FORM OF ORDER SHEET

Court of _____

Appeal No. 691/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
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1-	22/05/2024	The appeal of Mr. Khaled Khan presented today by Mr. Saadullah Khan Marwat Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 27.05.2024. Parcha Peshi given to the counsel for the appellant . By the order of Chairman REGISTRAR

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. 691 /2024

Majid Khan versus CCPO & Another

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Appellant

Through

Saadullah Khan Marwat
Advocate.
21-A Nasir Mansion,
Shoba Bazaar, Peshawar.
Ph: 0300-5872676

Dated.22-05-2024

BEFORE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. 691 /2024

Majid Khan S/O Niaz Ali Khan,
R/O. Servani Shabqadar,
Ex-Constable No. 902,
Capital City Police Peshawar . . . . . Appellant

Versus

1. Capital City Police Officer,
   Peshawar.
2. Provincial Police Officer, KP
   Peshawar. . . . . Respondents

APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974 AGAINST OFFICE ORDER NO. 1090-99 / PA-CCP DATED 06-03-2024 OF R. NO. 01 WHEREBY APPELLANT WAS DISMISSED FROM SERVICE OR OFFICE ORDER NO. S / 1325-28 DATED 21-05-2024 OF R. NO. 02 WHEREBY REPRESENTATION OF APPELLANT WAS REJECTED:

Respectfully Sheweth;

1. That appellant was initially appointed as Constable on 01-01-2012 and served the department with devotion wherever posted.
2. That on 26-10-2023 appellant was undergoing course at PTC Hangu till 06-03-2024 and was not serving in Police Station Paharipura Peshawar.
3. That on 01-02-2024, Show Cause Notice was served upon appellant containing the following allegations:-

i. It has been learnt through reliable sources that you are involved in torching the general public for ulterior motives and taking illegal gratification / bribe from various bus addas in the jurisdiction of Police Station Paharipura Peshawar.

ii. That you have links with notorious people / elements and had in gloves for mal-practices and corruption.

iii. Being a member of police force, your act is highly objectionable and brought a bad name for the department. But such allegations are not only of general nature but also without support of any proof. (Copy as annex "A")

4. That on 07-02-2024, the said Show Cause Notice was replied and denied the allegations. (Copy as annex "B")

5. That without conducting any regular enquiry into the matter, appellant was dismissed from service by R. No. 01 vide order dated 06-03-2024. (Copy as annex "C")

6. That thereafter appellant filed departmental appeal before R. No. 02 for reinstatement in service on 19-03-2024 which was rejected vide order dated 21-05-2024. (Copies as annex "D" & "E")

Hence this appeal, inter alia, on the following grounds:-

GROUNDS:

1. That as stated earlier, all the three allegations have no concern with the facts, the same are of general nature and no single proof is on the surface of record.

2. That before passing any order of penalty, the authority shall conduct regular enquiry to prove the same as neither any statement of any concerned was recorded nor appellant was afforded opportunity of cross examination over the witness(s), if any, what to speak of association of appellant into the enquiry proceedings.

3. That after conduct of any proceedings in the matter, personal hearing, being mandatory, is required under the law what to speak of self-defense, so the impugned orders are of no legal effect.

4. That facts and grounds of the departmental appeal be also treated as integral part of this appeal for extending relief.

5. That appellate order is not based on legal footing as the same is not supported by any material evidence.

6. That the charges leveled against appellant are serious in nature which should have been inquired through cogent evidence but the major punishment awarded to appellant is without any proof.

7. That appellant remained in the said Police Station since 20-05-2022 till 09-01-2023, while the charges are not of the said period.

8. That at the same time appellant was undergoing training in PTC Hangu and was not on duty at the said station being major punishment, the same is not only illegal but is based on malafide.

It is, therefore, most humbly prayed that on acceptance of appeal, order dated 06-03-2024and 21-05-2024 of the respondents be set aside and appellant be reinstated in service with all consequential benefits, with such other relief as may be deemed proper and just in circumstances of the case.

Appellant

Through

Saadullah Khan Marwat

Arbab Saiful Kamal

Amjad Nawaz

Advocates.

Dated 22-05-2024

AFFIDAVIT

I, Majid Khan S/O Niaz Ali Khan, Ex-Constable CCP Peshawar (Appellant), do hereby solemnly affirm and declare that contents of **Service Appeal** are true and correct to the best of my knowledge and belief.

DEPONENT

CERTIFICATE:

As per instructions of my client, no such like Service Appeal has earlier been filed by the appellant before this Hon'ble Tribunal.

ADVOCATE

A 5

OFFICE OF THE CAPITAL CITY POLICE OFFICER, PESHAWAR

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

No. 430 /PA/CCP, dated 01/2/2024

SHOW CAUSE NOTICE
(Under Rules 5(3) of KPK Police Rules 1975)

That you **Constable Majid Khan No. 902, while posted at Police Station Paharipura,** Peshawar have rendered yourself liable to be proceeded under Rules 5 (3) of the Khyber Pakhtunkhwa Police Rules 1975 for the following misconduct:-

I. It has been learnt through reliable sources that you are involved in torturing the general public for ulterior motives and taking illegal gratification/bribe from various Bus Addas in the jurisdiction of Police Station Paharipura, Peshawar.

II. That you have links with notorious people/elements and hand in gloves for malpractices and corruption.

III. Being a member of police force, your act is highly objectionable and brought a bad name for the department.

2). That the misconduct on your part is prejudicial to good order of discipline in the Police Force.

3). I therefore, called upon you to show cause as to why you should not be dealt strictly in accordance with the Khyber Pakhtunkhwa Police Rules 1975 for the misconduct referred above.

4). You should submit reply to this show cause notice within 07 days of the receipt of the notice, failing which an ex-parte action shall be taken against you.

5). You are further directed to inform the undersigned that you wish to be heard in person or otherwise.

CAPITAL CITY POLICE OFFICER,
PESHAWAR.

Copy of the above is forwarded for information to the:-

- SSP/Operations, Peshawar.

902 M/L
0347-9109900

B 6

بیان ازاں کنسٹیبل ماجد خان 902 منشی پولیس لائن پشاور

جناب عالی!

بحوالہ شوکاز نوٹس 431 مورخہ 05/02/024 حاضر خدمت ہوں۔ کہ میں سائل سے تقریباً (18) مہینے پہلے تھانہ پہاڑی پورہ میں بطور جنرل ڈیوٹی اپنا فرائض گزارہ ہے۔ دوران ڈیوٹی کوئی ایسا واقع پیش نہیں آیا ہے۔ اور نہ ہی میرے خلاف کوئی شکایات موصول ہوئی ہے۔ میرے خلاف جس شخص نے درخواست دی گئی ہے۔ جو کہ نامعلوم ہے

لہذا آپ صاحبان سے استدعا کی جاتی ہے۔ کہ سائل کے خلاف درخواست کو فائل کرنے کا حکم جاری فرمائیں۔

سائل تاحیات دعا دیگا۔

العارض!

آپ کا تابع حکم کنسٹیبل ماجد خان 902 منشی پولیس لائن پشاور

[signature]

07-02-024

C 7

OFFICOF THE
CAPITAL CITY POLICE OFFICER,
PESHAWAR
Phone No. 091-9210989 Fax: No. 091-9212597

ORDER

Constable Majid Khan No. 902, while posted at Police Station, Paharipura, Peshawar was issued Show Cause Notice vide this office No. 430/PA/CCP, dated 01.02.2024 on the charges that as per reliable sources he is involved in torturing the general public for ulterior motives and taking illegal gratification/bribe from various Bus Addas in the jurisdiction of Police Station Paharipura, Peshawar. Moreover, he has links with notorious people/elements and hand in gloves for malpractices and corruption. Being a member of police force, his act is highly objectionable and brought a bad name for the department.

2- The alleged official submitted his written reply to the Show Cause Notice which was perused and found unsatisfactory.

3- He was heard in person in Orderly Room. During personal hearing the delinquent officer failed to submit any tangible reason in his defense. Keeping in view the gravity of his delinquency and perusal of the file, I, being competent authority hereby award him the major punishment of **"Dismissal from service"** with immediate effect.

"Order is announced"

CAPITAL CITY POLICE OFFICER,
PESHAWAR

No. 1790-99/PA-CCP, dated Peshawar the 06/03/2024

Copies for information and necessary action to the :-

1. SSP/Coordination Peshawar.
2. SsP/Faqirabad: & HQr: Peshawar.
3. AD/IT CCP Peshawar.
4. OS, CRC, OASI & PO.
5. FMC alongwith complete original file.
6. Official concerned.

D 8

Before the Hon'able Inspector General of Police, Peshawar

Subject: **Appeal u/r 11(2) KP Police Rules 1975(Amended 2014) against the impugned order, Passed by worthy Capital City Police Officer Peshawar vide Endst No. 1090-99/PA-CCP dated 06.03.2024**

Respected Sir,

The appellant respectfully prefers this appeal against the impugned order of Worthy CCPO Peshawar, inter-alia on the following grounds, amongst others. (Order is enclosed as **Annexure-A**).

PRELIMINARIES:

1. At the very outset the appellant refers rule 16.2 Police Rules 1934, wherein it has been clearly provided that the punishment of dismissal is to be awarded very cautiously and with circumspection, relevant para whereof is enunciated as under:-

   "Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. In making such an award regard shall be had to the length of service of the offender". The competent authority awarded major penalty of dismissal to appellant, for no act or attribution, having not been committed rather no continued misconduct on the part of appellant exits. Moreover, the appellant served this august force for such a long period of about 12/13 years but the authority didn't consider this mandate provision, laid down u/r 16.2 PR 1934.

2. Worth mentioning that act of corruption/ malpractices like, receiving money from anti-social elements/smugglers/criminals or misappropriating case property money, needs to be legally adjudged in accordance with police rules / other relevant laws and there should be sufficient incriminating materials to substantiate the charges. Needless to say that corruption charge / persistent corruption requires solid materials but here on record, nothing in support is available. **Rules regarding proceedings against Police Officers reported to be corrupt or involved in corrupt practices, attractrules 16.39 r/w 16.16 PR 1934, wherein corruption record is required to be maintained on personal file, character role or fauji missal and attested copy thereof shall be furnished to the Police Officer concerned, but such record has not been maintained or is available against me hence the charge does not carry legal footings.**

3. Worth to highlight that learned superior courts have condemned the shortcut proceedings through show cause notice incase of major penalty of dismissal etc of civil servant without holding detailed inquiry in respect of serious allegations, declaring without lawful authority. It was observed that it was

incumbent upon the Authority to conduct full- fledged inquiry, awarding major penalty of dismissal in a haphazard manner.**Reliance is placed on the reported judgments,1995 PLC(C.S), Page 134, 1997 SCMS Page 1543, 1996 PLC(C.S) page 868 *ref*.2002 PLC(C.S) page 1324.**

4. The impugned order of worthy CCPO is without lawful authority and without jurisdiction as he was within meaning of rule 11(2) Police Rule 1975 is the appellate forum and not the authority. For departmental proceedings against the rank of constable as per **schedule-1 Police Rule 1975** DPO/SSP/SP is the authority, hence he (worthy CCPO) could not take upon himself the role of authority **Reliance is placed on the reported judgment 1988 PLC (CS), page 387.Impugned order was set aside and appellant reinstated with back benefitsby the learned superior court.**

5. The impugned orderclearly shows that the appellant has not been issued final show cause notice which as per provision u/r **16.25(ix) Police Rules 1934** in case of major penalty is mandatory, therefore the impugned order is not tenable.

6. On the face of show cause dated 01.02.2024, the source information seems to be **anonymous one** as no informative individual has been specifically mentioned. With due regret, it has become very common that when some differences between locals and local police are stirred up or relations with colleaguesbecome strained, complaints emerged in the shape of anonymous status with serious allegations against police officers, without any solid materials.

7. In view of **anonymous status information**, the case entails barring provisions, issued by Provincial Govt / Law, wherein actions or proceedings are strictly prohibited, depicted as under:-

   a. **S & GAD letter No SORII (S&GAD) 5 (29)/ 97-II dated 20.07.1998**
   b. **S & GAD letter No SORII (S&GAD) 5 (29)/ 97-II dated 15.11.1999**
   c. **Section 4 Federal Investigation rule 2002**
   d. **SRO(I)2015 dt 6/11/2015 Section 4(5) Act 2012 (XIV)**
   e. **321/4/910-AVD.III dated 29.09.1992**

8. The punishment is very harsh and as per superior court judgment, the quantum of penalty must be appropriate, compatible and reasonable **(1988PLC(CS) Page 179)**

ON FACTS:

i. Short facts are that the appellant while posted at PS Paharipura was show caused vide Endo No 430/PA CCP Dated 01.02.2024, containing corruption

and corrupt practices which was answered plausibly (Reply enclosed as annex B)

ii. The authority without going into the merits of the case, **passed the impugned order dated 06.03.2024 and dismissed the appellant from service without justifiable cause or cogent grounds**.

GROUNDS OF APPEAL:

The impugned order of W/CCPO, is assailable on the following grounds.

a. Dismissal is violation of **rule 16.2 PR 1934** and appellant deserves to be reinstated in service, under this mandate proviso.

b. No iota of evidence has been collected or brought on record to connect the appellant with alleged charges, even no detailed inquiry process followed.**It has been held by superior court, relevant observation is as under:**

"Sketchy inquiry is not sufficient to prove any charge against appellant – no witness was examined in inquiry proceedings – appellant was found guilty by inquiry officer without any substantive evidence – impugned order was set-aside".

c. The alleged charge is not justifiable and is also considerable on the following few stances:-

i. The appellant was not associated with any sort of departmental inquiry to reach real conclusion but has rashly passed the impugned order, which as per law is without jurisdictions and authority hence is not tenable.

ii. The principle of natural justices would be violated only when an action is taken against a person without his knowledge **(NLR 214 April QTA). It has been held by Hon'able Court that without knowledge, conviction is illegal and it was set aside (NCR 2004 (Feb P-84 Peshawar).**

iii. **No direct evidence as per available record so far collected and brought on record to link the appellant with alleged acts against him.**

iv. Since the appellant has joined this august force, he performed dedicatedly, honestly, efficiently and to the entire satisfaction of superiors, acted beyond the call of duty at the risk of his life. The awarded penalty shall cause irreparable loss to the appellant and his family.

d. **Worth to highlight that in a likewise case, in reported judgment 1989 PLC(CS) Page 336, a civil servant was dismissed from service on the charge of corruption but no solid proof or material was found against appellant except his cheque book and deposit of substantial amount in his bank. Appellant's dismissal was set aside and he was reinstated that no cogent evidence to connect the appellant with his bank account could be collected rather brought on record, no case of misconduct was made against him.**

e. The charges contained in the impugned order, are based on hearsay as no direct or indirect evidence is collected and brought to connect the appellant with alleged act of misconduct **(2005 PLC (C.S)page 559)**

PRAYER

Foregoing in view, it is humbly prayed that by accepting this appeal, the impugned order dated 06.03.2024 **(dismissal from service)** may very kindly be set aside and the appellant reinstated in service, to meet the ends of justice.

Sincerely yours,

Ex- Constable Majid Khan No: 902
(Appellant)

19/3/24

E...112

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
PESHAWAR.

ORDER

This order is hereby passed to dispose of Revision Petition under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 (amended 2014) submitted by **Ex-FC Majid Khan No. 902.** CCPO Peshawar issued the applicant Show Cause Notice on the charges that as per reliable sources he was involved in torturing the general public for ulterior motives and taking illegal gratification/bribe from various Bus Addas in the jurisdiction of Police Station Paharipura, Peshawar. Moreover, he had links with notorious people/elements and hand in gloves for malpractices and corruption.

His written and verbal response to the Show Cause Notice was found unsatisfactory. Consequently, he was awarded major punishment of "Dismissal from service" vide Order Endst: No. 1090-98/PA-CCP, dated 06.03.2024.

Meeting of Appellate Board was held on 16.05.2024 wherein petitioner was heard in person. The petitioner contended that the charges are based on hearsay.

Perusal of the enquiry papers reveals that the allegations leveled against the petitioner have been proved. During hearing, petitioner failed to advance any plausible explanation in rebuttal of the charges. The Board sees no ground & reasons for acceptance of his petition; therefore, his petition is hereby rejected.

Sd/-
AWAL KHAN, PSP
Additional Inspector General of Police,
HQrs: Khyber Pakhtunkhwa, Peshawar.

No. S/ 1325-28 /24, dated Peshawar, the 21-05- /2024.

Copy of the above is forwarded to the:

1. Capital City Police Officer, Peshawar. One Service Roll, One Fauji Missal alongwith One Enquiry File of the above named Ex-FC received vide your office Memo: No. 18036/CRC, dated 28.09.2022 and 7819/CRC, dated 03.05.2024 is returned herewith for your office record.
2. AIG/Legal, Khyber Pakhtunkhwa, Peshawar.
3. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
4. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.

(SONIA SHAMROZE KHAN)
PSP
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

بعدالت جناب سروس ٹریبونل صوبہ سرحد پشاور

منجانب اپیلانٹ

ماجد خان بنام محکمہ پولیس

دعویٰ اپیل

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و کل کاروائی متعلقہ آں مقام پشاور کیلئے [illegible] خان مروت ایڈووکیٹ ہائی کورٹ کو وکیل مقرر کرکے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا نیز وکیل صاحب کو کرنے راضی نامہ و تقرر ثالث و فیصلہ بر حلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق اور اس پر دستخط کرنے کا اختیار ہوگا نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظرثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور و قبول ہوگا۔ دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب سے ہوگا اس کے مستحق وکیل صاحب موصوف ہوں گے نیز بقایا و خرچہ کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکور کریں۔

لہٰذا وکالت نامہ لکھ دیا کہ سند رہے۔

المرقوم 22/05/24

العبد العبد العبد

ارباب سیف الکمال
ایڈووکیٹ

سعد اللہ خان مروت
ایڈووکیٹ

Majid Khan

امجد نواز
ایڈووکیٹ