

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.203/2024.


Ex- Constable Shabir Khan No.4091 of CCP, Peshawar.....Appellant

VERSUS.

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. Respondents.

I n d e x

S.NO	DOCUMENTS	ANNEXURE	PAGES
1	Reply		1 to 3
2	Affidavit		4
3	Authority		5
4	Copy of list	A	6
5	Copy of departmental Appeal	B	7
6	Charge Sheet	C	8
7	Statement of Allegations	D	9
8	Enquiry Report	E	10
9	FSCN	F	11


DSP/Legal, 14/04
CCP Peshawar.

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REPLY BY RESPONDENTS NO. 1, 2, & 3.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 16444

Dated 08-10-24

Respectfully Sheweth:-

PRELIMINARY OBJECTIONS.

1. That the appeal is badly barred by law & limitation.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has not come to Hon'able Tribunal with clean hands.
4. That the appellant has no cause of action and locus standi.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from Honorable Tribunal.
7. That the appeal is not maintainable being devoid of any merit.

REPLY ON FACTS:-

1. Incorrect. The appellant is not considered a peaceful and law-abiding citizen of Pakistan. This is evident from his involvement in an act of haraabah, as defined under Section 17(4) of the relevant law. According to this provision, any adult found guilty of committing haraabah particularly if this act includes murder shall be punished with the death penalty. The appellant's actions clearly fall under this serious category of crime, which underscores the severity of his offense.
2. Incorrect. The appellant performance has been unsatisfactory, as evidenced by his service record. He has accumulated 08 bad entries, including one major and one minor punishment, over the course of his service. His overall performance has consistently fallen short of acceptable standards. Additionally, his involvement in a criminal case, vide FIR No. 2721 dated 28.12. 2019, under Section 17(4) haraabah PS Chamkani, Peshawar, further highlights his inefficiency and lack of professionalism. (copy of list as annexure A)
3. Incorrect. As explained above.
4. Incorrect. The appellant was proceeded against departmentally on the charges of his involvement in a criminal case vide FIR No. 2721, dated 28.12.2019 u/s 17 (4) haraabah PS Chamkani, Peshawar. Besides commission of Criminal Offence, the appellant being member of a disciplined force committed professional misconduct by involving himself in a criminal case. His involvement in heinous criminal offence constitutes significant professional misconduct.
6. Incorrect. The appellant absented himself from lawful duty w.e.from 12.12.2019, and an FIR was lodged on 28.12.2019. The appellant was subsequently implicated in the criminal case after a statement recorded under Section 164 of the Criminal Procedure Code (CrPC) on 03.01.2020, indicating his involvement in the case. Moreover, the appellant admitted to these facts in his

departmental appeal. The dismissal from service was based on the charges related to criminal case *ibid*, and importantly, the dismissal was not carried out in absentia but after due process.(copy of departmental appeal is annexure as B)

- 7. Incorrect. The appellant was issued a final show cause notice on charges related to his involvement in a criminal case. It is a well-established principle that court proceedings and departmental proceedings are distinct entities and can proceed simultaneously. The appellant's actions brought disrepute to the entire force. The Supreme Court of Pakistan, in *Dr. Sohail Hassan Khan vs. Director General (Research), Livestock and Dairy Development Department, Punjab (2020 SCMR 1708)* and *District Police Officer Mianwali vs. Amir Abdul Majid (2021 SCMR 420)*, emphasized that departmental and criminal proceedings function in entirely different jurisdictions with distinct standards of proof and procedures. This distinction allows departments to make decisions without being bound by the strict procedural constraints that apply in criminal cases.
- 8. Incorrect. The point mentioned in para 8 is incorrect as it unnecessarily repeats the content already explained in detail in para 7, hence no need for duplication.
- 9. Incorrect. The appellant was issued Charge Sheet with statement of allegations vide No. 11/E/PA, dated 17.01.2020 DSP Hashtnagri Conducted departmental enquiry. The findings of the enquiry revealed that the appellant involved himself in the criminal case *ibid*. After receipt of finding of enquiry proceedings he was issued Final Show Cause Notice vide No. 11-E/PA, SP/Hqrs dated 20.01.2021. The appellant failed to acknowledge receipt or submit a response within the stipulated timeframe. The competent authority before imposing the Major penalty had completed all codal formalities, after a comprehensive review of the enquiry findings and the appellant's failure to respond to the Final Show Cause Notice, the Competent Authority awarded him Major punishment of dismissal from service. (Copy of charge sheets, statement of allegations and enquiry report, FSCN are attached as C, D, E& F).
- 10. Incorrect. The appellant preferred time barred departmental appeal on 17.01.2022 after inordinate delay of about 10 months and 09 days, meaning thereby that he was not interested and his departmental appeal was filed/ rejected on the grounds of facts and limitation. Furthermore, the appellant, in an attempt to avoid the limitation, failed to file a review petition before the appellate authority as per the record. Moreover, appeal of the appellant being devoid of merits and limitation may be dismissed on the following grounds.

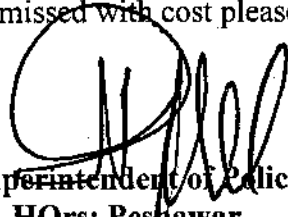
REPLY ON GROUNDS:-

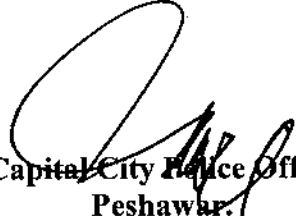
- A. Incorrect. The appellant was treated in accordance with law/rules and no violation of the constitution of Pakistan 1973 has been committed by the respondents.
- B. Incorrect. The charges leveled against the appellant were proved, hence the punishment order was passed in accordance with facts and rules.
- C. Incorrect. The appellant was provided full opportunity of personal hearing, but he failed to defend himself. Furthermore, the prime duty of police is to protect life, property and liberty of citizens, preserve and promote public peace, instead he committed gross misconduct by indulging himself in moral turpitude offences which speaks volume of his personality and unlikely of becoming a good police officer.

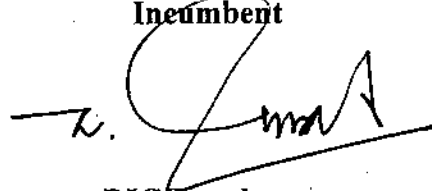
- D. Incorrect. The appellant is solely responsible for his situation due to committing gross misconduct. His involvement in the heinous offence under Section 17(4) of Haraabah is a serious violation, which is intolerable within the force and undermines the integrity of the department.
- E. Incorrect. The appellant involved himself in criminal case and during the course of enquiry the charges leveled against him were proved. As per Khyber Pakhtunkhwa ESTA code the defaulter officer shall be reprimanded as per quantum of misconduct committed by him and he was rightly punished as per his guilt.
- F. Incorrect as explained in detail in proceedings paras. However, it is crucial to mention that the appellant, being a member of a disciplined force, committed a heinous offence of haraabah. This act reflects poorly on the force and tarnishes its reputation.
- G. Para pertains to court record. Furthermore, The Supreme Court of Pakistan, in Dr. Sohail Hassan Khan vs. DG Livestock and Dairy Development (2020 SCMR 1708), held that a civil servant cannot evade departmental action solely based on acquittal in a criminal case, as these proceedings have different standards of proof and procedures. Similarly, in District Police Officer Mianwali vs. Amir Abdul Majid (2021 SCMR 420), the Court ruled that acquittal in criminal proceedings does not guarantee reinstatement, as departments may have independent grounds to assess the suitability of the officer for continued service.
- H. Respondents also seek permission of this Hon'ble Tribunal to raise additional grounds at the time of arguments.

PRAYERS:-

It is therefore most humbly prayed that in light of above facts and submissions, the appeal of the appellant being devoid of merit and legal footing, may kindly be dismissed with cost please.


 Superintendent of Police
 HQrs: Peshawar.
 (Noor Jamal)
 (Respondent No.3)
 Incumbent


 Capital City Police Officer,
 Peshawar.
 (Qasim Ali Khan) PSP
 (Respondent No.02)
 Incumbent


 DIG/Legal,
 For Provincial Police Officer,
 Khyber, Pakhtunkhwa, Peshawar.
 (Dr. Muhammad Akhtar Abbas)PSP
 (Respondent No.01)
 Incumbent

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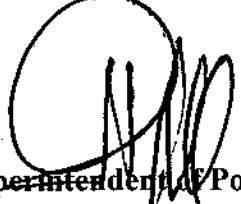
Ex- Constable Shabir Khan No.4091 of CCP, Peshawar.....Appellant.


VERSUS

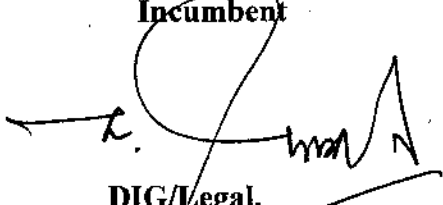
Capital City Police Officer, Peshawar and others..... Respondents

AUTHORITY.

We respondents are hereby authorize Mr.Inam Ullah DSP legal of Capital City Police, Peshawar to attend the Hon'ble Court and submit written reply, statement and affidavit required for the defense of above service appeal on behalf of respondent department.


Superintendent of Police
HQrs: Peshawar.
(Noor Jamal)
(Respondent No.3)
Incumbent


Capital City Police Officer,
Peshawar.
(Qasim Ali Khan) PSP
(Respondent No.02)
Incumbent


DIG/Legal,
For Provincial Police Officer,
Khyber, Pakhtunkhwa, Peshawar.
(Dr. Muhammad Akhtar Abbas)PSP
(Respondent No.01)
Incumbent

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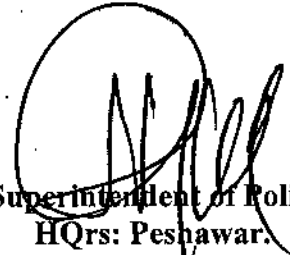
Ex- Constable Shabir Khan No.4091 of CCP, Peshawar.....**Appellant.**

VERSUS

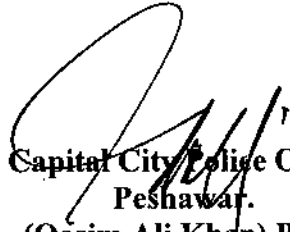
Capital City Police Officer, Peshawar and others..... **Respondents**

AFFIDAVIT.

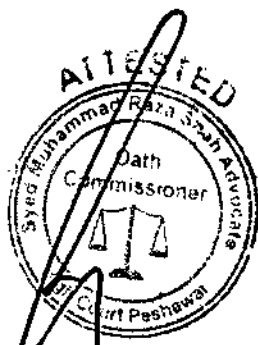
We respondents No. 02 & 03 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of my knowledge and belief and nothing has concealed/kept secret from this Hon'ble Tribunal. It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense have been struck off.



**Superintendent of Police
HQrs: Peshawar.
(Noor Jamal)
(Respondent No.3)
Incumbent**



**Capital City Police Officer,
Peshawar.
(Qasim Ali Khan) PSP
(Respondent No.02)
Incumbent**



10 8 OCT 2024



BIO DATE OF SHABIR KHAN S/O GUL BAHADAR FOR APPEARING IN THE ORDERLY ROOM

A
b

Name/No	Home Address	Date of Enlistment	Charges					E.O Name/Recommendation:	Punishment	Plea of the Applicant	Remarks/Opinion of DSP/Legal	Order of the CCP					
Ex-Constable Shabir Khan No. 4091	Badaber Peshawar	02.03.2012	Shorts facts leading to the instant appeal are that the defaulter Constable while posted at PS Gulberg was proceeded against departmentally on the charges of his involvement in a criminal case vide FIR No. 2721, dated 28.12.2019, u/s 17(4) Police Station Chamkani. <i>Appeal dismissed.</i>					SDPO Hashitnagri Peshawar Major Punishment.	Dismissal from Service By SP/HQrs: Peshawar Vide OB No. 470 Dt: 08.02.2021 (Appeal time barred for 10 months and 09	Request to set-aside the punishment	Perusal of relevant record reveals that punishment awarded by the competent authority is in accordance with law. Moreover, the appeal is also time barred.						
		Total Qlfy: Service															
		08 years, 09 months & 15 days															
		D.O.B															
		001.04.1990															
		Education 10 th											Entries:-				
		Courses											Bad	Minor	Major	Good	
		Recruit											08	01	01	Nil	

Attested

Handwritten initials and marks at the top left corner.

Handwritten signature and name, possibly "M. ...".

Handwritten word "Arrested" written vertically.

Handwritten text including a phone number "0332-9592533" and other illegible words.

Handwritten date "18/11/2022".

Handwritten text "10/11" below the signature.

Handwritten signature or stamp.

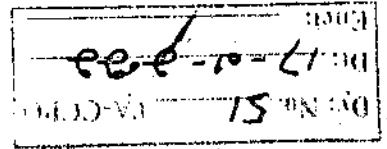
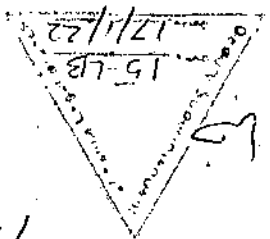
Official stamp with "FMC" and "B. ...".

Main body of handwritten text, appearing to be a letter or report, written in Urdu.

Handwritten text: "وکیل سے ڈسکس کر کے" (After discussing with the lawyer).

Handwritten text: "8/2/2021" and "70" with other illegible words.

Handwritten text: "58" and other illegible words.



Handwritten text "15-11" below the triangular stamp.

CHARGE SHEET

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge that Constable Shabir No.4091 of Capital City Police Peshawar with the following irregularities.

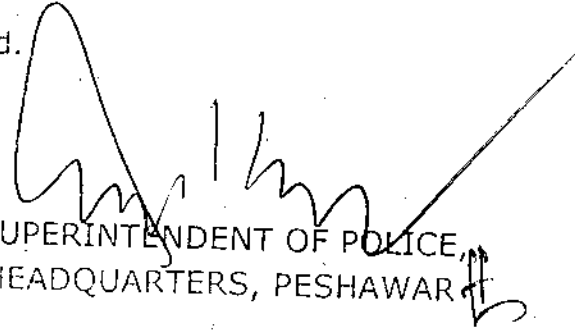
"That you Constable Shabir No.4091 while posted at PS Gulberg, Peshawar were involved in a criminal case vide FIR No.2721 dated 28.12.2019 u/s 17(4) PS Chamkani. This amounts to gross misconduct on your part and is against the discipline of the force."

You are, therefore, required to submit your written defence within seven days of the receipt of this charge sheet to the Enquiry Officer committee, as the case may be.

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

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

dr
Attested

DISCIPLINARY ACTION

OFFICE OF THE
DSD CITY II
NO. 15/E/PA
DT 18-1-2020

9D

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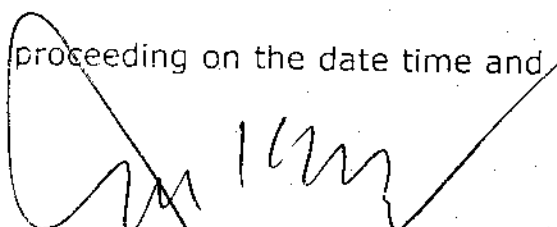
I, Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that Constable Shabir No.4091 has rendered him-self liable to be proceeded against under the provision of Police Disciplinary Rules-1975.

STATEMENT OF ALLEGATION

"That Constable Shabir No.4091 while posted at PS Gulberg, Peshawar was involved in a criminal case vide FIR No.2721 dated 28.12.2019 u/s 17(4) PS Chamkani. This amounts to gross misconduct on his part and is against the discipline of the force."

For the purpose of scrutinizing the conduct of said accused with reference to the above allegations an enquiry is ordered and SDPO CITY II is appointed as Enquiry Officer.

2. The Enquiry Officer shall, in accordance with the provisions of the Police Disciplinary Rules, 1975, provide reasonable opportunity of hearing to the accused officer, record his finding within 30 days of the receipt of this order, make recommendations as to punishment or other appropriate action against the accused.
3. The accused shall join the proceeding on the date time and place fixed by the Enquiry Officer.


SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR

No. 11 /E/PA, dated Peshawar the 17 /01 /2020

1. SDPO CITY II is directed to finalize the aforementioned departmental proceeding within stipulated period under the provision of Police Rules-1975.

2. Official concerned

Attested

FINDING U/S 6 (5) OF POLICE RULES 1975,
AGAINST CONSTABLE SHABIR NO. 4091.

3

The Instant enquiry was referred to the undersigned to ascertain the actual facts being involvement in a criminal case of the subject Constable vide order of enquire No. 11/E/PA, dated 17-01-2020.

Short facts are that Constable Shabir No. 4091, posted at PS Gulberg, Peshawar was involved in a criminal case vide FIR No. 2721, dated 28.12.2019 u/s 17(4) PS Chamkani, District Peshawar & also absented himself from duty w.e.f. 12.12.2019 till date without approval of prior permission from his senior officers or any justifiable reason/cause.

On the basis of his involvement in the criminal case, the accused Constable was summoned again and again to attend the office of undersigned.

The accused Constable did not submit his reply, because he is charged/involved in a criminal case since 08.01.2020, and now in Central Jail Peshawar.

Keeping in view the aforementioned circumstances, the undersigned is of the opinion that the accused Constable is involved/charged in a heinous criminal case. He is recommended for major punishment.

All relevant papers are attached herewith please.

*Issue Final
Show Cause Notice*

**Deputy Superintendent of Police,
Hashtnagri, Sub Division, Peshawar.**

Deputy Superintendent of Police,

HQs: COP Peshawar

Worthy Superintendent of Police,

Head Quarters, Peshawar

No. 157 / 2021 Dated: Peshawar the 14/1/2021.

Attested

F-11
②

FINAL SHOW CAUSE NOTICE

I Superintendent of Police, Headquarters, Capital City Police Peshawar, as competent authority, under the provision of Police Disciplinary Rules 1975 do hereby serve upon you, Constable Shabir No.4091 the final show cause notice.

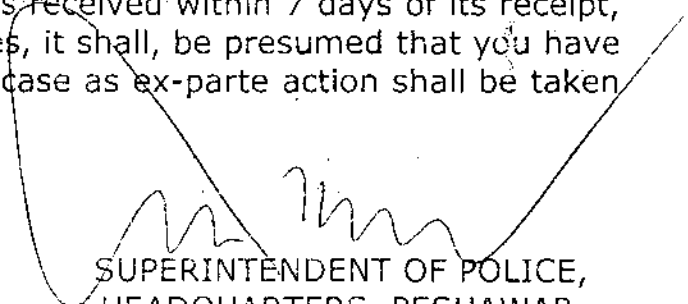
The Enquiry Officer, SDPO Hashtnagir, after completion of departmental proceedings, has recommended you for major punishment for the charges/allegations leveled against you in the charge sheet/statement of allegations.

And whereas, the undersigned is satisfied that you Constable Shabir No.4091 deserve the punishment in the light of the above said enquiry report.

And as competent authority, has decided to impose upon you the penalty of minor/major punishment under Police Disciplinary Rules 1975.

1. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

2. If no reply to this notice is received within 7 days of its receipt, in normal course of circumstances, it shall, be presumed that you have no defence to put in and in that case as ex-parte action shall be taken against you.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 11-2 /PA, SP/HQrs: dated Peshawar the 20/11 /2021.

Copy to official concerned

On Attest

بیان ازاں محمد خان حمزہ ولد امداد خان بھر 21 سال قوم زرغن خیل ساکن فیروز خان

بازار، درہ آدم خیل بلوچستان

زیر دفعہ 164 ض ف بر حلف

۱۲

علت نمبر:

2721

مورخہ:

28/12/2019

تاریخ: 17(4)

بر حلف بیان کیا کہ مورخہ 28/12/2019 کو میں نے والد امداد خان ولد محمد آواز کو قتل کرنے کی دعوت داری بر ذمہ ملزم/ملزمان اسم و مسکن نامعلوم درج کی تھی۔ میں تلاش و پتہ براری کر رہا تھا اور اب میں نے اپنی پوری تسلی اور یقین کر لیا ہے کہ سر (۱) بہار علی ولد نیکول خان ساکن بازار گیت، لووال کلبے، لودھیہ پایان، تحصیل و ضلع پشاور، (۲) شیر ولد گل بہادر ساکن شیخ محمدی، باہیر، تحصیل و ضلع پشاور کے والد امداد خان کے ساتھ گہرے دوستانہ تعلقات تھے اور وقوعہ سے قبل کسی شہیر والد امداد کے کسی سیر و تفریح کے لیے مری بھی گیا تھا۔ مری سے وہ ایسی کے بعد ہر دو کسان نے بعد دیگر کسان اسم و مسکن نامعلوم کے ایما اور ہاتھی ہمارے مشورہ کے ساتھ والد امداد سے ریوڈیل کیمپن گاڑی رجسٹریشن نمبری APH-300/Islamabad، ماڈل 2019 دسٹن سرورجیٹی موبائلز بڈور چھیننے کی خاطر ہر دو مسلمان بالائے والد امداد کو کسی بہانے پر جانے و وقوعہ ایجا کر جانے وقوعہ پر والد امداد سے گاڑی متذکرہ ہالا بعد قیمتی موبائلز بڈور چھیننے ہوئے مزاحمت پر والد امداد پر گاڑی کے اندر اسلحہ آتشیں سے فائرنگ کر کے قتل کیا اور والد امداد کو قتل کرنے کے بعد گاڑی سے نیچے پھینک دیا اور گاڑی متذکرہ ہالا بعد قیمتی موبائلز لے کر فرار ہو گئے، چونکہ اب گاڑی متذکرہ کو پولیس نے ہی سے برآمد کی ہے۔ لہذا اب میں والد امداد خان کو قتل کرنے اور گاڑی متذکرہ بعد موبائلز لیجا، کا برخلاف متذکرہ ہالا کسان بعد دیگر کسان اسم و مسکن نامعلوم دعوت داری ہوں جبکہ دیگر کسان اسم و مسکن کے خلاف، بعد از مکمل تسلی اور یقین کے دعوت داری کروں گا اور یہی میرا بیان ہے جو کہ حقیقت پر مبنی ہے۔ سن کر درست تسلیم کیا۔

Ar
Arrested



محمد خان حمزہ ولد امداد خان

NAVEED ULLAH
JISIC U Peshawar

نوید اللہ
جوڈیشل مجسٹریٹ ۱۱- پشاور