

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

**S.A No. 691/2024**

Majid Khan

versus

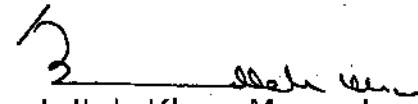
CCPO & Another

**I N D E X**

<b>S. No</b>	<b>Documents</b>	<b>Annex</b>	<b>P. No.</b>
1.	Memo of Rejoinder		1-2
2.	Judgment dated 14-09-2021	"R".	3-7

Appellant

Through

  
Saadullah Khan Marwat  
Advocate.  
21-A Nasir Mansion,  
Shoba Bazaar, Peshawar.  
Ph: 0300-5872676

Dated.24-09-2024

**BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR**

S.A No. 691/2024

Majid Khan

versus

CCPO & Another

**REJOINDER**

**Respectfully Sheweth,**

**PRELIMINARY OBJECTION**

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 16068

Dated 26-09-24

All the 07 Preliminary Objections are illegal and incorrect. No reason in support of the same is ever given as to why the appeal is barred by law / limitation, bad for mis and none joinder of necessary parties, unclean hands, no cause action / locus standi, estoppel, concealment of material facts and none maintainable.

**ON FACTS**

1. Not correct. The para of the appeal is not replied to its contents regarding appointment as Constable. The allegation leveled in the reply has no concern with the facts. He never acted against the credibility of police force but his standard was kept up. As for as previous laxities, if any, are concerned the same have already been dealt with by removing his stigma in the judgment of the hon'ble Tribunal. (Copy as annex "R")
2. Not correct. The para is without proof regarding torcher of public. It was also held by the apex court that general allegation shall not be given any importance.
- 3-4. Admitted correct by the respondents regarding service of Show Cause Notice. The allegations have been denied by the appellant being general one. There exists no standard in law of the satisfaction of the authority.

5. Not correct. The misconduct of the appellant was never proved through cogent evidence. When charges denied then conduct of regular enquiry becomes mandatory. The authority cannot say that there is no need for departmental enquiry.
6. Not correct. The para of the appeal is correct regarding submission of departmental appeal and its rejection.

**GROUNDS:**

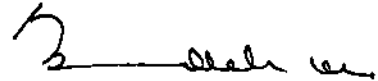
All the grounds of the appeal are legal and correct while that of the reply are illegal and incorrect. The same are re-affirmed once again.

It is, therefore, most humbly prayed that the appeal be accepted as prayed for.



Appellant

Through



Saadullah Khan Marwat  
Advocate,

Dated: 24-09-2024

**AFFIDAVIT**

I, Majid Khan appellant do hereby solemnly affirm and declare that contents of the **Appeal & rejoinder** are true and correct to the best of my knowledge and belief while that of reply of respondents are illegal and incorrect.




DEPONENT

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BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,  
PESHAWAR.

Service Appeal No. 10013/2020

Date of Institution ... 27.08.2020

Date of Decision ... 14.09.2021



Luqman S/o Mehraban Shah R/o Nisata Charsadda,  
Ex-F. Constable No. 2739, PS: Tatara Peshawar.

... (Appellant)

VERSUS

Superintendent of Police, Hqrs: Peshawar and two others.

(Respondents)

Mr. ARBAB SAIF-UL-KAMAL,  
Advocate

For appellant.

MR. RIAZ AHMED PAINDAKHEL,  
Assistant Advocate General

For respondents.

MR. SALAH-UD-DIN  
MR. ATIQ-UR-REHMAN WAZIR

MEMBER (JUDICIAL)  
MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Through this single judgment, we intend to dispose of the instant service appeal as well as connected Service appeal bearing No. 10014/2020 titled "Hamid Khan Versus Superintendent of Police, Hqrs: Peshawar and two others" and Service Appeal bearing No. 10015/2020 titled "Majid Ullah Versus Superintendent of Police, Hqrs: Peshawar and two others", as similar questions of law and facts are involved in all the appeals.

2. The appellants in all the three appeals were proceeded against departmentally on the allegations that they were involved in a criminal case registered vide FIR No. 396 dated

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14/09/2021

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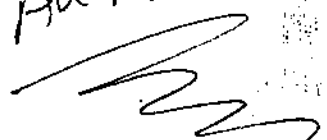
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24.02.2020 under section 365-A Police Station Chamkani. On conclusion of inquiry, vide separate orders dated 17.03.2020 passed by the competent Authority, the appellants were dismissed from service. The appellants filed separate departmental appeals, however the same were also dismissed, hence the instant service appeals.

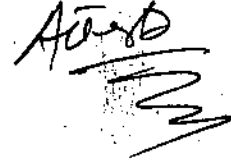
3. Notices were issued to the respondents, who submitted their comments, wherein they refuted the contentions of the appellants.

4. Learned counsel for the appellants has contended that on conclusion of the inquiry proceedings, the inquiry report was sent to the competent Authority, however he was bent upon awarding of penalty to the appellants, therefore, vide order dated 11.03.2020, he while pointing out certain deficiencies in the inquiry proceedings, returned back the matter to the inquiry officer for conducting proper inquiry; that neither during the inquiry nor during the re-inquiry, the appellants were in any way associated with the inquiry proceedings; that admittedly the statement of the complainant or any other witness were not recorded during the inquiry and no incriminating material whatsoever was collected in support of the allegations against the appellants; that in the subsequent inquiry report, the inquiry officer has not at all mentioned that the charges against the appellants stood proved; that on receipt of the inquiry report, no final show-cause notices were issued to the appellants, thereby depriving them of opportunity of defense as well as personal hearing; that the appellants have already been acquitted by the learned Judge Anti-Terrorism Court Peshawar vide order dated 09.02.2021, therefore, the very ground, which formed basis for awarding punishment to the appellants has vanished away. Reliance was placed on PLD 2003 Supreme Court 187, PLD 2010 Supreme Court 695 as well as judgment of this Tribunal rendered in Service Appeal bearing No. 1025/2017 decided on 03.07.2018.

II

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Secretary  
Tribunal

*Aditya*  


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5. On the other hand, learned Assistant Advocate General for the respondents has contended that departmental proceedings different from criminal proceedings, therefore, mere acquittal of the appellants in the criminal case cannot be considered as ground for their exoneration in the departmental proceedings conducted against the appellants; that the complainant of the criminal case was belonging to District Talagang falling in Punjab Province, therefore, it cannot be presumed that the complainant of the criminal case was having any ill-will with the appellants; that regular inquiry was conducted in the matter by complying all legal as well as codal formalities and the appellants were afforded ample opportunities of their defense; that the appellants remained indulged in illegal activities of moral turpitude and the charges against them stood proved in a proper legal inquiry, therefore, they have rightly been dismissed from service. Reliance was placed on 2021 PLC (C.S) 587, 2005 SCMR 1802, 2006 SCMR 554 as well as judgment dated 28.10.2016 of this Tribunal, rendered in Service Appeals bearing No. 1493/2013, 1494/2013 and 1495/2013.

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6. We have heard the arguments of learned counsel for the parties and have perused the record.

7. A perusal of the record would show that Niaz Muhammad, the then Deputy Superintendent of Police (Security) Civil Secretariat Peshawar was appointed as inquiry officer, who submitted his report to the competent Authority on 10.03.2020 and final show-cause notices were also issued to the appellants on the same day. However, the competent Authority instead of proceeding further with the matter, returned back the inquiry to the inquiry officer vide order dated 11.03.2020 with the observations, which are summarized as below:-

- i) The statement of the complainant/abductee as well as statements of the accused appellants were not recorded during the inquiry.

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*[Handwritten signature]*

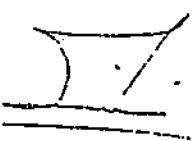
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Secretary  
Government

ii) The inquiry officer was supposed to make identification of the accused/appellants from the complainant/abductee.

iii) The photograph of the appellants, showing their presence in the motorcar in which the complainant was abducted was not attached with the inquiry report.

8. The subsequent report dated 16.03.2020, sent by the inquiry officer to the competent Authority would show that the inquiry officer could not record statement of the complainant/abductee as he was not traceable. Moreover, instead of recording statements of any witnesses in support of charges against the appellants, the inquiry officer chose a shortcut and annexed photocopies of statements of some of the witnesses recorded by the investigation officer in the criminal case. Similarly, instead of annexing the alleged photograph of the appellants, showing their presence in the motorcar in which the complainant was abducted, the photographs of the vehicle in which the complainant was allegedly abducted, were attached with the inquiry, without mentioning that the appellants are having any nexus with the vehicle shown in the photographs. Moreover, the appellants have not been provided any opportunity of cross-examination, which has created material dent in the inquiry proceedings.

9. The available record also does not show that the copies of the inquiry reports were provided to the appellants and an opportunity of personal hearing was afforded to them. On receipt of the finding of the inquiry officer on 16.03.2020, the appellants were straight away dismissed by the competent authority vide the impugned order dated 17.03.2020, without issuing of show cause notices to them. This Tribunal has already held in numerous judgments that the issuance of final show cause notice along with the inquiry report is must under Police Rules, 1975. Reliance is also placed on the judgment delivered by august Supreme Court of Pakistan reported as PLD 1981 SC-176, wherein it has been held that rules devoid of provision of final show cause notice along with inquiry report were not valid rules. Non issuance of the final show




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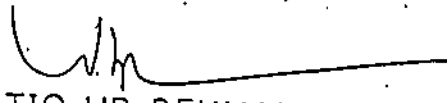
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cause notices and non-supply of copies of the findings of the inquiry officer to the appellants has caused miscarriage of justice as in such a situation, the appellants were not in a position to properly defend themselves in respect of the allegations leveled against them. Moreover, the appellants have already been acquitted by the learned Judge Anti-Terrorism Court Peshawar vide order dated 09.02.2021, therefore, the very ground, which formed basis for awarding punishment to the appellants has vanished away.

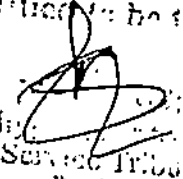
10. In view of the foregoing discussion, the instant service appeal as well as connected Service appeal bearing No. 10014/2020 titled "Hamid Khan Versus Superintendent of Police, Hqrs: Peshawar and two others" and Service Appeal bearing No. 10015/2020 titled "Majid Ullah Versus Superintendent of Police, Hqrs: Peshawar and two others", are accepted and the appellants are reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
14.09.2021

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

  
(ATIQ-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)

Certified to be true copy

  
Khan  
Services Tribunal  
Peshawar

Date of Disposal of Case No. 15/10/21  
Number 2020  
13/10/21  
26/10/21  
15/10/21  
Date of Receipt of Case No. 15/10/21



