

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 93/2024.

Ihtisham Ex-Constable No. 3173 FRP Peshawar Range.....Appellant.

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar & others.....Respondents.

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RESPONDENTS

29-05-24

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PARAWISE REPLY BY RESPONDENTS 1 to 4.

RESPECTFULLY SHEWETH.

PRELIMINARY OBJECTIONSKhyber Pakhtunkhwa
Service Tribunal

Diary No. 13047

Dated 29-05-2024

1. That the appeal is badly barred by law & limitation.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has no cause of action to file the instant appeal.
4. That the appellant has not come to this Honorable Tribunal with clean hands.
5. That the appellant is estopped due to his own conduct to file the instant Service Appeal.
6. That the appellant is trying to conceal the material facts from this Honorable Tribunal.

FACTS:-

1. Para to the extent of appointment pertains to record needs no comments, while rest of the Para is not plausible because every police officer is under obligation to perform his duties with devotion and honesty because in this department no room lies for lethargy. Moreover, non receipt of complaint does not mean a clean chit for exoneration from future wrong deeds.
2. Incorrect. That on 30.01.2023 the appellant while posted at main gate for security duty of Malik Saad Shaheed Police Lines Peshawar miserably failed to check and stop the entry of suspected suicide bomber into Police Lines. Hence, the horrible suicide attack occurred in the Mosque of Police Lines during the prayer (Nimaz E Zuhar), which resulted in loss of precious lives of more than 80 Police officers/officials and hundreds became seriously injured. However, it is worth to mention here that there is only one gate for entrance in Police Lines. Thus, the appellant failed to discharge his responsibility and due to his grave negligence such incident occurred.
3. Incorrect. Stance taken by the appellant is totally devoid of merit because in wake of above extreme negligence in official duty, the appellant alongwith others were proceeded against departmentally. Consequently, the appellant was issued Charge Sheet alongwith Summary of Allegations and Mr. Luqman Khan DSP was appointed as Enquiry Officer. He (appellant) submitted his reply to the Charge Sheet which was found unsatisfactory. (Copy of Charge

Sheet alongwith Summary of Allegations and his reply are attached as annexure "A & B").

4. Incorrect. Proper departmental enquiry was initiated against the appellant. During the course of enquiry, the appellant was provided full-fledged opportunity of defense, personal hearing as well as ample opportunity of cross examination. The Enquiry Officer examined all relevant factors of the case being based on evidence, the Enquiry Officer concluded in his finding report that the appellant was found guilty of the charges leveled against him. (Copy of enquiry report attached herewith as annexure "C").
5. Incorrect. The competent authority after receipt of the findings issued/served the appellant with Final Show Cause Notice, to which he replied but his reply, was found unsatisfactory as he bitterly failed to produce even a single iota of evidence in his defense. (Copies of Final Show Cause Notice and his reply are attached herewith as annexure "D & E").
6. Incorrect. Proper departmental enquiry was conducted into the matter and the allegations leveled against the appellant were fully established by the Enquiry Officer during the course of enquiry. Hence, after fulfillment of all codal formalities the appellant was awarded major punishment of dismissal from service. Besides, before the imposition of punishment, the appellant was provided full-fledged opportunity of defense, but he failed to prove himself innocent. Later on, a copy of dismissal order was conveyed to respondent No. 03 vide order Endst; No. 1643-53/PA, dated 18.05.2023. However, the appellant was concerned to FRP Unit therefore, the dismissal order passed by the respondent No. 04 was withdrawn under Police Rules 1975 amended 2014 by respondent No. 02, with the directions that in the light of enquiry so far conducted by respondent No. 4 the case of appellant shall be decided in accordance with law/rules after giving him proper opportunity of defense. (Copy of withdrawal order attached as annexure "F").
7. Incorrect. In the light of directions of respondent No. 02, sufficient and ample opportunity of defense was provided to the appellant by the competent authority, but he failed to defend himself with +even a single iota of evidence. Therefore, he was awarded major punishment of dismissal from service. The appellant filed departmental appeal, which was thoroughly perused by the appellate authority and the appellant was also provided full-fledged opportunity of defending himself and he was heard in person by the appellate authority in orderly room, but he failed to produce any plausible/justifiable grounds, hence his appeal was rejected being bereft of any substance.
8. That appellant has been dealt in accordance with law & thus the instant appeal being devoid of merit is liable to be dismissed on the following grounds.

GROUNDS:-

- A) Incorrect. The orders passed by the respondents are lawful being in accordance with law/rules and norms of natural justice hence, tenable in the eye of law therefore liable to be upheld.
- B) Incorrect. A proper departmental enquiry was initiated against the appellant as explained in the preceding Para No. 4 of facts. Hence, the punishment order is logical as passed by the competent authority in accordance with law/rules.
- C) Incorrect. All the officials concerned who were deputed for security duty at Main Gate were proceeded against proper departmentally. However, during the course of enquiry the appellant and others, who were found guilty of the charges leveled against them, were awarded major punishments of dismissal from service without any discrimination. Hence, the respondent did not violate the Constitution of Pakistan.
- D) Incorrect. As discussed above, there is only one gate for entrance in the Police Lines. The appellant being deputed for imperative security duty at Main Gate of Police Lines, failed to identify and prevent the entry of a suspected suicide bomber, which is a serious lapse in his responsibility. In this regard proper departmental enquiry was conducted into the matter, wherein the appellant was found guilty of the charges leveled against him without any shadow of doubt.
- E) Incorrect. On the day of occurrence, all officials who were deputed for the purpose of security duty of Police Lines, were proceeded against departmentally. After proper enquiry, those officials, who were held responsible for their grave negligence, were awarded major punishments. As such the appellant was assigned the security duty at Main Gate to search and identify all personnel including uniformed officials at Main Gate, before the entry inside the Police Lines. However, on that day the appellant badly failed to fulfill his responsibility, reflected his grave negligence in official duty, which resulted in causing huge human loss.
- F) Incorrect. The reply of Charge Sheet submitted by the appellant was found unsatisfactory as during the course of enquiry the Enquiry Officer found that the appellant failed to identify and prevent the entry of a suspected suicide bomber, despite being deputed for imperative security duty at Main Gate, which is a serious lapse in his responsibility. Hence, proper departmental enquiry was conducted against the appellant wherein his misconduct was fully established and proved beyond any shadow of doubt.
- G) Incorrect. The opportunity of defense in the shape of personal hearing has already been provided to the appellant by the Enquiry Officer and then by the competent authority, but he failed to prove his innocence.

- H) Incorrect. Plea of the appellant is false and baseless. In fact the appellant was absolutely treated in accordance with law within the meaning of Article 4 of the constitution by giving him sufficient and proper opportunities at every level of defense and that the entire proceedings were carried out in accordance with existing laws and rules.
- I) The respondents may also be permitted to raise additional grounds at the time of arguments.

PRAYERS:-

Keeping in view the above facts and circumstances, it is most humbly prayed that the instant service appeal being not maintainable may kindly be dismissed with costs please.



Superintendent of Police FRP,
Peshawar Range, Peshawar
(Respondent No. 03&4)
Bashir Dad Khan
(Incumbent)



Commandant FRP,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 02)
Asif Bahadar (PSP)
(Incumbent)



DIG/Legal CPO
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 01)
Dr. Muhammad Akhtar Abbas (PSP)
(Incumbent)

(5) 'A'

2

CHARGE SHEET

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, do hereby, charge you Constable Ihtisham No.3173/FRP of Capital City Police Peshawar with the following allegation.

"That on 30.01.2023, you Constable Ihtisham No.3173/FRP while posted at Concertina Point Main Gate-1 security Malak Muhammad Saad Shaheed Police Lines Peshawar have miserably failed to check and stop the entry of suspected suicide bomber into Police Lines. In this horrible incident more than 80 Police officers/officials have been martyred and hundreds have been injured. This amounts to gross misconduct on your part and is against the discipline of the force."

You are, therefore, required to submit to this office or the Enquiry Officer your written reply within 07-days of the receipt of this charge sheet.

Your written defence, if any, should reach this office or the Enquiry Officer within the specified period, failing which it shall be presumed that you have nothing to put in your defence and in that case an ex-parte action shall follow against you.

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

Attest



Attention

0342 - 9065078 -

21/02/2013

FRP

3173

انٹرنیشنل اسٹیشن

FRP

جانب سے ہے۔
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06/E/PA
 04-02-2013

جان سٹال

(11)
 (B)
 (6)



5

No. 02/15/PA dated 06/08/2023

To: Superintendent of police HQrs,
CCP, Peshawar.

Subject: **DEPARTMENTAL ENQUIRY REPORT**

Memo:

Kindly refer your good self Office Diary No. 06/E/PA, dated 04-02-2023 (attached in original).

Background:

The above memo Enquiry was marked to the under signed to dig out the actual facts about the role of FC Ihtisham No. 3173 FRP in the aftermath of miserably failing to check and stop the entry of suspect suicide bomber into the Main Gate No. 1 at Police Lines on dated 30-01-2023; which resulted in the loss of more than 80 police officers/ officials as envisaged in Charge Sheet issued to him vide the above quoted Memo.

During the course of enquiry, the concerned official was called to the office and was heard patiently. He also submitted written reply to the Charge Sheet and was cross questioned.

Statement of Alleged official:

FC Ihtisham No. 3173 FRP stated in his written statement that he was deputed on Concertina Point Main Gate No. 1 (exit) where the concertina wire was not installed. He further showed ignorance from the entry of any suspect from the point where he was deputed.

Critical Analysis of Statement:

During the cross questioning, he failed to satisfy the E.O. suggesting that he is not in a position to face the questioned raised during the session rather he was not present on the duty point as seen in the video recorded at 1238 hrs.

Findings:

Keeping in view the above position of alleged official as well the cross questions faced by him during enquiry, it has been established that the alleged constable was deputed keeping close watch on suspects and he left his point of duty at that specific time.

Conclusion:

In the bottom lines of this enquiry and as Enquiry Officer, I am of the view that FC Ihtisham No. 3173 FRP has been found guilty in the matter at hand.

*Issue RSEN
A Heston
[Signature]*

[Signature]
Sub Divisional Police Officer
Suburb Sub Division
Peshawar

(8) 'D'

4

FINAL SHOW CAUSE NOTICE

I Superintendent of Police, Headquarters, Capital City Police Peshawar, as competent authority, under the provision of Police Disciplinary Rules 1975 do hereby serve upon you, Constable Ihtisham No.3173/FRP the final show cause notice.

The Enquiry Officer, SDPO Suburb, after completion of departmental proceedings, has declared you guilty for the charges/allegations leveled against you in the charge sheet/statement of allegations.

And whereas, the undersigned is satisfied that you Constable Ihtisham No.3173/FRP deserve the punishment in the light of the above said enquiry report.

And as competent authority, has decided to impose upon you the penalty of minor/major punishment under Police Disciplinary Rules 1975.

1. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

2. If no reply to this notice is received within 7 days of its receipt, in normal course of circumstances, it shall, be presumed that you have no defence to put in and in that case as ex-parte action shall be taken against you.

SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 06 /PA, SP/HQrs: dated Peshawar the 14-4-2023.

Copy to official concerned

دستور العمل کے مطابق نوٹس سنا کر جواب دینا

Attested

[Signature]

[Signature]
14/4/23



(10) 'F'
PR
OFFICE OF THE COMMANDANT
FRONTIER RESERVE POLICE
KHYBER PAKHTUNKHWA, PESHAWAR
Ph: No. 091-9214114 Fax No. 091-9212602

No. 5559-60 ISI Legal, dated 6/6/2023.

ORDER

This order will dispose of the dismissal orders in respect of IHC Muhammad Ilyas No. 2723 and Constable Ihtisham No. 3173 of FRP Peshawar Range, issued by the office of SP HQrs; CCP Peshawar, respectively vide order Endst: No.1643-53 and vide No.1654-64 PA/SP/dated 18.05.2023.

Brief facts of the case are that the delinquent officials were proceeded against departmentally, on the allegations that they while posted at main gate of Police Lines, Peshawar has miserably failed to check and stop the entry of suspected suicide bomber on 30.01.2023. During the course of enquiry, they were found guilty of the charges leveled against them and awarded major punishment of dismissal from service.

In this regard Police rules-1975 amended 2014 clause -9 provided that:-

Procedure of enquiry against officer lent to other government or authority.

- i. Where the services of police officer to whom these rules apply are lent to any other government or to a local or other authority, in this rule referred to as the borrowing authority, the borrowing authority shall have the power of the authority for the purpose of placing him under suspension are requiring him to proceed on leave and initiating proceedings against him under these rules.
- ii. Provided that the Borrowing Authority shall forthwith inform the authority which his lent is services, here in after this rule referred to as Landing authority, of the circumstances leading to order of his suspension or the commencement of the proceedings, as the case may be.
- iii. If in the light of the findings in the proceedings taken against the police officer in terms of sub-rule (1) the Borrowing Authority is of opinion that any punishment should be imposed on him, it shall transmit to the lending authority the record of the proceedings and there upon the lending authority shall take action as prescribed in these rules.

Besides, according to standing order No. 02/2014 the strength of FRP, which placed with the district, the operational command of the FRP strength so placed rest with the District Head of Police concerned, otherwise the Deputy Commandant and SPs FRP Ranges are the competent authorities and responsible for the general administration, welfare and discipline of the FRP strength placed in the region.

Keeping in view the above mentioned rules and circumstances, the SP HQrs; CCP Peshawar is not a competent authority to impose any punishment upon the officials concerned to FRP. Hence, the punishment orders passed by the office of SP HQrs; CCP Peshawar vide orders quoted above are found illegal and without lawful authority.

Attester

(11) "F/2"

Based on the findings narrated above, I, Commandant FRP, Khyber Pakhtunkhwa, Peshawar being the competent authority, the punishment orders in respect of IHC Muhammad Ilyas No. 2723 and constable Ihtisham No. 3173 of FRP Peshawar Range, passed by the Superintendent of Police, Headquarter CCP Peshawar quoted above are hereby withdrawn. However, the SP FRP Peshawar Range, Peshawar is hereby directed that in the light of enquiry, so far conducted by SP HQrs; CCP Peshawar decide the case in accordance with law, after providing fair opportunity of defense to the officials concerned with intimation to this office.

COMMANDANT
Frontier Reserve Police
Khyber Pakhtunkhwa Peshawar

No. & Date Event:-

Copy of the above is forwarded for information & further necessary action to the:-

- 1. SP FRP Peshawar Range, Peshawar.
- 2. SP HQrs; CCP, Peshawar w/r to his office orders quoted above.

Office of the Supt. of Police
By No. 871
Dated 07-6-2023
FRD Peshawar Range Peshawar

PA/PR
for N/A report.

Call him in O.R

[Signature]
SP FRP/PR
7/6

[Signature]
Superintendent of Police FRP
Peshawar Range, Peshawar
9.6.23

Order: Both the officials found guilty and awarded
him for major punishment of Dismissal from
service.

[Signature]
SP FRP PR
12.06.2023.

Attested
[Signature]

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

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AUTHORITY LETTER

Respectfully Sheweth:-

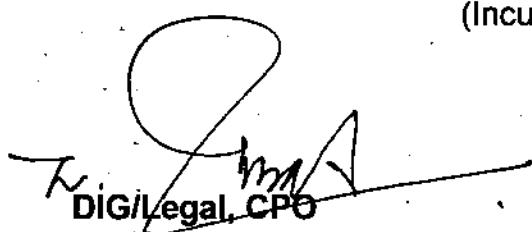
We respondents No. 1 to 4 do hereby solemnly authorize Mr. Ghassan Ullah ASI FRP HQrs; to attend the Honorable Tribunal and submit affidavit/Para-wise comments required for the defense of above Service Appeal on our behalf.



**Superintendent of Police, FRP
Peshawar Range, Peshawar
(Respondent No. 03&4)
Bashir Dad Khan
(Incumbent)**



**Commandant FRP,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 02)
Asif Bahadar (PSP)
(Incumbent)**



**DIG/Legal, CPO
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 01)
(Dr. Muhammad Akhtar Abbas)
Incumbent**

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AFFIDAVIT

I respondent No. 03 do hereby solemnly affirm and declare on oath that the contents of the accompanying Para-wise Comments is correct to the best of my knowledge and belief that nothing has been concealed from this Honorable Court.

It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense has been struck off/costs.



**Superintendent of Police FRP,
Peshawar Range, Peshawar
(Respondent No. 03)
Bashir Dad Khan
(Incumbent)**

ATTESTED



Handwritten initials/signature