

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 344/2024

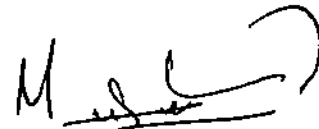
Khalid Khan Ex-FC Elite ForceAppellant

Versus

Provincial Police officer Khyber Pakhtunkhwa etcRespondent

INDEX

S No.	Description of Documents	Annexure	Pages
1.	Para wise comments		1-5
2.	Copy of Authority letter		06
3.	Affidavit		07
4.	Copy of FIR	A	08
5.	Copy of Charge Sheet	B	09
6.	Statement of Allegations	C	10
7.	Copy of Final Show Cause Notice.	D	11
8.	Copy of Dismissal Order	E	12
9.	Departmental Appeal Rejection Order	F	13


(MIAN NIAZ MUHAMMAD)
DSP Legal
Elite Force, Peshawar

①

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 344/2024

Khalid Khan Ex-Constable Elite ForceAppellant

Versus

Inspector General of Police Khyber Pakhtunkhwa and others.....Respondents

PARAWISE COMMENTS BY RESPONDENTS

RESPECTFULLY SHEWETH:

PRELIMINARY OBJECTIONS:-

- a) That the appeal is not based on facts.
- b) That the appeal is barred by law and limitation.
- c) That the appeal is not maintainable in the present form.
- d) That the appeal is bad for mis-joinder and non-joinder of necessary and proper parties.
- e) That the appellant is estopped to file the instant appeal by his own conduct.
- f) That the appellant has not come to this Honorable Tribunal with clean hands.
- g) That the appellant has got no cause of action and locus standi to file the instant Service Appeal.

Khyber Pakhtunkhwa
Service Tribunal

Case No. 16992

Dated 22-10-24

FACTS:-

- 1- Para not related hence need no comments.
- 2- Para to the entitlement of appointment as constable pertains to record needs no comments while rest of the para is not plausible. As every police officer is under obligation to perform his duties with utmost diligence because in this department there in room lies for any lethargy. Moreover, non receipt of complaint does not enunciate the appellant from future wrong deeds.
- 3- Incorrect. Plea taken by the appellant is totally bereft of any substance. As the appellant while posted in platoon No. 30 of the Elite Force was found involved in criminal case vide FIR No. 619 dated 18.12.2013 u/s 302/34 PPC PS Sabzi Mandi Islamabad. Hence, in light of above, he was issued charge sheet along with statement of allegations and enquiry was entrusted to DSP Elite Force Mardan for thorough probe into the same. The enquiry officer duly served charge sheet and statement of allegations upon the appellant through his brother namely Nafecs. In response, the appellant submitted his reply to the Enquiry Officer by sending the same through the hand of his other brother Nihar Ali wherein he rebutted the allegations. Besides, the appellant also absented himself from his lawful duty w.e from 19.12.2013 and went to hiding by evading his lawful arrest. During the course of enquiry, the enquiry officer provide full fledged opportunity to the appellant for defending himself by providing cogent evidence but in fiasco. As neither did the appellant join the enquiry proceedings nor did he assume the duty rather remained absent till the date of his dismissal. However, on conclusion of enquiry after completion of all legal and codal formalities, the enquiry officer recommended the appellant for major

punishment. In light of the recommendation of enquiry officer the appellant was issued final show cause notice which was duly served through his local police station and received by his uncle Ali Rahman became the appellant was declared as proclaimed offender after completion of proclamation proceedings. However, he failed to submit reply to the show cause notice, hence, the appellant was major punishment of dismissal from service vide order No. 6170-76/EF dated 13.05.2014 which does commensurate with the gravity of misconduct of appellant. Copies of FIR, Charge Sheet, Statement of Allegations, Final Show Cause Notice, Dismissal order and Departmental Appeal rejection order are attached as annexure (A, B, C, D, E, and F).

- 4- Plea taken by the appellant is totally devoid of any legal footing because being member of disciplined force he was under obligation to take proper leave / permission of the competent authority but instead he went into hiding by resorting to absconsion & avoided him lawful arrest. The res-gestae of the appellant clearly depicts his involvement in the criminal case.
- 5- Incorrect. Stance taken by the appellant is totally whimsical and fanciful rather a cooked one because he while posted in platoon No. 30 of the Elite Force was found involved in criminal case vide FIR No. 619 dated 18.12.2013 u/s 302/34 PPC PS Sabzi Mandi Islamabad. Hence, in light of above, he was issued charge sheet along with statement of allegations and enquiry was entrusted to DSP Elite Force Mardan for thorough probe into the same. The enquiry officer duly served charge sheet and statement of allegations upon the appellant through his brother namely Nafees. In response, the appellant submitted his reply to the Enquiry Officer by sending the same through the hand of his other brother Nihar Ali wherein he rebutted the allegations. Besides, the appellant also absented himself from his lawful duty w.e from 19.12.2013 and went to hiding by evading his lawful arrest. During the course of enquiry, the enquiry officer provides full pledged opportunity to the appellant for depending himself by providing cogent evidence but in fiasco. As neither did the appellant join the enquiry proceedings nor did he assume the duty rather remained absent till the date of his dismissal. However, on conclusion of enquiry after completion of all legal and codal formalities, the enquiry officer recommended the appellant for major punishment. In light of the recommendation of enquiry officer the appellant was issued final Show Cause Notice which was duly served through his local police station and received by his uncle Ali Rahman became the appellant was declared as proclaimed offender after completion of proclamation proceedings. However he failed to submit reply to the show cause notice, hence, the appellant was major punishment of dismissal from service vide order No. 6170-76/EF dated 13.05.2014 which does commensurate with the gravity of misconduct of appellant.
- 6- Incorrect. Plea taken by the appellant is totally ill-based because departmental proceedings & criminal proceedings are two different entities which can run side by side and the outcome of criminal case will have no binding effects on departmental proceedings. Para pertains to court record. Furthermore, Court proceedings and departmental proceedings are two different entities and can run side by side. Acquittal in a criminal case would not lead to exoneration of a civil servant in departmental proceedings. His act brought a bad name for the entire force. Similarly, the august Supreme Court of Pakistan in its judgment reported Dr. Sohail Hassan Khan and others vs. Director General (Research), Livestock and Dairy Development Department, Punjab, Lahore and others (2020 SCMR 1708), held that a civil servant cannot escape from departmental proceedings or consequences thereof

on account of his acquittal / exoneration in a criminal charge arising out of the same impugned transaction; these two are entirely different jurisdictions with different standards of proof as well as procedures; criminal prosecution requires strict proof through a narrowly jacketed procedure and, thus, State's failure on criminal plane does not provide shield of double jeopardy to a delinquent officer. In the case of District Police Officer Mianwali and 2 others vs. Amir Abdul Majid 2021 SCMR 420 the august apex Court again held that a civil servant facing expulsive proceedings on departmental side on account of indictment in criminal charge may not save his job in the event of acquittal as the department still may have reasons/material, to consciously consider his stay in the service as inexpedient; there are additional reasons to disregard his acquittal inasmuch as criminal dispensation of justice involving corporal consequences, comparatively, requires a higher standard of proof so as to drive home the charge beyond doubt, an exercise to be routed through a procedure stringently adversarial, therefore, factuality of the charge notwithstanding, procedural loopholes or absence of evidence sufficient enough to sustain the charge, at times occasion in failures essentially to maintain safe administration of criminal justice out of abundant caution. Departmental jurisdiction, on the other hand, can assess the suitability of a civil servant, confronted with a charge through a fact-finding method, somewhat inquisitorial in nature without heavier procedural riders, otherwise required in criminal jurisdiction to eliminate any potential risk of error, therefore, the Tribunal has undoubtedly misdirected itself in reinstating the respondent, considering his acquittal as the sole criterion in isolation to the totality of circumstances where under he had succeeded to vindicate position.

- 7- Para to the extent of acquitted is explained in detail in para no. 6 while rest of the para is incorrect hence, denied. As the appellant in order to give legal cover to the issue of limitation. Moreover, during departmental remedies, the appellate authority as well as revisionary authority provided full-fledged opportunity to the appellant by summoning him in the Orderly Room but he bitterly failed to produce even a single iota of evidence in his defense. Hence, the same were filed / rejected being devoid of any legal footings & badly time barred.
- 8- Incorrect. Stance taken by the appellant is totally ill-based because the order passed by the competent authority followed by rejection of departmental appeal & revision petition both being badly time barred were not in accordance with law/ rules and materials available on record hence, not tenable in the eye of law.

Ground:-

- A- Incorrect. Plea taken by the appellant is totally bereft of any substance. As the appellant while posted in platoon No. 30 of the Elite Force was found involved in criminal case vide FIR No. 619 dated 18.12.2013 u/s 302/34 PPC PS Sabzi Mandi Islamabad. Hence, in light of above, he was issued charge sheet along with statement of allegations and enquiry was entrusted to DSP Elite Force Mardan for thorough probe into the same. The enquiry officer duly served charge sheet and statement of allegations upon the appellant through his brother namely Nafees. In response, the appellant submitted his reply to the Enquiry Officer by sending the same through the hand of his other brother Nihar Ali

wherein he rebutted the allegations. Besides, the appellant also absented himself from his lawful duty w.e from 19.12.2013 and went to hiding by evading his lawful arrest. During the course of enquiry, the enquiry officer provide full pledged opportunity to the appellant for depending himself by providing cogent evidence but in fiasco. As neither did the appellant join the enquiry proceedings nor did he assume the duty rather remained absent till the date of his dismissal. However, on conclusion of enquiry after completion of all legal and codal formalities, the enquiry officer recommended the appellant for major punishment. In light of the recommendation of enquiry officer the appellant was issued final show cause notice which was duly served through his local police station and received by his uncle Ali Rahman became the appellant was declared as proclaimed offender after completion of proclamation proceedings. However he failed to submit reply to the show cause notice, hence, the appellant was major punishment of dismissal from service vide order No. 6170-76/EF dated 13.05.2014 which does commensurate with the gravity of misconduct of appellant.


- B- Para already explained in detail in the proceeding paras. Hence, no comments.
- C- Incorrect. Plea taken by the appellant is totally ill-based rather concocted because the appellant was proceeded against through proper departmental proceedings by issuing him with show cause notice and summary of allegations and enquiry was entrusted to DSP Elite Force who after fulfillment of all legal and coda formalities recommended the appellant for major punishment.
- D- Para earlier explained in detail hence, no comments.
- E- Incorrect, misleading and misconceived. Proper Charge Sheet along with Statement of Allegations was issued to the appellant which are already at Annexure C & D.
- F- Incorrect. The penalty awarded to the appellant is in accordance with the law / rules. The appellant was proved guilty of gross misconduct therefore, he was awarded major punishment which does commensurate with the gravity of misconduct of appellant.
- G- Incorrect the Enquiry Officer provide full-fledged opportunity of hearing to the appellant but he did not appear before the Enquiry Officer rather went into hiding for evading his lawful arrest.
- H- Need no comments.
- I- Incorrect. The penalty awarded to the appellant is in accordance with the law / rules. The appellant proved guilty of gross misconduct; therefore, he was awarded with major punishment.
- J- Incorrect. Plea taken by the appellant is totally bereft of any substance. As the appellant while posted in platoon No. 30 of the Elite Force was found involved in criminal case vide FIR No. 619 dated 18.12.2013 u/s 302/34 PPC PS Sabzi Mandi Islamabad. Hence, in light of above, he was issued charge sheet along with statement of allegations and enquiry was entrusted to DSP Elite Force Mardan for thorough probe into the same. The enquiry officer duly served charge sheet and statement of allegations upon the appellant through his brother namely Nafees. In response, the appellant submitted his reply to the Enquiry Officer by sending the same through the hand of his other brother Nihar Ali wherein he rebutted the allegations. Besides, the appellant also absented himself from his lawful duty w.e from 19.12.2013 and went to hiding by evading his lawful arrest. During


(5)

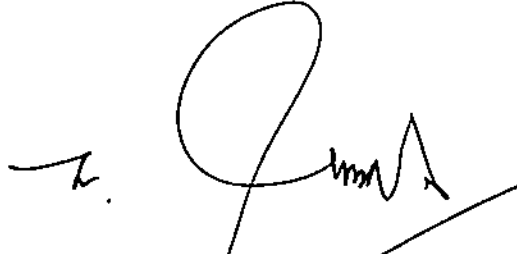
Enquiry Officer by sending the same through the hand of his other brother Nihar Ali wherein he rebutted the allegations. Besides, the appellant also absented himself from his lawful duty w.e from 19.12.2013 and went to hiding by evading his lawful arrest. During the course of enquiry, the enquiry officer provide full pledged opportunity to the appellant for depending himself by providing cogent evidence but in fiasco. As neither did the appellant join the enquiry proceedings nor did he assume the duty rather remained absent till the date of his dismissal. However, on conclusion of enquiry after completion of all legal and codal formalities, the enquiry officer recommended the appellant for major punishment. In light of the recommendation of enquiry officer the appellant was issued final show cause notice which was duly served through his local police station and received by his uncle Ali Rahman became the appellant was declared as proclaimed offender after completion of proclamation proceedings. However he failed to submit reply to the show cause notice, hence, the appellant was major punishment of dismissal from service vide order No. 6170-76/EF dated 13.05.2014 which does commensurate with the gravity of misconduct of appellant.

PRAYER:

It is, therefore, humbly prayed that the appeal of the appellant being devoid of merit may kindly be dismissed with cost please.


Deputy Commandant
Elite Force Khyber Pakhtunkhwa
Peshawar
(ABDUS SAMAD) PSP
(Respondent No.03)
(Incumbent)


Additional Inspector General of Police /
Commandant,
Elite Force, Khyber Pakhtunkhwa,
Peshawar
(MUHAMMAD WISAL FAKHAR SULTAN) PSP
(Respondent No.2)
(Incumbent)


DIG / Legal CPO
For Inspector General of Police, Khyber
Pakhtunkhwa Peshawar
(DR. MUHAMMAD AKHTAR ABASS) PSP
(Respondent No.1)
(Incumbent)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 344/2024


Khalid Khan Ex-Constable Elite ForceAppellant


Versus

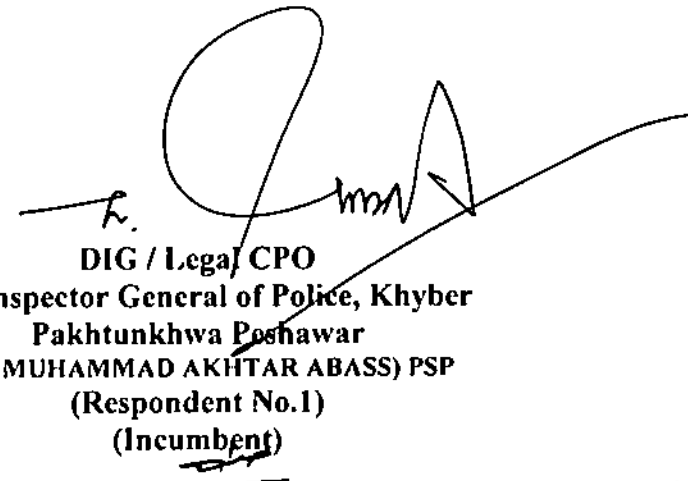
Inspector General of Police Khyber Pakhtunkhwa and others.....Respondents

AUTHORITY LETTER

Mian Niaz Muhammad DSP/Legal Elite Force Khyber Pakhtunkhwa is hereby authorized / nominated to submit para-wise comments and to attend Honorable Tribunal in above mentioned Service Appeal on behalf of Respondents No. 1 & 3.


 Deputy Commandant
 Elite Force Khyber Pakhtunkhwa
 Peshawar
 (ABDUS SAMAD) PSP
 (Respondent No.03)
 (Incumbent)


 Additional Inspector General of Police /
 Commandant,
 Elite Force, Khyber Pakhtunkhwa,
 Peshawar
 (MUHAMMAD WISAL FAKHAR SULTAN) PSP
 (Respondent No.2)
 (Incumbent)


 DIG / Legal CPO
 For Inspector General of Police, Khyber
 Pakhtunkhwa Peshawar
 (DR. MUHAMMAD AKHTAR ABASS) PSP
 (Respondent No.1)
 (Incumbent)

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

Service Appeal No. 344/2024

Khalid Khan Ex-Constable Elite ForceAppellant

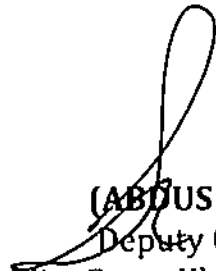
Versus

Inspector General of Police Khyber Pakhtunkhwa and others.....Respondents

AFFIDAVIT

Abdus Samad Deputy Commandant Elite Force Peshawar respondent No. 3, do hereby solemnly affirmed and declare that the contents of these joint para-wise comments are true and correct to the best of our knowledge and belief and nothing has been concealed from this Honorable Tribunal.

It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense has been struck off.


(ABDUS SAMAD) PSP
Deputy Commandant
Elite Force Khyber Pakhtunkhwa
Peshawar.



CHARGE SHEET

7A

I, Haroon Rashid Babar Superintendent of Police Elite Force, Peshawar Region as competent authority, hereby charge you constable Khalid Khan No 153 Platoon No 30 of Elite Force as follows:

You are involved in case FIR No 619, dated 18.12.2013 PPC 302/34 Police Station Shabzi Mandi Islamabad.

By reason of the above, you appear to be guilty of misconduct under the Police Rules (amended vide NWFP gazette, 27th January 1976) and have rendered yourself liable to all or any of the penalties specified in the said rules.

You are therefore, directed to submit your defense within seven days of the receipt of this Charge Sheet to the Enquiry officer.

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

You are directed to intimate whether you desire to be heard in person.

A Statement of allegation is enclosed.

HAROON-UR-RASHID BABAR
Superintendent of Police Elite Force
Peshawar Zone

ATTESTED

M. J. C.
D.S.P. C.

(10)

SUMMARY OF ALLEGATIONS

1. Haroon Rashid Babar superintendent of Police Elite Force, Peshawar Region as competent authority, am of the opinion that Constable Khalid khan No.153 has rendered himself liable to be proceeded against as he has committed the following misconduct within the meaning of Police Rules (amended vide NWFP gazette, 27th January 1976).

SUMMARY OF ALLEGATIONS

He is involved in case FIR No.619, dated 18.12.2013 PPC 302/34 Police Station Sabzi Mandi Islamabad.

- 2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations Mr. Pervaiz khan DSP Elite Force Mardan is appointed as Enquiry Officer.
- 3. The Enquiry Officer shall provide reasonable opportunity of hearing to the accused, record statements etc and findings within (25 days) after the receipt of this order.
- 4. The accused shall join the proceedings on the date, time and place fixed by the Enquiry Officer.

[Signature]
 HAROON-UR-RASHID BABAR
 Superintendent of Police Elite Force
 Peshawar Zone

No. 171-176 IR/SP/EF dated Peshawar the 26/12/2013.

Copy of the above is forwarded to the:-

- 1. Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar.
- 2. Deputy Superintendent Elite Force Mardan.
- 3. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
- 4. SRC, Elite Force Khyber Pakhtunkhwa Peshawar.
- 5. FC Khalid Khan No.153 of Elite Force through Moharrar.

MHC Elite
 Severed on above
 Constable!

[Signature]
 DSP EF MARDAN
 09/01/2014

[Signature]
 HAROON-UR-RASHID BABAR
 Superintendent of Police Elite Force
 Peshawar Zone

[Signature]
 D.P.C

(14)

(11)



Office of the Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar



No. 6170-76/EF

Dated 13/05/2014

ORDER

Constable Khalid Khan No. 153, Platoon No. 30 of Elite Force Khyber Pakhtunkhwa was found guilty of gross misconduct on the following grounds.

He was allegedly involved in case FIR No. 619, dated 18.12.2013 U/S 302/34 PPC Police Station Sabzi Mandi Islamabad. And also remained absent from duty without any leave or prior permission w.e. from 19.12.2013 till this date. Departmental proceeding was accordingly initiated against him and DSP/Elite Force Mardan was appointed as enquiry officer but he did not appear before the enquiry officer. A Final Show Cause Notice was also issued to him but he failed to reply.

Therefore, I, Sajid Khan Mohmand, Deputy Commandant, Elite Force Khyber Pakhtunkhwa Peshawar as competent authority, impose major penalty of dismissal from service upon him, with immediate effect.

Period he remained absent from duty is treated as absence, without pay.

(SAJID KHAN MOHMAND)
Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar.

Copy of the above is forwarded to the:-

1. Deputy Superintendent of Police, Elite Force, Mardan.
2. RI, Elite Force Khyber Pakhtunkhwa Peshawar.
3. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
4. Incharge Kot /OASf, Elite Force Khyber Pakhtunkhwa Peshawar.
5. SRC/FMC, Elite Force Khyber Pakhtunkhwa Peshawar.

DSP.C

R.K.

(12) Tics, 1/3/14

FINAL SHOW CAUSE NOTICE

I, Sajid Khan Mohmand, Deputy Commandant Elite Force Khyber Pakhtunkhwa as competent authority under Police Rules (amended vide NWFP gazette, 27th anuary 1976), do hereby serve you Constable Khalid Khan No. 153, Platoon No. 30 of Elite Force as follows;

You were allegedly involved in case FIR No. 619, dated 18.12.2013 U/S 302/34 PPC Police Station Sabzi Mandi, Islamabad. And also remained absent from duty without any leave or prior permission w.e from 19.12.2013 till this date.

i. That consequent upon the completion of enquiry conducted against you by Mr. Pervez Khan DSP/Elite Force Mardan, you were given full opportunity of hearing but failed to satisfy the enquiry officer.

ii. On going through the finding and recommendation of the enquiry officer, the material available on record, I am satisfied that you have committed the omission/commission specified in Police Rules (amended vide NWFP gazette, 27th January 1976) and charges leveled against you have been established beyond any doubt.

2. As a result therefore, I, Sajid Khan Mohmand, Deputy Commandant Elite Force, Khyber Pakhtunkhwa Peshawar as competent authority have tentatively decided to impose major penalty upon you including dismissal from service, under Police Rules (amended vide NWFP gazette, 27th January 1976) of the said ordinance.

3. You are therefore, directed to show cause as to why the aforesaid penalty should not be imposed upon you.

4. If no reply to this show cause notice is received within seven days of its delivery, in the normal course of circumstances, it shall be presumed that you have no defense to put and in that case an ex-parte action shall be taken against you.

5. A copy of the finding of the Enquiry Officer is enclosed.



(SAJID KHAN MOHMAND)
Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar


No. 2172 /EF, dated Peshawar the 14/02/2014.

Constable Mohammad Khalid No. 153 of Elite Force through reader DSP/Elite Mardana at his home address.

R.K

M
0.
1


DSP ELITE FORCE
MARDAN
17/2/2014


DSP.C



Office of the Addl: Inspector General of Police,
Elite Force Khyber Pakhtunkhwa, Peshawar



No. 18970-81/EF

Dated: 26/12/2023.

ORDER

This order will dispose of the departmental appeal preferred by Ex-Constable Khalid No. 153 who was awarded the major punishment of "Dismissal from Service" by Deputy Commandant Elite Force Khyber Pakhtunkhwa vide order No. 6170-76/EF, dated 13.05.2014.

Short facts leading to the instant appeal are that the delinquent official while posted in Elite Platoon No. 30 was charged in Case FIR No. 69, dated 18.12.2013 U/S 302/34/PPC PS Sabzi Mandi Islamabad and also remained absent w.e.from 19.12.2013 to 13.05.2014 for a total period of 145 days).

He was issued Charge Sheet and Summary of Allegations and DSP Elite Force Mardan was appointed as Enquiry Officer to scrutinize the conduct of the accused official. He failed to appear before the Enquiry Officer. He was issued Final Show Cause Notice but he also failed to submit his reply. The competent authority in light of the recommendation of the enquiry officer awarded him the above major punishment.

He feeling aggrieved preferred an appeal to Worthy Inspector General of Police Khyber Pakhtunkhwa which was sent to this office for disposal on merit being the first appellent authority.

He was heard in person in OR and the relevant record alongwith his explanation perused. During personal hearing he failed to submit any plausible justification in his defense. His appeal is badly time barred for more than 09 years, hence, rejected.

(MUHAMMAD WISAL FAKHAR SULTAN)PSP, QPM
Addl: Inspector General of Police
Elite Force Khyber Pakhtunkhwa Peshawar

Copy to the:

- 1. Addl: Inspector General of Police HQrs: Khyber Pakhtunkhwa.
- 2. Deputy Inspector General of Police HQrs: Khyber Pakhtunkhwa Peshawar.
- 3. Deputy Commandant Elite Force / RRF Khyber Pakhtunkhwa.
- 4. SP HQrs: Elite Force Peshawar.
- 5. Registrar CPO Peshawar w/r to his office letter No. S/2840/23, dated 13.12.2023.
- 6. Secret Branch CPO Peshawar.
- 7. IC /OASI Elite Force Peshawar.
- 8. Fme, SRC, d Accu EF

Ends File