

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 403/2024

Shaheen Shah Inspector Acting DSP/ Investigation Mardan

.....APPELLANT

VERSUS

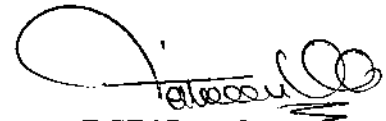
Inspector General of Police KP and others

.....RESPONDENTS

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DEPONENT


DSP/ Legal,
CPO, Peshawar

20/08/24

Peshawar

S. B

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PARA WISE COMMENTS BY RESPONDENT NO. 1

RESPECTFULLY SHEWETH!

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 14480

Dated 24-07-24

PRELIMINARY OBJECTIONS:

- a) That the appeal is not maintainable in the present form.
- b) That the appeal is bad for mis-joinder and non-joinder of necessary and proper parties.
- c) That the appellant is estopped to file the instant Appeal by his own conduct.
- d) That the appellant has not come to this Honorable Tribunal with clean hands.
- e) That the appellant has got no cause of action and locus standi to file instant Appeal.
- f) That the appeal is barred by law & limitation.

FACTS:

1. Pertains to service record of the appellant, needs no comments.
2. In respect to first portion of this para, it is submitted that the appellant had committed gross misconduct by involving himself in illegal business of non-custom vehicles. After fulfillment of all codal formalities, he was awarded major punishment of dismissal from service. Although the appellant was, later on, acquitted by learned Court but it is worth mentioning here that criminal proceedings and departmental proceedings are distinct in nature and both can run simultaneously. Reliance is placed on 2007 SCMR 562 & 2006 SCMR 554. The rest of the para pertains to record of this Hon'ble Tribunal.
3. Correct to the extent that in compliance of judgment dated 03.02.2021, the appellant was reinstated in service vide order dated 08.03.2021.
4. Pertains to record, needs no comments.
5. As per report received from AIG/ Establishment, para is correct to the extent of Departmental Selection Committee (DSC) meeting which was held on 27.11.2023, however, the case of appellant for promotion to the rank of Deputy Superintendent of Police (BPS-17) was discussed in the DSC. The recommendations of the DSC are given as under:-

- *"He was dismissed from Service by DPO Charsadda vide OB No. 810 dated 27.11.2017 on the serious allegations that while he posted as I/ C Traffic Unit Charsadda was driven NCP vehicle. Excise Squad gave signal of stopping but he did not stop. At last Excise Officer made firing on the vehicle. He made appeal to the RPO Mardan but RPO rejected his appeal vide*

order No. 9725/ES dated 22.12.2017. He again made appeal to Addl: IGP/ HQrs: Khyber Pakhtunkhwa vide No. S/1177-85/18 dated 28.03.2018 which was also rejected.

- Later on in compliance of Hon'ble Service Tribunal judgment dated 03.02.2021, he was reinstated in service with all back benefits vide order No. 608-10/EC dated 08.03.2021.
- His PERs quantification is 32 while minimum required score is 60.
- The officer has failed to achieve the requisite score of 65 for promotion to the rank of DSP.
- **The Committee unanimously recommended that the Officer having a long length of service be deferred and not superseded, on humanitarian grounds. He is given one year time to improve his performance.**

6. Pertains to record, needs no comments.

7. That appellant has got no cause of action to file the instant appeal, which is liable to be dismissed on the following grounds;

GROUND:

A. Incorrect. As already explained above that Departmental Selection Committee (DSC) meeting held on 27.11.2023, wherein, the case of appellant for promotion to the rank of Deputy Superintendent of Police (BPS-17) was discussed in the DSC. The recommendations of the DSC are given as under:-

- *"He was dismissed from Service by DPO Charsadda vide OB No. 810 dated 27.11.2017 on the serious allegations that while he posted as I/ C Traffic Unit Charsadda was driven NCP vehicle. Excise Squad gave signal of stopping but he did not stop. At last Excise Officer made firing on the vehicle. He made appeal to the RPO Mardan but RPO rejected his appeal vide order No. 9725/ES dated 22.12.2017. He again made appeal to Addl: IGP/ HQrs: Khyber Pakhtunkhwa vide No. S/1177-85/18 dated 28.03.2018 which was also rejected.*
- *Later on in compliance of Hon'ble Service Tribunal judgment dated 03.02.2021, he was reinstated in service with all back benefits vide order No. 608-10/EC dated 08.03.2021.*
- *His PERs quantification is 32 while minimum required score is 60.*
- *The officer has failed to achieve the requisite score of 65 for promotion to the rank of DSP.*
- ***The Committee unanimously recommended that the Officer having a long length of service be deferred and not superseded, on humanitarian grounds. He is given one year time to improve his performance***

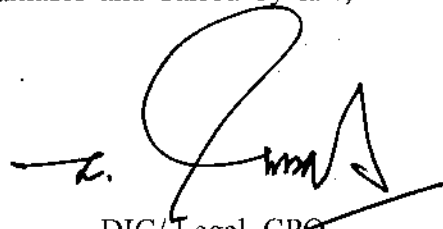
B. Incorrect. As already explained above that the appellant's PERs quantification was 32 while minimum required score is 60 hence, he was rightly deferred from promotion to the next higher rank.

C. As already explained in preceding Paras.

- D. Incorrect, as already explained above that the appellant had committed gross misconduct by involving himself in illegal business of non-custom vehicles. After fulfillment of all codal formalities, he was awarded major punishment of dismissal from service. Although the appellant was later on, acquitted by learned Court but it is worth mentioning here that criminal proceedings and departmental proceedings are distinct in nature and both can run simultaneously. Reliance is placed on 2007 SCMR 562 & 2006 SCMR 554. The rest of the para pertains to record of this Hon'ble Tribunal. Furthermore, promotion to the appellant cannot be granted without observance of codal formalities in accordance with law/ rules/ policy. The appellant will be considered for promotion on the basis of seniority cum fitness subject to improve his performance in a period of one year.
- E. Incorrect. The appellant was not entitled for promotion. The appellant will be considered for promotion on the basis of seniority cum fitness basis subject to improve his performance in a period of one year.
- F. Incorrect. The appellant has been treated in accordance with law/ rules/ policy, hence, no loss given by the answering respondent.
- G. That the respondents may also be allowed to raise additional grounds at the time of argument of appeal.

PRAYERS:-

Keeping in view above narrated facts/ circumstances, the instant service appeal may kindly be dismissed, being devoid of merits, not maintainable and barred by law, with costs, please.


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

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
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AFFIDAVIT

I, Faheem Khan DSP/ Legal, CPO, Peshawar, do hereby solemnly affirm on oath that the contents of accompanying Para-wise Comments/ Reply on behalf of respondent No. 1 to the Service Appeal are correct to the best of our knowledge and belief. Nothing has been concealed from this Honorable Tribunal.

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



(FAHEEM KHAN)
DSP/ Legal,
CPO, Peshawar



24 JUL 2024

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 403/2024

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AUTHORITY LETTER

Mr. Faheem Khan DSP/ Legal, CPO, Peshawar is authorized to submit Para-wise comments/ reply in the captioned Service Appeal in the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar and also to defend instant Service Appeal on behalf of respondent No. 1.


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