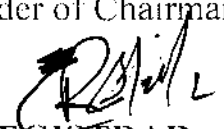


FORM OF ORDER SHEET

Court of _____

Appeal No. 735/2024

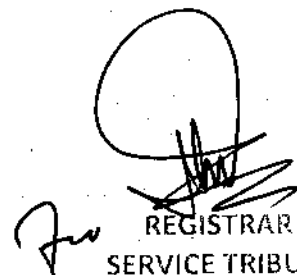
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	30/05/2024	<p>The appeal of Mr. Sher Zada resubmitted today by Mr. Fazal Shah Mohmand Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar 03.06.2024. Parcha Peshi given to the counsel for the appellant.</p> <p>By the order of Chairman  REGISTRAR</p>

The appeal of Mr. Sher Zada received today i.e on 24.05.2024 is incomplete on the following score which is returned to the appellant for completion and resubmission within 15 days.

- 1- Check list is not attached with the appeal.
- 2- Appeal has not been flagged /marked with annexures mark.
- 3- Affidavit is not attested by the Oath Commissioner.
- 4- Annexures/documents attached with the appeal are unattested.
- 5- Memorandum of appeal is not signed by the appellant.
- 6- Three copies/sets of the appeal along with annexures i.e. complete in all respect for Tribunal and one for each respondent may also be submitted with the appeal.

No. 72 /Inst;/2024/KPST,

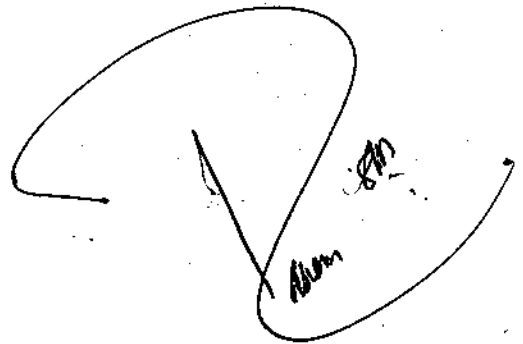
Dt. 27/05 /2024:


27/5/24
REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Fazal Shah Mohmand Adv.
High Court Peshawar.

Respected Sir,

Resubmitted, after necessary
completion, all the objections are
removed accordingly.


Hum

Dated

30-05-2024

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No 735 /2024

Sher Zada.....APPELLANT


V E R S U S

SP & others.....RESPONDENTS


I N D E X

S. No	Description of Documents	Annex	Pages
1.	Service Appeal with Affidavit		1-4
2.	Application for condonation of delay with Affidavit		5
3.	Copy of Order dated 23-11-2016 & Judgment dated 23-05-2023	A, B	6-13
4.	Copy of Order dated 03-07-2023, Charge Sheet & Inquiry report	C, D & E	14-18
5.	Copy of Order dated 03-01-2024	F	19
6.	Copy of departmental appeal	G	20
7.	Vakalat Nama		21

Through Appellant


Fazal Shah Mohmand
Advocate,
Supreme Court of Pakistan

&
BASEER AHMAD SHAH


IBAD UR REHMAN KHALIL
Advocates, Peshawar

OFFICE: Cantonment Plaza Flat 3/B Khyber Bazar
Peshawar

Cell# 0301 8804841

Email:- fazalshahmohmand@gmail.com

Dated: 24.05.2024

I

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Service Appeal No. 735 /2024

Khyber Pakhtunkhwa
Service Tribunal

Diary No: 12979

Dated: 24-05-2024

Sher Zada, Head Constable No 1613, Elite Force, Khyber
Pakhtunkhwa, presently, Elite Police Training Centre Nowshera

..... **APPELLANT**

V E R S U S

1. Superintendent of Police, Headquarters, Elite Force, Peshawar.
2. Deputy Commandant, Elite Forcer, Khyber Pakhtunkhwa,
Peshawar. **RESPONDENTS**

**APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA, SERVICE
TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 03-01-
2024, TO THE EXTENT OF TREATING THE INTERVENING
PERIOD AS WITHOUT PAY AND AGAINST WHICH
DEPARTMENTAL APPEAL OF THE APPELLANT HAS NOT
BEEN RESPONDED SO FAR DESPITE THE LAPSE OF
MORE THAN THE STATUTORY PERIOD OF NINETY DAYS.**

PRAYER:

On acceptance of this appeal the impugned Order dated
03-01-2024, may kindly be modified/varied to the extent
thereby reinstating the appellant in service with all back
benefits.

Respectfully Submitted:-

1. That the appellant was initially enlisted as Constable in the
respondent department in the year 1998 and being eligible was
promoted as Head Constable and transferred to Elite Forcer
Khyber Pakhtunkhwa, and since then the appellant performed
his duties with honesty and full devotion and to the entire
satisfaction of his high ups.

2. That on the allegations of involvement in Criminal Case registered vide FIR No. 354 dated 17-09-2016 U/S 436/427/381/411PPC, the appellant was dismissed from service vide Order dated 23-11-2016 and after availing departmental remedy, the appellant filed Service Appeal No 711/2017, wherein the dismissal order was set aside with directions to respondents to conduct denovo inquiry in accordance with law vide Judgment dated 19-10-2018. Accordingly on conclusion of denovo inquiry, the appellant was again removed from service vide Order dated 16-01-2019 and against which after availing departmental remedies, the appellant filed Service Appeal No 713/2019, which was accepted with directions to respondents to conduct inquiry strictly in accordance with law within, providing fair opportunity to the appellant sixty days vide Judgment dated 23-05-2023. **(Copy of Order dated 23-11-2016 & Judgment dated 23-05-2023 is enclosed as Annexure A & B)**

3. That the appellant was reinstated in service vide Order dated 03-07-2023 and Charge Sheet with Statement of Allegations was issued to him on 04-07-2023 and inquiry was conducted wherein no evidence was collected in support of the allegations. **(Copy of Order dated 03-07-2023, Charge Sheet & Inquiry report is enclosed as Annexure C, D & E)**

4. That finally the appellant was reinstated in service however the intervening period was treated as without pay vide Order dated 03-01-2024. **(Copy of Order dated 03-01-2024 is enclosed as Annexure F)**

5. That the appellant preferred departmental appeal dated 17-01-2024 for allowing him back, benefits of the intervening period before respondent No 2 which has not been decided so far despite the lapse of more than the statutory period of ninety days. **(Copy of departmental appeal is enclosed as Annexure G)**

6. That the impugned Order dated 03-01-2024 is liable to be modified/varied thereby reinstating the appellant in service with all back benefits and the refusal of respondents accordingly, is against the law, facts and principles of justice on grounds inter-alia as follows:-

GROUND S:-

- A. That the impugned Order to the extent of not giving the appellant back benefits is illegal, unlawful, without lawful authority and void ab-initio.
- B. That mandatory provisions of law and rules have badly been violated by the respondents and the appellant has not been treated according to law and rules.
- C. That the appellant was involved in a false criminal case from which he has been acquitted by the Court of competent jurisdiction vide Order dated 17-11-2022, hence the very on which the appellant was dismissed from service no more exist, hence the appellant is entitled to be reinstated in service with all back benefits.
- D. That no evidence of any sort was collected during inquiry to substantiate the allegations, hence the appellant is entitled to be reinstated in service with all back benefits.
- E. That Show Cause Notice was not issued to the appellant hence too the impugned Order is liable to be modified accordingly.
- F. That there is no omission or commission on part of the appellant and the appellant could not be punished for the fault of others even if any.
- G. That the appellant was not afforded the opportunity of personal hearing.


- H. That the appellant has about 26 years of service with unblemished service record.
- I. That the appellant seeks the permission of this honorable tribunal for further/additional grounds at the time of arguments.

It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for in the heading of the appeal.

Any other relief deemed appropriate and not specifically asked for, may also be granted in favor of the appellant.



Appellant

Through


Fazal Shah Mohmand
Advocate,
Supreme Court of Pakistan

BASEER AHMAD SHAH

&


IBAD UR REHMAN KHALIL
Advocates, Peshawar

Dated: 24.05.2024

CERTIFICATE:

Certified that as per instructions of my client, no other Service Appeal on the same subject and between the same parties has been filed previously or concurrently before this honorable Tribunal.


ADVOCATE

AFFIDAVIT:

I, Sher Zada, Head Constable No 1613, Elite Force, Khyber Pakhtunkhwa, presently, Elite Police Training Centre Nowshera, (the appellant), do hereby solemnly affirm and declare on oath that the contents of this **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.


DEPONENT

5

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No _____/2024

Sher Zada.....**APPELLANT**

V E R S U S

SP & others.....**RESPONDENTS**

APPLICATION FOR CONDONATION OF DELAY IF ANY

Respectfully Submitted:-

1. That the accompanying appeal is being filed today in which no date of hearing has been fixed so far.
2. That the grounds of appeal may be considered as integral Part of this application.
3. That the departmental appeal of the appellant is still pending before respondents, besides the matter is recurring cause of action, thus to the instant appeal is liable to be decided on merit.
4. That the law as well as the dictums of the superior Courts also favors decisions of cases on merit.

It is therefore prayed that on acceptance of this application, the delay if any in filing of appeal may kindly be condoned.

Through


Appellant


Fazal Shah Mohmand
Advocate,
Supreme Court of Pakistan

Dated: 24.05.2024

AFFIDAVIT

I, Sher Zada, Head Constable No 1613, Elite Force, Khyber Pakhtunkhwa, presently, Elite Police Training Centre Nowshera, (the appellant), do hereby solemnly affirm and declare on oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.


DEPONENT

17/01 - 10

(Handwritten initials)

6 26/1

A

Office of the Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar

17/01 - 10

Date: 23/11/2016.

ORDER

This order will dispose of the departmental proceedings against Head Constable Sher Zada No. 1569, of Elite Force, transferred from FRP/Khyber Pakhtunkhwa.

According to the complaint, he was allegedly involved in case FIR No. 354, dated 17.09.2016 u/s 436/427/381/411 PPC Police Station Kohsar Islamabad. In this regard, Charge Sheet and Summary of Allegations were issued to him by this office vide No. 15250-55/EF, dated 20.10.2016 and SP Elite Force Mardan was appointed as enquiry officer but the defaulter official failed to satisfy the enquiry officer, who recorded all the statements and submitted his findings to this office. The enquiry officer found him guilty in the matter and recommended him for suitable punishment on the grounds mentioned in the enquiry report including recovery of stolen amount and confirm presence of the defaulter official at the scene of crime Islamabad. Similarly, a Final Show Cause Notice was issued to him but his reply was found unsatisfactory.

The afore, I, Muhammad Hussain, Deputy Commandant, Elite Force, Khyber Pakhtunkhwa Peshawar as competent authority, keeping in view the above facts and recommendations of the enquiry officer impose major penalty of dismissal from service upon the defaulter official with immediate effect.

(Handwritten signature)
ATTENDED
TO BE TRUCKED

(Handwritten signature)
(MUHAMMAD HUSSAIN) SP
Deputy Commandant
Elite Force Khyber Pakhtunkhwa
Peshawar.

Copy of the above is forwarded to the:-

1. Commandant, FRP Khyber Pakhtunkhwa Peshawar for information.
2. Superintendent of Police, Elite Force Headquarters.
3. Superintendent of Police, Elite Force Mardan.
4. Office Superintendent, Elite Force Khyber Pakhtunkhwa Peshawar.
5. Elite Force Khyber Pakhtunkhwa Peshawar.
6. Charge No., Elite Force Khyber Pakhtunkhwa Peshawar.
7. Assistant, Elite Force Khyber Pakhtunkhwa Peshawar.
8. Elite Force Khyber Pakhtunkhwa Peshawar.
9. Along with complete enquiry encls: 31 pages.
10. O.F., Elite Force Khyber Pakhtunkhwa Peshawar.

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(6)

OFFICE OF THE DEPUTY COMMANDANT
ELITE FORCE KHYBER PAKHTUNKHWA PESHAWAR

17101-10

Dated 23.11.2016.

This order with dispose of the department proceedings against Head Constable Sher Zada No, 1569, of Elite Force, transferred from FRP/Khyber Pakhtunkhwa.

According to the complaint, he was allegedly involved in case FIR No. 354, dated 17.09.2016 u/s 436/427/391/411 PPC Police Station Kohsar Islamabad, in this regard, Charge Sheet and Summary of Allegations were issued to him by this office vide No. 15250-55/EF, dated 20.10.2016 and SP elite Force Mardan was appointed as enquiry officer but the defaulter official failed to satisfy the enquiry officer, who recorded all the statements and submitted his findings to this office. The enquiry officer found him guilty in the matter and recommended him for suitable punishment on the grounds mentioned in the enquiry report including recovery of stolen amount and confirm presence of the defaulter official at the scene of Crime/(sic) similarly, a final Show cause notice was issued to him but his reply was (sic) satisfactory.

Therefore, I Muhammad Hussain Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar as competent authority, keeping in view the above facts and recommendations of the enquiry officer impose major penalty of dismissal from service the defaulter official with immediate effect.

(MUHAMMAD HUSSAIN)
Deputy Commandant
Elite Force Khyber Pakhtunkhwa
Peshawar

Muhammad Hussain
ATTESTED
TO BE TRUE COPY

Copy of the above is forwarded to the:-

1. Commandant, FRP Khyber Pakhtunkhwa Peshawar for information.
2. Superintendent of Police, elite Force Headquarters.
3. Superintendent of Police, Elite Force Mardan.
4. Office Superintendent, Elite Force Khyber Pakhtunkhwa Peshawar.
5. RI, Elite Force Khyber Pakhtunkhwa Peshawar.
6. Incharge Kol, Elite Force Khyber Pakhtunkhwa Peshawar
7. Commandant, Elite Force Khyber Pakhtunkhwa Peshawar.
8. _____ Elite Force Khyber Pakhtunkhwa Peshawar.
9. _____ along with complete enquiry enls: 31 pages.
10. OH, Elite Force Khyber Pakhtunkhwa Peshawar.

7 B

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR



Service Appeal No. 713/2019

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER(E)

Sherzada, Ex-Head Constable No. 1569, Elite Force, Khyber
Pakhtunkhwa, Peshawar. (Appellant)

Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Commandant Elite Force, Khyber Pakhtunkhwa, Peshawar.
3. The Deputy Commandant Elite Force, Khyber Pakhtunkhwa,
Peshawar. (Respondents)

Mr. Taimur Ali Khan,
Advocate

... For appellant

Mr. Fazal Shah Mohmand,
Addl. Advocate General

... For respondents

Date of Institution.....28.05.2019

Date of Hearing.....23.05.2023

Date of Decision..... 23.05.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against three orders, one dated 16.01.2019, whereby major penalty of removal from service was imposed upon the appellant, second dated 26.02.2019 whereby his departmental appeal was rejected and third dated 07.05.2019, whereby his revision petition was rejected. It has been prayed that on acceptance of the appeal, the impugned orders might be set aside and the appellant might be reinstated into service with all back and

ATTENDED ?


MEMBER (E)
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

consequential benefits alongwith any other remedy which the Tribunal deemed fit and appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant joined the police force in the year 1998 as Constable and after completion of due trainings, he was promoted to the rank of Head Constable and transferred to Elite Force, Khyber Pakhtunkhwa. While serving in the respondent department he was falsely implicated in a criminal case vide FIR No. 354 dated 17.09.2016 u/s 436/427/381/411 PPC, P.S Kohsar Islamabad and arrested on the same day. On the basis of the said FIR, inquiry was conducted against him in which no proper chance of association was provided to him as he was in jail at that time. He was released on bail on 19.12.2016 and reported for duty but he was informed that he had been dismissed from service vide order dated 23.11.2016. Feeling aggrieved, he filed departmental appeal and revision petition but both were rejected on 22.02.2017 and 23.05.2017, respectively. He filed service appeal No. 711/2017 before the Service Tribunal which was finally decided on 19.10.2018 and the impugned order dated 23.11.2016 was set aside and the appellant was reinstated in service. The respondents were directed to conduct denovo inquiry strictly in accordance with rules. In compliance of judgment dated 19.10.2018, the appellant was reinstated into service. Charge sheet alongwith statement of allegations was served upon him which was duly replied by him and he denied the allegations leveled against him. Denovo inquiry was conducted and on the recommendations of the enquiry officer, major punishment of removal from service was imposed upon the

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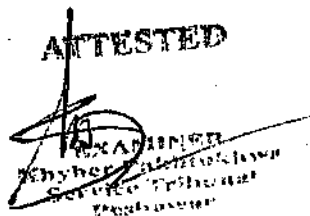
 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

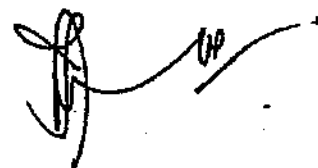


appellant vide order dated 16.01.2019. Feeling aggrieved, he filed departmental appeal which was rejected on 26.02.2019. Then he filed revision petition before the PPO under Rule 11-A of Khyber Pakhtunkhwa Police Rules, 1975 which was also rejected on 07.05.2019; hence the present appeal on 28.05.2019.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Additional Advocate General for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant after presenting the case in detail argued that the impugned orders were against the law, facts and norms of justice. According to him, the denovo enquiry was not conducted according to the prescribed procedure as no proper opportunity of defence was provided to him; neither statements of witnesses were recorded in the presence of the appellant nor he was given opportunity to cross examine them. He further argued that during the denovo enquiry, only the appellant was called by the inquiry officer, whereas the complainant, who was an ex-IGP, was not called. He further argued that as the criminal case was pending before the competent court of law when the inquiry was conducted, therefore under CSR-194-A, the respondent department should have suspended the appellant till the conclusion of criminal case but without conclusion of criminal case, he was removed from service. He requested that the appeal might be accepted as prayed for.

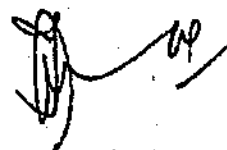
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 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar



5. Learned Additional Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was involved in a criminal case u/s 436/427/381/411 and was arrested by the local police of P.S Kohsar, Islamabad. His guilt was established by the CCTV footage as on the day of occurrence, he was found inside the house of the complainant. He further argued that the appellant was released on bail on the basis of compromise with the complainant which further confirmed the guilt of the appellant. He contended that a proper enquiry was conducted and on the recommendations of the enquiry officer, the appellant was removed from service. He requested that the appeal might be dismissed.

6. After hearing the arguments and going through the record presented before us, it is evident that the appellant, while serving in the respondent/ department, was involved in a criminal case under Sections 436/427/381/411 PPC P.S Kohsar, Islamabad. The FIR dated 17.09.2016 was registered on the request of Nawab Akbar Khan Hoti, Ex-I.G of Police, Khyber Pakhtunkhwa. The appellant was arrested on the same day when the FIR was registered. The department initiated an inquiry against him and as a result he was dismissed from service, about which he allegedly came to know when he was released on bail. After exhausting the right of departmental appeal and revision petition, he filed a service appeal before this Tribunal, which was accepted with the directions to the respondents to reinstate the appellant and conduct denovo inquiry strictly in accordance with rules. In pursuance of the judgment of the Service Tribunal dated 19.10.2018, a denovo inquiry was ordered and charge sheet and statement of allegations were issued on

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EXAMINED BY
Khyber Pakhtunkhwa
Service Tribunal
Peshawar



02.01.2019. In response to the charge sheet the appellant responded with the request to postpone the proceedings of inquiry till the final outcome of proceedings of criminal court/Sessions Judge, Islamabad, which was not accepted and the Deputy Commandant Elite Force, Khyber Pakhtunkhwa upheld his major punishment of removal from service vide his order dated 16.01.2019. Departmental appeal of the appellant as well as his Revision Petition were also rejected by the Commandant Elite Force vide order dated 26.02.2019 and AIG/Establishment vide order dated 07.05.2019 respectively.

7. While going through the proceedings of denovo inquiry, we noted that it had not been conducted in the light of rules, as directed by the Service Tribunal in its judgment dated 19.10.2018. While conducting the denovo inquiry, the inquiry officer did not record any statement of the complainant i.e the ex-IGP, Mr. Akbar Khan Hoti, as he was the material witness, without whose statement proper conclusion could not be arrived at. Further, no chance of cross examination was given to the appellant which is a clear violation of the rules. Another point, that was noted while going through the record, was that for conducting denovo inquiry, Mr. Waqar Ahmad, Acting SP/HQrs, Elite Force, Peshawar was appointed as Inquiry Officer who submitted his report on 07.01.2019. The impugned order dated 26.02.2019, passed by the Commandant Elite Force, as against that, while disposing of the departmental appeal of the appellant, mentions denovo inquiry conducted by one Mr. Salim Riaz. A report dated 25.02.2019, forwarded to the Commandant Elite Force Khyber Pakhtunkhwa, with reference to his

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 [Signature]
 Commandant Elite Force
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

[Signature]

letter dated 13.02.2019, by Salim Riaz, is available on record. According to that report, the Inquiry Officer, Mr. Salim Riaz, went through certain papers that were sent to him. He collected the service record of the appellant. He further sent two competent police officials of Elite Force to Islamabad for collecting evidence, summoned the appellant and recorded his fresh statement. All this procedure adopted by the Inquiry Officer indicates that he totally depended on already available documents and never bothered to go to the scene of actual happening to collect the evidence himself. Moreover, he only recorded the statement of the appellant, without giving him any opportunity to cross examine the witnesses, mentioned in the denovo inquiry as well as the complainant. These shortcomings make this inquiry faulty and ironically the Commandant Elite Force has based his order on the same Inquiry report.

8. Above all, FIR had already been registered and the case was subjudice in the court of law, therefore, it was in the fitness of the matter to place the official under suspension till the outcome of proceedings in the court of Judicial Magistrate, Islamabad. Learned counsel for the appellant produced an order dated 17.11.2022 passed by the Judicial Magistrate in case FIR No. 354/16 dated 17.09.2016 vide which the appellant has been acquitted of the charges leveled against him. The detailed judgment provides that during the course of hearing the complainant of the FIR, Mr. Akbar Khan Hoti, appeared before the Honourable Judicial Magistrate and submitted a compromise deed signed by him and the accused (appellant in the present service appeal) alongwith a statement recorded overleaf the compromise


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BY
MEMBER SECRETARY
Service Tribunal
Peshawar

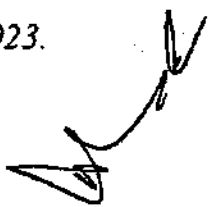
deed, wherein he categorically stated that he had forgiven all accused persons namely Sherzada and three others in the name of Allah and that he did not want to pursue the case any further and that he had no objection on the acquittal of the accused persons from that case. It is an undisputed fact that every acquittal is an honourable acquittal.

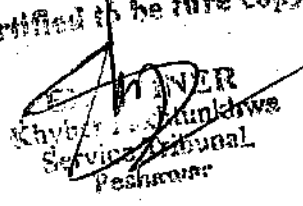
9. The above mentioned facts make this entire process faulty. It seems that the respondents have not taken the directions of this Tribunal given in its judgment dated 19.10.2018 seriously and conducted a *denovo* inquiry and later a re-inquiry, in a slipshod manner, without taking into consideration the requirements of the rules, was shown to have been conducted.

10. In view of the foregoing, this service appeal is allowed with the directions to the respondents to conduct the inquiry strictly according to the rules by providing a fair opportunity to the appellant to present his case and cross examine the witnesses and the complainant in order to arrive at an informed decision. The process is to be completed within 60 days of the receipt of copy of this judgment. The date of receipt of judgment be acknowledged. Costs shall follow the event. Consign.

11. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 23rd day of May, 2023.


(FAREHA PAUL)
 Member (E)


(KALIM ARSHAD KHAN)
 CHAIRMAN

Fazle Subhan PS
 Certified to be true copy

 Member
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

Date of Presentation of Application 13/6/23
 No. of Pages 25
 Total 10/2
 Name of Applicant _____
 Date of Completion 13/6/23
 Date of Delivery of Copy 13/6/23

Office of the Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar



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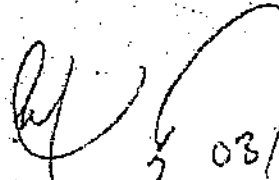
Dated: 03/07/2023

ORDER

In compliance of Khyber Pakhtunkhwa Service Tribunal Peshawar Judgment passed in appeal No. 713/2019 moved by Ex-Head Constable Sher Zada No. 1569 of Elite Force for reinstatement in service. The honorable Service Tribunal vide judgment dated 23.05.2023, passed that "Service appeal is allowed within due directions to the respondents to conduct the strictly according to the rules by providing a fair opportunity to the appellant to present and cross examine the witnesses and the complainant in order to arrive at an informed decision. The process is to be completed within 60 days of the receipt of copy of this judgment".

Therefore Ex-HC Sher Zada No. 1569 is hereby reinstated in service for the purpose of enquiry, afresh.

SP Elite Force HQs Peshawar is hereby directed to conduct denovo enquiry afresh stipulated time period and report compliance at the earliest.


03/07/23

(IRFAN TARIQ) PSP
Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar

Copy of the above is forwarded to the:-

1. Superintendent of Police, Elite Force HQs: Peshawar.
2. Accountant /EC Elite Force Khyber Pakhtunkhwa Peshawar.
3. OASI, Elite Force Khyber Pakhtunkhwa Peshawar.
4. SRC / FMC, Elite Force Khyber Pakhtunkhwa Peshawar

Attested
TO BE TRIED
AEL

15 D B

CHARGE SHEET

I, Atta Muhammad Superintendent of Police HQrs, Elite Force, Khyber Pakhtunkhwa Peshawar as competent authority hereby charge you Head Constable Sher Zada No.1569 of Elite Force.

1. You were charged in criminal case vide FIR, No.354, dated: 17.09.2016, u/s 436/427/381/411 PPC, PS Kohsar Islamabad, in this regard an enquiry was conducted, in light of which you were dismissed from service. However, honorable Service Tribunal passed the following remarks after being accepted your appeal that: *Service appeal is allowed within due direction to the respondent to conduct the enquiry strictly according to the rules by providing a fair opportunity to the appellant to present his case and cross examine the witnesses and the complainant in order to arrive at an informed decision. The process is to be completed within 60 days of the receipt of copy of this judgment*".

2. By reason of the above, you appear to be guilty of misconduct under Khyber Pakhtunkhwa Police Rules, 1975, (Amendment 2014) and have rendered yourself liable to all of the penalties specified in the said rules.

3. You are, therefore, directed to submit your defence within 07 days of the receipt of this charge sheet to the enquiry officer.

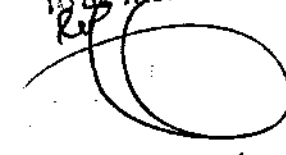
4. Your written defence, if any, should reach the enquiry officer within the specified period failing which, it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.

5. You are directed to intimate whether you desire to be heard in person.

6. A statement of allegations enclosed.



ATTA MUHAMMAD
Superintendent of Police,
HQrs. Elite Force, Peshawar.

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SUMMARY OF ALLEGATIONS

I, Atta Muhammad Superintendent of Police HQrs. Elite Force, Khyber Pakhtunkhwa, Peshawar as competent authority am of the opinion that Head Constable Sher Zada No.1569 has rendered himself liable to be proceeded against as he has committed the following misconduct within the meaning of Khyber Pakhtunkhwa Police Rules, 1975 (Amendment 2014).

SUMMARY OF ALLEGATIONS

1. Head Constable Sher Zada No.1569 was charged in criminal case vide FIR, No.354, dated: 17.09.2016, u/s 436/427/381/411 PPC, PS Kohsar Islamabad, in this regard an enquiry was conducted, in light of which he was dismissed from service. However, Honorable Service Tribunal passed the following remarks after being accepted his appeal that: *Service appeal is allowed within due direction to the respondent to conduct the enquiry strictly according to the rules by providing a fair opportunity to the appellant to present his case and cross examine the witnesses and the complainant in order to arrive at an informed decision. The process is to be completed within 60 days of the receipt of copy of this judgment".*
2. For the purpose scrutinizing the conduct of the said HC with reference to the above allegation. Mr. Fahad Khan Acting SP/Elite Force, Malakand Region, is appointed as enquiry officer for denovo enquiry.
3. The enquiry officer shall provide reasonable opportunity of hearing to the delinquent HC, record statement etc. and findings within (25 days) after the receipt of this order.
4. The delinquent HC shall join the proceedings on the date, time and place fixed by the enquiry officer.

ATTA MUHAMMAD
Superintendent of Police,
HQrs, Elite Force, Peshawar.

ATTES
10.07.2023

No. S38-45R/SP/HQrs/EF,

dated Peshawar the 04 /07/2023.

Copies to the;

1. Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar.
2. Accountant, of Elite Force, Khyber Pakhtunkhwa Peshawar.
3. Acting Superintendent of Police, Elite Force, Malakand Region,
4. PA to Additional Inspector General of Police, Elite Force, Khyber Pakhtunkhwa, Peshawar.
5. SRC/ FMC, Elite Force, Khyber Pakhtunkhwa Peshawar.
6. This Charge Sheet and Summary of Allegations to be served upon the delinquent Head Constable Sher Zada No.1569 through reader to Acting Superintendent of Police, Elite Force, Malakand Region.

Atta

ATTA MUHAMMAD
Superintendent of Police,
HQrs, Elite Force, Peshawar.



آفس آف سپرنٹنڈنٹ آف پولیس
ایلیٹ فورس ملاکنڈ ریجن



مورہ: 13-09-2023

نمبر: 2136 /R-EF

فائنڈنگ رپورٹ

AT 111
TOB
جناب عالی!

بحوالہ مشمولہ چارج شیٹ نمبری EF/HQrs/SP/45-538-R/، مورہ 04-07-2023، مجاریہ جناب SP صاحب ہیڈ کوارٹرز ایلیٹ فورس خیبر پختونخواہ پشاور۔ معروض خدمت ہوں کہ چارج شیٹ متذکرہ بمعہ دیگر کاغذات انکوائری دفتر جناب SP صاحب ایلیٹ فورس ہیڈ کوارٹرز سے موصول ہو کر ملاحظہ کرنے پر پایا گیا کہ HC شیر زادہ نمبر 1569 ایلیٹ فورس پر کیس FIR نمبر 354 مورہ 17-09-2016 جرم PPC 411/381/427/436 تھانہ کوسار اسلام آباد میں نامزد ہونے کا الزام لگایا گیا ہے۔ اور من زیر دستخطی کو انکوائری آفیسر مقرر کیا گیا ہے۔

اندریں بارہ من زیر دستخطی نے حسب ضابطہ انکوائری شروع کر کے موصول شدہ فائل کا بغور ملاحظہ کرنے پر پایا گیا کہ HC مذکور کے خلاف بحوالہ چارج شیٹ نمبری EF/55-15250 مورہ 20-10-2016، مجاریہ جناب محمد حسین خان PSP ڈپٹی کمائنڈ ایلیٹ فورس خیبر پختونخواہ بذریعہ محمد جاوید اقبال SP ایلیٹ فورس مردان ریجن محکمہ انکوائری شروع کر کے انکوائری آفیسر نے حسب ضابطہ انکوائری کر کے IO کے پراگرس رپورٹ کے حوالہ سے HC مذکور کو قصور وار ٹھہرا کر مناسب سزا دینے کی سفارش کی تھی۔ جس پر جناب ڈپٹی کمائنڈ صاحب نے HC مذکور کو فائنل شو کاز نوٹس نمبری EF/15996 مورہ 11-03-2016 جاری کر کے نتیجہ کے طور پر بحوالہ آرڈر نمبری EF/10-17101 مورہ 23-11-2016، HC مذکور کو Major Punishment دے کر نوکری سے برخاست کیا تھا۔

بعدہ، HC مذکور نے بعدالت سروس ٹریبیونل خیبر پختونخواہ پشاور اپیل نمبر 711/2017 ڈائری شدہ نمبری 723 مورہ 22-06-2017 دائر کر کے جس پر سروس ٹریبیونل نے بحوالہ آرڈر نمبری ST/2155 مورہ 25-10-2018 HC مذکور کو Re-Instate کرنے اور ساتھ ہی De-novo-Inquiry کرنے کی ہدایت کی تھی۔ جس پر جناب SP صاحب ہیڈ کوارٹرز ایلیٹ فورس خیبر پختونخواہ نے بحوالہ چارج شیٹ نمبری EF/47-42 مورہ 02-01-2019، مجاریہ جناب ڈپٹی کمائنڈ صاحب ایلیٹ فورس خیبر پختونخواہ، انکوائری HC مذکور کو قصور وار ٹھہرا کر محکمہ اور ایلیٹ فورس کے لئے شہرت بد کا سبب قرار دے کر Major Punishment دینے کی سفارش کی تھی۔ جس پر HC مذکور بحوالہ آرڈر نمبری EF/39-833 مورہ 16-09-2019، مجاریہ جناب ڈپٹی کمائنڈ صاحب ایلیٹ فورس خیبر پختونخواہ HC مذکور کا Major Punishment برقرار رکھتے ہوئے نوکری سے برخاست کیا گیا تھا۔

جس کے بعد HC مذکور نے سروس ٹریبیونل عدالت میں دوبارہ سروس اپیل نمبر 713/2019 مورہ 28-05-2019 دائر کر کے جو کہ مورہ 23-05-2023 کو فیصلہ ہو کر تفصیلی تحریری فیصلہ میں معزز سروس ٹریبیونل نے ٹرائل کورٹ کے فیصلہ اور

مدعی مقدمہ جناب EX-IGP صاحب کے جانب سے ٹرائل کورٹ میں تحریری اقرار نامہ / راضی نامہ کا ذکر کرتے ہوئے دونوں فریقین اور شہادت کو Cross-Examine کرنے کی ہدایت کر کے جس پر محکمہ نے بحوالہ آرڈر نمبری EF/9054/محرمہ-03/2022-07 مجاریہ جناب ڈپٹی کمانڈنٹ صاحب ایلینٹ فورس خیبر پختونخواہ، HC مذکور کو برائے afresh, de-novo بحال کر کے مذکورہ کے خلاف چارج شیٹ نمبری EF/HQrs/SP/45-R/538-45، محرمہ 04-07-2023، مجاریہ جناب SP صاحب ہیڈ کوارٹرز ایلینٹ فورس خیبر پختونخواہ پشاور، جاری کر کے، جس پر انوائری لہذا شروع کیا جا کر HC مذکور کو دفتر خود طلب کر کے زبانی طور پر سنا جا کر اس کا بیان قلمبند کیا گیا۔ مذکورہ نے اپنے بیان میں اپنے اوپر لگائے گئے الزامات کی تردید کرتے ہوئے واضح کیا کہ جناب EX-IGP صاحب نے غصہ کے وجہ سے من HC اور میرے دیگر رشتہ داران کو مقدمہ میں چارج کیا تھا۔

سروس ٹریبیونل اور افسران بالا صاحبان کے instruction پر عملدرآمد کے خاطر مدعی مقدمہ جناب EX-IGP صاحب کے آپریٹر مسکی شکیل سے بذریعہ موبائل فون نمبر 03455046257 بحوالہ مد 05 روزنامہ 22-08-2023 رابطہ کر کے جناب EX-IGP صاحب سے سلسلہ انکوائری ملاقات کا وقت مانگا گیا۔ جو کہ تاحال نہ مل سکا۔

جبکہ ٹرائل کورٹ وقاص احمد راجہ جوڈیشل مجسٹریٹ سیکشن-30 اسلام آباد کے جاری کردہ فیصلہ کے مصدقہ نقولات حاصل کر کے ہمراہ لف انکوائری لہذا ہونگے۔

خلاصہ رپورٹ:

سابقہ انکوائری فائل اور ریکارڈ پر موجود تمام کاغذات انکوائری کا بغور ملاحظہ کرتے ہوئے واضح ہوا کہ مدعی مقدمہ جناب EX-IGP صاحب مسٹر اکبر خان ہوتی نے ٹرائل کورٹ میں تحریری اقرار نامہ / راضی نامہ پیش کر کے ملزم ہیڈ کنسٹیبل بمعہ دیگر چارج ملزمان کو فی سبیل اللہ بخش کر مزید مقدمہ بازی نہ کرنے کا تحریر کیا ہے۔

مدعی مقدمہ جناب EX-IGP صاحب کے جانب سے تاحال سلسلہ انکوائری لہذا ملاقات کا اجازت نہیں دیا ہے۔ جس سے انکوائری لہذا کی تکمیل مزید التوا کا شکار ہو رہی ہے۔

لہذا، افسران بالا صاحبان ٹرائل کورٹ کے فیصلے کو مد نظر رکھتے ہوئے Conditionally بحال شدہ ہیڈ کنسٹیبل شیر زادہ نمبر 1569 ایلینٹ فورس کو Permanent بحال کرنے کی احکامات صادر فرمادیں تو میرے نزدیک قرین انصاف ہو گا۔ باقی افسران بالا صاحبان کے احکامات افضل ہونگے۔

فائینڈنگ رپورٹ مرتب ہو کر گزارش ہے۔


(انہد خان)

سپرٹنڈنٹ آف پولیس،

ایلینٹ فورس ملاکنڈ ریجن

Superintendent
of Police Elite Force
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OFFICE OF THE SUPERINTENDENT OF POLICE,
HEADQUARTERS, ELITE FORCE, PESHAWAR.



No. 45-49 /R, SP/HQ, EF,

Date: 03/01/2024

ORDER

As per discussion with the DSP legal Elite Force Khyber Pakhtunkhwa the intervening period against Head Constable Sher Zada No.1569 is hereby treated without-pay with immediate effect

(Signature)
(SHAH JEHAN DURRANI) PSP
Superintendent of Police,
HQrs. Elite Force, Peshawar

Copy for information to the:-

1. Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar, with reference to wide letter No. 18040/EF, dated: 05.12.2023.
2. DSP Legal Elite Force, Khyber Pakhtunkhwa
3. Accountant Elite Force KP, Peshawar.
4. OASI Elite Force, Khyber Pakhtunkhwa Peshawar.

Attested
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(Signature)
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To:- The Deputy Commandant,
Elite Force, Khyber Pakhtunkhwa, Peshawar.
(Through Proper Channel)

Subject: DEPARTMENTAL APPEAL for back benefits UNDER RULE 11 OF KP
POLICE RULES, 1975 (AMENDMENT 2014) FOR RE-INSTATEMENT

Respectfully Sheweth:-

Most respectfully, the appellant puts forth the following points for your kind consideration.

1. The appellant had filed Service Appeal No. 713/2019 for his re-instatement in service before the Hon'ble Service Tribunal, KP which was partially allowed with directions to conduct de-novo Enquiry vide judgment dated 23.05.2023. (Copy attached as Annexure 'A')
2. That the appellant in the wake of de-novo Enquiry was reinstated in service vide SP/ Elite Force, HQrs: Peshawar vide Order No. 85257/R-SP/HQrs/EF dated 03.01.2024, however, without mentioning regarding the appellant's intervening period. (Copy attached as Annexure 'B').
3. That due to the impugned order, the appellant's intervening period was not counted which shall incur great loss to the appellant in terms of service.
4. That the appellant in this respect has, time and again, visited the account section but to no avail.
5. That the appellant's reinstatement in service accrue to him every right of back benefits.
6. That the appellant belongs to poor family and is the sole source of livelihood of his children and parents too and the impugned order shall incur greater loss to him and his family.
7. That the appellant may also be allowed to be heard in person.


PRAYERS

Foregoing in view, the appellant humbly requests the appellant's intervening period may kindly be treated as leave of kind due by taking a lenient view, please.

The appellant shall be thankful and prayerful for life.

Yours obediently,

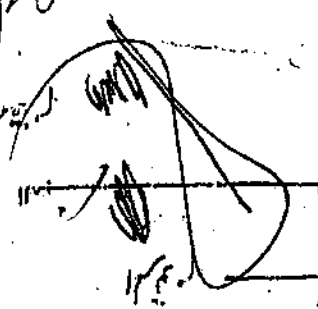
Dated 17.01.2024


Head Constable Sher Zada
No.1569/EF

Mobile: 0312-5515159

Attesting & Accepting

the



Handwritten signature or name on the left margin.

2024 05 24

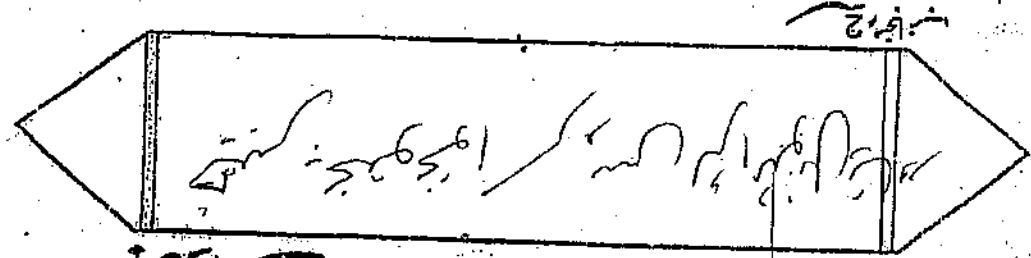
Main body of handwritten text in Urdu script, containing several lines of a document or report.

Handwritten text at the bottom of the main body, possibly a signature or a note.

امتحان کے نتائج

- A list of four items with dashed lines next to them, possibly a checklist or a list of names.

Handwritten text on the right side, possibly a signature or a date.



Handwritten text below the diagram, possibly a label or a signature.