Net Notworking

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

| Service Appeal No <u>100/2024.</u> | |
|---|--------------|
| Fida Ullah Ex-LHC No. 1326, District Dir Upper. | . 5 |
| ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,, | Appellant. |
| <u>VERSUS.</u> | |
| District Police Officer Dir Upper and others. | · |
| •••••• | Respondents. |

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went date 6/5/24
Peshawan

`Nawroz Khan, DSP Legal, Dir Upper.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE hyber Pakhtukhwa Service Tribunal

TRIBUNAL PESHAWAR.

Service Appeal No. 100 of 2024.

Fida Ullah Ex LHC No.1326, District Dir Upper.

Versus

- 1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 2. The Regional Police Officer, Malakand at Saidu Sharif Swat.
- 3. District Police Officer, District Dir Upper.....(Respondents)

<u>PARA WISE REPL</u>Y BY RESPONDENTS.

Preliminary objections:

- 1. That the instant service Appeal is not maintainable in the present form and liable to be dismissed.
- That the Appellant has got no cause of action and locus standi 2. to file the instant Appeal.
- That the Appellant is estopped due to his own conduct to file 3. the instant appeal.
- That the Appellant has concealed the material facts from the 4. honorable Service Tribunal.
- That jurisdiction of this honorable service Tribunal has 5. wrongly been invoked.
- That the Appeal is bad for mis-joinder and non-joinder of 6. necessary parties.
- That the Appeal is barred by law &limitation. 7.

Respectfully Sheweth:

ON FACTS:

- 1. Correct only to the extent of enlistment of the appellant. The rest of Para is incorrect as, evident from the record, wherein the appellant was once dismissed from service involved in criminal case vide FIR No.227/2022 under section 9(D)CNSA police station Sarband, Peshawar. Said act of appellant carried bad reputation to the discipline force (Dismissal order is annexed as A).
- 2. Correct to the extent of case FIR No. 227 dated 19-03-2022 U/S 9(D) CNSA PS sarband, Peshawar, wherein he was caught red-handed 2400gram of narcotics. His act amounted to gross misconduct which also carried bad name to the discipline force, subsequently he has been dealt departmentally as per law. Charge sheet along with statement of allegation was issued to him and enquiry was initiated. The enquiry officer found him guilty of misconduct. Therefore, he was called in orderly room and heard in person by the competent authority. However, he failed to produce any cogent/plausible explanation in his defense. Thus by issuing final show cause notice he was dismissed from service as per law. Rest of Para pertains to record of the honorable court. However, departmental and judicial proceedings are apart from each other and one does not affect other. Reliance is placed on 2020

- SCMR 1708 and 2021 SCMR 420. (Copies of charge sheet, finding report and final show cause notice are attached as B,C and D).
- 3. Correct to the extent that appellant/defaulter remained absent from his lawful duty from 21/03/2022 vide DD.NO 19 dated 21/03/2022 without permission of high ups; therefore, he was preceded as per law.
- 4. Correct to the extent of dismissal order passed in accordance with law. The departmental appeal was processed and the appellate authority called the appellant for the personal hearing on 20-07-2022 in which he failed to produce any cogent explanation in his defense. Thus the appeal, being devoid of merits, was rejected on same day. The appellant has been duly informed of the outcome of the appellant. However, the instant appeal has been filed after inordinate delay thus, is badly time-barred and is liable to be dismissed on this score only.
- 5. Incorrect, the competent authority examined and rejected the revision petition submitted by the appellant against the punishments of dismissal from service.
- 6. Incorrect the appellant wrongly invoked the jurisdiction of this Honorable Service Tribunal. Moreover, the instant appeal is barred by law and limitation and liable to be dismissed on following grounds;

GROUNDS:-

2 ·

- A. Incorrect the respondents No.1&2 being competent authorities, have rightly passed the dismissal orders as per law.
- B. Incorrect the appellant has been treated in accordance with law/rules and no fundamental rights of the appellant has been violated.
- C. Incorrect the appellant was arrested red handed smuggling 2400 gram chars recovered from his possession while, there are many judgment of the Apex Court in CP No.3122 of 2020 which condemn and discourage the employees of a disciplined force. The relevant Para of the judgment is reproduced as under.
- 17."the police force is a disciplined force with cumbersome of accountability and responsibility of maintaining law and public order in the society and populace, therefore, any person who wants to be part of the disciplined force should be a person of utmost integrity and uprightness with unimpeachable/spotless character and clean antecedents. Despite acquittal, it is the privilege and prerogative of the employer which is in this case "Punjab police force". so, it is for the department to examine fairly and equitably weather the appellant has been exonerated or not and has further induction may not be come a constant threat to the discipline of the police force and public confidence and may also not demoralize and undermine the environment and frame of mind of the upright and righteous members of the force, therefore a person having criminal antecedents would not be fit to be restored or reinstated to his previous post or position".
- D. Incorrect, as already explained vide para-2 of facts. Moreover departmental and judicial proceedings are apart from each other and one does not affect other.

- E. Incorrect the competent authority issued Charge Sheet and Statement of Allegation to the defaulter/appellant on 22-03-2022, while he was charged in case FIR No.227, dated 19-03-2022 U/S 9DKPCNSA which amounted to gross misconduct on the part of the appellant.
- F. Incorrect, proper departmental inquiry was conducted against the appellant/defaulter and charge sheet coupled with statement of allegation was issued to him but he badly failed to defend himself during enquiry and resultantly Final Show Cause Notice was issued to him vide No.03/EB dated 11-05-2022, by the competent authority. However, again he failed to produce any reasonable ground to defend him.
- G. Incorrect, proper opportunity of personal hearing was provided to the appellant during the enquiry and also he was called in orderly room by Regional Police Officer Malakand and heard in person but he did not provide any cogent explanation in his defense (Statement of the appellant is annexed as E).
- H. Incorrect no discrimination exist on the part of the respondents.
- I. Incorrect the punishment imposed on the appellant by the competent authority is according to the rules, as recommended by the enquiry officer, and also commensurate with the gravity of his misconduct.
- J. Incorrect the appellant has been given many chances and in this regard, many times he remained absent from service but the respondent department provided opportunities to the appellant (Copy of bad entries is annexed as F).
- K. That respondent may also be allowed to advance other grounds at the time of arguments before this honorable Tribunal.

Prayer:.

It is therefore humbly prayed that on acceptance of this Para-wise comments the appeal of the appellant, being devoid of merits and barred by law and limitation, may kindly be dismissed with cost please.

> District Police Officer, Dir Upper

Respondent No. 3

(WAQAR AHMAD)

Incumbent

Regional Police Offices,

Malakand Region,

Regional Police Officer,

Malakand at Saidu Sharif Swat.

Respondent No.2

(MUHAMMAD ALI KHAN) PSP
Incumbent

DIG LEGAL, CPO

For Inspector General of Police, Khyber Pakhtunkhwa, Peshawar

Respondent No.1

(DR. MUHAMMAD AKHTAR ABBAS) PSP

Incumbent

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

| Power of Attorney | | | |
|---|--------------|--|--|
| | Respondents. | | |
| District Police Officer Dir Upper and others. | | | |
| <u>VERSUS.</u> | | | |
| | Appellant. | | |
| Fida Ullah Ex-LHC No. 1326, District Dir Upper. | | | |
| Service Appeal No 100/2024. | | | |

We, the undersigned do hereby authorized Nawroz Khan DSP Legal, to appear on our behalf before the honorable Service Tribunal in the cited above case on each and every date.

He is also authorized to file para wise comments/ reply, prefer appeal and to submit the relevant documents before the Honorable Tribunal.

District Police Officer,

Dir Upper. Respondent No. 3 (WAQAR AHMAD) Incumbent

Regional Police Officer.

Malakand Region,

Regional Police Officer,

Malakand at Saidu Sharif Swat.

Respondent No.2

(MUHAMMAD ALI KHAN) PSP
Incumbent

DIG LEGAL, CPO

For Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.

Respondent No.1

(DR. MUHAMMAD AKHTAR ABBAS) PSP

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

| Service Appeal No 100/2024. | |
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| Fida Ullah Ex-LHC No. 1326, District Dir Upper. | |
| Appellan | ıt. |
| VERSUS. | |
| District Police Officer Dir Upper and others. | |
| Responde | nts |

Affidavit

I, the undersigned do hereby solemnly affirm and declared that the contents of parawise comments are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

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

District Police Officer, Dir Upper.

Respondent No. 3 (WAQAR AHMAD) Incumbent





OFFICE OF THE DISTRICT POLICE OFFICER, UPPER DIR.

ORDER.

This order will dispose of the departmental Enquiry conducted against LHC Fida Ullah No. 1326 while posted in PS Patrak.

Allegations leveled against the above named defaulter LHC Fida Ullah No. 1326 while posted in PS Patrak, whereas 2400 grams Chars were recovered from his possession, where a proper case FIR No. 227, dated 19.03.2022 U/S 9D-CNSA, PS Sarband, Peshawar was registered against him. Therefore, he was suspended and closed to Police Lines vide this office O.B No. 192, dated 25.03.2022. So the above act amounts to gross misconduct on his part. Therefore, the charge sheet coupled with statement of allegation were served upon him and Mr. Ghulam Sadiq SDPO Kohistan, Upper Dir was appointed as Enquiry Officer.

During the course of departmental enquiry, he was recorded with ample opportunities in his self-defense by the enquiry Officer. The Enquiry Officer submitted in his finding report that he is guilty of the charges level against him and the allegations were proved beyond in shadow of doubt.

On the perusal of the finding report, the defaulter LHC was issued Final Show cause notice vide this office No. 03/EB, dated 11.05.2022. The reply of the same was perused and found unsatisfactory. Therefore, he was called in orderly room and heard in person but he could not produce any plausible evidence in his self-defense in this regard. Moreover, the following grounds are also observed.

- 01. The defaulter LHC has been arrested by the local Police of PS Sarband and recovered 2400 grams Chars from his possession.
- 02. The case of the defaulter constable is heinous.
- 03. The act is grievous which is not only effects as individual but also effect badly the whole society and the Department.
- 04. The defaulter caused a bad name for Police Department.

Therefore, Keeping in view the recommendation of the Enquiry Officer and material on the record, I Nazir Khan, District Police Officer, Upper Dir (the Competent Authority) in exercise of powers vested to the undersigned under Police Rules-1975 (amended in 2014), hereby dismissed the defaulter LHC Fida Ullah No. 1326 from Police service with immediate effect.

Order announced.

OB No. 330

Dated: 27-05 /2022.

District Police Officer Dir Upper.

No. 1724-25/EB, dated Upper Dir the: 5.7/05/2022

Copy of above is submitted to the Capital City Police Officer, Peshawar w/r to his office Memo: No. 6855/SRC, dated 04.04.2022

District Police Officer Dir Upper.

CHARGE SHEET.

hereby charged you LHC Fida Ullah No. 1326 while posted in Police Station Patrak, is involved in case FIR No. 227 dated 19.03.2022 u/s 9DCNSA, PS Sarband, Peshawar, so this amounts a gross misconduct on your part.

- 2. By reason of the above, you appear to be guilty of criminal act and have rendered yourself liable to all or any of the penalties specified in Rule-4 of the Disciplinary Rules 1975.
- 3. You are therefore required to submit your written reply within 03 days of the receipt of this charge sheet to the enquiry Officer.
- 4. Your written reply, if any should reach to the Enquiry Officer within the specified period, failing which it shall be presumed that you have no defense to put in and in that case the ex-party action shall follow against you.

 Intimate as to whether you desire to be heard in person or not?

6. Statement of allegation is enclosed.

(Nazir Khan)
District Police Officer,
Dir Upper.

No. 1° /EB, Dated Dir Upper the 2Z/03 /2022.

- The Enquiry Officer for initiating proceeding against the accused official under Police Rule, 1975.
- 2. Copy to LHC Fida Ullah No.1326, submits your reply to the Charge Sheet with stipulated period.

1326 m/s/2 1326 m/s/2 0345-9277096

Allested

LI Klena : U

OFFICE OF THE DEPUTY SUPERINTDENT OF POLICE CIRCLE KOHISTAN DISTRICT DIR UPPER

Tel & fax #0944-885615

Email: sdpokohistan615@gmail.com

NO.406./S

Dated. 08/.04.2022.

فالميندنك ربورث

جناب عالى!

تحریر ہے کہ وفتر جناب DPO صاحب سے چارج شیٹ نمبری PB موصول ہوکر ملاحظہ کرنے پر پایا گیا۔ کہ فداءاللہ نمبر LHC فداءاللہ نمبر 1326متعینہ مدد محرر تھانہ پاڑاک موصول ہوکر ملاحظہ کرنے پر پایا گیا۔ کہ فداءاللہ نمبر 1326/LHC تعلینہ مقدمہ علت 227مور نہ 290KPCNSA و 19.03.2022 تھانہ سربند ضلع پشاور درج رجسٹر ہوکر بد چلنی کا مر تکب ہوا ہے۔ من SDPO سرکل کوہتان کو انکوئری آفیسر مقرر کر کے رپورٹ طلب فرج رابدہ فداءاللہ نمبر 1326/LHC کو بغرض قلمبندی بیان دفتر طلب کر سے حالات ، واقعات انکوئری زبل یا ہے۔ اندریں بارہ فداءاللہ نمبر 1326/LHC کو بغرض قلمبندی بیان دفتر طلب کر سے حالات ، واقعات انکوئری ذبل یائے گئے۔

بیان فداواللہ نمبر LHC معینہ تھانہ پاڑاک کے وہ بحثیت مدو محرر تھانہ پاڑاک ہیں تعینات تھا مور خر 17.03.2022 فرائس اطلاع ملی کہ گھر میں شدید بیاری ہے۔انہائی ذہنی دباؤکی وجہ سے چھٹی کی درخواست اللہ نفیر گھر جا کر بیار کو جبیتال پشاور لے گیا۔اچائک گھر سے آنے کی صورت میں اُس کے پاس علاج معالجہ کیلئے رقم نہیں تھا۔ اُسے اپنے بھائی عنائت الرحمان کو جو کہ تشمیر میں ہے۔اُسکے موبائل نمبر 03456766423 کو ماپنی موبائل نمبر 0345977096 میں موبائل نمبر 0345977096 میں موبائل نمبر 0345977096 میں موبائل نمبر 10000 کے باس بھے دیاور اُس سے نمبر 10000 کیا۔ تو اُس نے کا کہا۔ جو ہی میں نے رقم لیکر واپس آرہا تھا تو پولیس کی ناکہ بندی تھی میں جلدی کی وجہ سے ڈار میک آنے لگا۔ تو پولیس والوں نے جھے کہا کہ تم نے کیوں قانون کی پاسداری نہیں گی۔ اس بات پر پولیس والوں کیساتھ تکر ارہو کر اُنہوں نے جھے کہا کہ تم نے کیوں قانون کی پاسداری نہیں گی۔ اس بات پر پولیس والوں کیساتھ تکر ارہو کر اُنہوں نے جھے کہا کہ تم نے کیوں قانون کی پاسداری نہیں گی۔ اس بات پر پولیس والوں کیساتھ تکر ارہو کر اُنہوں نے جھے کہا کہ تم نے کیوں قانون کی پاسداری نہیں گی۔ اس بات پر پولیس والوں کیساتھ تکر ارہو کر اُنہوں نے جھے کہا کہ تم نے کیوں قانون کی پاسداری نہیں گی۔ اس بات پر پولیس والوں کیساتھ تکر ارہو کر اُنہوں نے جھے کہا کہ تم نے کیوں قانون کی پاستان کے سے دارج کیا میں ہے گناہ

Attested

اُسے کہا کہ تم نے قانون کی پاسداری کیوں نہیں گی۔ یولیس والوں کے ساتھ تکر ار ہو کر اُسے بکڑ کر تھانہ لے جاکر اُس 🍍 کے خلاف چرس کا جھوٹا مقدمہ درج رجسٹر کیا۔ مذکورہ پر دوران انگوئری کر اس سوالات کر کے کہ آپ کے گھر میں کون بیار تھااور کس تاریخ کو پشاور لے کمیا تھا۔ نہ کورہ نے جوابا کہا کہ اُس کے گھر میں کوئی بیار نہیں تھا۔ جبکہ پڑوی خان زرین بیار تھااور مور خد 17.03.2022 17.03 کویٹاور RMI لے گیا تھا۔ نہ کورہ پر مزید سوالات کرکے کہ کیا خان زرین کے اپنے بچے یا خاندان کے افراد نہیں تھے۔جو آپ تھانہ پاتراک سے انتہائی ذہنی دباؤ کی وجہ سے چھٹی کی درخواست دیئے بغیر گھر آنا تھا۔ مذکورہ نے اس سوالات کاکسی قسم کی جو ابات نہیں دیا اور خاموش رہا۔ مذکورہ نے اپنے بیان میں واضح کیا ہے کہ مور ند 2022. 17.03 کو این بھائی عنائت الرحمان کو کال کی کہ علاج معالج کیلئے رقم ناکانی ہے۔ بقول مذکورہ کے بیان اور اُس کے بھائی نے اُسے پیثاور علاقہ سر بند میں اپنے ایک دوست کے پاس بھیج دیا تھا۔اور اُس سے (10000) دس ہزار رویے لے کر واپی پر یولیس والوں نے بوجہ کراس کرنے ناکہ بندی یولیس والوں نے گر فار کر کے اس کے خلاف چرس کا جھوٹا مقدمہ درج رجسٹر کیا۔ گر مذکورہ کے CDR کے روشنی میں مور نبہ 17.03.2022 کولوکیشن اپنا گاؤں حیا گے گاڈنڈ آتا ہے۔ اور نہ ہی مور خہ CDR کے 17.03.2022 اینے بھائی عنائت الرحمان کو کسی قتم کی کال کی -CDR کے مطابق ند كوره مورنيه 16.03.2022 كو تھانہ ياتراك سے اپناگھر گريال علاقہ تھانہ شرينگل آيا تھا۔مورنيہ 2022.18.03 كو پیٹاور جاکر شب باش رہا۔ مور خد 19.03.2022 کو بذکورہ فداءاللہ کو تھانہ سربندیولیس نے گر فتار کرکے بذکورہ کے تضے سے دو پیک چرس 1200/1200 گرام یعنی کل 2400 گرام برآمد کرکے مذکورہ کے خلاف مقدمہ علت 227مور خدر 19.03.2022 جرم 9DKPCNSA فقائد سربند ضلع بشاور درج رجستر كيا -فداء الله نمبر 1326/LHC انکوائری سے بد چلنی کا مر تکب یا کر قصوروار پایا جاتا ہے۔ اور چرس کے مکروہ دہندے میں ملوث پایا جاتا ہے۔لہذا مذکورہ کے خلاف بڑی سزاوینے کی سفارش کی جاتی ہے۔ فائینڈنگ رپورٹ مرتب کی ہو کر گزارش ہے۔

Skur grade

Allested

OFFICE OF THE DISTRICT POLICE OFFICER, UPPER DIR ********

FINAL SHOW CAUSE NOTICE.

No. 03

/EB, Dated Upper Dir the: //

/05/2022.

- 1. Whereas, you LHC Fida Ullah No. 1326 while posted in PS Patrak, committed gross misconduct as defined in section of Khyber Pakhtunkhwa Removal from Service (Special power) Police Rules, 1975 (defined under rule-4(b)), resultantly your was Charge Sheet/Statement of Allegation were issued and Mr. Ghulam Sadiq SDPO Kohistan, Upper Dir was appointed as Enquiry Officer to conduct proper departmental enquiry.
- 2. Whereas, The Enquiry Officer finalized the Enquiry proceeding given you full opportunities of defense. The Enquiry Officer held you guilty of the charge leveled against you as per charge sheet.
- 3. And whereas, Ongoing through the finding and recommendation of Enquiry Officer. The material placed on record and other connected papers including your defense before the said Enquiry Officer. I am satisfied you have committed the misconduct and are guilty of the charge leveled against you as per statement allegation conveyed to you vide this Office Memo: No. 19-20/EB dated 22.03.2022 which stand proved and render you liable to be awarded punishment under the said rule.
- 4. Now therefore, I Nazir Khan, District Police Officer Upper Dir, as competent authority have tentatively decided to impose upon you, any one or More penalties, including the penalty of Dismissal from service under the said rule.

You are therefore, required to show cause within seven days of the receipt of this notice, as to why the aforesaid penalty should not be imposed upon you, failing it shall be presumed that you have no defense to offer and ex- party action shall be taken against you. Meanwhile also intimate whether you desired to be heard in person or otherwise.

Attested

District Police Officer, Upper Dir.

1326 MIN 13/10 20132 1326 MIN CHIN 0345=9277096/ 13/1/20 PU Son 1825/326/00/13 CIL 13 Com Cos Cor Will City City in 18701- 3202698-1 171161612 51703/19-65 1,00 16 CONS 16 3 - (1) W (198 BB C) CM - 65 CM 21 20 360 2116 CV 6 رُض ليك كا بها وري ميل رقم ممكرور كي را را في فو يو يك ك را را وي 2 4/4 2 (1/2) Of 1/2 (1/2) CIEN CIEN CIEN SUND 1520 13.6 CP2 GIP 100 212619/12. CM Just the Constitution of the control 2000 19 60 1 Just . 019 - WW2 05/17/201-W/6 (11) 6 (11) 6 (11) 10 (11) 6 (W. Gen C. W. Co. S. - 2 will word 1/3 and 1/3 (60)1-6060 -1363 56-516-1108 5 -1108 5 ATTES . C. Allested

Jule 031-d, (=) 5 17/02/20 2011 20-2000 Joseph Cin 6 tion colored in the color المولي من المولي ورا المراه و The Selver of the services الما وهود فرانا - ان الرفعالية الما الموادية الموادة -a Sil SPhones of Girani-Will & as well Light with and the control of the co John Com with a supplied the supplied of the s while the series of the series a his im- 2033 principles - iil 6,11, cld, 16,000 to chi pagon 2 16 cm less > 2 min 2 3 2 (306) - Co Cin-1205 in Sil pro-1.

Mostio 17 3 15 16 Mes 13:30 in 17:022 lor MHC (50 lgis & dr 16)0 مرتبي مقانه من معم مراك المراك على مواكر ما كرو مر الحارث تحود والرائه م مل مال مهراك مرواك مروال 16/16 (2) per /101-0-05 St. 20 1000 وه تعلین کامی روی می می داد کا مانا بیم ایما کا می داد کا دارا کی دری می داد کا دانا بیم دانا mm Ps partial 17-03-012 Attested

21 3 /sle 19 to My del Vist 17.20 = 2/3/022 Com MHC Syn/EUL/19, (jei i i, Sp John Ols 11- 1632 50% دنان روم تعنم عاد سرسر على بنادر ك تلاف رسرورون the style 2 cole ps, ester-colopie 16 90 KPCNSA PO 193 20 27 lenge Mist 112 July 20 3 20 32 Or for a les sur la sur She 6/16 of the sale of the 1816 of the 18 mm fo patoate 21-03- 622 too worded SHO.PS. patak 26.03.022 Mested