

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 735/2024


Sher Zada Ex-HC Elite ForceAppellant

Versus

Deputy Commandant Elite Force, Khyber Pakhtunkhwa Peshawar and others.....Respondents

INDEX

S No.	Description of Documents	Annexure	Pages
1.	Para wise comments		1-3
2.	Affidavit		4
3.	Copy of Authority letter		5
4.	Charge Sheet and Summary of Allegations	A & B	6-7
5.	Copy of Finding Report	C	8-9
6.	Copy of order dated 03.01.2024	D	10


(MIAN NIAZ MUHAMMAD)
DSP Legal Elite Force,
Peshawar

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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 appellant has not come to this Honorable Tribunal with clean hands.
- g) That the appellant has got no cause of action and locus standi to file the instant Service Appeal.

Khyber Pakhtunkhwa
Service Tribunal

Date: 16/7/24

Date: 30-09-24

FACTS:-

- 1- Pertain to record, hence no comments.
- 2- Correct to the extent that the appellant was involved in criminal case vide FIR No. 354, dated 17.09.2016 u/s 436/427/381/411 PPC PS Kohsar Islamabad. The appellant was dismissed from service vide order dated 23.11.2016. The appellant filed service appeal No. 711/2017 in service tribunal Peshawar wherein the dismissal order was set aside with direction to respondent, to conduct de-novo enquiry in accordance with law vide judgment dated 19.10.2018. Accordingly on conclusion of the de-novo enquiry, the appellant was again removed from service vide order dated 16.01.2019. The appellant filed service appeal No. 713/2019 which was accepted with the direction to respondents to conduct enquiry strictly in accordance with law by providing fair opportunity to the appellant sixty days vide judgment dated 23.05.2023.
- 3- Incorrect and misleading. In fact, appellant was reinstated vide order 03.07.2023 and fresh charge sheet and statement of allegations were issued to him vide No. 338-45/R/SP/HQrs/EF dated 04.07.2023. Mr. Fahad Khan A/SP was appointed as enquiry officer. Appellant was proceeded departmentally on the charge of involvement in criminal case registered against him vide FIR No. 354 dated 17.09.2016 u/s 436/427/381/411 PPC PS Kohsar Islamabad. During the course of enquiry his guilt was established, therefore, he was awarded the major punishment of dismissal from service by the competent authority. After exhausting remedy in Respondent department he filed Service Appeal No. 911/2019 before the Service Tribunal Peshawar. The honorable Court after hearing arguments vide judgment that reinstated him with immediate effect

and directed respondent to conduct denovo enquiry into the charges. During a course of enquiry he produced judgment copy of the competent court in the light of which he was acquitted of the charges. The competent authority it observed from the circumstances that when appellant know about consequences of his guilt he bowed before the complainant of the case and affected compromise on the basis of which he was acquitted of the charges by the competent court of law. Offences for which appellant was booked, falling under moral turpitude, therefore no leniency was taken and he remained out of service was treated as leave without pay vide order No. 45-49/R,SP/HQrs, EF dated 03.01.2024. As he was not entitled for the back benefit therefore was not granted.

- 4- Correct. The appellant was reinstated in service but intervening period was treated as without pay vide order dated 03.01.2024.
- 5- Para is incorrect. The departmental appeal was processed in a proper manner but the appellant without waiting, he filed the instant service appeal in Service Tribunal Khyber Pakhtunkhwa which is against the law.
- 6- Incorrect. That the impugned order dated 03.01.2024 is legal and lawful.


Grounds:-

- A- Incorrect, the impugned order dated 03.01.2024 is according to law, facts and rules.
- B- Incorrect. The appellant has been treated by the respondents according to law / rules.
- C- Incorrect. The appellant was charged in criminal case vide FIR No. 354 dated 17.09.2016 u/s 436/427/381/411 PCC PS Kohsar Islamabad. In this regard inquiry was conducted in light of which he was rightly dismissed from service by the reason of the above. The appellant was found guilty of misconduct under KP Police Rules 1975 Amendment 2014.
- D- Incorrect. A proper enquiry was conducted against the alleged official and was proved guilty beyond any doubt and was rightly dismissed from service.
- E- Incorrect. The respondent department conducted the enquiry strictly according to the rules by providing a fair opportunity to the appellant and all codal formalities were fulfilled by the respondent, department.
- F- Incorrect, after all codal formalities the alleged official was proved to be guilty and was rightly punished by the competent authority according to law and rules.
- G- Incorrect, all codal formalities were fulfilled but the appellant did not satisfy the enquiry officer. Opportunity of personal hearing was also provided by the respondent, department but the appellant failed to satisfy the enquiry officer.
- H- Pertain to record, hence no comments.
- I- The answering respondents also are allowed to adhere to additional grounds at the time of hearing before the honorable tribunal.


M.S.

PRAYER:

It is, therefore, humbly prayed that the appeal of the appellant being devoid of merit may kindly be dismissed with cost please.



**Deputy Commandant,
Elite Force, Khyber Pakhtunkhwa,
Peshawar
(ABDUS SAMAD) PSP
(Respondent No. 2)
(Incumbent)**



**Superintendent of Police, HQrs
Elite Force Peshawar
(SHABBIR HUSSAIN)
(Respondent No.01)
(Incumbent)**

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

Service Appeal No. 735/2024


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Deputy Commandant Elite Force, Khyber Pakhtunkhwa Peshawar and others.....Respondents

AUTHORITY LETTER

Mian Niaz Muhammad Khan DSP/Legal Elite Force Khyber Pakhtunkhwa is hereby authorized to submit para wise comments/reply in the instant service appeal in the Hon'able Service Tribunal Peshawar and also to defend instant case on behalf of respondents.


**Deputy Commandant,
Elite Force, Khyber Pakhtunkhwa,
Peshawar
(ABDUS SAMAD) PSP
(Respondent No. 2)
(Incumbent)**


**Superintendent of Police, HQrs.
Elite Force Peshawar
(SHABBIR HUSSAIN)
(Respondent No.01)
(Incumbent)**

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
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AFFIDAVIT

I, respondent No. 1, Mr. Shabbir Hussain Shah Superintendent of Police HQrs: Elite Force Peshawar do hereby solemnly affirmed and declare that the contents of these joint parawise comments on behalf of Respondents No. 1 to 2 are true and correct to the best of our 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.




**Superintendent of Police, HQrs
Elite Force Peshawar
(SHABBIR HUSSAIN)
(Respondent No.01)
(Incumbent)**




CHARGE SHEET

I, Atta Muhammad Superintendent of Police HQrs. Elite Force, Khyber Pakhtunkhwa Peshawar as competent authority hereby charge you Head Constable Sher Zada No.1569 of Elite Force.

1. You were charged in criminal case vide FIR. No.354, dated: 17.09.2016, u/s 436/427/381/411 PPC, PS Kohsar Islamabad, in this regard an enquiry was conducted, in light of which you were dismissed from service. However, honorable Service Tribunal passed the following remarks after being accepted your appeal that: *Service appeal is allowed within due direction to the respondent to conduct the enquiry strictly according to the rules by providing a fair opportunity to the appellant to present his case and cross examine the witnesses and the complainant in order to arrive at an informed decision. The process is to be completed within 60 days of the receipt of copy of this judgment.*
2. By reason of the above, you appear to be guilty of misconduct under Khyber Pakhtunkhwa Police Rules, 1975, (Amendment 2014) and have rendered yourself liable to all of the penalties specified in the said 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 defence 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 enclosed.


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


M. S. C.
D.S.P.C

SUMMARY OF ALLEGATIONS

1. Atin Muhammad Superintendent of Police HQrs. Elite Force, Khyber Pakhtunkhwa, Peshawar as competent authority on of the opinion that Head Constable Sher Zada No.1569 has rendered himself liable to be proceeded against as he has committed the following misconduct within the meaning of Khyber Pakhtunkhwa Police Rules, 1975 (Amendment 2014).

SUMMARY OF ALLEGATIONS

1. Head Constable Sher Zada No.1569 was charged in criminal case vide FIR. No.354, dated: 17.09.2016, w/s 436/427/381/411 PPC, PS Kohsar Islamabad, in this regard an enquiry was conducted, in light of which he was dismissed from service. However, Honorable Service Tribunal passed the following remarks after being accepted his appeal that: *Service appeal is allowed within due direction to the respondent to conduct the enquiry strictly according to the rules by providing a fair opportunity to the appellant to present his case and cross examine the witnesses and the complainant in order to arrive at an informed decision. The process is to be completed within 60 days of the receipt of copy of this judgment".*

2. For the purpose scrutinizing the conduct of the said HC with reference to the above allegation, Mr. Fahad Khan Acting SP/Elite Force, Malakand Region, is appointed as enquiry officer for denovo enquiry.

3. The enquiry officer shall provide reasonable opportunity of hearing to the delinquent HC, record statement etc. and findings within (25 days) after the receipt of this order.

4. The delinquent HC shall join the proceedings on the date, time and place fixed by the enquiry officer.


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


No. 538-45/USP/HQrs/EF,

dated Peshawar the 04/07/2023.

Copies to the;

1. Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar.
2. Accountant, of Elite Force, Khyber Pakhtunkhwa Peshawar.
3. Acting Superintendent of Police, Elite Force, Malakand Region.
4. PA to Additional Inspector General of Police, Elite Force, Khyber Pakhtunkhwa, Peshawar.
5. SRC/FMC, Elite Force, Khyber Pakhtunkhwa Peshawar.
6. This Charge Sheet and Summary of Allegations to be served upon the delinquent Head Constable Sher Zada No.1569 through reader to Acting Superintendent of Police, Elite Force, Malakand Region.


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


DSP.C



آفس آف سپرنٹنڈنٹ آف پولیس
ایلیٹ فورس ملاکٹر ریجن

13-09-2023

2136 /R-EP

فائنڈنگ رپورٹ

جناب عالی!

بحوالہ مشمولہ چارج شیٹ نمبری FIR/SP/HQrs/EF 45-538-R/SP/HQrs/EF 07=04=2023، محرمہ 04=07=2023، مجاریہ جناب SP صاحب ہیڈ کوارٹر ایلیٹ فورس خیبر پختونخواہ پشاور۔ معروض خدمت ہوں کہ چارج شیٹ متذکرہ ہمیدہ دیگر کاغذات انکوائری دفتر جناب SP صاحب ایلیٹ فورس ہیڈ کوارٹر سے موصول ہو کر ملاحظہ کرنے پر پایا گیا کہ HC شیرازہ نمبر 1569 ایلیٹ فورس پر کیس FIR نمبر 354 محرمہ 17-09-2016 جرم 17-09-2016 RPC 411/381/427/436 قحانہ کو ہتسار اسلام آباد میں نامزد ہونے کا الزام لگایا گیا ہے۔ اور سن ذریعہ سختی کو انکوائری آفیسر مقرر کیا گیا ہے۔

اندیس بارہ سن ذریعہ سختی نے حسب ضابطہ انکوائری شروع کر کے موصول شدہ فائل کا بغور ملاحظہ کرنے پر پایا گیا کہ HC مذکورہ کے خلاف بحوالہ چارج شیٹ نمبری EF/55-15250 محرمہ 10=20=2016، مجاریہ جناب محمد حسین خان PSP ذہنی کمانڈنٹ ایلیٹ فورس خیبر پختونخواہ بذریعہ محمد جاوید اقبال SP ایلیٹ فورس مردان ریجن گلگت انکوائری شروع کر کے انکوائری آفیسر نے حسب ضابطہ انکوائری کر کے 10 کے پراگرس رپورٹ کے حوالہ سے HC مذکورہ کو قصور وار ٹہرا کر مناسب سزا دینے کی سفارش کی تھی۔ جس پر جناب ذہنی کمانڈنٹ صاحب نے HC مذکورہ کو فاضل شوکارا نوٹس نمبری EF/15996 محرمہ 11-03-2016 جاری کر کے نتیجہ کے طور پر بحوالہ آرڈر نمبری EF/10-17101-10 محرمہ 11-23-2016، HC مذکورہ کو Major Punishment دے کر نوکری سے برخاست کیا تھا۔

بعدہ HC مذکورہ نے بعد اہلت سروس ٹریبیونل خیبر پختونخواہ پشاور اپیل نمبر 11/711 ڈائری شدہ نمبری 723 محرمہ 22-2017-06 دائر کر کے جس پر سروس ٹریبیونل نے بحوالہ آرڈر نمبری ST/2155 محرمہ 10-25-2018 HC مذکورہ کو Re-Instate کرنے اور ساتھ ہی De-novo-Inquiry کرنے کی ہدایت کی تھی۔ جس پر جناب SP صاحب ہیڈ کوارٹر ایلیٹ فورس خیبر پختونخواہ نے بحوالہ چارج شیٹ نمبری EF/47-42 محرمہ 01=02=2019، مجاریہ جناب ذہنی کمانڈنٹ صاحب ایلیٹ فورس خیبر پختونخواہ، انکوائری HC مذکورہ کو قصور وار ٹہرا کر محکمہ اور ایلیٹ فورس کے لئے شہرت بد کا سبب قرار دے کر Major Punishment دینے کی سفارش کی تھی۔ جس پر HC مذکورہ بحوالہ آرڈر نمبری EF/39-833 محرمہ 09-16-2019، مجاریہ جناب ذہنی کمانڈنٹ صاحب ایلیٹ فورس خیبر پختونخواہ HC مذکورہ کا Major Punishment برقرار رکھتے ہوئے نوکری سے برخاست کیا گیا تھا۔

Principal
The Police
B. U. Swat

جس کے بعد HC مذکورہ نے سروس ٹریبیونل عدالت میں دوبارہ سروس اپیل نمبر 13/713 مورخہ 05-28-2019 دائر کر کے جو کہ مورخہ 05-23-2023 کو فیصلہ ہو کر تفصیلی تحریری فیصلہ میں معزز سروس ٹریبیونل نے ٹرائل کورٹ کے فیصلہ اور

M. J. Khan
D.S.P.C

مدعی مقدمہ جناب EX-IGP صاحب کے جانب سے ٹرائل کورٹ میں تحریری اقرار نامہ / اراضی نامہ کا ذکر کرتے ہوئے دونوں زمینیں اور شہادت کو Cross-Examine کرنے کی ہدایت کر کے جس پر محکمہ نے بحوالہ آرڈر نمبری EF/9054/محرمہ-03-2023=07 بجاریہ جناب ڈپٹی کمیشن صاحب ایلیٹ فورس خیبر پختونخواہ، HC مذکور کو برائے afresh, de-novo enquiry بحال کر کے مذکورہ کے خلاف چارج شیٹ نمبری BF/SP/HQrs/538=45=R/محرمہ-07-2023=04 بجاریہ جناب SI صاحب ہینڈ کوآرڈر ایلیٹ فورس خیبر پختونخواہ پشاور، جاری کر کے، جس پر الٹرازی ہڈا شروع کیا جا کر HC مذکور کو دفتر خود طلب کر کے زبانی طور پر سنا جا کر اس کا بیان قلمبند کیا گیا۔ مذکورہ نے اپنے بیان میں اپنے اوپر لگائے گئے الزامات کی تردید کرتے ہوئے واضح کیا کہ جناب EX-IGP صاحب نے غصہ کے وجہ سے من HG اور میرے دیگر رشتہ داران کو مقدمہ میں چارج کیا تھا۔

مزید یہ کہ عدالت اور افسران بالا صاحبان کے instruction پر عملدرآمد کے خاطر مدعی مقدمہ جناب EX-IGP صاحب کے آپریٹر مسکی کلین سے ہڈر لینڈ سوبائل فون نمبر 03455046257 بحوالہ 05 روز تاچہ 22-08-2023 رابطہ کر کے جناب EX-IGP صاحب سے بسلسلہ انکوآزی ملاقات کا وقت مانگا گیا۔ جو کہ تاخا ل نہ مل سکا۔

جبکہ ٹرائل کورٹ و قاضی احمد راجہ جوڈیشل مجسٹریٹ سیکشن=130 اسلام آباد کے جاری کردہ فیصلے کے مصدقہ فتوحات حاصل کر کے ہر اہل انکوآزی ہڈا ہو گئے۔

خلاصہ رپورٹ:

سابقہ انکوآزی فائل اور ریکارڈز پر موجود تمام کاغذات انکوآزی کا بغور ملاحظہ کرتے ہوئے واضح ہوا کہ مدعی مقدمہ جناب EX-IGP صاحب مسٹر اکبر خان ہوتی نے ٹرائل کورٹ میں تحریری اقرار نامہ / اراضی نامہ پیش کر کے ملزم ہینڈ کنسٹیبل بسو دیگر چارج ملزمان کو فی سبیل اللہ بخش کر مزید مقدمہ بازی نہ کرنے کا تحریر کیا ہے۔

مدعی مقدمہ جناب EX-IGP صاحب کے جانب سے تا حال بسلسلہ انکوآزی ہڈا ملاقات کا اجازت نہیں دیا ہے۔ جس سے انکوآزی ہڈا کی تکمیل مزید التوا کا شکار ہو رہی ہے۔

لہذا، اگر افسران بالا صاحبان ٹرائل کورٹ کے فیصلے کو مد نظر رکھتے ہوئے Conditionally بحال شدہ ہینڈ کنسٹیبل شیر زادہ نمبر 1569 ایلیٹ فورس کو Permanent بحال کرنے کی احکامات صادر فرمادیں تو میرے نزدیک قرین انصاف ہو گا۔ باقی افسران بالا صاحبان کے احکامات افضل ہو گئے۔

فائینلنگ رپورٹ مرتب ہو کر گزارش ہے۔

(افند خان)

سپرٹنڈنٹ آف پولیس،

ایلیٹ فورس ملاکنڈ رجن

Superintendent
of Police Elite Force
R III Swat

M
DSP-C

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3-1-24



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



No. 45-09 /R, SP/HQr, EF,

Date: 03/01/2024

ORDER

As per discussion with the DSP legal Elite Force Khyber Pakhtunkhwa the intervening period against Head Constable Sher Zada No.1569 is hereby treated without-pay with immediate effect.

(SHAH JEHAN DURRANI) PSP
Superintendent of Police,
HQrs, Elite Force, Peshawar.

Copy for information to the:-

1. Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar, with reference to vide letter No.15040/EF, dated: 05.12.2023.
2. DSP/Legal Elite Force, Khyber Pakhtunkhwa
3. Accountant Elite Force KP, Peshawar,
4. OASI Elite Force, Khyber Pakhtunkhwa Peshawar,



OFFICE OF THE SUPERINTENDENT OF POLICE,
HQRS, ELITE FORCE PESHAWAR



No. 85257 FIR, SP/HQrs, EF, D. No. 6102 Date: 25/09/2023
Date: 26-9-23
Commandant, Elite Force

ORDER

This order will dispose of the departmental enquiry against the delinquent Head Constable Sher Zada No. 1569 of Elite Force.

Whereas Sher Zada No. 1569 of Elite Force was charged in case FIR No. 354, dated: 17.09.2016 u/s 436/427/381/4.11 PPC, PS Kohsar, Islamabad.

In this regard Charge Sheet and Summary of Allegations vide No. 538-54/R/SP/HQrs/EF dated: 04.07.2023 was issued to him and SP Elite Force, Malakand, Region was appointed as enquiry officer. Enquiry officer recommended the delinquent HC for reinstated in service.

Therefore I, Mr. Tajammul Khan, Superintendent of Police, HQrs Elite Force, Peshawar, being a competent authority in view of the above facts, recommendation of enquiry officer and legal opinion of DSP Legal Elite Force, Khyber Pakhtunkhwa, enquiry against the delinquent Head constable Sher Zada No. 1569 is hereby filed and reinstated in service.

(TAJAMMUL KHAN)
Superintendent of Police,
HQrs, Elite Force, Peshawar.

Copy of the above is forwarded for information to the:

- ✓ Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar,
- Superintendent of Police, Elite Force, Malakand Region.
- Accountant, of Elite Force, Khyber Pakhtunkhwa Peshawar.
- SRC /OASI Elite Force Khyber Pakhtunkhwa, Peshawar.
- FMC Elite Force Khyber Pakhtunkhwa, Peshawar along with (252 Pages).