

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.691/2024.

Ex-Constable Majid Khan No.902 of CCP Peshawar..... **Appellant.**

VERSUS

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

I n d e x

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[Signature]
**DSP/Legal,
CCP, Peshawar.**

22-07-24

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

REPLY BY RESPONDENTS NO. 1 & 2.

**Khyber Pakhtunkhwa
Service Tribunal**

Respectfully Sheweth:-

Diary No. 14398

PRELIMINARY OBJECTIONS:-

Dated 22-07-2024

1. That the appeal is badly barred by law & limitation.
2. That the appeal is bad for mis-joinder and non-joinder of necessary and proper 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 the 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 Hon'ble Tribunal.
7. That the appeal is not maintainable being devoid of any merit.

REPLY ON FACTS:-

1. Incorrect. The appellant was appointed as a constable in the respondent department in 2012. Unfortunately, his performance throughout his service was consistently unsatisfactory. As a member of a disciplined force, the appellant engaged in gross misconduct by indulging in criminal activities. Additionally, record revealed that he was involved in acts of bribery and established nexus with smugglers. These filthy actions have not only breached the principles of integrity and duty expected from a member of the force but also severely tarnished the reputation of the entire force. The appellant's behavior had certainly stigmatized the prestige of force, undermining public trust and the credibility of law enforcement. It is noteworthy that the appellant was previously dismissed on the charges of his involvement in criminal case vide FIR No.396 dated 24.02.2020 u/s 365-A PS Chamkani. Subsequently he was conditionally reinstated into service in compliance of this Hon'ble Service Tribunal judgment in Service Appeal No.10015/2020.
2. Incorrect. The appellant was found involved in torturing the general public for ulterior motives and taking illegal gratification from various bus terminals within the jurisdiction of PS Paharipura, Peshawar. These actions severely tarnished the image of the department, undermining public trust and damaging the department reputation. Furthermore, the august apex court has passed numerous judgments affirming that the act of accepting illegal gratification constitutes a grave offense, particularly for civil servants. In cases where a civil servant is found guilty of such an offense, it has been established that they cannot be retained in the civil service.
3. Correct to the extent that the appellant was issued Show Cause Notice under Rule 5 (3) of the Police Rule 1975 on the following misconduct:-

- i) It has been learned through reliable sources that you are involved in torturing the general public for ulterior motives and taking illegal gratification from various Bus Addas in the jurisdiction of Paharipura Peshawar.
 - ii) That you have links with narcotics peoples/elements and hand in glove for malpractices and corruption.
 - iii) Being member of Police Force your act is highly objectionable and brought a bad name for the department.
4. Correct to the extent that the appellant was issued Show Cause Notice to which he replied but the same was found unsatisfactory as he bitterly failed to advance any cogent reasons to justify his innocence.
5. Incorrect. The appellant was issued Show Cause Notice as per Rules 5 (3) of Police Rules 1975 amended (2014) provided that "if the authority decides that the misconduct or act of omission or commission referred to above should be dealt with in General Police proceedings he shall proceed as under:-
- a) The authority shall determine if in the light of facts of the case or in the interests of justice, a departmental inquiry, through an Inquiry Officer if necessary. If he decides that is not necessary; he shall-
 - b) By order in writing inform the accused of the action proposed to be taken in regard to him and the grounds of the action: and
 - c) Give him a reasonable opportunity of showing cause against that action: Provided that no such opportunity shall be given where the authority is satisfied that in the interest of security of Pakistan or any part thereof it is not expedient to give such opportunity."

As discussed in detailed in the rules *ibid*, there was no need for a departmental enquiry. The appellant was dismissed on the grounds of misconduct, as his guilt has been proved beyond any shadow of doubt. The clear and irrefutable evidence of his actions warranted immediate dismissal, bypassing the need for further enquiry. This decision underscores the seriousness of the appellant allegations and the department's commitment to maintaining high standards of integrity and accountability among its members.

6. Incorrect. The appellant filed departmental appeal, which was thoroughly processed and opportunity of personal hearing was provided to the appellant by appellate authority, however, the appellant failed to defend himself with plausible/justifiable grounds, hence his appeal was rejected/filed as per law.

That the appeal of the appellant being devoid of merit and hit by limitation, liable to be dismissed on the following grounds.

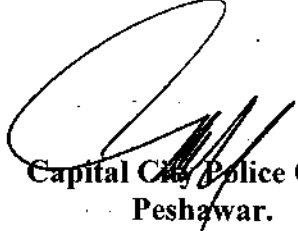
REPLY ON GROUNDS:-

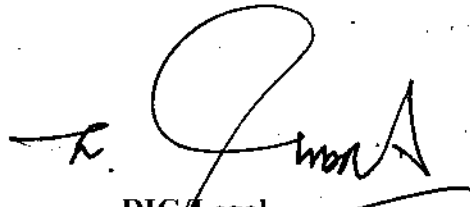
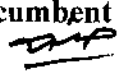
1. Incorrect. The charges leveled against him were proved beyond any doubt. Additionally, it was established that he had a history of involvement in malpractices and accepting bribes. This pattern of unethical behavior further justified the decision to dismiss him, as it demonstrated a consistent disregard for the principles of integrity and duty expected for a member of the department. His repeated misconduct highlighted a significant breach of trust and a failure to uphold the standards required by his position.

2. Incorrect. As explained in detail in para No. 5 of facts there is no need of departmental enquiry. As his guilt proven beyond any shadow of doubt.
3. Incorrect. The appellant was provided the opportunity of personal hearing. However, during hearing, he failed to present any plausible explanation or cogent reason in his defense in rebuttal of the allegations.
4. Incorrect. The appellant only want to save his skin from misconduct/negligence explained in detail in the above paras. The appellant treated as per law/rules. The charges leveled against the appellant were proved, hence the rejection order was passed in accordance with facts and rules.
5. Incorrect. The order passed by the Appellate Authority is just legal and in accordance with law/rules and liable to be upheld.
6. Incorrect. As explained in the above paras. Furthermore, appellant was treated as per law/rules, however failed to rebut the charges as he was found guilty committing misconduct within the meaning of Rules ibid.
7. Incorrect. The charges leveled against the appellant were proved, hence the punishment order was passed in accordance with facts and rules.
8. Incorrect. The appellant was found involved in torturing the general public for ulterior motives and taking illegal gratification from various bus terminals within the jurisdiction of PS Paharipura, Peshawar. These actions severely tarnished the image of the department, undermining public trust and damaging the department reputation. Furthermore, the august apex court has passed numerous judgments affirming that the act of accepting illegal gratification constitutes a grave offense, particularly for civil servants. In cases where a civil servant is found guilty of such an offense, it has been established that they cannot be retained in the civil service.

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.


Capital City Police Officer,
Peshawar.
(Qasim Ali Khan) PSP
(Respondent No.01)
Incumbent


DIG/Legal
For Provincial Police Officer,
Khyber, Pakhtunkhwa, Peshawar.
(Dr. Muhammad Akhtar Abbas) PSP
(Respondent No.02)
Incumbent


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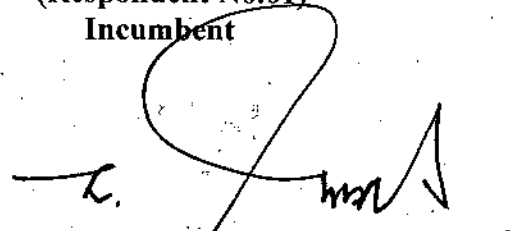
VERSUS

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

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.


(Capital City Police Officer,
Peshawar.
(Qasim Ali Khan) PSP
(Respondent No.01)
Incumbent


DIG/Legal
For Provincial Police Officer,
Khyber, Pakhtunkhwa, Peshawar.
(Dr. Muhammad Akhtar Abbas)PSP
(Respondent No.02)
Incumbent

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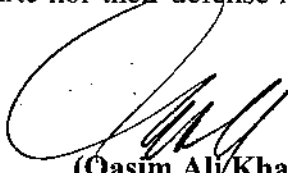
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AFFIDAVIT.

I respondent:No. 01 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.




(Qasim Ali Khan) PSP
Capital City Police Officer,
Peshawar.
(Respondent No.01)
Incumbent

22 JUL 2024

- (iii) Forfeiture of approved service up to 2 years;
- (iv) With holding of promotion up to one year;
- (v) Stoppage of increment for a period not exceeding 3 years with or without cumulative effect;

(iv) Fine up to Rs15000/- as per schedule-I.

(b) **Major punishments-**

- (i) Reduction in rank/pay;
- (ii) Compulsory retirement;
- (iii) Removal from service; and
- (iv) Dismissal from service.

2. (a) Removal from service does not but dismissal from service does, disqualify for future employment.

(b) Reversion from an officiating rank is not a punishment.

3. In this rule, removal or dismissal from service does not include the discharge of a person.

(a) Appointed on probation, during the period of probation, or in accordance with the probation or training rules applicable to him; or

(b) Appointed, otherwise than under a contract, to hold a temporary appointment on the expiration of the period of appointment; or

(c) Engaged under a contract, in accordance with the terms of the contract.

4-A.

In case a Police Officer is accused of subversion, corruption or misconduct the Competent Authority may require him to proceed on leave or suspend him.

5. **Punishment proceedings.-**

The punishment proceedings will be of two kinds. i.e. (a) Summary Police Proceedings and (b) General Police Proceedings and the following procedure shall be observed when a Police Officer is proceeded against under these rules:---

(1) When information of misconduct or any act of omission or commission on the part of a Police Officer liable for punishment provided in these rules is received by the authority, the authority, shall examine the information and may conduct or cause to be conducted quick brief inquiry if necessary, for proper

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omission or commission referred to above should be dealt with in a Police Summary Proceedings in the Orderly Room or General Police Proceedings.

(2) In case the authority decides that the misconduct is to be dealt with in Police Summary Proceedings, he shall proceed as under-

- (i) The accused officer liable to be dealt with in the Police Summary Proceedings shall be brought before the authority in an Orderly room.
- (ii) He shall be apprised by the authority orally the nature of the alleged misconduct, etc. The substance of his explanation for the same shall be recorded and if the same is found unsatisfactory, he will be awarded one of the minor punishments mentioned in these rules.
- (iii) The authority conducting the Police Summary Proceedings may, if deemed necessary, adjourn them for a maximum period of 7 days to procure additional information.

(3) If the authority decides that the misconduct or act of omission or commission referred to above should be dealt with in General Police Proceedings he shall proceed as under-

- a) The authority shall determine if in the light of facts of the case or in the interests of justice, a departmental inquiry, through an Inquiry Officer if necessary. If he decides that is not necessary; he shall-
- b) By order in writing inform the accused of the action proposed to be taken in regard to him and the grounds of the action: and
- c) Give him a reasonable opportunity of showing cause against that action: Provided that no such opportunity shall be given where the authority is satisfied that in the interest of security of Pakistan or any part thereof it is not expedient to give such opportunity.

(4) If the authority decides that it is necessary to have departmental inquiry conducted, through an Inquiry Officer, he shall appoint for this purpose an Inquiry Officer, who is senior in rank to the accused.

(5) On receipt of the findings of the Inquiry Officer or where no such officer is appointed, on receipt of the explanation of the accused, if any, the authority shall determine whether the charge has been proved or not. In case the charge is proved

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