the appellant **SIR** actually appellant was amongst of those policemen who remained always stand against the extremism in the atmosphere of law & order situation at that time and almost served over & above 10⁺ years regularly to the police department with throughout unblemished character. His services and never even think about to be a part of any criminal intimidation particularly those which has been agitated by the complainant in his complaint, **BUT** it is very unfortunate to say that the reply is based by the appellant in good faith and bonafide intention while disclosing all the true materialistic facts, but not recognized or acknowledged by avoiding the same and in very surrounding circumstances, the **Major Punishment of dismissal from services** is awarded.

Moreover, it is humbly stated that applicant never committed such guilt and even cannot dream to do so because it is the only source of income of the appellant for 25 years running. It is food & butter to his family having certain dependent persons like wife & children and other basic necessities of life which could only bear upon such sustainable source of income. So regardless with the above facts & legal base the case of the appellant be required to considered even on humanitarian basis also.

It is, therefore, requested that on acceptance of this appeal the impugned departmental order passed by a Mr. Officer of SP Telecommunication dated 02/06/2023 may very kindly please be set aside and consequently services of the appellant may very kindly please be also restored.

Appellant



YASEEN KHAN

(Constable# 549/1029)

Cell: 0344-9788151

Attested

Kashif Naseem
 Advocate High Court

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BETTER COPY 21 (Annexure F)

To,
Worthy
Deputy Inspector General (DIG)
Telecommunication Khyber Pakhtunkhwa
Peshawar

Through: Proper Channel

Attested

Kashif Naseem
Advocate High Court

Subject:

DEPARTMENTAL APPEAL AGAINST THE IMPUGNED DEPARTMENTAL ORDER DATED: 02.06.2023 PASSED BY WORTHY OFFICE OF REPRESENTATION SP TELECOMMUNICATION & TRANSPORT, KHYBER PAKHTUNKHWA, PESHAWAR SERVICES OF THE APPELLANT WAS ORDERED TO DISMISSED WHILE WHEREBY, ANNOUNCING THE PUNISHMENT, IN HACKING OF THE THROUGHOUT MAJOR DEPARTMENTAL PROCEEDINGS DETAILED BELOW

PRAYER:

On acceptance of this Departmental Appeal the impugned. Departmental Order dated: 02.006, 2023 may se declared illegal, unlawful, and consequently the appellant may very kindly please be while restoring the services,

Respected Sir,

With profound veneration it is hereby submitting precisely to the facts as per documented form, started via issuance of the Charge Sheet and Statement of Allegation No.7151- 55/Tele/OASI, dated: 01.06.2023 a very unreal, srange allegation leveled against the appellant, as per backing of the complaint filed by Jawad Ali S/o Badshah Zaman af Lower Dir, wherein it has stated that appellant is demanding certain amount to ride the name of the above complainant from the responsible de laved element of 9th May, 2023, "The Black Day".

As per explanation, the written reply is also submitted on behalf of the appellant by unveiling the true story "therein and rightly been agitated that the extra ordinary void privileges and advantages/ benefits have been avail by the different general public, in backing of the black incident of 9th of May, 2023. So in this respect certainly the above complainant was one of those who mischiefly, with criminal intimidation, blackmailing to the appellant and when not got fruitful result enough, submitted frivolous, fictitious and self-planted

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Better Copy 22

Complaint against the appellant. SIR actually appellant was amongst of those policemen who remained extremism, in the atmosphere of law order situation the region always stand in the and almost served over & above 10 ½ years regularly to the police department with throughout unblemished character of his services. and never even think about to be is part any criminal intimidations, particularly those which has been agitated complaint, BUT it is very unfortunate to that the reply is based by the complainant in his the appellant in good faith and bonafide intention while disclosing all the true materialistic facts, but not recognized or acknowledged by avoiding the same and in very surrounding circumstances, the Major Punishment of dismissal from services is awarded

Moreover, it is humbly stated that applicant never committed such guilt and even cannot dream to do so, because it is the only source of income of the appellant being sole earner of bread butter to his family having cerain dependents of school going etc. and other basic necessities of life which could only bear upon stich sustainable source of income. So regardless with the above facts 20 legal base, the case of the appellant be required to considered even on humanitarian basis also.

It is, therefore, requested that on acceptance of this appeal, the impugned departmental order passed by worthy office of SP Telecommunication dated: 02.06.2023 may very kindly please be set aside and consequently services of the appellant may very kindly please be also restored.

Appellant

YASEEN KHAN
(Constable# 549/1029)
Cell: 0344-9788151

Attested
Kashif Nasseem
Advocate High Court

Better Copy 23**ORDER**

The order is hereby passed to dispose of Departmental Appeal under rule 11 of Khyber Pakhtunkhwa Police Rule-1975 amended 2014) submitted by Ex constable Yaseen Khan No 549/1029 The appellant was dismissed from service by Superintendent of Police Telecommunication & Transport Khyber Pakhtunkhwa Peshawar vide Order No. 7213-23/Tele/OASI dated 02.06.223

The appellant was called in orderly Room in the office of the Undersigned on 06.07.2023, heard in person, during the hearing, the appellant failed to prove himself innocent on the allegation levelled against him in the complaint. Therefore, the Departmental Appeal of Ex-Constable Yaseen Khan No 549/1029 is hereby rejected.

Attested

Kashif Naseem
Advocate High Court

(ABBAS MAJEED KHAN MARWAT)
Deputy Inspector General of Police
Telecommunication & Transport
Khyber Pakhtunkhwa, Peshawar

NO 9007/11 Tele/OASI, dated Peshawar the 10-07-2023

1. SP/Telecomm: & Transport Peshawar.
2. DSP Telecomm: & Transport Peshawar
3. OVC Tele Lower Dir (with the direction to disburse the said Order to Ex Constable concerned and returned one spare copy duly signed by him)
4. Appellant concerned.

Amna (G)
کتاب - عالی

Dy = 2327 / 06/06/2023

گزارش جدید سائل سے انفاذاتی ہو یا نہیں

انکوائری کے سلسلے میں لیا گیا تھا۔ لیکن سائل کو

فائل میں فرخواست کیا گیا ہے

اس کے بعد اس کا جدید سائل کو انفاذاتی ہو یا نہیں

دیکھنا سائل کے پاس ہے

عین کو اور سائل

الحا میں

مبین خان پور 54 (پورٹل)

Date - 6/6/2023

Attested
Kashif Naseem
Advocate High Court

[Signature]

VAKALATNAMA

BEFORE THE

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Yaseen Khan (Ex-Constable No.549/1029).....**Appellant**

VERSUS

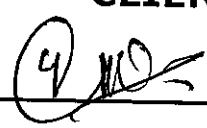
Deputy Inspector General of Police, Telecommunication and
Transport & others.....**Respondents**

Service Appeal

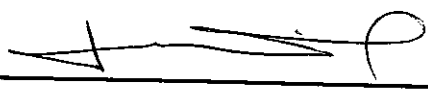
I Yaseen Khan (Appellant) Do hereby appoint and constitute **Kashif Naseem/Abdul Jalil Faqir Advocates High Court, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. 24 / 07 /2023

CLIENT(S)



ACCEPTED



Kashif Naseem
(BC-11-1910)
Abdul Jalil Faqir
()

Office:
1st Floor, Babul Madina Plaza
Near Raheem Medical Center
GT Road, Hastnagri Peshawar
Cell:0313-9987202
Email: Kashif.Surt@gmail.com,