BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Service Appeal No. 255/2024 ShahzadMasih s/o NiamatMasih, Ex-Sweeper, Deputy Inspector General of Police

VERSUS

Inspector General of Police, KP, Peshawar two (2) others (Respondents)

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VERSUS

Inspector General of Police, KP, Peshawar two (2) others (Respondents) <u>REPLY BYRESPONDENTS.</u>

PRELIMINARY OBJECTIONS:-

- a) That the appellant has no cause of action.
- b) That the appellant has been stopped by his own conduct to file the appeal.
- c) That the appeal is not maintainable in its present form.
- d) That the appellant has not come to the Hon'ble Tribunal with clean hands.
- e) The Appellant is estopped to file the appeal.
- f) That the appeal is bad for misjoinder and non joinder of necessary parties.<u>FACTS</u>:-
- 1. Pertains to Service record of the appellant, needs no comments.
- Incorrect, the appellant involved in criminal offense of immoral turpitude. Hence, a case was registered against him vide FIR No. 1266 u/s 377 PPC, 53 CPC PS Tahkal Bala, Peshawar.
- 3. Incorrect, hence denied appellant while posted at Special Branch Hqr involved in criminal offense of moral turpitude vide case FIR vide No. 1266, dated 07.09.2023 u/s 377/PPC, 53/CPC at PS Tahkal Bala, Peshawar. The act amounted to gross misconduct on part of the appellant which also carried bad name to the discipline Police Force. Consequently, departmental proceedings were initiated against the appellant, as charge sheet along with summary of allegation was issued to him. Upon completing departmental proceedings he was dismissed from service (Copies of charge sheet, summary of allegations, enquiry report are annexed as Annexures 'A' to 'C').
- 4. Incorrect, hence denied the appellant was issued with Charge Sheet and Statement of allegations as he involved in criminal offense of moral turpitude . DIG Special Branch was nominated as enquiry officer to dig out the real facts of the case and scrutinize the act of the appellant. After conduct of enquiry, the enquiry officer found him guilty and recommended the appellant for Major Penalty of dismissal

from service. (Charge Sheet along with Statement of Allegation and enquiry report already annexed above as Annexure 'A' & 'C'). Upon completion of enquiry proceedings, the appellant was issued Final Show Cause Notice (Annexure '**D**') by the competent authority. However, he badly failed to produce any cogent reason in his Reply/defense. Therefore, he was awarded major punishment of dismissal from service. (Reply of Final Show Cause Notice and Dismissal Order is as Annexure '**E**' & '**F**,)

 Correct to the extent that departmental appeal was dismissed on merit/ rejected. (Rejection order is annexed as 'G').

6. Incorrect, the order of respondents are according to law/ rules and regulations. Therefore, the instant appeal may kindly be dismissed on the following grounds;

GROUNDS:-

- A. Incorrect, orders of the respondents are according to the Law, Police Rules and Constitution of Pakistan 1973. Moreover, after fulfillment of all codal formalities appellant was dismissed from service.
- B. Incorrect, as the appellant being a member of disciplined Police force got involved in offense of moral turpitude. Moreover, criminal proceedings and departmental proceedings are two different entities fate of one does not affect the other. Reliance is placed on 2004 SCMR 192. 2020 SCMR 1708 & 2021 SCMR 420.
- **C.** Incorrect, as proper opportunity of personal hearing and self defense were provided to the appellant during course of enquiry. (Copies of his submitted statements are enclosed as Annexed as Annexure **'H'**).
- **D.** Incorrect and misleading. Acts of respondents are according to Law, rules and regulations. Rest is already explained vide above Paras.
- E. Incorrect, appellant is charged in criminal offense of moral turpitude. Consequently, he has been proceeded departmentally as per law/ rules. Moreover, departmental and judicial proceedings are apart from each other.
- F. Incorrect already explained vide above Paras.
- G. Respondents may also be allowed to raise additional grounds at the time of arguments.

PRAYER:-

Keeping in view of the above stated facts, it is therefore humbly prayed that the Appeal being not maintainable may kindly be dismissed with costs please.

Senior Superinténdent of Police, Admn,

Special Branch Khyber Pakhtunkhwa, Peshawar MUHAMMAD MAROOF (Respondent No. 3)

Incumbent

Additional Inspector General of Police Special Branch Khyber Pakhtunkhwa, Pesháwar KASHIF ALAM (PSP)

(Respondent No. 2) Incumbent

DIG/ Legal, CPO

For Inspector General of Police, Khyber Pakhtunkhwa, Peshawar (DR. MUHAMMAD AKHTAR ABBAS) PSP

(Respondent No. 1) Incumbent

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

VERSUS-

Inspector General of Police, KP, Peshawar two (2) others (Respondents)

AUTHORITY LETTER

Jan Muhammad DSP Special Branch, Khyber Pakhtunkhwa, Peshawar is authorized 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 case on behalf of respondents.

Senior Superintendent of Police, Admn;

Special Branch Khyber Pakhtunkhwa, Peshawar MUHAMMAD MAROOF (Respondent No. 3)

Incumbent

Additional Inspector General of Police Special Branch Khyber Pakhtunkhwa, Peshawar KASHIF ALAM (PSP)

(Respondent No. 2) . Incumbent

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

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

VERSUS

Inspector General of Police, KP, Peshawar two (2) others (Respondents)

AFFIDAVIT

We, Respondents No. 1, 2, & 3do hereby solemnly affirm on oath that the contents of accompanying Reply to the Service Tribunal are correct to the best our knowledge and belief. Nothing has been concealed from this Hon'ble Tribunal.

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

Senior Superintendent of Police, Admn, Special Branch Khyber Pakhtunkhwa, Peshawar **MUHAMMAD MAROOF** (Respondent No. 3) Incumbent





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CHARGE SHEET

I, Khan Akbar, SSP/Admn: Special Branch, Khyber Pakhtunkhwa Peshawar, as a competent authority, under Rule 5 (b) of Khyber Pakhtunkhwa, Govt Servants (Efficiency & Discipline) Rules, 2011 hereby charge you Sweeper Shahzad Masih as follows: -

That you while posted at SB/Hqrs allegedly involved in case FIR vide No.1266, dated 07-09-2023 under section 377/PPC, 53/CPA at Police Station Tehkal Bala Peshawar.

You're this act amounts to gross misconduct and speaks highly adverse on your part warranting stern disciplinary action against you under the relevant Rules of Khyber Pakhtunkhwa, Government Servants (Efficiency and Discipline) Rules, 2011.

By reasons of the above, you appear to be guilty of misconduct under Rule 4 of Khyber Pakhtunkhwa Govt. servants (Efficiency and Discipline) Rules, 2011 and has rendered you liable to all or any of the penalties specified in the Rules ibid.

You are, therefore required to submit your written defense within Seven days of the receipt of this charge sheet to the Enquiry Committee/Enquiry Officer as the case may be.

Your written defense, if any, should reach the Enquiry Officer / Enquiry committee within the specified period, failing which it shall be presumed that you have no defense to put in and in that case and ex-parte action shall follow against you.

Intimate whether you desire to be heard in person.

A statement of allegations is enclosed.

(Khan Akbar) SSP/Admn: Special Branch Khyber Pakhtunkhwa, Peshawar.

Encls 66

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DISCIPLINARY ACTION.

l, Khan Akbar, SSP/Admn: Special Branch, Khyber Pakhtunkhwa Peshawar, am of the opinion that Sweeper Shahzad Masih while posted to this Establishment rendered himself liable to be proceeded against departmentally, as he has committed the following acts / omissions within the meaning of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS

- That he while posted at SB/Hqrs, allegedly involved in case FIR vide No.1266, dated 07-09-2023 under section 377/PPC, 53/CPA at Police Station Tehkal Bala Peshawar.
- This act amounts to gross misconduct and speaks highly adverse on his part warranting 3) stern disciplinary action against him under the relevant Rules of Khyber Pakhtunkhwa, Government Servants (Efficiency and Discipline) Rules, 2011.
- For the purpose of enquiry against the said accused with the reference to the above ·4) allegation Mr. Aftab Ahmad Mehsood DIG Special Branch is appointed as Enquiry Officer to conduct enquiry under Rule 10 (1) (a) of the ibid rules.
- The Enquiry Officer / Enquiry Committee shall, in accordance with the provision of the 5) said Rules, provide reasonable opportunity of hearing to the accused, record and submit its findings and make within 30-days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused officer.
- The defaulter official is directed to attend the proceedings on the date, time and place 6) fixed by the Enquiry Officer.

(Khan Åkbar) SSP/Admn: Special Branch Khyber Pakhtunkhwa, Peshawar.

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// /09/2023.

/EB: dated Peshawar the, Copy of above is forwarded for information and necessary action to the: -1. The Enquiry Officer. 2. Sweeper Shahzad Masih



ENQUIRY REPORT

Subject:

ENQUIRY AGAINST SHAHZAD MASIH S/O NAMIT MASIH, SWEEPER, SPECIAL BRANCH

An FIR bearing No. 1226 dated 07-09-2023 u/s-377-53 CPA was lodged by the Afghan Citizen namely Zia Ullah S/O Sawab Gul at Police Station Tehkal, Peshawar (Annex-I) against unknown with regard to commitment of unnatural offence and sexual molestation on 07-09-2023 with his 8/9 years minor son/victim namely Bilal being deaf and dumb. Upon the pointation of minor Bilal (the victim), the concerned police station thoroughly investigated the case and arrested the accused namely Shahzad Mashee S/O Namit Mashee which is now in Centre Jail, Peshawar.

Shahzad Mashee S/O Naimat Mashee is an employee of Special Branch, Peshawar who was appointed as Sweeper on 05-11-2003 on contract basis and later on his service regularized vide notification No. 2425-32/EB dated 02-12-2005. Upon the verbal direction of high-ups, Shahzad Mashee posted to Banglow of DIG Karim Khan on 01-01-2018 and till date he is working there. A copy of his profile is at (Annex-II).

As the above named accused is the employee of Special Branch, Peshawar, therefore, Charge Sheet was given to Shahzed Mashee and accordingly disciplinary proceeding was initiated vide order No. 8953-54/EB: dated 11-09-2023 and the undersigned has been nominated as inquiry officer to investigate the matter transparently. A copy of Charge Sheet and Disciplinary Action Order is at (Annex-III) respectively. It is further added that the accused has been suspended from the service vide this headquarter Order No. 8946-52/FB dated 11-09-2023 (Annex-IV).

PROCEEDING:

The undersigned collected the evidences and reports submitted at/by various tiers to conduct a transparent/impartially inquiry. In this regard, the victim's father Zia Ullah S/O Sawab Gul was called for personal hearing on 13-09-2023.

Upon inquiring the case and personal hearing, Zia Ullah, father of victim has put the following (a copy of his written statement is also attached as (Annex-V):

- i. That the he is an Afghan citizen and residing in a rented house located at Shaheed Abad, Tahkal Bala, Peshawar since 13 months and works as a Junk/Broker.
- ii. That his son namely Bilal (the victim) is 8/9 years of age who has deaf and dumb is studying at Hayatabad School.

He claimed that on 07-09-2023 when his son Bilal was coming to home from school a person committed unnatural offence and sexual molestation with his minor son. Later on, on the pointation of his minor son, an FIR was lodged in the Police Station Tahkal Bala, Peshawar.

 iv. He further informed that after inspection and interrogated the case, arrested Shahzad Mashee and his minor son being deaf and dubm narrated the story through sings and gestures that the above mentioned accused has committed the said offence.

v. That he charged the accused Shehzad Mashee S/O Naimat Mashee for committing unnatural offence and sexual molestation with his minor son namely Bilal.

The accused cannot attend the inquiry proceeding as he arrested an in the custody of police, therefore, he submitted his written statement which is attached as (Annex-VI). In his written statement, Shahzad Mashee submitted the following points in his defence;

- i. That since 2002 he is an employee of Special Branch Headquarter, Peshawar and working approximately in the Banglow of Retired Ex-Commission Mr. Iqbal which is located at Hayatabad, Phase-II.
- ii. He added that he left to home around 04:30 PM and via BRT reached to BRT StationTahkal around 05:30 PM. After that take some grocery and reach home at 06:10 PM.
- iii. He further added on 08-09-2023 around 10:00 AM he was in home when the Tahkal police arrested him on account of baseless allegation charged against him.

Upon the direction of High-ups, a Special Investigation Team of constituted by the SSP Investigation CCP Peshawar vide Order No. 4366-71/PA dated 08-09-2023 with an aim to arrested the real accused and investigate the case transparently/impartially. A copy of order of investigation team is at (Annex-VII). Therefore, to find out the more factual position of the case, on the member from the above investigation team namely Mr. Ali Akber Khan (Inspector), OII Tahkal Police Station was also heard and he submitted his written statement which is placed at (Annex-VIII). His submissions with the regard to the instant case are as under;

i. That upon the complaint of Zia Ullah father of victim Bilal, an FIR was lodged against the unknown person who committed unnatural offence and sexual molestation with minor Bilal. As the vitim is deaf and dumb, therefore, he narrated his story with signs and gesture and develop a map of the location/crime scene.

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- As per practices in involves in such cases, the concerned police visited the crime scene and after thorough investigation, arrested the culprit which named as Shahzad Masih, an employee of Special Branch Headquarter, Peshawar.
- iii.
- Meanwhile, a copy of FIR/Report has been sent to KMC for medical examination/analysis, however, the report is not yet received and are pending at their part.
- iv. He revealed that accused was interrogated under the supervision of high level officers whereas the accused informed the officer that his wife is 7 months pregnant that's why he committed this act. The inspector further submitted that the accused 3 times accepted and committed all the charges leveled against him.
- In this regard, the inspector proposed suspension of the accused Shahzad Mashee S/O Naimat Mashee being a culprit.

FINDINGS:

On perusing the record, hearing of the parties and getting information from the relevant stakeholders, the following findings are made;

- i. It is evident from the record that the act of Shahzad Mashee S/O Naimat Mashee is an unjustified and the charges leveled against him are true and therefore, he found guiltiness.
- ii. The accused Shahzad Mashee S/O Naimat Mashee has been suspended on the account of involving in case FIR vide No. 1266 dated 07-09-2023.
- iii. The statement of Shahzad Mashee S/O Naimat Mashee (the accused) has completely denied because which is a baseless story and having no confirmation.

RECOMMENDATIONS:

As per inquiry proceedings and evidence in hand, the accused is <u>liable to imposed him a</u> major penalty of dismissal from services under Rule 4 (b) (iv) of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

(Enclosed= 11 pages)

(AFTAB AHMAD MEHSUD)^{PSP} Deputy Inspector General of Police, Special Branch, Khyber Pakhtunkhwa Peshawar.

FINAL SHOW CAUSE NOTICE

I, Aslam Nawaz, SSP Admn: Special Branch, Khyber Pakhtunkhwa, Peshawar being competent authority under Rule 5(b) of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011, issue this Final Show Cause Notice to you <u>Sweeper Shahzad</u> <u>Masih</u> as follow: -

That, you while posted at SB/Hqrs allegedly involved in case FIR vide No.1266, dated 07-09-2023 under section 377/PPC, 53/CPA at Police Station Tehkal Bala Peshawar.

You were served with Charge Sheet and statement of allegation based on said charges vide 8953-54/EB, dated 11-09-2023. Mr.Aftab Ahmad Mehsood DIG Special Branch was nominated as enquiry officer to scrutinize your conduct with reference to the charges leveled against you. The enquiry officer after conduct of enquiry, found you guilty and recommended for a Major penalty of dismissal from service.

After going through the findings of the Enquiry Officer, the material available on record and other connected papers, I am satisfied that you have committed misconduct being defined under ibid rules. As a result, thereof, I Aslam Nawaz, SSP/Admn: Special Branch, Khyber Pakhtunkhwa, Peshawar as a competent authority have tentatively decided to impose upon you Major penalty of Dismissal from Service under ibid Rules.

You are therefore, directed through this Final Show Cause Notice to Reply within 07-days as why not punishment be imposed upon you.

In case your reply is not received within stipulated period, it shall be presumed that you have no defense to put and, in that case, an ex-parte action shall be taken against you. Copy of findings of the Enquiry Officer is enclosed.

12-10-2023

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(Aslam Nawaz) PSP, UNPM

No.9785/EC(En

Dated _11 / { P

Senior Superintended of Police Admn: Special Branch Khyber Pakhtunkhwa, Peshawar



To

Mr Aslam Nawaz SSP Admin Special Branch KPK Peshawar

n (53:10?

Subject: Reply To The Final Show Cause Notice.

Respected Sir, Reply is submitted as under;

Earlier the show cause notice and statement of allegations have been replied with detail. Specifying the innocence of the undersigned. The matter has not been inquired per rules and law as specified.

Pertinent to submit that at very intrensic the FIR was lodged against unknown person latter on the undersigned was arrested on the very day and date, 7-09-2023 without any charge as on 09-09-2023 statement U/S 164 CRPC was recorded by father of the victim when the undersigned was in police custody.

Letter on, as the story and involvement of the undersigned as alleged was based on concoction and the matter was that of further inquiry the learned judge of the child protection court was pleased to release the undersigned on bail on 28-09-2023, which gave further Probe of innocence to the accused Govt. servant. The inquiry as conducted was not in accordance relevant law and regulations as to since 28-09-2023. The undersigned has not been allowed to participate in the inquiry proceeding or he be heard personally, rather without conducting any inquiry the recommendation have been made over the statement of the father of the victim, no document has been examined even the medical report neglecting the status and stance as narrated by the investigating officer while conducting the case.

With utmost respect it is submitted the undersigned is innocent and falsely been implicated in case further to submit that the undersigned has enough service at has credit without and adverse attribution.

It is requested for Exhortation of the undersigned from the inquiry/ charge and be allowed to rejoin his service.

Thanking You Name: Shahzad Masih Resignation: Sweeper

Department: Special Branch

<u>ORDER</u>

This office order relates to the disposal of formal departmental enquiry against Sweeper Shahzad Masih (BPS 04) on the allegation/charges that while he was posted at Special Branch HQrs: Peshawar involved in criminal case vide FIR No.1266 dated 07.09.2023 u/s 377-PPC/53-CPA PS Tehkal Bala, Peshawar.

Accordingly, he was placed under suspension and closed to SB HQrs vide Order Endst: No.8946-52/EB dated 11.09.2023. He was also charge sheeted and issued summary of allegations in order to dig out the actual facts. Mr. Aftab Ahmed Mehsud DIG Special Branch Khyber Pakhtunkhwa Peshawar was appointed as Enquiry Officer. He conducted the enquiry proceedings against Sweeper Shahzad Masih and submitted his report/findings that the alleged official found guilty of the charges levelled against him. He further recommended that he shall be awarded major punishment of dismissal from service under Rules-4 (b) (iv) of the Khyber Pakhtunkhwa Government servants (Efficiency & Discipline) Rules.

Upon the findings of the Enquiry Officer, he was issued Final Show Cause Notice vide No.9785/EC(Enq) dated 11.10.2023 which he received and replied but found un-satisfactory/ plausible. He was also called to be heard in person on 24.10.2023. During hearing he was badly failed to produce any cogent reason in self-defence regarding his involving in immoral criminal case. Moreover, he was also provided time for cross questions.

In view of the above facts, findings of the Enquiry Officer and other material available on record, the undersigned came to conclusion that charges/allegations levelled against the alleged official has been proved beyond any shadow of doubt and found guilty of misconduct being involved in immoral turpitude criminal case u/s 377-PPC/53-CPA which is stigma for department. He also defamed the image Police Department in the eyes of general public.

In exercise of the power vested to me under the Khyber Pakhtunkhwa (Efficiency & Discipline) Rules, <u>I, Aslam Nawaz SSP Admn: Special Branch Khyber Pakhtunkhwa, being</u> <u>the competent authority awarded him major punishment of dismissal from service</u> with immediate effect under the ibid rules.

(Aslam Nawaz) ^{PSP} Sr: Superintendent of Police, Admn: Special Branch, Khyber Pakhtunkhwa Peshawar.

No. $c_1 - g_1 / \mathbb{BB}$, dated Peshawar the

34 /10/2023.

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Copy of above is forwarded to the:-

- 1. Addl: IG Special Branch, Khyber Pakhtunkhwa,
- 2. DIG International Accountability Branch, CPO.
- 3. DIG Special Branch, Khyber Pakhtunkhwa, Peshawar.
- 4. SSP Admin Special Branch, Khyber Pakhtunkhwa, Peshawar.
- 5. Establishment Section Special Branch, Khyber Pakhtunkhwa.
- 6. Account Branch, Special Branch, Khyber Pakhtunkhwa.
- 7. I/C SRC Special Branch, Khyber Pakhtunkhwa.
- 8. LO Special Branch, Khyber Pakhtunkhwa.
- 9. Officer Concerned.



OFFICE OF THE ADDL: INSPECTOR GENERAL OF POLICE, SPECIAL BRANCH KHYBER PAKHTUNKHWA PESHAWAR

No. 12 - 9 / C & E, Desk, Peshawar,

the Dated, 05/01 /2024.

<u>ORDER</u>

This order is passed to dispose of departmental appeal preferred by Ex-Sweeper Shahzad Masih (BPS 04) under Khyber Pakhtunkhwa Efficiency & Discipline Rules 2011 against his dismissal from service. Facts forming the background of the departmental appeal are as follow.

That Ex-Sweeper Shahzad Masih (hereinafter referred as appellant) while posted at SB/HQrs, got involved in criminal case vide FIR No. 1266 U/S 377/PPC,53/CPA at police station Tehkal Bala, wherein he was charged for committing immoral and sexual offense with 8/9 years minor son/victim namely Bilal being deaf and dumb.

Proper departmental proceedings were initiated against the appellant under Khyber Pakhtunkhwa Efficiency & Discipline Rules 2011 by issuing charge sheet and Statement of Allegations wherein **Mr. Aftab Ahmad Mehsud (DIG SB)** was nominated to probe into the matter.

The enquiry officer accomplished enquiry and held the appellant guilty of committing immoral and sexual offense within the meaning of ibid rules hence dismissed from service by the competent authority.

His appeal was perused and detail along with the record of enquiry proceedings by the undersigned but found unsatisfactory having no substance. Further, he was given an opportunity for hearing in person in orderly room but the appellant did not convince the undersigned. Therefore, the appeal of the appellant is rejected and filed in the light of his involvement in serious immoral turpitude criminal case.

(Kashif Alam) PSP

Addl: Inspector General of Police, Special Branch Khyber Pakhtunkhwa Peshawar.

Copy to the:-

1. PA to SSP/Admin SB

2. DSP HQrs SB.

3. LO, SRC,EB & Accountant SB.

4. Official Concerned.

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