

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Ameded Service Appeal No _____/2024.

in

Service Appeal No963/2024

Service Appeal No. _____/2024

Ex- SHO, Ayat Ullah

R/O Sector 8, street No.1,


House No.35, KDA,Kohat.....Appellant.

VERSUS

The Provincial Police Officer, Peshawar and othersRespondents.

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Applicant/Petitioner
Through
AsL 5110
Ashraf Ali Khattak

Advocate, Supreme Court of Pakistan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. _____/2024

①

Ex- SHO, Ayat Ullah
R/O Sector 8, street No.1,
House No.35, KDA,Kohat.....Appellant.

VERSUS

1. The Regional Police Officer,
Kohat Region, Kohat.
2. The District Police Officer, Karak.....Respondents

AMENDED SERVICE APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
READ WITH KHYBER PAKHTUNKHWA POLICE RULES, 1975
AGAINST THE IMPUGN ORDER OF RESPONDENT NO.1 VIDE
NO.6108/EC DATED 26-07-2024 PASSED ON THE
DEPARTMENTAL APPEAL OF THE APPELLANT FILED
AGAINST THE ORDER OF RESPONDENT NO.2 ORDER NO.
144 DATED 27-03-2024 WHEREBY HE IMPOSED UPON THE
APPELLANT MAJOR PENALTY OF DISMISSAL FROM
SERVICE WITH IMMEDIATE EFFECT.

Respected Sir,

Appellant humbly submits as to the following:-

1. That appellant is the bonafide resident of Sector 8, street No.1, House No.35, KDA,Kohat. At the relevant time he was posted as SHO, Police Station Yaqoob Khan Shaheed (Takht-e-Nasrati). On 04-02-2024 Pakistan Tehreek Insaf (PTI) Convention was held at Ambiri Kala. Numbers of Police officers/officials from almost all over the

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District/Region were deployed for safe administration of the Convention under the Command of DSP, Takht-e-Nasrati Mr. Dervish Khan and DSP, BD Shah (Karak) Mr. Hafeez Ur Rehman Khan including Inspector Amir Sultan and Saeed Khan. Appellant was also present along with his own staff. Appellant directed his staff to park his Government Vehicle at safe place/zone away from the venue of place of convention, which was duly complied with by his staff members.

2. That it worth mentioning that every Police Station Staff members and members of Police Line; deployed for maintaining the law and order situation during the time of convention were made responsible for safety of their own Government Vehicles. It is also pertinent to explain that no duty roaster for security purpose was planned. The participants were in thousands in numbers and they were also armed with latees/iorn hands etc including weapons. The mob was mobilized by some anti-state elements and they rushed towards the police personnel's, which caused the unfortunate occurrence/happening. Numbers of FIRs were lodged against the culprits, which is evident from the record. More over numbers of constables etc sustained injury due to violence of the mob.

Copy of Murasla and FIR are attached as Annexure-A.

3. That it is also worth mentioning that present MNA, Karak Mr. Shahid Ahmad Khattak continuously threatening the appellant with dire consequences till date in all public gatherings and their mutual settings and more so the present disciplinary proceeding prima facie speaks the melody of his revengeful counter blow. Video clippings record is available from which the mala fide intention and ulterior motives of the present rulers can best be judged.
4. That appellant has neither been served with charge sheet and statement of allegations nor associated with inquiry proceedings. Appellant has acquired the alleged charge sheet and statement of allegation through his

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own private efforts and that too was provided after the impugned dismissal order for the purpose of filing departmental appeal and the instant service appeal but yet SP Investigation wing Karak; the alleged inquiry officer had directed the appellant to appear before him and he took/recorded appellant's statement regarding the occurrence. Nothing more or less is the participation of appellant. It is also a true fact that while recording statement of appellant; appellant was not informed that inquiry was going to be conducted against him. The statement was recorded regarding the unfortunate happening and not against the appellant.

5. The alleged charge sheet and statement of allegations is nothing more than a flimsy and fairy tales type of accusations whereby the role of appellant has not been specified / mentioned in the unfortunate happenings. The charge sheet and statement of allegations is general type of accusation signifying nothing which could provide the appellant the detail of his alleged offence and for which appellant would have a fair opportunity of defense. Appellant does not know the sin or crime he has committed. The procedure adopted by the penal authority and inquiry officer has occasioned the cause of justice and fair level playing which is the mandate of Article 10A of the Constitution of Pakistan (a guaranteed vested right).
6. That the appellant does not know as to whether a detail inquiry as per prescribed procedure has been adopted by the inquiry officer or not as he has never been associated with the same. The whole proceedings has been conducted and adopted at the back of appellant as per bonafide information of the appellant, no statement of the prosecution witness has been recorded by the inquiry officer and if there may be any recorded statement, the same were certainly recorded in the absence of the

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appellant. The question of cross examination in circumstance does not arise.

7. That appellant has neither been served with final show cause notice nor has been provided with opportunity of personal hearing. The competent authority was under legal obligation to serve the appellant with final show cause along with the copy of inquiry report plus documents (if any) but the competent authority failed to observe his legal obligation and finally penalized the appellant with major penalty of dismissal from service vide impugned order OB No.144 dated 27-03-2024.

Copy of the impugned order OB No.144 dated 27-03-2024 is attached as Annexure-B

8. That being aggrieved from the impugned order, appellant preferred departmental appeal (Annexure-C), which, which is now been decided vide NO.6108/EC DATED 26-07-2024, hence being also aggrieved from the final order; appellant presents the instant amended service appeal inter alias on the following grounds.

GROUNDS

- A. That the respondents have not treated the appellant in accordance with law, rules and policy and acted in violation of Articles 4, 10-A, 25 and 27 of the Constitution of Islamic Republic of Pakistan, 1973. Appellant has been penalized as a result of counter blow organized and acted upon by the present elite rulers. Appellant has not been dealt with in accordance with law and rules provided for in the statute and statutory rules and have also been deprived from fair defense guaranteed under Article 10A of the Constitution of Pakistan, 1973.. In circumstance the

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impugned order cannot not be clothed with validity and is liable to be reversed back by re-instating the appellant with all back benefits.

B. That the appellant has highly been discriminated. Appellant has performed his duty in accordance with law and rules and he was under the command of DSP Takht E Nasrati and DSP BD Shah and other Inspectors. He has acted as per directions of his high officials but has been made escape goat for the pleasure of ruling elites. Moreover, the higher officers who were controlling the whole situation of the unfortunate happenings, have either been exonerated or have not been proceeded against departmentally. It is also worth mentioning that only appellant has been penalized with major penalty of dismissal from service and whereas others have either been exonerated or penalized with lesser penalties which is a sheer discrimination on the part of penalizing authority.

C. That the alleged charge sheet and statement of allegations has never been served upon the appellant and appellant has acquired the same through his own efforts. The bare perusal of the charge sheet and statement of allegations shows that it does not provide the true spirit of accusation and specification of the role of the appellant in the alleged occurrence which has caused serious injustice to the service career of the appellant comprising of for almost 26 years. The long standing service career of the appellant has been reined with single struck of pen.

D. That the impugned order has been passed in violation of the law laid down by the Hon'ble Supreme Court of Pakistan which provides that in case of major penalty and factual controversy, regular inquiry was obligatory and in absence of regular inquiry penal order of major penalty (dismissal from service) cannot be clothed with validity and was liable

to be struck down on this score alone.

⑥

Citation Name : 2019 PLC(CS) 224 PESHAWAR-HIGH-COURT

Side Appellant : SALEEM WAZIR PROFESSOR COMMUNITY MEDICINE

Side Opponent : GOVERNMENT OF KHYBER PAKHTUNKHWA

Major penalty, imposition of---Requirements---Any disciplinary proceedings relating to misconduct of an employee/officer of any department which entails major penalty of removal/dismissal from service must be inquired through **regular inquiry** which cannot be dispensed with in matter where controversial facts and ticklish questions are involved.

Citation Name : 2019 PLC(CS) 475 KARACHI-HIGH-COURT-SINDH

Side Appellant : IQBAL HUSSAIN

Side Opponent : FEDERATION OF PAKISTAN through Secretary Ministry of Information and Technology, Government of Pakistan

Holding of **regular inquiry** in case of imposition of major penalty was prerequisite and mandatory condition.

- E. That section sixteen of the Civil Servant Act, 1973 provides that every civil servant in case of misconduct is liable for prescribed disciplinary action only in accordance with law. It has also been settled down by the Hon'ble Supreme Court of Pakistan that when law prescribe something to be done in a particular manner, it has to be done in that manner or not at all. In the instant case no prescribed procedure has been adopted by the competent authority and as well by the inquiry officer. On this score alone the impugned order is liable to set aside.
- F. That the inquiry officer has conducted a slipshod inquiry and that too in the absence and at the back of the appellant. The inquiry officer has totally failed to collect an iota of incriminating evidence against the appellant. In absence of any incriminating evidence how a civil servant can be penalized with major penalty and that too of dismissal from

service therefore, this Hon'ble Tribunal is under legal obligation to interfere with and set aside the impugned order. (7)

- G. That the basic concept of regular inquiry was the formation of issues, its determination and reason for determination along with recommendations but the same are absolutely missing as evident from the context of the impugned order, which is against the provision of General Clauses Act, 1897.
- H. That appellant has neither been served with final show cause notice nor provided a copy of inquiry report plus incriminating documents (if any). The appellant has been condemned unheard. No opportunity of personal hearing has been provided to him. The impugned penal order passed by the competent authority is flimsy in its nature and does not provide legal justification for imposition of major penalty. On this score as well, the impugned penal order is liable to be set aside.
- I. There can be no cavil with proposition that act of carelessness on the part of civil servant could be a valid ground to award penalty. Elements of bad faith and willfulness may bring the act of negligence within the mischief of "misconduct" within the meaning of section 4 but a conduct demonstrating lack of proper care and the requisite vigilance may not always be willfulness amounting to grave negligence to warrant harsh punishment under S. 4. 2013 TD (Service) 204, 2013 SCMR 817.
- J. That the well-known principle of law "Audi altram Partem" has been violated. This principle of law was always deemed to have embedded in every statute even though there was no express specific or express provision in this regard.

(8)

....An adverse order passed against a person without affording him an opportunity of personal hearing was to be treated as void order. Reliance is placed on 2006 PLC(CS) 1140. As no proper personal hearing has been afforded to the appellant before the issuing of the impugned order, therefore, on this ground as well the impugned order is liable to be set aside.

The Executive have to show source of authority:-

The Executive is not above law and it must, on challenge to its action, show the legal authority from where it derives the source of its authority. In case the executive fails to show the source of its power, its acts, as so far they conflict with legal protected interests of individuals, must be declared by courts Ultra vires and without jurisdiction. [PLD 1990 Kar 9].

Things must be done in prescribed manner or not at all..... Expressio unius est exclusion alterius..... When an action is required to be done in a particular manner that must be done in that manner only or not at all.

K. That appellant is jobless since his dismissal order and under heavy financial burden therefore liable to be re-instated with all back benefits.

Re-instated employee would be entitled to back benefits as a matter of course unless employer is able to establish by cogent evidence that concerned employee had been gainfully employed elsewhere. In this respect, initial burden would lie upon the employer and not upon the employee to prove that such employee was gainfully employed during period of termination from his service. 2010 TD (Labour) 41.

Civil servant who was dismissed from service through arbitrary and whimsical action of the government functionaries and re instated through judicial order of Service Tribunal would have every right to recover arrears of salaries by way of back benefits due to them during the period of their dismissal and re instatement. It would be very unjust and harsh to deprive them of back benefits for the period for which they remained out of job without any fault on their part and were not gainfully employed during that period.....Supreme Court allowing their appeal and directing payment of back benefits to the appellant. 2006 T D (SERVICE) 551 (a):

--Grievance petition---Mechanical Helper---Allegation of misconduct---Termination from service---back benefits , grant of---Employee was terminated from service against which grievance petition was accepted by the Labour Court without back benefits but Labour Appellate Tribunal remanded the matter for decision on merits including point of maintainability of grievance petition---Validity--Employee company had failed to get examined the complainant and star witnesses of alleged incident---Evidence of said witnesses was necessary to corroborate the respondent's case---Respondent had examined only Inquiry Officer

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before the Court but no reliance could be placed on his evidence as he was not eye witness of alleged misconduct---Withholding of star witnesses would create an impression that the said witnesses if produced might not have supported the employer's case---No opportunity during domestic inquiry had been provided to the employee to produce his witnesses---No reliance could be placed on the inquiry report in circumstances---Employer company had failed to prove that employee during dismissal period remained in gainful employment---Employee during dismissal period did not remain in gainful employment, in circumstances---Service of employee had been terminated illegally and he was entitled for reinstatement with all the **back benefits** ---Impugned order passed by the Labour Appellate Tribunal was set aside and grievance petition was accepted as prayed for---Constitutional petition was allowed, in circumstances.

Citation Name : 2018 SCMR 376 SUPREME-COURT

Side Appellant : KHALID MEHMOOD

Side Opponent : STATE LIFE INSURANCE CORPORATION OF PAKISTAN

Sched., S.O 12(3)--- Permanent employee---Dismissal without assigning reasons--- **back benefits** , entitlement to---Appellant's services were terminated without assigning any reason whatsoever, which termination was found illegal by the Labour Court as well as by the Labour Appellate Tribunal---In terms of Standing Order 12(3) of the Schedule to the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, the services of a permanent employee could be terminated only by giving explicit reasons---Supreme Court ordered payment of **back benefits** to the appellant for the intervening period between his date of termination and date of his reinstatement in service.

Citation Name : 2018 PLC 182 SUPREME-COURT

Side Appellant : KHALID MEHMOOD

Side Opponent : STATE LIFE INSURANCE CORPORATION OF PAKISTAN

Reinstatement in service---**back benefits** ---Employer obtaining consent from employee to forgo **back benefits** as a condition for reinstatement---Practice of obtaining such consent from employee was deprecated by the Supreme Court.

Citation Name : 2016 PLC 16 PESHAWAR-HIGH-COURT

Side Appellant : SHAUKAT ALI

Side Opponent : CHIEF EXECUTIVE PESCO

S.O.13(3)---Khyber Pakhtunkhwa Industrial Relations Act (XVI of 2010), S.37---Withholding of **back benefits** ---Time barred de novo proceedings---Effect---Discrimination---Legal and economic justice in Labour Laws---Object and scope---Petitioners were dismissed from service---Service Tribunal set aside the order of dismissal of petitioners and they were reinstated into service by remanding their cases

for de novo proceedings---Criminal case was lodged against the petitioners wherein they were acquitted of the charge---Contention of the petitioners was that after their reinstatement their **back benefits** could not be withheld particularly when the de novo proceedings were barred by time---Validity---Under Standing Order 13(3) of the Standing Order Ordinance, 1968 and Labour Law nowhere withholding of benefit was defined as punishment and the same was the position in the non-statutory law of respondents establishment and Civil Servant Act---Withholding of **back benefits** had not been defined as punishment, if charges proved and under the labour law **back benefits** /wages were only withheld when the employee was found to have been employed in some gainful employment during this period---Service Tribunal ordered de novo proceedings to be finalized within four (4) months, whereas the same were finalized beyond the period of four (4) months, which was not permissible under the law---Petitioner's colleague was also charged but subsequently a separate inquiry was held and he was exonerated therein and was allowed all **back benefits** , while the petitioners were discriminated---Labour Court had taken cognizance of the case with no objection from the respondents, therefore, Labour Laws were applicable to parties---Workers, in Labour matters placed economic justice while employees placed legal justice; court had to maintain a balance between legal and economic justice; scales of social justice were tilted in favour of weaker section; Industrial Relations Act, 2010 was basically a beneficial legislation, which provided for protection of rights of labour classes; object amongst other was to ameliorate conditions of workers; such a legislation had to be construed liberally and beneficially; restricted construction of Industrial Relations Act, 2010 would defeat manifest objective of legislation---Time barred de novo proceedings and withholding of **back benefits** were held to be illegal and unlawful---Petitioners' appeal was allowed.

Burden of proof:-

Burden of proof lie is on authority to prove misconduct. [1997 SCMR 1543].

Burden of proof lies on the department for communication of orders. [1994 PLC (CS) 46].

Burden of proof on the prosecution to prove the charge.

The law in the country is still unchanged and is governed by law of Qanoon-e-Shahadat in Vogue and by virtue of the same, we have to see, that it is for the prosecution to establish the guilt of the person and if it fails to do so, the result is that benefit goes to the accused of the said failure.

If the allegation against the accused civil servant/employee is of serious nature and if he denies the same, a regular inquiry cannot be dispensed with. In such a case, the initial burden on the department to prove the charge, which cannot be done without producing evidence [1983 PLC (CS) 211 + 1997 PLC (CS) 817 (S.C) + 1997 SCMR 1543].

Standard of proof.....To be akin to one required in criminal cases.

It is significant that while referring to civil servant, who is being proceeded against under the Govt: Servant (Efficiency and Discipline) Rules the word "accused" has been used which indicates that the proceedings conducted by the inquiry officer are akin to a criminal trial [1996 SCMR 127]. A person is presumed to be guilty of

misconduct if evidence against him establishes his guilt. The use of the word "guilty" is indicative of the fact that the standard of proof should be akin to one required in criminal cases [PLD 1983 SC (AJ & K) 95].

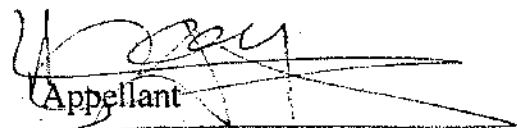
Prosecution to stand on its legs to prove the allegations.

Accused is stated to be a favorite child of law and he is presumed to be innocent unless proved otherwise and the benefit of doubt always goes to the accused and not to the prosecution as it is for the prosecution to stand on its own legs by proving all allegations to the hilt against the accused. Mere conjectures and presumption, however strong, could not be made a ground for removal from service of civil servant [1999 PLC (CS) 1332 (FST)]..... Unless and until prosecution proves accused guilty beyond any shadow of doubt, he would be considered innocent [1983 PLC (CS) 152 (FST)].


That appellant would like to request your kind honour to provide him an opportunity of personal hearing so that he would be able to bring each and every aspect of the occurrence into the active notice of your kind honour.

In view of the above narrated positions, this Hon'ble Tribunal may graciously be pleased to set aside both the impugned order of Respondent No.1 vide Endst: NO.6108/EC DATED 26-07-2024 and impugned order of dismissal vides OB NO. 144 DATED 27-03-2024 and re-instate the appellant with all back benefits.

Any other remedy deemed appropriate under the circumstance of the case may also be graciously awarded.


Appellant

Through


Ashraf Ali Khattak
Advocate, Supreme Court

Dated : _____/09/2024

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Ameded Service Appeal No _____/2024.

in

Service Appeal No963/2024

Service Appeal No. _____/2024

Ex- SHO, Ayat Ullah

R/O Sector 8, street No.1,


House No.35, KDA, Kohat.....Appellant.

VERSUS

The Provincial Police Officer, Peshawar and othersRespondents.

Affidavit

I, Ayat Ullah r/o Sector 8, Street No.1. House No.1, KDA, Kohat do hereby solemnly affirms and declare on Oath that the contents of this amended service appeal are true and correct and nothing has been concealed from the notice of this Hon'ble Tribunal.


Deponent

ATTACHED

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ORDER

This order will dispose off the departmental enquiry initiated against SI Ayat Ullah the then SHO FB YKS (now Constable Police Lines Karak):

"It has been noticed with grave concern that PTI convention was held at Ambri Kala on 04.02.2024 at 1400 hours wherein SI Ayat Ullah SHO FB YKS alongwith Police contingent were deputed for security duty but SI Ayat failed to do so as a result of which 14 Govt. vehicles were badly damaged by the PTI workers. This shows his loose command/supervision over his subordinates although sufficient Police strength were provided. Moreover, SI Ayat Ullah, being a responsible Police officer failed to park the Govt. Vehicles at safe zone away from the venue but in town. This is quite adverse on his part and shows his negligence, carelessness and non-professionalism in the discharge of his official obligations. This act on his part is against service discipline and amounts to gross misconduct."

He was served with Charge Sheet together with statement of allegations under Police Disciplinary Rules 1975 (amended 2014) rule No. 11/Enq dated 04.02.2024. Mr. Zahid Khan SP Investigation Wing Karak was appointed as Enquiry Officers to conduct departmental enquiry against him. After the completion of enquiry, the Enquiry Officer submitted his findings whereas the allegations levied against the defaulter police official have been proved.

It is to be mentioned that on the same morning prior to the starting of PTI Jalsa, the undersigned called the defaulter SI alongwith other concerned police officers regarding the subject duty, deployment and rules of engagement. Later on, during the day the defaulter SI/SHO Ayat Ullah and other officers were given directions multiple times both telephonically and through wireless. It was reiterated multiple times to the SI/SHO Ayat Ullah that he should carefully park official vehicles and should have an evacuation plan. Being SHO of the area it was his utmost duty to collect the information about the area and apprise his senior command but he failed. It was also his duty to command his men on ground but he preferred to sit in APC leaving behind his men stranded and uncommanded. All this shows lack of proper planning and poor execution of his command as an SHO. Moreover, he failed to deploy his men and park their vehicles at strategic place so as to avoid any damage to official property or any hurt to any Police official. His failure to carefully address the law and order situation caused damage to 14 official vehicles.

Thereafter, Final Show Cause Notice was issued to him vide this office No. 36/Enq dated 20.01.2024. He submitted his reply to this effect and his reply was found unsatisfactory.

Keeping in view of the above facts and circumstances on file, the undersigned came to the conclusion that he being a member of disciplined force, have acted in indisciplined and irresponsible manner and also shown non-professionalism in the discharge of his official obligations. Therefore, I, Muhammad Waqas Khan (SP) District Police Officer, Karak in exercise of the powers conferred upon me under Police rules 1975 (as amended in 2014), he is hereby awarded ~~major punishment~~ **discharged from service with immediate effect.**

Off No. 144
Date 27/03/2024


DISTRICT POLICE OFFICER,
KARAK

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ORDER

This order will dispose off the departmental enquiry initiated against SI Ayat Ullah the then SHO PS YKS (now Constable Police Lines Karak):-

"It has been noticed with grave concern that PTI convention was held at Ambiri Kala on 04.02.2024 at 1400 hours wherein Si Ayat Ullah SHO PS YKS alongwith Police contingent were deputed for security duty but SI Ayat failed to do so as a result of which 14- Govt: vehicles were badly damaged by the PTI workers. This shows his loose command/supervision over his subordinates although sufficient Police strength were provided. Moreover, SI Ayat Ullah, being a responsible Police officer failed to park the Govt: Vehicles at safe zone away from the venue but in vain. This is quite adverse on his part and shows his negligence, carelessness and non-professionalism in the discharge of his official obligations. This act on his part is against service discipline and amounts to gross misconduct.

He was served with Charge Sheet together with statement of allegations under Police Disciplinary Rules 1975 (amended 2014) vide No. 11/Enq: dated 04.02.2024. Mr. Zahid Khan SP Investigation Wing Karak was appointed as Enquiry Officers to conduct departmental enquiry against him. After the completion of enquiry, the Enquiry Officer submitted his findings whereas the allegations leveled against the defaulter police official have been proved.

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Keeping in view of the above facts and circumstances on file, the undersigned come to the conclusion that he being a member of disciplined force, have acted in indiscipline and irresponsible manner and also shown non-professionalism in the discharge of his official obligations. Therefore, I. Muhammad Waqas Khan (PSP) District Police Officer, Karak in exercise of the powers conferred upon me under Police rules 1975 (as amended in 2014), he is hereby awarded major punishment of dismissal from service with immediate effect.

OB No. 144

Dated 27/03/2024

DISTRICT POLICE OFFICER,
KARAK

~~ATTACHED~~

To

The Worthy,
Regional Police Officer,
Kohat Region, Kohat.

ANEX-C

16

~~Amir Sultan~~
~~Saeed Khan~~

Subject: DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER OB NO. 144 DATED 27-03-2024 WHEREBY THE DISTRICT POLICE OFFICER, KARAK HAS IMPOSED UPON THE APPELLANT MAJOR PENALTY OF DISMISSAL FROM SERVICE WITH IMMEDIATE EFFECT.

Respected Sir,

Appellant humbly submits as to the following:-

1. That appellant was posted as SHO, Police Station Yaqoob Khan Shaheed (Takht-e-Nasrati). On 04-02-2024 Pakistan Tehreek-insaf (PTI) Convention was held at Ambiri Kala. Numbers of Police officers/officials from almost all over the district were deployed for safe administration of the Convention under the Command of DSP, Takht-e-Nasrati Mr. Dervish Khan and DSP, BD Shah (Karak) Mr. Hafeez Ur Rehman Khan including Inspector Amir Sultan and Saeed Khan. Appellant was also present along with his own staff. Appellant directed his staff to park their Government Vehicle at safe place/zone away from the venue of place of convention, which was duly complied with by his staff members.
2. That it worth mentioning that every Police Station Staff members and members of Police Line; deployed for the law and order situation during convention were made responsible for safety of their own Government Vehicles. It is also pertinent to explain that no duty roster for security purpose was planned. The participants were in thousands in numbers and they were also armed with latees/iorn hands etc including weapons. The

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mob was mobilized by some anti-state elements and they rushed towards the police personnel's, which caused the unfortunate occurrence. Numbers of FIRs were lodged against the culprits, which is evident from the record. More over numbers of constables etc sustained injury due to violence of the mob.

3. That it is also worth mentioning that present MNA, Karak Mr. Shahid Ahmad Khattak continuously threatening the appellant with dire consequences till date in all public gatherings and their mutual settings and more so the present disciplinary proceeding prima facie speaks the melody of his revengeful counter blow. Video clippings record is available from which the mala fide intention and ulterior motives of the present rulers can best be judged.
4. That appellant has neither been served with charge sheet and statement of allegations nor associated with inquiry proceedings. Appellant has acquired the alleged charge sheet and statement of allegation through his own private efforts and that too was provided after the impugned dismissal order for the purpose of present departmental appeal. SP Investigation wing Karak; the alleged inquiry officer directed the appellant to appear before him and he took/recorded appellant's statement regarding the occurrence. Nothing more or less is the participation of appellant.
5. The alleged charge sheet and statement of allegations is nothing more than a flimsy and fairy tales type of accusations whereby the role of appellant has not been specified / mentioned in the unfortunate happenings. The charge sheet and statement of allegations is general type of accusation signifying nothing which could provide the appellant the detail of his alleged offence and for which appellant would have a fair opportunity of defense. Appellant does not know the sin or crime he

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has committed. The procedure adopted by the penal authority and inquiry officer has occasioned the cause of justice and fair level playing which is the mandate of Article 10A of the Constitution of Pakistan (a guaranteed vested right).

6. That the appellant does not know as to whether a detail inquiry as per prescribed procedure has been adopted by the inquiry officer or not as he has never been associated with the same. The whole proceedings has been conducted and adopted at the back of appellant as per bonafide information of the appellant, no statement of the prosecution witness has been recorded by the inquiry officer and if there may be any recorded statement, the same were certainly recorded in the absence of the appellant. The question of cross examination in circumstance does not arise.

7. That appellant has neither been served with final show cause notice nor has been provided with opportunity of personal hearing. The competent authority was under legal obligation to serve the appellant with final show cause along with the copy of inquiry report plus documents (if any) but the competent authority failed to observe his legal obligation and finally penalized the appellant with major penalty of dismissal from service vide impugned order OB No.144 dated 27-03-2024 hence, the instant departmental appeal inter alia on the following grounds.

GROUNDS

A. That the penal authority has not treated the appellant in accordance with law, rules and policy and acted in violation of Articles 4, 10-A, 25 and 27 of the Constitution of Islamic Republic of Pakistan, 1973. Appellant has been penalized as a result of counterblow organized by the present elite rulers.

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B. That the appellant has highly been discriminated. Appellant has performed his duty in accordance with law and rules and he was under the command of DSP Takht E Nasrati and BD Shah and other Inspectors. He has acted as per directions of his high officials but has been made escape goat for the pleasure of ruling elites. Moreover, the higher officers who were controlling the whole situation of the unfortunate happenings, have either been exonerated or have not been proceeded against departmentally. It is also worth mentioning that only appellant has been penalized with major penalty of dismissal from service and whereas others have either been exonerated or penalized with lesser penalties which is a sheer discrimination on the part of penalizing authority.

C. That the alleged charge sheet and statement of allegations has never been served upon the appellant and more so, are against the law and the rulings of the Apex Court of Pakistan. It does not provide the true spirit of accusation and specification of the role of the appellant in the alleged occurrence which has caused serious injustice with the service career of the appellant comprising of for almost 26 years and in these 26 years of service has been reaped with single struck of pen.

D. That the impugned order has been passed in violation of the law laid down by the Hon'ble Supreme Court of Pakistan which provides that in case of major penalty and factual controversy, regular inquiry was obligatory and in absence of regular inquiry penal order of major penalty (dismissal from service) cannot be clothed with validity and was liable to be struck down on this score alone.

E. That the inquiry officer has conducted a slipshod inquiry and that too in the absence and at the back of the appellant. The inquiry officer has totally failed to collect an iota of incriminating evidence against the appellant. In absence of any incriminating evidence how a civil servant

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(20) 209

can be penalized with major penalty and that too of dismissal from service therefore, your kind honour is under legal obligation to interfere with and set aside the impugned order.

- F. That the basic concept of regular inquiry was the formation of issues, its determination and reason for determination along with recommendations but the same are absolutely missing as evident from the context of the impugned order, which is against the provision of General Clauses Act, 1897.
- G. That appellant has neither been served with final show cause notice nor provided a copy of inquiry report plus incriminating documents (if any). The appellant has been condemned unheard. No opportunity of personal hearing has been provided to him. The impugned penal order passed by the competent authority is flimsy in its nature and does not provide legal and justifiable reasons for imposition of major penalty. On this score as well, the impugned penal order is liable to be set aside.
- H. That the well-known principle of law "Audi altram Partem" has been violated. This principle of law was always deemed to have embedded in every statute even though there was no express specific or express provision in this regard.
-An adverse order passed against a person without affording him an opportunity of personal hearing was to be treated as void order. Reliance is placed on 2006 PLC(CS) 1140. As no proper personal hearing has been afforded to the appellant before the issuing of the impugned order, therefore, on this ground as well the impugned order is liable to be set aside.
- I. That appellant would like to request your kind honour to provide him an opportunity of personal hearing so that he would be able to bring each

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and every aspect of the occurrence into the active notice of your kind honour.

In view of the above narrated positions, it is humbly requested before Your Kind Honour that the instant departmental appeal may kindly be allowed and the impugned order OB No.144 dated 27-03-2024 passed by District Police Officer, Karakbe set aside and the appellant may kindly be reinstated into service with all back benefits.

Yours faithfully,

Ayatullah

Ex- SHO

P.S YaqoobShaheed Khan

Takht E Nasrati

Cell No. 0333-9634123

Dated : 4 /04/2024

ATTACHED

S.A No. 963/2024

13th August, 2024

Ayatullah vs Police

Ann (D) 23



Appellant in person present. Mr. Malik Jan, Inspector
(Legal) alongwith Mr. Arshad Azam, Assistant Advocate
General for the respondents present.

Para-wise comments on behalf of respondents have
been received through office. Copy of the same is handed
over to the appellant. Be placed before the D.B for
arguments on 18.09.2024. Parcha Peshi given to the parties.

(Aurangzeb Khattak)
Member (Judicial)

Nasim Amin

18.09.2024 1. Learned counsel for the appellant present. Mr. Muhammad
Jan, District Attorney for the respondents present.

2. Learned counsel for the appellant submitted an application
seeking permission to place on file order dated 26.07.2024
passed by appellate authority upon departmental appeal filed
against the impugned order already placed on file. Request of
appellant is accepted in terms that he is directed to amend the
prayer of appeal and challenge it by way of filing amended
appeal with further direction to submit it within three days and
respondents are directed to submit reply if they want to do so
within next three days. To come up for arguments on 20.11.2024
before D.B. P.P given to the parties.

ATTESTED

EXAMINER
Ayatullah Service Tribunal
Peshawar

03-10-2024

(Fareeha Paul)
Member (E)

(Rashida Bano)
Member (J)

Anx E, 09
District Police Officer Karak
Disty. 29/12
Date: 30/07/2024

ORDER

This order will dispose of the departmental appeal preferred by Ex-Constable Ayat Ullah, the then SHO PS Yaqoob Khan Shaheed, of district Karak against the order of District Police Officer, Karak whereby he was awarded major punishment of dismissal from service vide OB No. 144, dated 27.03.2024. Brief facts of the case are that a Convention of a Political Party was held at Amberi Kalay on 04.02.2024 at 14:00 hours wherein Ex-Constable Ayat Ullah, the then SHO PS Yaqoob Khan Shaheed along with a Police contingent had been deputed for security duty. As a result of his loose command / supervision over his subordinates, 14 Government vehicles were badly damaged by the political workers, although a reasonable Police strength had been provided to him. Moreover, being a responsible Police officer, he failed to park the Government vehicles at a safe distance away from the venue. This showed his negligence, carelessness and non-professionalism in the discharge of his official obligations.

Proper departmental enquiry proceedings were initiated against him and Superintendent of Police Investigation Karak was nominated as Enquiry Officer. The Enquiry Officer, after fulfillment of usual formalities, submitted his findings wherein the appellant was found guilty of the charges leveled against him. He was, therefore, recommended for suitable punishment under the relevant rules.

Keeping in view the recommendations of the Enquiry Officer and the above cited circumstances, the delinquent officer was awarded major punishment of dismissal from service vide OB No. 144, dated 24.03.2024.

Feeling aggrieved from the order of District Police Officer, Karak, the appellant preferred the instant appeal. He was summoned and heard in person in Orderly Room held in the office of the undersigned on 23.07.2024. During personal hearing, the appellant did not advance any plausible explanation in his defense.

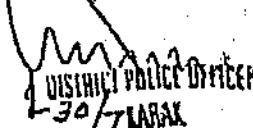
Foregoing in view, I, Sher Akbar, PSP, S.St, Regional Police Officer, Kohat, being the appellate authority, am of the considered opinion that the charges leveled against him have been fully established. The punishment of dismissal from service awarded by the District Police Officer, Karak is justified and, therefore, warrants no interference. Hence, appeal of Ex-Constable Ayat Ullah is hereby rejected being devoid of substance and merit.

Order Announced
23.07.2024


Regional Police Officer,
Kohat Region

No. 6108 JEC. Dated Kohat the 26/07 2024

Copy forwarded to District Police Officer, Karak for information and necessary w/r to his office Memo: No. 2110/JEC, dated 20.05.2024. Service Record and Enq: File are returned herewith.

SRE
Part in action.

DISTRICT POLICE OFFICER
30/7 KARAK

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WAKALAT NAMA

24

IN THE COURT OF Sesivile Tribunal Peshawar

Ex. SMO ayaf ullah

Appellant(s)/Petitioner(s)

VERSUS

The Provincial Police
office Peshawar

Respondent(s)

I/We ayaf ullah do hereby appoint **Mr. Ashraf Ali Khattak, Advocate** Supreme Court of Pakistan in the above mentioned case, to do all or any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

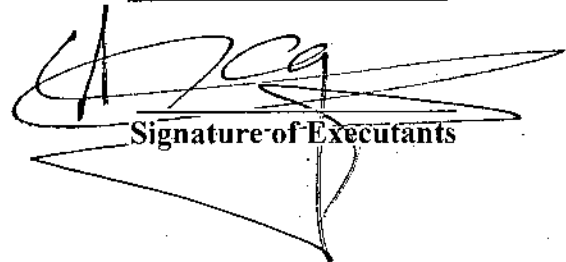
AND hereby agree:-

- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this _____

Attested & Accepted by

Asl Tm
Ashraf Ali Khattak
Advocate,
Supreme Court of Pakistan


Signature of Executants