

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHWAR

Service Appeal No. 2203/2023


Aleem Khan, Ex-FC Elite ForceAppellant

Versus

Provincial Police Officer Khyber Pakhtunkhwa and othersRespondent

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(MIAN NIAZ MUHAMMAD)
D&P Legal
Elite Force, Peshawar

*order sheet not
uploaded
sheet.*

B

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWER**

Service appeal no .2203/2023

Aleem Khan FC 4472/, Elite ForceAppellant

Versus

Provincial Police Officer, Khyber Pakhtunkhwa Peshawar and others

.....Respondents

PARAWISE COMMENTS BY RESPONDENTS

Respectfully Sheweth:-

PRELIMINARY OBJECTIONS:-

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

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 12055

Dated 22-04-24

Reply on FACT:-

1. Para pertains to record, hence need no comments.
2. Incorrect. Appellant during service proved himself on inefficient office and found habitual absentee, on account of which he was awarded minor/ major punishments in accordance with the rules. (copies of extract of punishment is attached as **Annexure A**).
3. Para is incorrect and misleading. Appellant was not transferred to swat in the hard days of operation against Taliban. However, as per record the appellant was transferred to upper chitral district vide RPO Malakand Swat office order No.4696-97 dt:09-04-2021 and remained posted in Chitral District till 16-11-2022. (Copy of Transfer Order is attached as **Annexure B**).
4. Para pertains to record, as explained above.
5. Para is incorrect and misleading. As replied above.

6. Para is incorrect and misleading. Appellant was transferred to Elite Force vide order dated 14.12.2022. (Copy of order is attached as **Annexure C**).
7. Para is incorrect. Appellant being a member of the disciplined force was supposed to follow the procedure for obtaining medical leave in case of any illness and by showing irresponsible attitude, absented himself from official duty on account of such gross misconduct he was served with charge sheet/ summary of allegation and proper inquiry was conducted against the appellant in accordance with rules. (Copies of Charge Sheet and Inquiry are **Annexure D & E**).
8. Para is incorrect. As explained above para, appellant has never obtained Leave from the competent authority.
9. Para is incorrect. Proper departmental enquiry was conducted against the appellant during which the charge against him stands proved, hence awarded punishment of dismissal from service. (Copy attached as **Annexure F**).
10. Pertain to record. Hence no comments.
11. That the appellant has got no cause of action to file the instant appeal, which is liable to be dismissed on the following grounds:

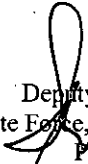
Grounds:-


- A- Incorrect, order passed by the competent authority is quit legal and in accordance with law/ rules.
- B- Incorrect. Reply already given vide paras above.
- C- Incorrect. As explained in the preceding Paras before passing final order proper departmental enquiry was conducted against the appellant in accordance with the rules.
- D- Incorrect. On account of willful absence, appellant was served with charge sheet which was delivered at his home address through District Commander Chitral and received by the brother of appellant.
- E- Incorrect, as explained in Para above.
- F- Incorrect, as explained in Para above.
- G- Incorrect and misleading. In fact all the members of the Force following the rules/ procedure for obtaining any leave.
- H- Already explained in para 6.
- I- Incorrect, order passed by the competent authority is in accordance with law and rules.
- J- Incorrect, The order of respondent No. 3 is in accordance with the law/ rules..
- K- Incorrect, reply already given vide paras above. Record is not unblemished and has earned one minor on account of absence from duty and the instant major punishment of dismissal from service.
- L- That respondent will also raise additional grounds at the time of hearing of appeal with the kind permission of this Hon'ble Tribunal.

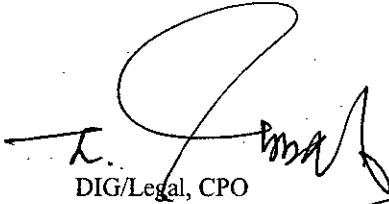
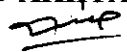
3

Prayer:

In view of above, the instant appeal may very kindly be dismissed being time barred.


Deputy Commandant
Elite Force, Khyber Pakhtunkhwa
Peshawar.
(Respondent No.3)
(ABDUS SAMAD)PSP


Additional Inspector General /Commandant
Elite Force, Khyber Pakhtunkhwa,
Peshawar.
(Respondent No.2)
(Muhammad Wisal Fakhar Sultan) PSP


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


(4)

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 2203/2023


Aleem Khan Ex-FC Elite ForceAppellant

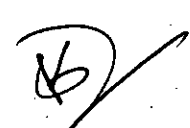
Versus

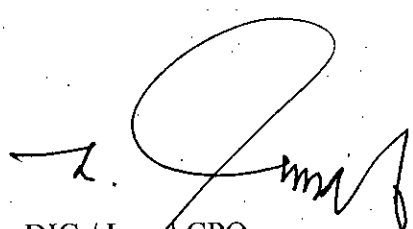
Provincial Police Officer Khyber Pakhtunkhwa etcRespondent

AUTHORITY LETTER

I, **Main Niaz Muhammad (DSP) Elite Force Khyber Pakhtunkhwa Peshawar** do hereby solemnly affirmed that the contents of these joint parawise comments on behalf of Respondents No. 1 to 3 are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.


Deputy Commandant
Elite Force, Khyber Pakhtunkhwa Peshawar
(Respondent No. 3)
(**Abdus Samad Khan**) Psp


Additional Inspector General / Commandant
Elite Force Khyber Pakhtunkhwa,
Peshawar
(Respondent No. 2)
(**Muhammad Wisal Fakhar Sultan**) PSP


DIG / Legal CPO
For Inspector General of Police
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 1)
(**Dr. Muhammad Akhtar Abbas**) PSP

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 2203/2023

Aleem Khan Ex-FC Elite ForceAppellant

Versus

Provincial Police Officer Khyber Pakhtunkhwa etcRespondent

AFFIDAVIT

I, **Abdus Samad Khan Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar responded No. 3)** do hereby solemnly affirmed that the contents of these joint parawise comments on behalf of Respondents No. 1 to 3 are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense has been struck off/ *Cost*

[Signature]
Deputy Commandant
Elite Force, Khyber Pakhtunkhwa
Peshawar
(Respondent No. 3)
(**ABDUS SAMAD KHAN**) PSP

ATTESTED



2-9-2024



OFFICE OF THE SUPERINTENDENT OF POLICE
HQrs, ELITE FORCE, PESHAWAR.



No. 292-96 /R, SP/HQr, EF,

Date: 11-05-2023

D. No. 292
Date 15-5-23
Commandant Elite Force

ORDER

Constable Halim Khan No.4472 is still absent from 08.05.2023 from lawful duty without prior permission his salary is hereby stopped with immediate effect.

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

Copy for information to the:-

1. Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar.
2. Accountant Elite Force Khyber Pakhtunkhwa, Peshawar.
3. OASI/SRC Elite Force, Khyber Pakhtunkhwa Peshawar along with DD reports 02 pages.

A = 6

14-COMMENDATORY ENTRIES—concl.

Serial No.

TR. 153

TR-366
18/05/2021

found amount pay \rightarrow All
drcs 13196/2 due to loss drawn.

ORDER

[Handwritten signature]

Transferred & adjusted in upper Chitral District vide R.P.O MKD Swat office order NO-4696-97/E dt, 09-04-2021

01-08-2013 30-04-2021 -

[Signature]
District Police Officer
Chitral

ORDER

Transferred to Elite Force KPK Peshawar vide CPO Order No. 10956-58/E-IV, dated 16-11-2022, RPO MKD Swat Endst. No. 13707/E, dated 08-12-2022 & this office order No. 3941-50/E-II, dated 14-12-2022.

Service from 01-05-2021 to 14-12-2022

Has been verified from the pay & acc: rolls

Kept in this office record.

[Signature]
District Police Officer
Upper Chitral

[Signature]
DPO Upper Chitral

Attested
[Signature]
D.P.O. C

C-2/8

14—COMMENDATORY ENTRIES—concl'd.

Serial No.

TR. 143

TR-366
18/05/2021

Hand amount pay → All
Rs. 13196/2 due to loss drawn.

ORDER

[Handwritten signature]

Transferred & adjusted in Upper Chitral District, vide R.P.O MKD Swat office order No. 4696-97/E dt, 09.04.2021

01-08-2013 30-04-2021 -

[Handwritten signature]
District Police Officer
Upper Chitral

ORDER

Transferred to Elite Force KPK Peshawar vide CPO Order No. 10956-58/E-IV, dated 16-11-2022, RPO MKD Swat Endst. No. 13707/E, dated 08-12-2022 & this office order No. 3941-50/E-II, dated 14-12-2022.

Service from 01-05-2021 to 14-12-2022
Has been verified from the pay & accy rolls
Kept in this office record.

[Handwritten signature]
District Police Officer
Upper Chitral

[Handwritten signature]
DPO Upper Chitral

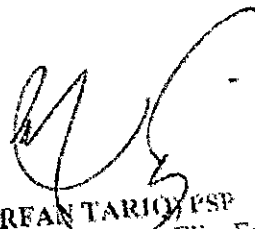
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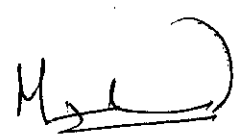
D and E / Enquiry
⑨

CHARGE SHEET

I, Irfan Tariq, Deputy Commandant, Elite Force Khyber Pakhtunkhwa, Peshawar as competent authority hereby charge you Cook Constable Halim No. 4472 /EF.

1. As per report of Moharrar Elite HQrs: Peshawar vide DD No. 13 dated 19.03.2023, you were absent from lawful duty without any leave or prior permission from the competent authority wef 19.03.2023 to till date. Being a member of discipline force, your act is highly objectionable and against the norm of disciplined force, which is gross misconduct on your part.
2. By reason of the above, you appear to be guilty of misconduct under the Khyber Pakhtunkhwa Police Rules, 1975 (Amended 2014) and have rendered yourself liable to all or any of the penalties specified in the 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 defense 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 is enclosed.


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



16

SUMMARY OF ALLEGATIONS

I, Irfan Tariq, Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar as competent authority, am of the opinion that Cook Constable Halim No. 4472 /EF has rendered himself liable to be proceeded against as he has committed the following misconduct within the meaning of Khyber Pakhtunkhwa Police Rules, 1975 (Amended 2014).

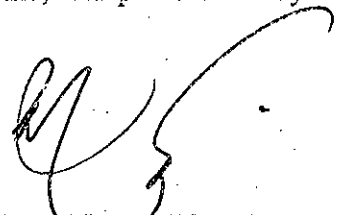
SUMMARY OF ALLEGATIONS

As per report of Moharrar Elite HQrs: Peshawar vide DD No. 13 dated 19.03.2023, you were absent from lawful duty without any leave or prior permission from the competent authority wef 19.03.2023 to till date. Being a member of discipline force, your act is highly objectionable and against the norm of disciplined force, which is gross misconduct on your part.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations, Mr. Amir Nawaz DSP HQrs Elite Force Peshawar is appointed as Enquiry Officer.

3. The Enquiry Officer shall provide reasonable opportunity of hearing to the accused official, record statements etc and submit findings within (25 days) of the receipt of this order.

4. The accused shall join the proceedings on the date, time, and place fixed by the Enquiry Officer.



(IRFAN TARIQ) PSP

Deputy Commandant, Elite Force
Khyber Pakhtunkhwa Peshawar.

No. 4873-76 /EF, dated Peshawar the: 17/04 /2023.

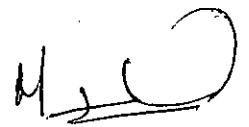
Copy of the above is forwarded to the:-

5. Superintendent of Police HQrs: Elite Force Peshawar.
6. Deputy Superintendent of Police HQrs: Elite Force Peshawar.
7. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
8. This charge sheet and summary of allegation to be served upon the accused Cook Constable Halim No. 4472 /EF through reader to DSP/HQrs Elite Force, Peshawar

میں نے اپنا چارج شیٹ و سمری ان ایڈیشن
درسن طور پر و سمری کر لیا ہے



08-05-2023





OFFICE OF THE DEPUTY SUPERINTENDENT OF POLICE,
HEADQUARTERS, ELITE FORCE, PESHAWAR.



No 74 /R, DSP/EF, HQrs

Date: 09 /05/2023.

To: The Deputy Commandant,
Elite Force, Khyber Pakhtunkhwa, Peshawar

D. No. 2739
Date 10-5-23
Commandant Elite Force

Subject: DEPARTMENTAL ENQUIRY AGAINST CONSTABLE HALIM NO.4472

Memo: Kindly refer to your office Endst: No.4873-76/EF, dated: 17.04.2023 Peshawar.

Respected Sir,

In pursuance of your kind directives, the undersigned completed enquiry in the above cited case. Its stepwise detail is given below:

ALLEGATIONS:

As per report of Moharrar Elite Force HQrs Peshawar vide DD No.13 dated: 19.03.2023, the delinquent Cook Constable Halim was absent from lawful duty without any leave or prior permission from the competent authority w.e. from 19.03.2023 to till to date. Being a member of discipline force, his act is highly objectionable and against the norm of disciplined force, which is gross misconduct on his part.

PROCEEDINGS:

In this regard, Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar issued him charge sheet & summary of allegations and Deputy Superintendent of Police Headquarters Elite Force was appointed as enquiry officer.

Charge Sheet and Summary of Allegations was served upon the delinquent constable through District Commander Elite Force Chitral vide this office letter No.69/R/DSP/HQrs, EF, dated: 27.04.2023 and received by brother of the delinquent constable namely Mohammad Ali Khan on 27.04.2023.

In reply to charge sheet and summary of allegations neither the delinquent constable appeared in person before the undersigned nor submitted his written statement till to 08.05.2023.

STATEMENT OF HALIM KHAN NO.4472:

Similarly, the delinquent constable vide DD No.32 dated: 08.05.2023 ensured his arrival at Elite Force HQrs Peshawar and he was handed over a copy of Charge Sheet & Summary of Allegations responding of which he submitted his written statement and appeared in person before the undersigned, stating in his statement that he is patient of stomach due to which he is feeling physical and mental weakness, in this context he went to Al-Safia Medical Centre Islamabad for medical treatment he further stated that enquiry against him may be filed (Statement & Medical documents attached).

M. Ali Khan

(12)

CROSS EXAMINATIONS:

In addition to above the delinquent constable was examined with several cross questions enclosed for ready reference.

FINDINGS:

Keeping in view all the circumstance it has been reflected through DD report No.05 dated: 01.05.2023 during the course of enquiry that the delinquent Constable Halim Khan No.4472 has left home on 31.03.2023 and has not contacted with any family member. Further revealed by his brother that father of the delinquent constable has passed away and he has been living with his elder brother as well as has not got married yet. In accordance with the information of family members present location of the delinquent constable Halim Khan No.4472 was unknown.

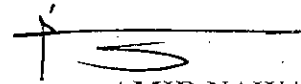
CONCLUSION:

Having gone through all materials placed on record the undersigned has reached to the conclusion that the delinquent constable do not take interest in duty and still is absence from place of posting from 19.03.2023, in this context his family members were also approached by district commander Chitral but despite that no signal about his appearance was found during the course of enquiry till to 08.05.2023.

However, the delinquent constable alongwith medical documents appeared in person before the undersigned and submitted his written statement on 08.05.2023, reflecting that he suffered from illness of stomach and in this connection he went to Al- Safia Medical Centre Islamabad but he did not submit an application for leave, so, he has committed gross misconduct and did not defend himself against allegations as leveled against him and irresponsibility is still shown in discipline force on his part, therefore, he does not deserves leniency and mercy.

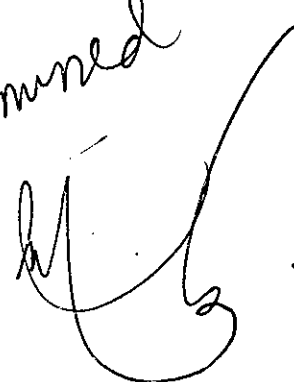
RECOMMENDATIONS:

Keeping in view of the above facts and other materials placed on record the delinquent constable was absent from lawful duty w.e.f 19.03.2023 to 08.05.2023, therefore, he is recommended to be awarded "Major punishment" if deemed possible.

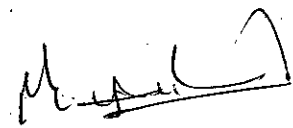


AMIR NAWAZ

Deputy Superintendent of Police,
Headquarters Elite Force, Peshawar.

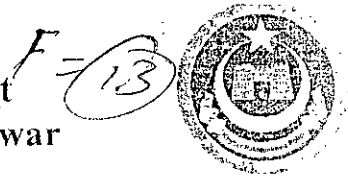
Dismissed


10/5/23.





Office Of the Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar



No. 6504-19/EF,

Dated: 14/05/2023

ORDER

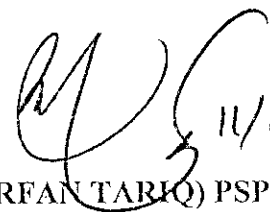
This office order relates to the disposal of departmental enquiry against Cook Constable Aaleem Khan No. 4472 of Elite Force on the following ground:-

As per report of Moharar Elite HQrs vide DD No. 13, dated 19.03.2023, he remained absent from official duty without any leave or prior permission from the competent authority w. e. from 19.03.2023 to 08.05.2023 (total 49 days)

In this regard charge sheet along with summary of allegation were issued to him by this office vide No. 4873-76/EF, dated 17.04.2023 and DSP HQrs Elite Force was appointed as enquiry officer. Enquiry Officer conducted enquiry proceedings and reported that he does not take interest in his official duty and still absence from place of posting, in this context his family members were also approached through District Commander Elite Force Chitral and reported vide No. 511-5/SA/EF-CH, dated 02.03.2023 that his brother namely Muhammad Ali received charge sheet & summary of allegations and stated that his brother leave the home on 31.03.2023 and not yet contacted with any family member and his cell phone is switch off but despite that no signal about his appearance was found during the course of enquiry till to 08.05.2023.

However, he was appeared before the enquiry officer on 08.05.2023 also received his Charge Sheet along with Summary of Allegation and submitted written statement along with medical documents of Al- Safia Medical Center Islamabad about his illness, but he did not submit an application for leave, so, he has committed of gross misconduct and did not defined himself against allegations as leveled against him and irresponsibility is still shown in discipline force on his part, therefore, he does not deserves leniency and mercy. And Enquiry Officer also recommended to be awarded major punishment.

Therefore, I Irfan Tariq Deputy Commandant Elite Force Khyber Pakhtunkhwa, keeping in view the above facts and circumstances impose **major punishment of dismissal form Service** upon him and his absence period treated as without pay.


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

Copy to the:-

01. DSP Elite Force HQrs Khyber Pakhtunkhwa w/r to his office letter No. 74/R, DSP/EF/HQrs, dated 09.05.2023.
02. SP Elite Force Malakand Region.
03. Accountant, Elite Force Khyber Pakhtunkhwa, Peshawar.
04. OASI, Elite Force Khyber Pakhtunkhwa, Peshawar.
- ✓ 05. EC, SRC, EMC, Elite Force Khyber Pakhtunkhwa, Peshawar along with completed departmental enquiry file Encls: (27pages)

B.K. / B.M.C.

