

Internet
ISSUE

BEFORE THE KPK Service Tribunal PESHAWAR

Service Appeal No.1088/2024

Muhammad Irfan LHC/226 PS Chinglai District Buner

versus

1. District Police officer Buner and others

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Inspector
Buner

22-10-24

C/R

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1088/2024

①

Mr. Muhammad Irfan LHC No. 226 PS Chinglai District Police Buner.

.....APPELLANT

Versus

1. District Police Officer Buner.
2. Regional Police Officer/DIG Malakand Division at Saidu Sharif Swat.

.....Respondents

PARA-WISE COMMENTS ON BEHALF OF RESPONDENTS

Respectfully sheweth:-

Preliminary objections: -

1. That the service appeal of the appellant is badly barred by law and limitation.
2. That the service appeal is not maintainable in its present form.
3. That the appellant has not come to this honorable Tribunal with clean hands.
4. That the appellant has concealed the material facts from this honorable Tribunal.
5. That the appellant has been estopped due to his own conduct.
6. That the Instant Service Appeal is bad due to miss-joinder and non-joinder of the necessary parties.
7. That the appellant has got no cause of action and locus-standi to file the instant appeal.

FACTS

1. Correct to the extent that, the appellant was serving as LHC in Police Department but his service record is tainted with 03 bad entries. **(Copy of same is attached as Annexure "A")**.
2. Incorrect and misleading one appellant joined police department on 15.09.2015. When militancy in the area was almost normal as Malakand region especially district buner was remained hub of militants.
3. That, during the period when the appellant was posted as AMHC at PS Chinglai an incident was taken place on 05.03.2024 vide Case FIR No.60 dated 05.03.2024 u/s 302/324 PPC PS Chinglai against accused HC Haq Nawaz. The said accused/Head Constable was on light duty/mentally unfit but despite so the appellant had disbursed weapon on him for Polio Security duty on 05.03.2024. On same day he (accused HC) opened firing in with official rifle at Civilian namely Bait Ullah and Jan Parvaiz. Consequently Bait Ullah civilian was shot dead while the other one received injuries. As the appellant/AMHC was having prior knowledge of that accused mental/ unfitness having same issues of accused Haq Nawaz as the MHC Ashraf Khan appellant had already communicated to high-ups on 30.01.2024 that there were 03 police personnel including accused Haq Nawaz at PS Chinglai who were on light duty/medically unfit. So, fixing the responsibility upon appellant being AMHC of PS, he was issued charge sheet coupled with statements of allegations. in response to while appellant admitted in his statement that he had disbursed weapon upon HC accused Haq Nawaz and the demonstrated irresponsible act **(Copies of FIR, Temporary Register Page, عارضی رجسٹر برائے تقسیم اسلحہ and Reply of charge Sheet are attached as Annexure "B", "C" & "D" respectively)**.
4. Incorrect and misleading one That Mr. Abdul Wakil Khan was appointed as Enquiry Officer to dig out the real facts mentioned in charge sheet. Enquiry Officer summoned the appellant and recorded his statement where in proper opportunity of personal hearing and he was also Cross examined by enquiry officer but he did not produce any solid reason in his defense. Therefore after observing all Codal formalities by enquiry officer, he was recommended for punishment. **(Copies of enquiry report including statements etc are attached as Annexure "E")**.
5. Incorrect That there was no need of issuing show cause notice keeping in view the sensitivity of the matter rather appellant was issued charge sheet and statement of

allegation by deputing enquiry officer. Furthermore, the appellant has submitted only application for provision of order copy, which was provided as per his request. The appellant has admitted his negligence during the course of enquiry, therefore, the EO recommended him for punishment. The competent Authority agreed with the recommendations of Enquiry Officer and awarded major punishment of reduction in pay by 02 times scale for the period of 02 years vide office order dated 28.03.2024. The appellant was properly given opportunity of personnel hearing, during Orderly Room before awarding punishment.

6. Correct to the extent that, the appellant filed departmental appeal before the Regional Police Officer, Malakand against the office order dated 28.03.2024 in which he was properly called in Orderly Room on 13.06.2024 but the appellant did not produce any cogent reason in his defense. Therefore, his departmental appeal was filed on 14.06.2024 (Copy of same is attached as annexure "F").

The service appeal of the appellant is liable to be set aside on the following grounds.

GROUND:

- a. Incorrect: - That office Orders dated 28.03.2024 & 14.06.2024 issued by respondents are according to the law & justice with solid proof against the appellant.
- b. As explained in above Para No. 05 of the facts.
- c. Incorrect:- That appellant was properly given chance of cross questioning by the Enquiry Officer but he did not want to ask cross questions from the witnesses.
- d. Incorrect:- That appellant was properly called in orderly room and asked him for material available against him on Enquiry File, but he did not produce solid reasons to defend himself. Therefore, he was rightly awarded punishment.
- e. Incorrect:- As explained above, the appellant himself admitted the fact in his statement /reply cross examination that he was aware of light duty of accused HC. Moreover, Opinion of doctor was only to the extent of fitness for Police Custody. This is not an opinion of Authorized Psychiatrist.
- f. Incorrect that if there were any personal with deceased by the accused, he could have been killed any other occasion rather than in polio duty.
- g. Incorrect:- No injustice has been done by the respondents but the appellant was dealt in accordance with law rules & policies.
- h. As explained above in various preceding paras of facts.
- i. Incorrect:- That appellant was properly heard but he was having no solid reason in his defense. No violation of constitution has been done by the respondents.
- j. Incorrect:- As explained above.
- k. That being posted as AMHC, appellant was supposed to observe due care and diligence while, disbursing arms to Police Officers for Polio duty. The appellant was in knowledge of having mental issues/unfitness with accused therefore, he could avoid not to disperse weapon on accused which he did not bother to do so which resulted in loss of human life from the hands of accused.
- l. The Material available on record against the appellant and hearing on the occasion of Orderly Room the silence of appellant for defending himself against the allegations/facts concluded by the EO, the competent Authority disposed of the inquiry by punishing the appellant.
- m. As explained above in various paras.
- n. As Above.
- o. As Above
- p. Incorrect:- The Office Order is according to the law and rules.
- q. As replied above.
- r. That, others grounds will be advanced at the time of arguments.

PRAYERS:

In view of the above detailed para wise comments /reply to facts /grounds, it is most humbly prayed that the instant Service Appeal of the appellant may graciously be dismissed with costs.

~~Signature~~
District Police Officer Buner
(Respondent No.1)
District Police Officer
SHAH HASSAN (PSP)
INCUMBENT

Signature

Regional Police Officer Malakand
at Saidu Sharif, Swat
(Respondent No.2)
MUHAMMAD ALI KHAN (PSP)
INCUMBENT
Regional Police Officer,
Malakand, at Saidu Sharif Swat

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1088/2024

Muhammad Irfan LHC No. 226 PS Chinglai District Buner.

.....APPELLANT

Versus

- 1. District Police Officer, Buner
- 2. Regional Police Officer/DIG Malakand Division at Saidu Sharif Swat.

.....Respondents

AUTHORITY LETTER

We the above respondents do hereby authorize and allow Mr. Zahir Shah Inspector legal Buner to file the accompany para wise comments on our behalf in the Honorable Service Tribunal vide service appeal mentioned above and do whatever is needed in the court.

~~District Police Officer Buner~~
 District Police Officer
 (Respondent No.1)
 SHAH HASSAN (PSP)
 INCUMBENT

Muhammad Ali Khan
 Regional Police Officer Malakand
 at Saidu Sharif, Swat
 (Respondent No.2)
 MUHAMMAD ALI KHAN (PSP)
 INCUMBENT
 Regional Police Officer,
 Malakand, at Saidu Sharif Swat.

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1088/2024

Muhammad Irfan LHC No. 226 PS Chinglai District Buner.

.....APPELLANT

Versus

- 1. District Police Officer, Buner
- 2. Regional Police Officer/DIG Malakand Division at Saidu Sharif Swat.

.....Respondents

Affidavit

I Mr. Zahir Shah Inspector Legal Buner do hereby solemnly affirm and state on Oath that the whole contents of the a company para wise comments are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable tribunal.

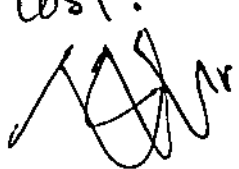


(ZAHIR SHAH)

Inspector Legal Buner
(Representative of Police Deptt:)
Mob:
CNIC No.

Inspector Legal
Buner

It is further stated.
that the answering
respondents have
never been place
of party nor their defence
struck off / cost.



Serial No:

15. CENSURES AND PUNISHMENTS

<p>Charge Absence Punishment: suspended & dep E-droll</p> <p>OBNo: 100 DT: 7-10-16</p> <p>DPO Buner</p>	<p>Change Absence Punishment: 01 day L.O.O.Pay</p> <p>OBNo: 13, DT: 2-2-2019</p> <p>DPO Buner</p>	<p>Suspended and closed to Police limits</p> <p>OBNo: 31, DT: 06-3-24</p> <p>DPO Buner</p>	<p>ORDER awarded him major Punishment i.e. Reduction in pay by 02 time scales for the Period of 02 years. He is re-instated into Service from the date of Suspension. Order number OBNo: 45 dt 28-03-24</p>	<p>DRDA: Panyant awarded to him by the DPO, Buner is upheld and his appeal is hereby "filed" vide PPO order dt 14.6.24.</p> <p>OBNo: 85 DT: 10/06/2024</p> <p>Inspector legal Buner</p> <p>Attested</p> <p>DPO Buner</p>	<p>DRDA: Panyant awarded to him by the DPO, Buner is upheld and his appeal is hereby "filed" vide PPO order dt 14.6.24.</p> <p>OBNo: 85 DT: 10/06/2024</p> <p>Inspector legal Buner</p> <p>Attested</p> <p>DPO Buner</p>	<p>DRDA: Panyant awarded to him by the DPO, Buner is upheld and his appeal is hereby "filed" vide PPO order dt 14.6.24.</p> <p>OBNo: 85 DT: 10/06/2024</p> <p>Inspector legal Buner</p> <p>Attested</p> <p>DPO Buner</p>	<p>DRDA: Panyant awarded to him by the DPO, Buner is upheld and his appeal is hereby "filed" vide PPO order dt 14.6.24.</p> <p>OBNo: 85 DT: 10/06/2024</p> <p>Inspector legal Buner</p> <p>Attested</p> <p>DPO Buner</p>
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تاریخ: 21-5-2024 (1)

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اسی کی طرف سے: 00060

05-03-2024 11:45 AM

6

05-03-2024 02:20 PM

فائل پر عمل درآمد کی تاریخ

اس کی طرف سے

تاریخ:

اس کی طرف سے

302
324

Signature

اس کی طرف سے

فائل پر عمل درآمد

تاریخ: 12-03-2024

اس کی طرف سے

03469218329

ASI

80

Muhammad
Rahman

(اس کی طرف سے)

Handwritten Urdu text, likely a report or letter, containing various details and signatures.

Inspected for legal
Buner

Attested




CamScanner

بہتر کر پڑھ کر سنا یا کیا۔ درستی کے نسبت بن سے نشان اگشت جبکہ بہتر کر پڑھ کر سنا یا کیا اور مقتول زین اللہ سے بہتر کر پڑھ کر سنا یا کیا جسکی میں تصدیق کر رہوں۔ مجروح
برطانوی راجات رسید و مرتب کر کے جبکہ مقتول کے کاغذات مرگ تیار کر کے ہمدانہ بخش بغرض پور سنہار نم جبکہ مجروح کے کاغذات: مجروح بلوغ
نوالہ ان ڈیوٹی سکندریات صاحب سیکھی۔ مضمون رپورٹ سے صورت جرم ہلا کا وقوع پا کر برخلاف مراسلہ مجرم بلا ضبط تحریری میں لا کر بغرض
یہ دست کنسٹیبل ٹیس الا کبر 2200 در سائل تھانہ ہے۔ مراسلہ بطور پیش رپورٹ گزارش ہے۔ ست سرگند خان SHO صاحب
05.03.2024 کو روانہ تھانہ پس آمد، مراسلہ پر برخلاف ٹرم ہلا چاک کر کے نقل پرچہ ہمہ اصل مراسلہ ہمدانہ تفتیش انوشی گیشن دنگ کو
کیا جاتا ہے۔ افسران ہلا کو اطلاع دی جاتی ہے۔ پرچہ بطور پیش رپورٹ گزارش ہے۔

ASI Muhammad Rahman

05-03-2024

Attested

Inspector legal
Buner

08.03.24

Handwritten notes and scribbles at the top of the page, including the date 08.03.24.

Inspector legal
Buncr

Attempted

SAC / Psychological Bureau

RECORDED

INSN. E0
01.12.03.24

Handwritten notes and scribbles on the left side of the page.

Handwritten signature or initials.

01/27/24

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DT-12-03-24
INSR. E.O.

DT-12-03-24
226
LIT

1500

Inspector legal
Buner

Attended

Handwritten notes in Urdu script, including dates like 27/03/2024, 27/02/2024, and 24/03/2024, and names like AMH. The text appears to be a record of legal proceedings or a case file, mentioning various dates and possibly names of individuals involved.

1500

INSP. Eo
07-15-24

Inspector legal
Bunker

Attended

Handwritten notes in Urdu, including dates like 07-15-24 and 07-23-24, and names like AMATHU. The text is written vertically and appears to be a record of an inspection or legal proceeding.

AMATHU
07-23-24
07-24-24

RE

(18)

Handwritten text in Urdu script, appearing to be a report or document. The text is dense and covers most of the page.

P-3

(18)

47

15.3.2014
INSPECTOR

Inspector leg

Handwritten signature

Attended

INSF-E
03/15/03
05/15/24

Inspector legal
Buner

Attacked

Handwritten text in Urdu script, appearing to be a legal document or report. The text is dense and covers most of the page. It includes various lines of text, some of which are underlined or written in a larger, bolder script. The content appears to be a detailed account or legal proceeding, possibly related to an incident in Buner, as indicated by the header.

P-4


(15)

P-5

۲۔ پیرا ۱۰ میں ماحول بنانے میں ایس کے دار ادا کی ہے۔ صیانت تک الزام نہیں ہے۔
 محمد عرفان 226 کا تعلق ہے۔ گو خوب علم تھا۔ کہ HE حق
 نظار کی صوبہ AMHC ایٹم انجینئرنگ ہالہ لائٹ ڈیویژن پر آرڈر تھا۔
 اور یہ بھی علم تھا۔ کہ محمد اشرف خان نے مذکورہ اور دیگر دو ایٹم ہالہ
 کا نسبت انجینئرنگ ہالہ کو خریدی اور یہ ثابت کی گئی کہ وہی خریداری
 پر اسٹیم تقسیم کرنے کے نسبت فوراً ۵۰ فی کو ایک رپورٹ بھی
 پیش کی تھی۔ اور ایٹمی ڈیپارٹمنٹ کی ہوا سیٹ انجینئرنگ ہالہ سے کوئی
 حکم بھی فراہم نہیں ہوا تھا۔ اس نسبت اس میں بیان میں
 مذکورہ سے مطلع ہونے اور ضروری ایٹمی ڈیپارٹمنٹ سے مطلع ہونے
 کی بھی باقاعدہ اس نے تصدیق کی ہے کہ مطلع ہونے کے باوجود
 مذکورہ نے حق لورڈ HE پر عسکری اسٹیم انجینئرنگ ہالہ کی
 لیسو کی ہوئی کے سلسلہ میں تقسیم کرنا ذکر نہیں اسٹیم سے HE حق
 لورڈ مذکورہ فائبرنگ کرنا ایک بے گناہ شہری کی قتل اور بے گناہ
 شہری کی اقدام قتل اعزاز شہرہ نہیں ہے کہ سب سے بڑا AMHC اور
 نہایت ہی غفلت اور انجینئرنگ ہالہ کی اچکھات توجیوں شہرہ کی عدم تعمیل
 کا نتیجہ ہو سکتا ہے۔

لہذا مذکورہ کے غفلت کو مد نظر رکھتے ہوئے آئندہ مذکورہ کی اصلاح
 کیلئے مناسب حکمت عملی سے کی سفارش کی جاتی ہے۔ اگر اتفاق ہو۔

محمد الوداد
 INSP, EO
 03
 DT: 15/24

Attested

 Inspector legal
 Buner

Inspector legal
Buneri

[Handwritten signature]

Attended

01-12-03-24
MSP. ED
[Handwritten initials]

05/12/03 for ...
MSP. ED

12/24/03
226 ...

[Handwritten signature]

2-12-03 ...
2-12-03 ...

19/03 ...

P-2

(17)

(18)

Handwritten header text in Hindi/Urdu script.

Handwritten text in Hindi/Urdu script, possibly a title or address.

Dr. 8.3.24

656/1933 HC

Handwritten signature or stamp.

DT-8/3
INSIP. EO

Main body of handwritten text in Hindi/Urdu script, containing detailed notes or a report.

Inspector legal
Buner

Handwritten signature and the word "Attested".

Handwritten mark or stamp.

NIC-15101-6690024-3
656/1933 HC

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Inspector legal
Buner

DT. 12-03-24
INSR - 22

Handwritten text in Urdu, likely a signature or header, including the name 'Inspector legal' and 'Buner'.

Main body of handwritten text in Urdu, containing several lines of script, possibly a report or official communication.

Handwritten text at the bottom of the page, including a date '19/3/24' and other illegible Urdu characters.

Handwritten mark or signature at the bottom center of the page.



21

OFFICE OF THE
REGIONAL POLICE OFFICER, MALAKAND
 AT SAIDU SHARIF SWAT.
 Ph: 0946-9240388 & Fax No. 0946-9240390
 Email: ebmalakandregion@gmail.com

ORDER

This order will dispose of appeal of LHC Muhammad Irfan No.226 of Buner District in connection with major punishment awarded by District Police Officer, Buner vide OB: No.45, dated 28-03-2024 i.e. "Reduction in pay by 02 times scales for the period of 02 years".

Brief facts of the case are that, being aware regarding the mentally retarded official HC Haq Nawaz No.656, that no arm & ammunition will be disbursed upon the above mentioned official, by his slackness a regretful incident occurred during Polio duty, he disbursed weapon on the above mentioned mentally unfit official, who committed murder of innocent civil person and one was badly injured. In the instant matter a case vide FIR No.60 dated 05-03-2024 U/S 302,324 PPC PS Chinglai was registered. Consequently, he was suspended by the District Police Officer, Buner vide OB No.31 dated 05-03-2024 and closed to Police Lines, Daggar. Subsequently, he was served with charge sheet coupled with statement of allegation by the District Police Officer, Buner vide No.19/Enq: dated 07-03-2024 and No.1027/PA, dated 07-03-2024 respectively, and Inspector Abdul Wakil Khan was appointed as Enquiry Officer to conduct proper departmental enquiry. During the course of enquiry the E.O. recorded statement of the delinquent on 30-01-2024, wherein he stated that MHC PS Chinglai written a report regarding non-disbursement of weapon upon the mentally disturbed officials and the name of HC Haq Nawaz was also included in the same list. He further stated that as per duty diary for Polio campaign, which was prepared by MHC Ashraf Khan, disbursed weapon upon the accused in KOT Temporary Register, including Rifle G-III, 03 Magazine and 60 cartridges, bullet proof jacket and helmet, during cross examination the delinquent HC stated that he was prior aware regarding non-disbursement of weapon upon HC Haq Nawaz. The delinquent confessed the allegations levelled against him. After conducting proper departmental enquiry, the Enquiry Officer, submitted his findings report, wherein he intimated that being prior aware regarding the mentally disturbance of HC Haq Nawaz, he disbursed weapon along with ammunition and also confessed his guilt, and recommended him for appropriate punishment. Therefore the District Police Officer, Buner being competent authority awarded him major punishment of "Reduction in pay by 02 times scales for the period of 02 years" vide OB No.45 dated 28-03-2024.

He was called in Orderly Room held in this office on 13-06-2024 and heard him in person, but he could not produce any cogent reason to defend the charges leveled against him. Therefore, the punishment awarded to him by the District Police Officer, Buner is upheld and his appeal is hereby filed.

Regional Police Officer,
 Malakand at Saidu Sharif, Swat

No. 7223 /E,
 Dated 14-06-2024.

Copy to the District Police Officer, Buner for information with reference to his office Memos: No.2066/PA, dated 29-04-2024 and No.2328/PA, dated 15-05-2024. Service Roll and Fuji Missal containing enquiry file of above-named appellant, received with the memo: under reference, are returned herewith for record in your office.

Encl: S Roll
 F. Missal

OB No: 85
 Dt: 21/06/2024

Attest

 Inspector legal
 Buner