

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.489/2022.

Sub Inspector Hidayat Ullah No.427-P of CCP Peshawar..... Appellant.

VERSUS

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

REPLY BY RESPONDENTS NO. 1, 2&3.

SCANNED
KPST
Peshawar

Respectfully Sheweth:-

PRELIMINARY OBJECTIONS:-

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 not come to Hon'ble Tribunal with clean hands.
4. That the appellant has no cause of action and locus standi to file instant appeal.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from the Hon'ble Tribunal.
7. That the appeal is not maintainable being devoid of any merit.

REPLY ON FACTS:-

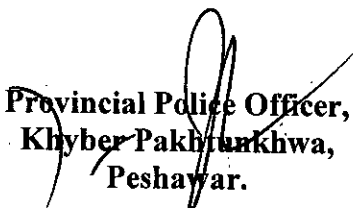
1. Pertains to record however the performance of the appellant during service is not upto the mark.
2. Incorrect, The appellant while posted as OII at PS Mattani Peshawar was proceeded departmentally on the charges when an audio clip got viral on social media wherein he talking via phone with the brother of arrested accused Asif and demanding gratification in lieu of extending relief to the accused in Police Custody whom arrested in cases FIR No.473, dated 08.04.2021 u/s 392/412 and FIR No.787, dated 11.06.2021 u/s 15AA/ 11BNCNSA PS Mattani.(audio clip of conversation is annexure as A)
3. Incorrect, Para already explained in the preceding para however an audio clip made viral on Social Media wherein accused Asif alleged that the appellant OII has demanded illegal gratification from his brother via phone lieu of extending relief in Police custody.
4. Correct to the extent that he was issued show cause notice under Rule 5(3) of KP Police Rules 1975 (amended 2014) to which he replied but his explanation was found unsatisfactory and the allegations stand proved, hence reprimanded accordingly.(copy of show cause notice & reply are annexure as B,C)
5. Incorrect, the competent authority before imposing penalty had completed all codal formalities and sufficient opportunity of defence was provided to him. The audio clip was played in his presence however he failed to defend thus awarded him Minor punishment of forfeiture approved service for a period of one year.
6. Incorrect, the appellant filed departmental appeal which after due consideration was filed/rejected having no substance in it as the charges leveled against him were proved.
7. That appeal of the appellant being devoid of merit and limitation may be dismissed on the following grounds.

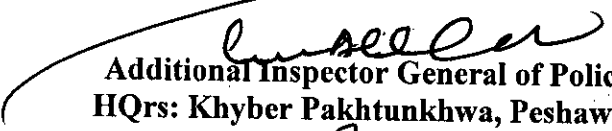
REPLY ON GROUNDS:-

- A. Incorrect, the penalty is just, legal and passed in accordance with law/rules and liable to be upheld.
- B. Incorrect, the appellant was dealt legally and no violation of constitution of Pakistan has been done by the respondent department. The allegation of demanding illegal gratification was proved against him hence rightly panelized.
- C. Incorrect, the competent authority has discretion to dispense with the enquiry proceeding either in summary proceedings or in general proceedings hence proceeded summarily by issuing him show cause notice under Rule 5(3) of Rules ibid however the appellant failed to submit convincing reply hence reprimanded accordingly.
- D. Incorrect, the appellant was issued show cause notice under Rule 5(3) of Rules ibid to which he replied but his reply was found unsatisfactory. Later, the competent authority heard him in person, but he failed to rebut the charges leveled against him.
- E. Incorrect, Para already explained in the proceedings paras of facts and grounds.
- F. Incorrect, the competent authority examined the available material on record and after completion of all the legal formalities passed the punishment order.
- G. Incorrect, the competent authority before imposing Minor punishment had completed all codal formalities and sufficient opportunity of personal hearing/self defense was provided to appellant but he failed to defend himself.
- H. Incorrect, the allegations leveled against him were based on facts as the audio clip is the credible and admissible evidence available on record which is sufficient for proving his guilt. Therefore the penalty is passed in accordance with law needs to be upheld.
- I. Incorrect, the penalty is passed by the competent authority and in accordance with law/rules and liable to be upheld.
- J. That respondents may also be allowed to advance any additional ground at the time of hearing of the appeal.

PRAYER.

It is therefore most humbly prayed that in light of above facts and submissions, the appeal of the appellant being devoid of merit and legal footing, may kindly be dismissed with costs please.


Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.


Additional Inspector General of Police,
HQrs: Khyber Pakhtunkhwa, Peshawar.


Capital City Police Officer,
Peshawar.

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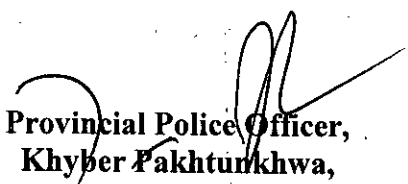
Sub Inspector Hidayat Ullah No.427-P of CCP Peshawar..... **Appellant.**


VERSUS


Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. **Respondents.**

AFFIDAVIT

We respondents No. 1 , 2 & 3 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Hon'ble Tribunal.


Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.


Additional Inspector General of Police,
HQrs: Khyber Pakhtunkhwa, Peshawar.


Capital City Police Officer,
Peshawar.



03 OCT 2022

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AUTHORITY.

I, **Capital City Police Officer, Peshawar**, hereby authorize **Mr.Ahmad Jan** SI legal of Capital City Police, Peshawar to attend the Hon'ble Court and submit written reply, statement and affidavit required for the defense of above service appeal on behalf of respondent department.

**Capital City Police Officer,
Peshawar.**



ٹیلی فونک بات چیت از اہدایت خان

کالر - امن دے

ہدایت - رازہ کنہ ہفتے سڑے تھانہ کے دے چہ ملاقات ہم ورسرہ اوکے اور وہ کچھر وکار برابر کو

کالر - صحیح دہ

ہدایت - چہ کارٹیک کو چہ لس شل روپے ہم چالہ ور کے چہ ریمانڈ ہم کم راکہ

کالر - صحیح دہ رورے راروان دے

ہدایت - ہفتہ تہ او وایہ چہ برابر راشی چہ خرچہ او کو چہ دو روزے ریمانڈ راکہ 4/5 روزے رانہ کی

کالر - مقصد دہ دے چہ ریلیز خوشنتہ

ہدایت - نہ نہ دابہ عدالت تہ بوزم اور ریمانڈ بہ اظلم ورتہ وایہ چہ برابر راشہ

کالر - صحیح دہ



Annexure-B
OFFICE OF THE
CAPITAL CITY POLICE OFFICER,
PESHAWAR

No. 2047 /PA, dated 2.7.2021

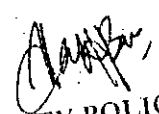
SHOW CAUSE NOTICE
(Under Rules 5(3) of KPK Police Rules 1975)

That you **SI Hidayat Ullah** have rendered yourself liable to be proceeded under Rules 5 (3) of the Khyber Pakhtunkhwa Police Rules 1975 for following misconduct:-

- i) That a video went viral on social media in which an accused namely Asif Khan r/o Mattani has stated that the OII has called his brother and demanded money/bribe by giving relaxation/concession in Police Custody.
- ii) As per Police Station Record accused Asif Khan was involved in case FIR No. 787, dated 11-06-2021 u/s 15AA/11B CNSA and FIR No. 473 dated 08-04-2021 u/s 392/412 PPC PS Mattani.
- iii) As per report of SSP/Investigation Peshawar that allegations of demanding money from the accused party by OII Hidayat Ullah were found correct as per video clip of accused Asif Khan.

This act of yours comes within the definition of misconduct as defined in the rules mentioned.

- 2) That by reason of the above, as sufficient material is placed before the undersigned; therefore, it is decided to proceed against you in general Police proceedings without aid of the enquiry officer.
- 3) That the misconduct on your part is prejudicial to good order of discipline in the Police Force.
- 4) 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.
- 5) 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.
- 6) You are further directed to inform the undersigned that you wish to be heard in person or otherwise.


CAPITAL CITY POLICE OFFICER
PESHAWAR.

جناب عالی:-

بحوالہ مشمولہ شوکاز نوٹس مجاریہ جناب سی سی پی او صاحب پشاور معروض خدمت ہوں کہ مورخہ 11.06.2021 کو مجرم اشتہاری آصف خان ولد حبیب الرحمان سکنہ شرکیہ ہارٹ باہا مطلوب مقدمہ نمبر 473 مورخہ 08.04.2021 جرم 392، 412 تھانہ متنی گرفتار ہو کر جس کے خلاف عابد خان ASi کی طرف سے علیحدہ مقدمہ نمبر 787 مورخہ 11.06.2021 جرم 15AA/11BCNSA تھانہ متنی بھی درج رجسٹرڈ ہو کر تفتیش من Si کو حوالہ ہو کر نقشہ مرتب کیا۔ ملزم کو ہمراہ نفری پولیس ہر دونوں مقدمات بالا میں 7/7 یوم کسٹڈی حاصل کرنے JMIC/MOD صاحب کو پیش کر کے 2/2 یوم کسٹڈی منظور ہو کر مقدمہ نمبر 473/021 جرم 392، 412 متنی کی تفتیش شمشاد خان ASi نے کیا۔ جبکہ مقدمہ نمبر 787/021 جرم 15AA 11B CNSA کی تفتیش من Si نے کیا۔ دوران انٹار و گیشن ملزم نے جرم خود کو تسلیم کیا ہے جس سے موقع کی نشاندہی کرائی ہے۔ (درخواست کسٹڈی و آرڈر عدالت ہمراہ لف ہے)۔

علاوہ ازیں یہ امر قابل ذکر ہے کہ ملزم خود اور اس کے رشتہ داران الزام تراشی کر رہے تھے کہ مقامی پولیس نے ملزم کو کافی دن پہلے نیز قانونی طور پر گرفتار کر کے نامعلوم مقام منتقل کر کے اس پر سخت تشدد کیا ہے۔ لہذا حالات واقعات اور موقع کی نزاکت کے پیش نظر سائل نے ملزم کے رشتہ داروں سے ہمدردی کا اظہار کیا اور اس سے رابطہ ہو کر ملزم کے رشتہ داروں کو نارمل کرنے اور پولیس کے خلاف الزام تراشی سے ہٹانے کی خاطر گفت و شنید ہوئی اور ان کو عدالت و پکھری میں اپنا بندوبست کرنے کی ہدایت کی ہے۔ اپنے لئے کوئی ڈیمانڈ نہیں کیا ہے۔ نہایت حکمت عملی سے کام لیا ہے۔ ملزم پر تشدد کے بارے میں مجاز عدالت نے مورخہ 12.06.2021 کو کسٹڈی آرڈر میں بھی واضح الفاظ میں ذکر کیا ہے اور جیل سپرنٹنڈنٹ صاحب سے رپورٹ پیش کرنے کی ہدایت کی تھی۔

حلفاً بیان کرتا ہوں کہ میں نے ملزم کے رشتہ دار سے رشوت کا مطالبہ نہیں کیا ہے اور نہ رقم لیا ہے 2 یوم کسٹڈی لیا ہے ملزم کے ساتھ تفتیش میں کسی قسم کوئی نرمی نہیں کیا ہے۔ حقیقت صفحہ مشمل پر موجود ہے۔ ملزم ایک چالاک اور مجرمانہ ذہنیت کا حامل ہے اور مقامی پولیس کو پھنسانے کی ناکام کوشش کرتا ہے۔ تاکہ وہ علاقہ میں اپنی چوری چکاری، منشیات فروشی کے دھندے آزادی سے کرتے رہے۔ ملزم کا ایک ساتھی شفیق عرف پانکے ابھی بھی مجرم اشتہاری ہے۔ جو کہ ایف آئی آر سے صاف واضح ہے۔ ملزم کے خلاف مقامی لوگوں نے بذریعہ موبائل بھی ملزم کے خلاف باتیں کیا ہے۔ جو پرنٹ وغیرہ لف ہے۔ سائل کو بہترین تفتیش پر اور ملزمان کو کیفر کردار تک پہنچانے انسران بالا صاحبان نے وقتاً فوقتاً نقد انعامات اور سرٹیفکیٹ سے نوازا ہے۔ عاجزانہ استدعا ہے کہ حقیقت کو پیش نظر رکھ کر سائل کے شوکاز نوٹس کو بغیر کسی کاروائی کے داخل دفتر کرنے کا حکم صادر فرمایا جائے۔

سائل دعا گور ہے گا۔

سائل
ہدایت خان سب انسپٹر
پولیس لائن پشاور
8/7/21