BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.2602/2023.

Ex- Levi Constable Muqadar Khan of CCP Peshawar..... **Appellant.**

VERSUS

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

I n d e x

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DSP/Legal,
CCP, Peshawar.

Next date 6/5/24 Peshawar
one copy handed over to AG staff

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REPLY BY RESPONDENTS NO. 1 &2.

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 and proper parties.
3. That the appellant has not come to Hon'ble Tribunal with clean hands.
4. That the appellant has no cause of action and locus standi to file the instant appeal.
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 Hon'ble Tribunal.
7. That the appeal is not maintainable being devoid of any merit.

REPLY ON FACTS:-

1. Pertains to record.
2. Incorrect. The appellant underwent departmental proceedings based on allegations of involvement in a criminal case Vide FIR No. 66 dated 22.01.2020, under sections 302/34 Pakistan Penal Code (PPC) Police Station Mattani, Peshawar.
3. Incorrect. Involvement in a criminal case of committing culpable homicide is a heinous offence and being a member of disciplined force he was liable to be proceeded departmentally hence he was issued Charge Sheet with statement of allegations vide No. 01/E, PA, dated 06.02.2020.
4. Incorrect. The SDPO/Saddar was appointed as Enquiry Officer, who conducted a thorough departmental enquiry into charges leveled against the appellant. Subsequently, the Enquiry Officer found the appellant guilty of charges and recommended punishment accordingly. Furthermore, it is well established principle of administrative law that criminal proceedings and departmental proceedings are two different entities and can run side by side having no bearing on each other.
5. Incorrect. The Competent Authority after receipt of the findings issued him final show cause notice vide No. 01/E/PA, dated 30.12.2020, after completion of all codal formalities he was awarded major punishment of dismissal from service under Police Rules 1975 amended 2014. (Copy of FSCN is annexed as A).
6. Incorrect. After completion of all codal formalities he was awarded major punishment of dismissal from service. Being member of disciplined force, Involvement in a heinous criminal case of committing murder is a cognizable offence, therefore, during departmental

proceedings charges was established and he was awarded penalty commensurate with his guilt/misconduct. So, under the law/rules mere acquittal from criminal cases does not entitle him to be reinstated into service.

7. Incorrect as explained above. Furthermore, the appellant preferred time barred departmental appeal after inordinate delay of about 02 years 05 months and 09 days, after due consideration his appeal was thoroughly processed and sufficient opportunity of hearing was provided to him, his departmental appeal was filed/ rejected on the grounds of facts and limitation.

REPLY ON GROUNDS:-

A. Incorrect. The orders passed by the competent authority are just legal, lawful and in accordance with norms of natural justice hence, liable to be upheld.

B. Incorrect. The charges leveled against him got proved. The appellant being a member of a disciplined force, committed gross misconduct. Court proceedings and departmental proceedings are two different entities which can parallel as per dicta of august Supreme Court of Pakistan.

C. Incorrect. As explained above.

D. Incorrect. The appellant was treated as per Law/Rules, and no violation of the Article 4, 25 & 38 of the Constitution of Pakistan 1973 has been committed by the replying respondents.

E. Incorrect. The appellant himself is responsible for the situation by committing gross misconduct. Further, the appellant is giving wrong picture just to save his skin as charges leveled against him are proved.

F. Incorrect. The appellant availed the opportunity of personal hearing however, he failed to advance any plausible explanation in his defense.

G. Incorrect. The competent authority before imposing the major punishment had completed all codal formalities and an ample opportunity of self defense was provided, but the appellant failed to rebut the charges leveled against him.

H. Incorrect. The appellant was treated as per law/rules and no discrimination has been done by replying respondents.

I. Incorrect. He was provided full opportunity of defense, but he failed to defend himself. After fulfilling of all codal formalities, he was found guilty, hence awarded appropriate punishment commensurate with his guilt.

J. Incorrect. The appellant was treated as per principle of policy as enshrined by Constitution of Pakistan 1973 and no violation of any provision has been done by the respondent department.

K. Incorrect. Appellant was treated as per law/rules, however failed to rebut the charges as he was found guilty committing misconduct within the meaning of Rules ibid.

L. Incorrect as explained in the proceedings Paras.

M. Incorrect. The appellant was associated with the enquiry proceedings, but he failed to rebut the charges leveled against him. Furthermore, the appellant being member of a disciplined department was proceeded with departmentally under the relevant rules. Therefore rightly be awarded the Major punishment.

N. Incorrect. The appellant was issued charge sheet with statement of allegations and after completion of enquiry proceedings final show cause notice was issued. After completion of all codal formalities he was rightly warded major punishment.

O. Incorrect. Departmental appeal of the appellant was properly processed and also heard him in person by the appellate authority, however he failed to defend himself with plausible/justifiable grounds, hence appeal of the appellant was rejected/ filed having no legal footage.

P. Incorrect. The appellant was treated as per law/rules, therefore, the punishment awarded by the competent authority is liable to be upheld.

Q. Incorrect. Respondents also seek permission of this Honorable Tribunal to raise additional grounds at the time of arguments.

PRAYER.

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

(Muhammad Zaman)
Superintendent of Police,
Saddar, Peshawar.
(Respondent No.02)

(Syed Ashfaq Anwar)PSP
Capital City Police Officer,
Peshawar.
(Respondent No.1)

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AFFIDAVIT.

We respondents are 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.

Muhammad Zaman)
Superintendent of Police,
Saddar, Peshawar.
(Respondent No.02)

(Syed Ashfaq Anwar)PSP
Capital City Police Officer,
Peshawar.
(Respondent No.1)

ATTESTED

Syed Muhammad Raza Shah Advocate
Oath Commissioner
Dist. Judiciary Peshawar

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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.

Muhammad Zaman)
Superintendent of Police,
Saddar, Peshawar.
(Respondent No.02)

(Syed Ashfaq Anwar)PSP
Capital City Police Officer,
Peshawar.
(Respondent No.1)

OFFICE OF THE
SUPERINTENDENT OF POLICE,
SADDAR, CCP, PESHAWAR

NO. 01/E /PA, DATE: 3E-12 /2020

FINAL SHOW CAUSE NOTICE.

I, Waqar Ahmed, Superintendent of Police, Saddar, CCP Peshawar, as competent authority under the Police Disciplinary Rules, 1975 do hereby serve you Ex-Levy Muqadar Khan s/o Sher Bahadar of PS Hassan Khel (Ex-FR Peshawar) as follow:-

a) That consequent upon the completion of enquiry against you by Enquiry Officer SDPO Saddar, Peshawar for which you are given opportunity of hearing and producing evidence.

b) On going through the finding of Enquiry Officers submitted vide memo: No. 02/E/ST, dated 30.12.2020. The material on record and other connected papers including your defense before the said Enquiry Officers.

1. I am satisfied that you have committed the following acts/omissions specified in the said rules.

That you are involved/ behind the bar in criminal case of PS Mattani.

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you major/minor punishment under the said rules.

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

4. If no reply to this notice is received within 15 days of its delivery, it shall be presumed that you have no defense to put-in and in that case ex-parte action shall be taken against you.

5. Copy of the findings of Enquiry Officer is enclosed.

Superintendent of Police, Saddar Division
CCP, Peshawar

Attested