

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.1075/2024.

Ex-Constable Muhammad Shafiq No. 6534 of CCP Peshawar..... **Appellant.**

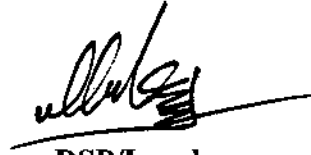
VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others.

Respondents.

I n d e x

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**DSP/Legal,
CCP, Peshawar.**

①

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REPLY BY RESPONDENTS NO. 1, 2&3.

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.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 17683

Dated 06-11-24

REPLY ON FACTS:-

1. Pertains to record.
2. Incorrect. The performance of the appellant during service was neither satisfactory nor up to the mark and his involvement in a criminal case vide FIR No.193, dated 09.05.2022 u/s 9(D) KP CNSA PS Sarai Salih, District Haripur with a huge quantity of 03 KG & 700 grams Chars speaks volume of his inefficiency and criminal mindset.
3. Incorrect. The appellant was proceeded against departmentally on the charges of his involvement in a criminal case vide FIR No.193, dated 09.05.2022 u/s 9(D) KP CNSA PS Sarai Salih, District Haripur and also absented himself from his lawful duty w.e.f 09.05.2022 till date of dismissal. 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. The Supreme Court of Pakistan, in District Police Officer Mianwali and 2 others vs. Amir Abdul Majid (2021 SCMR 420), the Supreme Court ruled that a civil servant acquittal in criminal proceedings does not automatically secure his job. The Court emphasized that departmental inquiries can assess a civil servant conduct with a less stringent standard than criminal justice, allowing the department to consider factors beyond acquittal when determining job suitability.
4. Incorrect. Besides commission of Criminal Offence, the appellant being member of a disciplined department committed professional misconduct alienated with criminality which falls under moral turpitude as such the above act of the appellant is a bad stigma for the entire Police Force, which is against the norms of disciplined force resultantly, the appellant was suspended and departmental proceedings were initiated against the appellant and DSP Complaint, Peshawar was appointed as E.O to probe into the matter. The charge sheet with statement of allegations was issued to him vide No.80/E/PA dated 13.05.2022. The enquiry officer during the course of enquiry had completed the departmental proceedings and found

the appellant guilty of the charges. (Copy of charge sheets, statement of allegations and enquiry report are attached as A, B, C& D).

- 5. Correct to the extent that a detailed departmental enquiry was conducted against him in accordance with law/rules. Enquiry officer after thorough probe into the matter reported that the charges against the appellant were proved beyond any shadow of doubt.
- 6. Incorrect. After receipt of the Enquiry Report, Final Show Cause Notice was issued vide No.80-E/PA, SP/HQrs: dated 01.11.2022 and delivered to him through local Police.
- 7. Incorrect. After fulfilling all codal formalities, the charges leveled against him were proved; hence he was awarded major punishment of dismissal from service vide OB No. 3118, dated 24.11.2022 under Police Rules 1975 (amended 2014).
- 8. Incorrect. The appellant filed departmental appeal, which was thoroughly processed and an ample opportunity of hearing was provided to the appellant by appellate authority but the appellant failed to rebut the charges leveled against him with plausible/justifiable grounds, hence his appeal was rejected/filed on facts vide order No.1840-46/PA dated 24.04.2023.
- 9. Incorrect. The appellant then preferred revision petition before the Revision Board, which after due consideration was also filed/rejected because the charges leveled against him were proved beyond any shadow of doubt vide No. S/1708-12 dated 05.07.2024.
- 10. Incorrect. The appellant being a member of a disciplined force committed gross misconduct by involving himself in a heinous offence of trafficking narcotics, hence rightly punished in accordance with law/rules. Furthermore, appeal of the appellant being devoid of merits and limitation may be dismissed on the following grounds.

REPLY ON GROUNDS:-


- A. Incorrect. The punishment orders passed by the competent authority are legal/lawful and in accordance with law/rules and liable to be upheld.
- B. Incorrect. The charges against the appellant have been substantiated, indicating a breach of discipline within the force. Despite the acquittal in a criminal case, this does not automatically absolve a civil servant from accountability in departmental proceedings. In this instance, the appellant's involvement in a criminal case under section 9(D) KPCNSA constitutes a serious offense, falling within the realm of moral turpitude. Consequently, the gravity of the offense and its implications for the appellant's conduct as a member of a disciplined force cannot be overlooked.
- C. Para is totally incorrect and misleading as the appellant was issued charge sheet with statement of allegations due to involvement in the above mentioned allegations and Final Show Cause Notice was issued and delivered to him on his home address through local police. After fulfilling all codal formalities, the charges leveled against him were proved; hence he was awarded major punishment of dismissal from service
- D. Incorrect. The Enquiry Officer visited Central Jail Haripur to inquire the matter thoroughly. During the inquiry, the appellant stated that he was traveling to Kaghan in motorcar IDH-2002. Upon reaching Haripur, within the jurisdiction of Police Station Sari Salih, local police stopped his vehicle, conducted a search, and discovered narcotics. The appellant claimed that he had no knowledge of how kept narcotics in his car and did not know who had placed them there. His

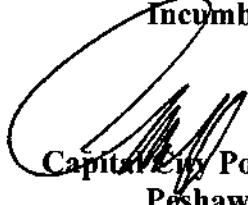
assertion raises questions about the circumstances surrounding the discovery of the drugs and his involvement in the matter. (Copy of Statement is annexed as E).

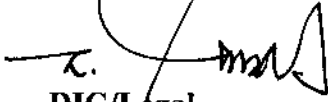
- E. Incorrect as explained in the preceding paras. Furthermore, proper departmental enquiry was conducted against him. During the course of enquiry the appellant was provided full opportunity of personal hearing. Involvement in a criminal case of trafficking of narcotics is a heinous offence and being a member of disciplined force he was liable to be proceeded departmentally hence after proof of charge, he was awarded penalty commensurate with his guilt/misconduct
- F. Incorrect. The charges leveled against him got proved. The appellant being a member of a disciplined force, committed gross misconduct. Acquittal in a criminal case would not ipso facto lead to exonerate Civil Servant in departmental proceedings. Involvement in a criminal case of 9(D) KPCNSA is a heinous offence comes under the ambit of moral turpitude.
- G. Incorrect as explained in the preceding paras. The appellant action, allegedly involving trafficking narcotics, starkly contrasts with the fundamental duties entrusted to law enforcement officer. Rather than upholding the paramount responsibilities of protecting life, property, and liberty, he is accused of engaging in activities that violate public trust and safety. Instead the appellant committed gross misconduct by indulging himself in moral turpitude offences of trafficking narcotics which speaks volume of his misconduct and unlikely of becoming a good police officer.
- H. Para is totally incorrect and misleading as the appellant was treated is in accordance with law/rules. After fulfilling all codal formalities, the charges leveled against him were proved; hence he was awarded major punishment of dismissal from service and liable to be upheld.

Prayers:-

Keeping in view the above stated facts & reasons, it is most humbly prayed that the appeal of the appellant being devoid of merits and limitation, may kindly be dismissed with costs 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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Service Appeal No.1075/2024.

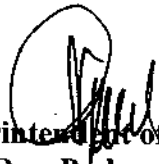
Ex-Constable Muhammad Shafiq No.6534 of CCP Peshawar..... Appellant.

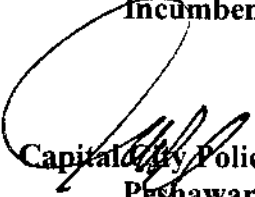
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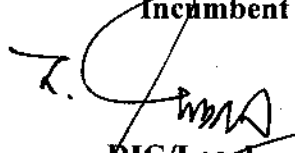
Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others..... Respondents.

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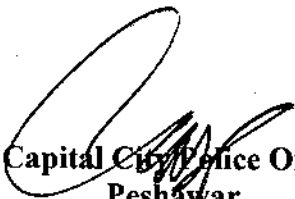
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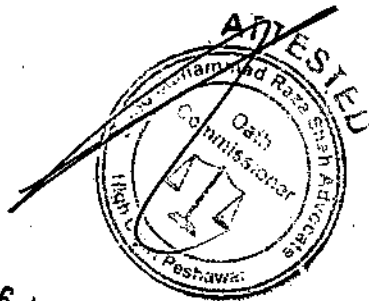
Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others.....**Respondents.**

AFFIDAVIT.

We respondent No. 02 and 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.2)
Incumbent**



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CHARGE SHEET

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge that Driver Constable Shafiq-ur-Rahman No.6534 of Capital City Police Peshawar with the following irregularities.

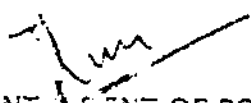
"That you Driver Constable Shafiq-ur-Rahman No.6534 while posted at City Patrol, Peshawar were involved in a criminal case vide FIR No.193 dated 09.05.2022 u/s 9DCNSA PS Sarai Saliq District Haripur & also absented from lawful duty w.e.f 09.05.2022 till date. This amounts to gross misconduct on your 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 you 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


Attested

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DISCIPLINARY ACTION

I, Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that Driver Constable Shafiq-ur-Rahman No.6534 has rendered him-self liable to be proceeded against under the provision of Police Disciplinary Rules-1975

STATEMENT OF ALLEGATION

"That Driver Constable Shafiq-ur-Rahman No.6534 while posted at City Patrol, Peshawar was involved in a criminal case vide FIR No.193 dated 09.05.2022 u/s SDCNSA PS Sarai Salih District Haripur & also absented from lawful duty w.e.f 09.05.2022 till date." 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 DSP Complaints 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.

[Signature]
SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. S50 /E/PA, dated Peshawar the 13/5 /2022

DSP Complaints is directed to finalize the aforementioned departmental proceeding within stipulated period under the provision of Police Rules-1975.

2. Official concerned

[Signature]
Attested

DATE: 21.10.2022

C-8

No. 884 PA.

The Superintendent of Police HQs,
Peshawar.Subject: ENQUIRY AGAINST DRIVER CONSTABLE SHAFIQ UR REHMAN
NO. 6534

Memo:

Kindly refer to your office Dy: No. 80/E/PA, dated 13.05.2022 on the subject cited above.

ALLEGATIONS:-

That Driver Constable Shafiq Ur Rehman No. 6534 while posted at City Patrol, Peshawar was involved in a criminal case vide FIR No. 193 dated 09.05.2022 u/s 90CN SA PS Sarai Salih District Haripur and also absented from lawful duty w.e.f 09.05.2022 till date. This amounts to gross misconduct on his part and is against the discipline of the force.

PROCEEDINGS:-

To dig out the real facts, the undersigned has visited to central jail Haripur and recorded the statement of alleged Driver Constable Shafiq Ur Rehman No. 6534, in which he stated that on 09.05.2022 he was on shabasi and demanded a motor car No IDH 2002 from his friend namely Javed and set aside in and went to Kaghan to meet his friends there, when reached to Haripur in the jurisdiction of PS Sarai Salih, where they had blockade, stop his car and start searching and recovered narcotics and registered case vide FIR No. 193 dated 09.05.2022 u/s 90CN SA PS Sarai Salih. He doesn't know that who have kept these narcotics in the car.

As per report of Moharrar City Patrol Peshawar that on 09.05.2022 Driver Constable Shafiq Ur Rehman No. 6534 was on shabasi. 02 days and today his arrival was expected but didn't made arrival report and marked as absent vide DD No. 03 dated 09.05.2022 (copy attached). Furthermore on 12.05.2022 Inspector Tanveer PS Sarai Salih District Haripur has telephon call informed that Driver Constable Shafiq Ur Rehman No 6534 posted at City Patrol has been arrested in narcotics there and registered case vide FIR No. 193 dated 09.05.2022 u/s 90CN SA PS Sarai Salih District Haripur.

As per report of Inspector Tanveer Khan OII of PS Sarai Salih District Haripur that on 09.05.2022 SHO Sadiq Shah has recovered 3700 gram narcotics from the accused Muhammad Shafiq ur Rehman s/o Muhammad Rafiq r/o Peshawar from his car No. IDH 2002 and arrested the accused and sent him to police station. Registered case vide FIR No. 193 dated 09.05.2022 u/s 90CN SA PS Sarai Salih and during interrogation he was found that accused was serving in Police Department. The accused was challaned to court and sent to central jail Haripur.

CONCLUSIONS:-

Keeping in view of the above facts, the undersigned reached to the conclusions that accused Driver Constable Shafiq Ur Rehman No. 6534 was posted at City Patrol of Peshawar as Driver in the official vehicle No. AB 1312 in sector Town. He was on shabasi on 07.05.2022 and his arrival was expected on 09.05.2022. Moharrar City Patrol Peshawar has absented him due to non arrival of report vide DD No. 03 dated 09.05.2022. On 12.05.2022, Inspector Tanveer OII PS Sarai Salih has telephon call informed his concern unit City Patrol and told that accused Driver Shafiq Ur Rehman No. 6534 has been arrested in narcotics and registered case vide FIR No. 193 dated 09.05.2022 u/s 90CN SA PS Sarai Salih District Haripur. As per statement of

On
Attested

Accused Driver Shafiq UR Rehman No. 6534 that he went to Kagan to meet his friends
there and hire a car from his friend namely Javed. It is therefore, the undersigned is of
opinion that alleged driver constab e Shafiq UR Rehman No. 6534 is found guilty, if
agreed please.

Submitted please.

[Signature]

INSPECTOR

COMPLAINT & ENQUIRY

CAPITAL CITY POLICE PESHAWAR

27/10/2008

*Issue Report
Shafiq UR Rehman
6534*

[Signature]

Altered

C-9

[Signature]

D-10

10

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, Driver Constable Shafiq-ur-Rahman No.6534 the final show cause notice.

The Enquiry Officer, Inspector Complaint and Enquiry, after completion of departmental proceedings, has declared you guilty of misconduct.

And whereas, the undersigned is satisfied that you Driver Constable Shafiq-ur-Rahman No.6534 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 an ex-parte action shall be taken against you.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. S50-2-PA, SP/HQrs: dated Peshawar the 01/11 /2022.

Copy to official concerned

@
Attested

Attested

There is no legal bar over the award of punishment even if criminal proceedings are pending before the court of law. Hence enquiry may be disposed of in light of recommendation of the court.

opinion of D.S. / Legal

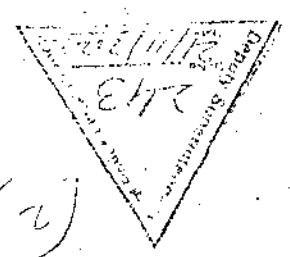
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NO. 80-3104
11/22