BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.1608/2023.

Ex-Constable Kachkol Muhammad No.3867/5481 of CCP, Peshawar..... .....**Appellant.**

VERSUS.

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

I n d e x

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DSP/Legal,
CCP, Peshawar.

1-04-2024

S.B

Peshawar.

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REPLY BY RESPONDENTS NO. 1, 2, 3 & 4.

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.
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 Honorable Tribunal.
7. That the appeal is not maintainable being devoid of any merit.

REPLY ON FACTS:-

1. Pertains to record.
2. Pertains to record.
3. Incorrect. Performance of the appellant during service was not upto the mark.
4. Incorrect. The appellant has got no locus standi as he has been proceeded in accordance with law.
5. Correct to the extent of incident dated 30.01.2023 and the appellant was deputed for security at Main Gate of Masjid Malak Muhammad Saad Shaheed front gate at Police Lines, Peshawar. However, he was unable to prevent the entry of a suspected suicide bomber into the Police Lines Mosque. This catastrophic lapse resulted in the loss of over 80 police officers, with hundreds more sustaining injuries. The failure to fulfill his duty effectively led to devastating consequences, causing immense human loss and suffering to the police force.
6. Incorrect. The appellant was assigned important security duty of Masjid Main Gate. However, he tragically failed in his responsibility to identify and prevent entry of the suspected suicide bomber in manifestation of grave negligence in official duty. Therefore, he was issued Charge Sheet with Statement of Allegations and SDPO Town was appointed as Enquiry Officer. During the enquiry process, the appellant was granted a fair and transparent chance of defense and hearing. Besides providing him ample opportunity of cross examination. The Enquiry Officer conducted a meticulous examination of all relevant factors. Subsequently, based on the evidence and testimony presented, the Enquiry Officer concluded in his findings report that the appellant was guilty of the charges leveled against him. (Copy of charge sheet, Statement of allegations and Enquiry Report are annexure as, A, B & C).

7. Incorrect. The Competent Authority after receipt of the findings issued him Final Show Cause Notice, to which he has replied. Beside this, he was also heard in person. However, he failed to defend himself, hence, he was awarded major punishment of dismissal from service under Police Rules 1975 amended 2014. The appellant filed departmental appeal, which was thoroughly processed and an ample opportunity of hearing was provided to the appellant by the appellate authority but the appellant failed to defend himself with plausible/justifiable grounds, hence his appeal was rejected/filed (Copy of FSCN is annexed as D).
8. Incorrect. In fact the appellant filed Revision Petition before the PPO and without waiting its statutory period of disposal by the Appellate Authority, the appellant filed Service Appeal before this Hon'ble Service Tribunal. Thus at this score only, the instant appeal is pre-mature at this stage and wants its disposal accordingly.
9. That the appellant has been dealt in accordance with law & thus the appeal of the appellant, being devoid of merits and limitation, may be dismissed on the following grounds;

REPLY ON GROUNDS:-

A. Incorrect. The punishment order passed by the competent authority is lawful as issued in accordance with law and thus is liable to be upheld.
B. Incorrect. The punishment order is logical and has been passed in accordance with law/rules.
C. Incorrect. The appellant was deputed for Security duty to check all entering the mosque but he badly failed to identify and stop the suspect suicide bomber and resultantly a horrible incident occurred leading to loss of precious human lives. Thus the appellant exhibited grave negligence in his official duties for which he has been rightly proceeded in accordance with law.
D. Incorrect. Proper departmental enquiry was conducted and the enquiry officer reported that charges leveled against the appellant were proved beyond any shadow of doubt. The whole enquiry was conducted purely on merit and in accordance with law/rules. The appellant was provided full opportunity of defense but he failed to defend himself. After fulfilling all codal formalities he was awarded major punishment as per rules.
E. Incorrect. His departmental appeal was processed. He was heard in person by the appellate authority however, he badly failed to defend himself with plausible/justifiable grounds. Hence, rejected/ filed having no substance in it.
F. Incorrect. As explained above.
G. Incorrect. As explained above.
H. Incorrect. The appellant's failure to identify and prevent the entry of a suspect into the mosque, despite being deputed for imperative Security duty at the main gate, is a serious lapse in his responsibility. Particularly concerning is the appellant's failure to recognize and apprehend a suspect wearing a uniform, indicating lack of vigilance and awareness in performing their duties. In this regard proper departmental enquiry was conducted against him wherein charges leveled against him were proved beyond any shadow of doubt. It is clear that such negligence is highly objectionable. Therefore, upholding the punishment order is essential to maintain discipline within the department.

I. Respondents also seek permission of this Hon'ble Tribunal to raise additional grounds at the time of arguments.

Prayers:-

Keeping in view the above stated facts & reasons it is, most humbly prayed that the appeal of the appellant being devoid of merits and limitation, may kindly be dismissed with costs, please.

Superintendent of Police,
HQrs, Peshawar.
(Respondent No.3)
(Raham Hussain)
Incumbent

Capital City Police Officer,
Peshawar.
(Respondent No.4)
(Syed Ashfaq Anwar)PSP
Incumbent

Deputy Inspector General of Police,
HQrs: Khyber Pakhtunkhwa, Peshawar.
(Rizwan Manzoor)PSP
(Respondent No.2)
Incumbent

DIG/Legal, CPO
For Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No.1)
Dr. Muhammad Akhtar Abbas(PSP)
Incumbent

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AUTHORITY.

We respondents are hereby authorize ***Mr.Inam Ullah*** DSP 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.

Superintendent of Police,
HQrs, Peshawar.
(Respondent No.3)
(Raham Hussain)
Incumbent

Capital City Police Officer,
Peshawar.
(Respondent No.4)
(Syed Ashfaq Anwar)PSP
Incumbent

Deputy Inspector General of Police,
HQrs: Khyber Pakhtunkhwa, Peshawar.
(Rizwan Manzoor) PSP
(Respondent No.2)
Incumbent

DIG/Legal, CPO
For Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No.1)
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AFFIDAVIT.

We respondents are do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of my knowledge and belief and nothing has concealed/kept secret from this Hon'ble Tribunal. It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense have been struck off.

Superintendent of Police,
HQrs, Peshawar.
(Respondent No.3)
(Raham Hussain)
Incumbent

Capital City Police Officer,
Peshawar.
(Respondent No.4)
(Syed Ashfaq Anwar)PSP
Incumbent

ATTESTED
Oath Commissioner
Peshawar

D/13

CHARGE SHEET

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, do hereby, charge you Constable Kachkol No.4602 (LD) of Capital City Police Peshawar with the following allegation.

"That on 30.01.2023, you Constable Kachkol No.4602 (LD) while posted as Khadim Masjid Malak Muhammad Saad Shaheed Police Lines Peshawar have miserably failed to check and stop the entry of suspected suicide bomber into Police Lines. In this horrible incident more than 80 Police officers/officials have been martyred and hundreds have been injured. This amounts to gross misconduct on your part and is against the discipline of the force."

You are, therefore, required to submit to this office or the Enquiry Officer your written reply within 07-days of the receipt of this charge sheet.

Your written defence, if any, should reach this office or the Enquiry Officer within the specified period, failing which it shall be presumed that you have nothing to put in your defence and in that case an ex-parte action shall follow against you.

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.

SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

Attested

JAVED IQBAL GULBELA
Advocate
Supreme Court of Pakistan
(ASC # 5317)

10/A

24-E
15-02-023

DISCIPLINARY ACTION

I, Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that Constable Kachkol No.4602 (LD) has rendered himself liable to be proceeded against under the provision of Police Disciplinary Rules-1975

STATEMENT OF ALLEGATION

"That on 30.01.2023 Constable Kachkol No.4602 (LD) while posted as Khadim Masjid Malak Muhammad Saad Shaheed Police Lines Peshawar has miserably failed to check and stop the entry of suspected suicide bomber into Police Lines. In this horrible incident more than 80-Police officers/officials have been martyred and hundreds have been injured. This amounts to gross misconduct on his part and is against the discipline of the force."

For the purpose of scrutinizing the conduct of said accused with reference to the above allegations an enquiry is ordered and Mr. Luqman Khan SDPO Town is appointed as Enquiry Officer.

2. The Enquiry Officer shall, in accordance with the provisions of the Police Disciplinary Rules, 1975, provide reasonable opportunity of hearing to the accused officer, record his finding within 30 days of the receipt of this order, make recommendations as to punishment or other appropriate action against the accused.

3. The accused shall join the proceeding on the date time and place fixed by the Enquiry Officer.

SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

PA

No. 17 /E/PA, dated Peshawar the 04/2 /2023

Call the said FC to my office for statement and Perusal hearing P/S.

1 DSP- U. Town is directed to finalize the aforementioned departmental proceeding within stipulated period under the provision of Police Rules-1975.

2. Official concerned

15/2/2023

18/02/23

Attested

JAVED IQBAL GULBELA
Advocate
Supreme Court of Pakistan
(ASC # 5317)

SUBURB PESHAWAR.
091-2569997

No. 624 dated 30/03/2023

To: Superintendent of poli
CCP, Peshawar.

Subject: **DEPARTMENTAL ENQUIRY REPORT**

Memo:

Kindly refer your good self Office Diary No. 17/E/PA, dated 04-02-2023 (attached in original).

Background:

The above memo Enquiry was marked to the under signed to dig out the actual facts about the role of FC Kachkol Muhammad No. 4602 in the aftermath of miserably failing to check and stop the entry of suspect suicide bomber into the Mosque at Police Lines on dated 30-01-2023; which resulted in the loss of more than 80 police officers/ officials as envisaged in Charge Sheet issued to him vide the above quoted Memo.

During the course of enquiry, the concerned official was called to the office and was heard patiently. He also submitted written reply to the Charge Sheet and was cross questioned.

Statement of Alleged official:

FC Kachkol Muhammad No. 4602 narrated in his written statement that he was deputed for searching duty at Mosque gate and he checked all the personnel entering the mosque. During his duty, no one in suspicious form enter the mosque.

Critical Analysis of Statement:

During the cross questioning, he failed to satisfy the E.O. suggesting that he is not in a position to face the questioned raised during the session rather he admitted that he searched majority of the personnel entering the mosque. As Enquiry Officer, I cannot rely on his statement as the Gate of the mosque was the sole entry point where the suspect could be stopped from blowing up himself in the main building.

Findings:

Keeping in view the above position of alleged official as well the cross questions faced by him during enquiry, it has been established that the alleged constable was deputed for searching purpose and he badly failed to identify the suspect entering the mosque. It also put question mark on the operational capabilities of the constable that he never judged the situation arising from the incapability of his own. Furthermore, he was performing the same duties for the last two years as reflected from his posting chart and he was not sensitized to stop a suspect wearing uniform. The aforementioned position also suggests that he lacks the basic skill of keeping eagle eye on anyone in rush hours.

Conclusion:

In a nutshell and as Enquiry Officer, I am of the view that FC Kachkol Muhammad No. 4602 has been found guilty in the matter at hand.

Sub Divisional Police Officer
Suburb Sub Division
Peshawar

JAVED IQBAL
Advocate
Supreme Court of
(ASC # 5317)

Attested

...quiry process, the appellant was granted a fair ...ring. He was provided ample opportunity to articul... t his statement. Furthermore, he was ... gainst him, ...

(10)

ANNEX-D

FINAL SHOW CAUSE NOTICE

I Superintendent of Police, Headquarters, Capital City Police Peshawar, as competent authority, under the provision of Police Disciplinary Rules 1975 do hereby serve upon you, Constable Kachkol Muhammad No. 4602 the final show cause notice.

The Enquiry Officer, SDPO Suburb, after completion of departmental proceedings, has declared you guilty for the charges/allegations leveled against you in the charge sheet/statement of allegations.

And whereas, the undersigned is satisfied that you Constable Kachkol Muhammad No.4602 deserve the punishment in the light of the above said enquiry report.

And as competent authority, has decided to impose upon you the penalty of minor/major punishment under Police Disciplinary Rules 1975.

1. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

2. If no reply to this notice is received within 7 days of its receipt in normal course of circumstances, it shall, be presumed that you have no defence to put in and in that case as ex-parte action shall be taken against you.

SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 17 /PA, SP/HQrs: dated Peshawar the 14-4- /2023.

Copy to official concerned

JAVED IQBAL GULBELA
Advocate
Supreme Court of Pakistan
(ASC # 5317)

Attested