

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR

Service appeal No. 146/2022

Asif Ali

..... (Petitioner)

VERSUS

Provincial Police officer, Govt of KPK, Peshawar

and others

..... (Respondents)

I N D E X

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Deponent

Inspector Legal, Hangu

28.05.24
SB
Peshawar

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Provincial Police officer, Govt of KPK, Peshawar and others

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JOINT PARA WISE COMMENTS ON BEHALF OF RESPONDENT NO. 1, 2 and 3

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER NO 177 DATED 02-7-2021 PASSED BY THE DISTRICT POLICE OFFICER HANGU (RESPONDENT NO 03) AGAINST WHICH A DEPARTMENTAL APPEAL WAS FILED BUT THE SAME WAS DISMISSED ON 30-08-2021.

Respectfully Sheweth,
Preliminary objection,

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 12710

- i. That the instant appeal is not maintainable in law
- ii. That the appellant has got no locus standi to file the instant appeal.
- iii. That the appellant is concealing material facts from the Hon'ble Tribunal.
- iv. That the appellant has not come to this court with clean hands.
- v. That the appellant has been proceeded in accordance with law.

Dated 13-05-2024

FACTS:

- 1) Correct only to the extent that the appellant joined Police department as constable in the year 2013. Rest of the Para is incorrect, hence denied as the appellant has always been negligent in performance of his duty, and his service record is full of various bad entries. He remained absent from official duty for several times. (Copy of punishment order annexed as **Annexure "A"**)
- 2) Incorrect, hence denied. True facts are that as reported vide DD No.12 dated 21.02.2021 the appellant was charged in criminal case vide case FIR No.156 dated 21.02.2021, u/s 302-34-324PPC P.S City Hangu. Subsequently, he was suspended and closed to police lines vide order No.2174-75 dated 23.02.2021 for initiating departmental inquiry against him. He was also issued Charge Sheet along with summery of allegation and DSP, Thall was appointed as Inquiry Officer vide order No. 05/EC dated 24.02.2021 (order and copy of application are annexed as **Annexure "B"** and **Annexure "C"**). The Enquiry Officer in his findings report held the appellant guilty of the misconduct (copy of the findings is attached). Later on, he was issued Final Show Cause Notice by the competent authority who also heard him in person. However, he could not extend any plausible explanation in his defense. Therefore, he was awarded major punishment of dismissal from service as per law. (Copy attached).
- 3) Incorrect & misleading, hence denied. Infact, the appellant, was charged in cross murder case. The matter and the case was discussed with IO concerned and the story of appellant was found incorrect as he was also found guilty and subsequently, has been Charge Sheeted by the Investigation Officer. The above mentioned case is still pending in the Court of ASJ-III, Hangu. Moreover, departmental and criminal proceeding are apart from each other and one does not affect other. The appellant was proceeded departmentally as per law/rule.
- 4) Incorrect and misleading, hence denied. The appellant has been awarded penalty after completion of departmental proceeding as per law. Moreover, as explained vide preceding Para, criminal & departmental proceedings are apart from each other as also held by the Supreme Court of Pakistan.
- 5) Incorrect, hence denied. Show Cause Notice was duly served upon him. Moreover, during departmental proceeding he was provided an opportunity of personal hearing and defense.

- 6) Incorrect, & misleading hence denied. In fact, departmental appeal was filed by the appellant before the answering respondent No 02, who sought comments as well as relevant record from DPO Hangu. The appellant was also heard in person by the appellate authority in orderly room on 30-08-2021. However, the appellant did not advance any plausible explanation in his defense. Therefore, his appeal was rejected/dismissed being devoid of merits. (Copy of Order is attached as Annexure "D").
- 7) Incorrect, the appellant was dismissed from service after departmental proceeding as per law. Rest of Para irrelevant, needs no comments.
- 8) The appellant plea, holds no ground as the appellant in the wake of departmental proceeding was found guilty of grave misconduct for involvement in criminal offence and thus, was proceeded as per law. Therefore, the instant petition being devoid of merits, is liable to be dismissed on the following grounds.


GROUND:

- A) Incorrect, the appellant was proceeded in accordance with law. Thus the impugned order has every legal standing and is liable to be maintained.
- B) Incorrect, as already explain in above Para. Furthermore, no constitutional law have been violated.
- C) Incorrect as already explained vide above Paras.
- D) Incorrect as already explained vide above Paras.
- E) Incorrect as already explained vide above Paras.
- F) Incorrect, false and spurious. Story of appellant was not supported by any tenable evidence. The inquiry officer examined different witnesses, however, story of all witnesses was not in consonance with the story of appellant. The case of appellant is still pending in the Court of ASJ-III Hangu. The inquiry officer did not exonerate the appellant. The investigation officer also found him guilty. Appellant has blemished service record. The answering respondent No 03 dismissed the appellant from service after fulfilling all codal formalities as appellant was found guilty. Moreover, departmental and judicial proceeding do not impact each other.
- G) That Para No "G" needs no comments as Additional IG investigation Peshawar, is not made party to the instant case. Moreover, the appellant his to prove himself is innocence before the trial court.
- H) Incorrect, hence denied. The Supreme Court of Pakistan has already held that judicial and departmental proceeding are apart from each other.
- I) I-O) That para No "I" "J" "K" "L" "m" "n" and "o" is incorrect, false and spurious, hence denied. In reply, it is stated that the answering respondents No 03 and 02 provided legal oppournity to appellant to defend his case. No right of appellant was violated as all codal formalities are fulfilled. On 21-02-2021, appellant, Muhammad Asif No. 153 was charged vide daily dairy No 12 dated 21-02-2021 of PS City Hangu in cross case of 302 of case FIR No 156 dated 21-02-2021 under section 302-34-324 PPC PS City. The appellant was suspended and closed to Police Line vide order No 2174-75 dated 23-02-2021 by answering respondents No 03. Subsequently the answering respondent No 03 has issued Charge Sheet and asked the appellant for written defense to inquiry officer. The Inquiry Officer submitted his finding report after examining all the witnesses and giving all the oppournity to appellant. The investigation officer of the above mentioned case also held appellant guilty of that case by submitting challan against him. The answering respondent No 03 called the appellant and heard him in person but the appellant could not produce any tenable explanation in his defense, therefore, he was issued Final Show Cause Notice. The appellant submitted reply which was found un-satisfactory. The appellant was again given chance of personal hearing to defend himself. As appellant was part of disciplined force (police) and misconduct on appellant part has brought bad name to the police, therefore, the respondent No 03 imposed major penalty upon appellant after fulfilling all codal formalities. Even the answering respondent No 02 granted the

opportunity of personal hearing. As appellant was also heard in person in orderly room on 30-08-2021. However, the appellant did not advance any plausible explanation therefore his appeal was rejected/ dismissed being devoid of merits.

p) The responded department may also be allowed to advance an additional ground at the time of hearing before the Hon'ble court.

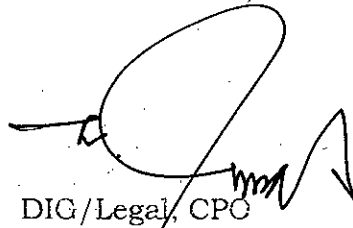
It is, therefore, most humbly prayed that on acceptance of the instant para-wise comments, the Service appeal may kindly be dismissed, please.



District Police Officer,
Hangu
Respondent No.3
MUHAMMAD KHALID PSP
Incumbent



Regional Police Officer,
Kohat, Region Kohat
Respondent No.2
SHER AKBAR PSP, S.St
Incumbent



DIG/Legal, CPO
For Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No.1)
DR. MUHAMMAD AKHTAR ABBAS
Incumbent

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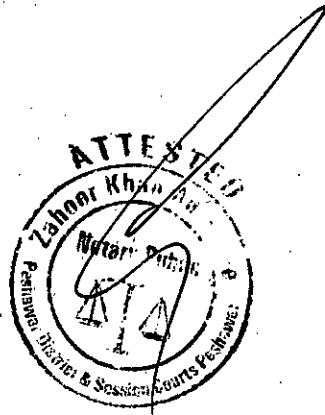
and others

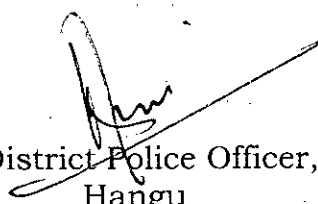
..... (Respondents)

AFFIDAVIT

I respondent No.3, Mr. Muhammad Khalid PSP District Police Officer Hangu and Respondent, do hereby solemnly affirm on oath and declare that contents of these joint Parawise Comments/Reply on behalf of Respondents No.1 to 3 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 placed ex-parte nor their defense has been struck off.




District Police Officer,
Hangu
(Respondent No. 3)
(MUHAMMAD KHALID) PSP
Incumbent
CNIC # 15202-1557066-1
Cell # 0345-5411106

Serial No.

15. CENSURES AND PUNISHMENT

Charges: Absented him self from from 24¹¹/₁₃ To 25¹¹/₁₃ - 1 day. PUNISHMENT: - leave with out pay.

OB No 134
21-3-14

[Signature]
S.P.A. B.S.

Charges: Absented him self from 5⁵/₁₄ To 9⁵/₁₄ - 4 days
PUNISHMENT: leave w/o pay. OB No 331

10-7-14, *[Signature]*

Charges: Absented him self from 11⁴/₁₄ To 15⁰⁹/₁₄
4 days

Punishment: Leave with out pay OB No 526
16-10-14

[Signature]
S.P.A. B.S.

P.I as Const BPS-07 at
Rs. 14040/- on 1-12-2019

[Signature]
V.D.P.O. Hangu

S.V.O
Service from 1-1-19 to 30-11-19
has been verified by Bills &
Acq: Roll Kept in the office Record.

[Signature]
V.D.P.O. Hangu

P.I as Const (BPS-7) at

Rs. 14650/- on 1-12-2020

[Signature]
V.D.P.O. Hangu

S.V.O
Service from 1-1-20 to 31-12-20
has been verified by Bills &
Acq: Roll Kept in the office Record.

[Signature]
V.D.P.O. Hangu

[Signature]
insp - Legal

3:30 HANGU
Page No. 44
Date 2-2-21

CHARGE SHEET.

I, **Mr. IKRAM ULLAH, PSP, D.P.O, HANGU** as competent authority, hereby charge you Constable Muhammad Asif No. 153 while posted at MT Staff Police Line, Hangu committed the following irregularities :-

- a). You, Constable Muhammad Asif No. 153 were charged in cross case vide Daily Diary No. 12, dated 21.02.2021 of P.S City Hangu thus, suspended & closed to Police Line, Hangu vide this office OB No. 52, dated 22.02.2021.
- b). You being a member of Disciplined Force acted criminal gross misconduct on your part, which spoilt/badly affected the name of Police Department.

2. By reasons of the above, you appear to be guilty of misconduct Under Police Disciplinary Rules, 1975 and have rendered yourself liable to all or any of the penalties specified in the above rules.

3. You are, therefore, required to submit your written defence within seven days of the receipt of this Charge Sheet to the Enquiry Officer/Committees, as the case may be.

4. Your written defence, if any, should reach to the Enquiry Officer/Committees 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 shall be taken against you.

5. Intimate whether you desire to be heard in person.

6. A statement of allegation is enclosed.

**DISTRICT POLICE OFFICER,
HANGU**

No. 05 /EC,

Dated 24/02/2021.

Asif
Legal

DISCIPLINARY ACTION.

I, **Mr. IKRAM ULLAH, PSP, D.P.O, HANGU** as competent authority, am of the opinion that **Constable Muhammad Asif No. 153** has rendered himself liable to be proceeded against as he committed the following acts/omissions within the meaning Under Police Disciplinary Rules, 1975:-

STATEMENT OF ALLEGATIONS.

- a). You, Constable Muhammad Asif No. 153 were charged in cross case vide Daily Diary No. 12, dated 21.02.2021 of P.S City Hangu thus, suspended & closed to Police Line, Hangu vide this office OB No. 52, dated 22.02.2021.
- b). You being a member of Disciplined Force acted criminal gross misconduct on your part, which spoilt/badly affected the name of Police Department.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations, an Enquiry Officer consisting of the following is constituted in the above rules: -

Mr. Muhammad Ismail, DSP City, Hangu.

3. The Enquiry Officer shall, in accordance with the provisions of the Ordinance, provide reasonable opportunity of hearing to the accused, record its findings and make, within twenty five days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the Enquiry Officer.

**DISTRICT POLICE OFFICER,
HANGU**

A copy of the above is forwarded to: -

1. Mr. Muhammad Ismail, DSP City, Hangu. The Enquiry Officer for initiating proceedings against the accused under the provisions of Police Disciplinary Rules, 1975.

2. Constable Muhammad Asif No. 153. The concerned officer with the directions to appear before the Enquiry Officer, on the date, time and place fixed by the Officer, for the purpose of the enquiry proceedings.

*Attested
Inss. Legal*



OFFICE OF THE
DISTRICT POLICE OFFICER,
HANGU

Tel: 0925-623878 Fax 0925-620135

ORDER

This order of mine will dispose of on departmental enquiry initiated against Constable Muhammad Asif No. 153 on the basis of followed allegations:-

- a. Constable Muhammad Asif No. 153 while posted at MT Staff Police Line Hangu was charged in cross case vide Daily Dairy No. 12, dated 21.02.2021 of P.S City Hangu thus, suspended & closed to Police Lines, Hangu vide OB No. 52, dated 22.02.2021.
- b. He being a member of disciplined force acted a criminal gross misconduct on his part, which spoilt/badly affected the name of Police Department.

He was issued a charge sheet and statement of allegation. SDPO Thall was appointed as enquiry officer to conduct a departmental enquiry against him. After completion of enquiry, the Enquiry Officer submitted his finding and stated that the case in which he involved vide FIR No. 156, dated 21.02.2021 u/s 302-34-324 PPC of P.S City Hangu is under trial in the Court of law thus, the enquiry officer is recommended to keep it pending till the decision of Court. The case file perused thoroughly and discussed the matter with I.O, the statement of Investigation Officer was also recorded. As per case file and the statement of I.O, the above named Constable is found guilty, being a member of disciplined force badly affected the name of Police department.

He was called in orderly room and heard in person but he could not produced a plausible explanation in his defence, therefore, he was issued a Final Show Cause Notice, he again submitted the same reply to the Final Show Cause Notice which was found unsatisfactory. He was called in orderly room on 02.07.2021 and heard in person but he once again failed to defend himself.

Keeping in view of above and having gone through the available record, I, Ikram Ullah Khan, PSP, District Police Officer, Hangu in exercise of the powers conferred upon me, **award him a major punishment of Dismissal from service with immediate effect.**

OB No. 177

Dated: 02/07/2021

**DISTRICT POLICE OFFICER,
HANGU 2/7**

No. 6068-70 /EC, dated Hangu the 02/07/2021

Copy of above is submitted to the Regional Police Officer, Kohat Region, Kohat for favour of information w/r to his office Endst: No. 5587-89/EC, dated 29.04.2021 followed by Endst: No. 9992-94/EC, dated 30.06.2021, please.

1. DSP, HQrs, Hangu to collect the kit etc and report.
 2. Pay Officer
 3. EC/OASI
 4. Reader
- } for necessary action.

**DISTRICT POLICE OFFICER,
HANGU 2/7**

M. Khalid
Legal

POLICE DEPTT:

KOHAT REGION

ORDER.

This order will dispose of a departmental appeal moved by Ex-Constable Asif Ali No. 153 of district Hangu, against the punishment order, passed by DPO Hangu vide OB No. 177, dated 02.07.2021 whereby he was awarded major punishment of **Dismissal from Service** on the allegations of his alleged involvement in a criminal case vide FIR No 156, dated 21.02.2021 u/s 302/34/324 PPC PS City Hangu.

Comments as well as relevant record were requisitioned from DPO Hangu and perused. The appellant was also heard in person in O.R held in this office on 30.08.2021. During hearing the appellant did not advance any plausible explanation in his defense to prove his innocence.

Above in view, the undersigned reached to the conclusion that the appellant has directly been charged in a criminal case which earned bad name to Police department. Therefore, his appeal being devoid of merits is hereby rejected.

Order Announced
30.08.2021

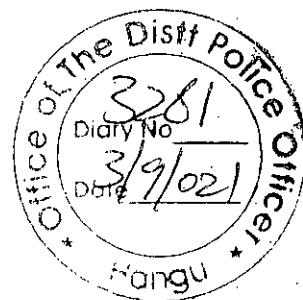
Mohammad Zafar Ali
(MOHAMMAD ZAFAR ALI) PSP
Region Police Officer,
Kohat Region.

No. 13770 /EC, dated Kohat the 1-08- /2021.

Copy to District Police Officer, Hangu for information and necessary action w/r to his office Memo: No. 6615/LB, dated 26.07.2021. His Service Roll & Fauji Missal / Enquiry File is returned herewith.

✓
EC/OASi
Per *Asif Ali*
D.P.O Hangu
3/5

Mohammad Zafar Ali
(MOHAMMAD ZAFAR ALI) PSP
Region Police Officer,
Kohat Region.



(1)

alleged
legal.
MSP

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR

Service appeal No. 146/2022

Asif Ali

..... (Petitioner)

VERSUS

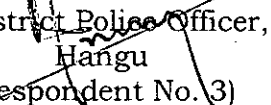
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and others

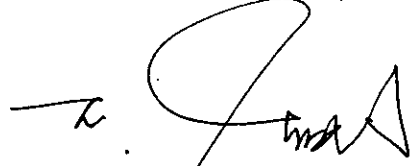
..... (Respondents)

AUTHORITY LETTER

Mr. Falak Nawaz DSP City Hangu, (BPS-17) Hangu is hereby authorized/nominated to submit para-wise comments/reply in the instant service appeal in the Hon'ble Khyber Pakhtunkhwa Service Tribunal Peshawar and also to defend instant service appeal on behalf of Respondent's No.1 to 3.


District Police Officer,
Hangu
(Respondent No. 3)
(MUHAMMAD KHALID) PSP
Incumbent


Regional Police Officer, Kohat
Kohat Region Kohat
(Respondent No. 2)
(SHER AKBAR) PSP S.St
Incumbent


DIG/Legal, CPO
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No.1)
(DR. MUHAMMAD AKHTAR ABBAS)
Incumbent
