BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SERVICE APPEL NO.2593/2023

Mr. Ajab Khan Ex-constable No. 52 Police Taralla, District Troghar . Appellant
VERSUS
Provincial Police Officer Khyber Pakhtunkhwa Peshawar & other

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Deponent Si. Legal Torget



BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

SERVICE APPEL NO. 2593/2023

Mr.	Ajab	Khan	Ex-Constable	No.	52,	Police	Post	Taralla,	District	Torghar.
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RESPECTFULLY SHEWETH:-					D:	<u>22</u>	04-2024			

- a) The appeal is not based on facts and appellant has got no cause of action or locus standi.
- **b)** That appeal is not maintainable in its present form.

PRELIMINARY OBJECTION:-

- c) The appeal is bad for non-joinder of necessary and mis-joinder of necessary parties.
- d) The appellant is estopped by his own conduct to file the appeal.
- **e)** The appeal is barred by the law and limitation.
- f) The appellant has not come to the Honorable Tribunal with clean hands.

FACTS:-

- 1. Pertains to record.
- 2. That the appellant, while posted as driver constable at PP Taralla District Torgahr has absented himself from duty without any leave or permission w.e.f. 13/07/2022 till date of his dismissal from service vide OB No. 285 dated 25/12/2022. In this regard departmental proceeding were conducted against him and SDPO Judbah was appointed as Enquiry officer. After completion of enquiry, he was found guilty of misconduct. Later on, final show cause Notice was issued to the appellant to which he failed to produce any cogent reason for his long absence. He was also called in person by the competent authority however, he failed to defend himself. Then was awarded major punishment.
- 3. Incorrect as already explained vide above para.
- 4. That appellant filed departmental appeal was rejected being time barred vide order dated 25/05/2023. Similarly his revision petition was also filed being badly time barred. Moreover, he was personally heard by the appellate authority but he failed to convince him with cogent reason.
- 5. The instant service appeal is not maintainable on the following grounds:-

GROUNDS:-

- A. Incorrect. The impugned order are correct and according to law.
- **B.** Incorrect. The appellant deliberately avoided the enquiry proceedings despite being personally served during enquiry. Copy of proof of his personnel service is annex B
- C. Incorrect. The appellant was properly charge sheeted and statement of allegation was duly received by him. The signature of appellant overleaf of charge sheet is strong proof of his knowledge about enquiry proceedings. (Copy already enclosed as annex C)
- **D.** Incorrect. He deliberately absented himself without leave or permission of officers and being disciplined force member, he was bound to inform his senior officer.
- E. Incorrect. The penalty of dismissal fully commensurate with the gravity of allegations.
- F. Incorrect, the Enquiry officer in his finding report has recommended the appellant for awarded of major punishment as charges against him were proved beyond any shadow of doubt. The appellant has been dismissed from service and his absence period has been treated as leave without pay vide order. 478/89/PA dated 04.08.2022, Declaring absence period as leave without pay infers that this appellant cannot claim any benefits there of on the principle of no work, no pay.
- **G.** Incorrect. The appellant was treated according to law.
- **H.** The respondent department may also be allowed to adduce additional grounds at the time of hearing before the honorable Tribunal.

PRAYER:

In view of the above mentioned facts, the appeal in hand may kindly be dismissed, being devoid of any legal force, please.

District Police Officer,

Corghar

(Respondent No. 3)

Muhammad Ishtiaq(PSP)

Police Officer

Torghar

Regional Police Officer, Hazara Region Abbottabad

(Respondent Vo. 2)
Ajaz Khan (PSP)

Regional Police Officer Hazara Abbottabad

DIG, Legal, CPO

For Inspector General Of Police, Khyber

Pakhtunkhwa, Peshawar (Respondent No. 01) Provincial Police Officer. Khyber Pakhtunkhwa, Peshawas.

(DR. Muhammad Akhtar Abbas) PSP

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA <u>PESHAWAR</u>

SERVICE APPEL NO. 2593/2023

Mr.	Ajab	Khan	Ex-Constable	No.	52,	Police	Post	Taralla,	District	Torghar.
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Prov	incial	Police	Officer Khybe	r Pak	htun	khwa Po	eshaw	ar & othe	ers.	
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AFFIDAVIT

We respondents do solemnly affirm and declare that the contents of the comments are true and correct to our knowledge and belief and that nothing has been concealed from this Honorable tribunal.

It is further stated that the answering respondent have neither seen placed ex-parte nor their define hes been struck If I cost.



Muhammar Ishtia(RSP) District Police Officer, Torghar

Forghar

PESHAWAR

SERVICE APPEL NO. 2593/2023

Mr.	Ajab	Khan	Ex-Constable	No.	52,	Police	Post	Taralla,	District	Torghar
Appellant										
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Prov	incial/	Police	Officer Khybe	r Pak	htụn	khwa P	eshaw	ar & othe	ers.	
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AUTHORITY LETTER

I, District Police Officer, Torghar, hereby authorized Muhammad Nadeem, SI Legal Torghar, to attend Honorable Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal NO. 2593/2023 on my behalf.

District Police Officer,

Torghar

(Respondent No. 3)

Muhammad Ishtiaq(PSP)

Police Onicer

Torghar

Regional lice Officer,

Hazara Region Abbottabad

Ajaz Khan (PSP)

Regional Police Cityes Hazara Abbottabad

DIG, Legal, CPQ

(

For Inspector General Of Police, Khyber

Pakhtunkhwa, Peshawar

(Respondent No. 01)

DR. Muhammad Akhtar Abbas (PSP)

Previncial Police Officer,

Khyber Pakhtunkhwa, Peshawaz,

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OFFICE OF THE DISTRICT POLICE OFFICER, TORGHAR

No. 194 /PA dated, Torghar the 6 /10 /2022.

FINAL SHOW CAUSE NOTICE.

(Unit Rule (3) KPK Police Rules, 1975 Amendments in 2014)

- 1. That You Constable Ajab No.52 while posted at Driver PP Taralla rendered yourself liable to be proceed under Rule 5 (3) of the Khyber Pakhtunkhwa Police Rules 1975 for the following misconduct:
- i. You while posted at Driver PP Taralla absented yourself from your official duties without any leave or permission by the competent authority w.e.f 13.07.2022 to till date. A charge sheet and summary of allegations was served upon you vide No.478-79/PA dated 04.08.2022 and enquiry was entrusted to SDPO, Circle Judbah who suggested/recommended for Major punishment in his enquiry report. Hence, this final showcase notice is issued to you, if you have any evidence in support of your defense otherwise ex-partee action will be taken against you.
- ii, During proper departmental enquiry the allegations have been proved against you.
- 2. That by reason of above as sufficient material is placed before the undersigned therefore is decided to proceed against you in general Police proceedings without aid of enquiry officer.
- 3. That the misconduct on your part is prejudicial to good order of discipline in the Police Force.
- 4. That your retention in the police force will amount to encourage inefficient and unbecoming of good Police Officer.
- 5. That by taking cognizance of the matter under enquiry, the undersigned as competent authority under the said rules, proposes stern action against you by awarding one or more kind of the punishments as provided in the rules.
- 6. You are, therefore, called upon to Final Show Cause Notice as to why you should not be dealt strictly in accordance with the Khyber Pakhtunkhwa Police Rule, 1975 for the misconduct referred to above.
- 7. You should submit reply to this Final Show Cause Notice within 07 days of the receipt of the notice failing which an ex-parte action shall be taken against you.
- 8. You are further directed to inform the undersigned that you wish to be heard in person or not.
- 8. Ground of action is also enclosed with this Final Show Cause Notice.

District Police Officer, Torghar

Received	by			
Dated.		/	/2022	

بيان!

بیان ازاں ہیڈ کانشیبل گل بادشاہ نمبر 01/MHC متعینہ محرر چوکی تؤلہ معروض ہوں کہ میں چوکی تؤلہ میں بطور محرر تعینات ہوں ۔ مور فیہ 2022-07-10 کوکانشیبل عجب خان نمبر 52 جو کہ عید ڈیٹیل نمبر 1 پرعید الاضحیٰ ڈیٹیل پر چھوڑا گیا تھا ندکورہ کانشیبل کو بحوالہ مذنمبر 5 روز نامچہ 2022-07-10 عیدالاضیٰ رخصت پرچھوڑا جا کر ندکورہ کو ہدایت کی گئی کہ مور خد 2022-07-10 عیدالاضیٰ رخصت پرچھوڑا جا کر ندکورہ کو ہدایت کی گئی کہ مور خد 2022-07-13 کوچوکی ہذا حاضر آئے تاکہ دوسری ڈیٹیل عیدالاضیٰ پرچھوڑا جائے گاندکورہ کا انتظار کیا گیا اور ندکورہ کے زاتی موبائل فون پر متعدد بار رابطہ کیا گیا جس نے کال اٹینڈ کرنے کی زحمت نہیں کی ۔ بدیں وجہ ندکورہ کانشیبل کی بحوالہ مذنمبر 10 روز نامچہ کی گئی ۔ ندکورہ کانشیبل تا حال بدستور غیر حاضر ہے ۔ اور بھکم افسران بالاشوکاز ، و چارج شیٹ موصول کانشیبل تا حال بدستور غیر حاضر ہے ۔ اور بھکم افسران بالاشوکاز ، و چارج شیٹ موصول کوئی جو کہ میں نے بخرض فیمیل صحب ضابطہ کریں ۔ میرا نہی بیان ہے جو کہ درست ہے ۔ ندکورہ کانشیبل کی فیمیل حسب ضابطہ کریں ۔ میرا نہی بیان ہے جو کہ درست ہے ۔ ندکورہ کانشیبل کی فیمیل حسب ضابطہ کریں ۔ میرا نہی بیان ہے جو کہ درست ہے ۔ ندکورہ کانشیبل کی فیمیل حسب ضابطہ کریں ۔ میرا نہی بیان ہے جو کہ درست ہے ۔ ندکورہ کانشیبل کی فیمیل حسب ضابطہ کریں ۔ میرا نہی بیان ہے جو کہ درست ہے ۔ ندکورہ کانشیبل کی فیمیل حسب ضابطہ کریں ۔ میرا نہی بیان ہے جو کہ درست ہے ۔

-SD-MHC-PP-Trallah 19-09-2022

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DISCIPLINARY ACTION

I. Mr. Syed Mukhtar Shah, District Police Officer, Torghar as competent authority of the opinion that FC Ajab No.52 while posted as Driver PP Taralla has rendered himself liable to be proceeded against departmentally as you committed the following act/omission within the meaning under the Khyber Pakhtunkhwa, Police Rules, 1975 (with amendment 2014).

SUMMARY OF ALLEGATION

As per report of MHC PP Taralla vide DD No:10 dated 13.07.2022, you have absented yourself from your official duty without any leave or permission of the competent authourity w.e.f 13.07.202 to till date which shows gross misconduct on your part.

For the purpose of scrutinizing the conduct with reference to the above allegation.

Mr, Hayat Khan SDPO, Judbah is deputed as Enquiry Officer.

The Enquiry Officer shall in accordance under the provision of this above mentioned rules, provide reasonable opportunity of hearing to the accused, record finding and make within 25 days of the receipt of this order, recommendation as to punishment or take other appropriate action against the accused.

The accused shall appear in the departmental proceedings on the date, time and place fixed by the Enquiry Officer/Committee.

District Police Officer,
Torghar

No. 478/79/PA, dated Torghar the 04/08/2022

FC Ajab No.52 while posted as Driver PP Taralla, with the direction to submit his written statement to the Enquiry Officer, the receipt of the charge sheet/statement of allegations and also to appear before Enquiry Officer on the date, time and place fixed for purpose of departmental proceedings.

CHARGE SHEET

10-27-5A (90)

I, Mr. Syed Mukhtar Shah, District Police Officer, Torghar as competent authority hereby charge FC Ajab No.52 while posted as Driver PP Taralla for the allegation explained in the attached statement of allegations.

You appear to be guilty of misconduct under Khyber Pakhtunkhwa, Police-Rules, 1975 (with amendment 2014) and have rendered yourself liable to all or any of the penalties specified in the said rules.

You are therefore directed to submit your written defence within (07) Seven days on receipt of the charge sheet to the Enquiry officer.

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

Intimate whether you desire to be heard in person or otherwise.

Summary of allegation is also enclosed.

District Police Officer, Torghar