BEFORE THE HONOURABLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR.

Service Appeal No.238/2023

Hazrat Umar s/o Ayat Khan, Ex Constable SWTD ...(Appellant)

Versus

1. Government of KP, through Home Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
2. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. Additional Inspector General of Police (Establishment), Khyber Pakhtunkhwa, Peshawar.
4. Regional Police Officer, Dera Ismail Khan.
5. District Police Officer, SWTD. ....(Respondents)

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DEPONENT

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PARAWISE COMMENTS ON BEHALF OF RESPONDENTS (1 to 5)

Respectfully sheweth,

Parawise Comments are submitted as under:-

PRELIMINARY OBJECTIONS

1. That the appellant has got no cause of action.
2. That the appeal is bad for misjoinder/non-joinder of necessary parties.
3. That the appeal is badly time barred.
4. That the appellant has not come with clean hands.
5. That the appellant is estopped due to his own conduct.
6. That the appellant has concealed the material facts from Honourable Tribunal.

REPLY ON FACTS

1. Correct to the extent that the appellant was absorbed from Khasadar Sepoy to Police Constable vide Notification No. SO(Police)HD/SMY/1004-15, dated 10.04.2020.
2. Incorrect. That the appellant while selected for training with Pak Army in the training Center of South Waziristan vide SWTD office letter No. 1935 dated 02.09.2020 but he failed to report at the training Center. He intentionally absent from mandatory training without prior approval/permission from the high ups.
3. Incorrect. Appellant wilfully absented himself from mandatory training without any approval/permission from the high ups, which amounts to his gross misconduct. A proper charge sheet alongwith statement of allegation vide No.1711-13/EC, dated 23.09.2020 has been served and departmental enquiry was conducted by SDPO Sarwakai. The enquiry officer stated in his finding that the defaulter constable neither report to Training Center DC Compound, nor received his Charge Sheet and Final Show Cause Notice and recommended for ex-parte action. A final show cause notice vide No. 1708, dated 02.10.2020 was issued and ample opportunities of defence was provided to the appellant, but he failed to prove his innocence. Hence, he was

failed to report at the training Center. He intentionally absent from mandatory training without prior approval/permission from the high ups. In this regard, a charge sheet alongwith statement of allegation was served upon him and departmental enquiry was conducted by SDPO Sarwakai who submitted in his finding that the appellant failed to join the enquiry and recommend for major punishment. A Final Show Cause Notice was issued vide No. 1708, dated 02.10.2020 and ample opportunities of defence was provided to the appellant, but he failed to prove his innocence. Hence, he was awarded major punishment of Dismissal from Service vide OB No. 86, dated 04.11.2020 in the light of Section 5(5) of Police Rules 1975 (Amended 2014).

> **"On receipt of the findings of the Inquiry Officer or where no such officer is appointed, on receipt of the explanation of the accused, if any, the authority shall determine whether the charge has been proved or not. In case the charge is proved the authority shall award one or more of major or minor punishments as deemed necessary".**

vi. Correct to the extent, but invain the appellant is neither charged criminally nor has any action been taken beyond the rules and regulations. Similarly, the Judgment of Honourable Sindh High Court Bench at Sukkur is worthy consideration in which the Honourale Court order that:

> **The Hon'ble Supreme Court of Pakistan has time and again deprecated the grant of any indulgence to the employees who remained absent from duties without prior leave or permission and reference in this regard may be made to the cases reported as Deputy Inspector General of Police v Sarfraz Ahmed [2022 PLC (CS) 278], Secretary Elementary & Secondary Education v Noor ul Amin [2022 PLC (CS) 132]; National Bank of Pakistan v Zahoor Ahmed Mengal (2021 SCMR 144)and Federation of Pakistan v Mamoon Ahmed Malik (2020 SCMR 1154). *(Copy Annex "G")***

vii. Incorrect. In fact, as per Police Rules Chapter 19 Rule 2, recruitment training is mandatory after the appointment of a constable.

Training of recruits

(1) Except in exceptional circumstances, which shall be reported to the Deputy Inspector General of the range, recruits shall not be passed into the ranks until they have undergone six months' training and instruction.

(2) The following training and instruction shall be given to recruits:-

(a) A course of drill and instruction on the lines laid down in Chapter I of the Police Drill Manual 1929. A separate programme and time-table shall be made out for each squad of recruits and shall be kept to throughout the course.

(b) A course of instruction in the headquarters lines school as laid down in rule 19.10.

And the appellant while selected for mandatory training with Pak Army in the training Center of South Waziristan vide SWTD office letter No. 1935 dated 02.09.2020 but he failed to report at the training Center. He intentionally absent from mandatory training without prior approval/permission from the high ups. In this regard a charge sheet alongwith statement of allegation vide No.1711-13/EC/SWTD, dated 23.09.2020 and departmental enquiry was conducted by SDPO Sarwakai who stated in his finding that the appellant failed to join the enquiry neither submit reply of charge sheet. A final show cause notice vide No. 1708, dated 02.10.2020 issued but he failed to produce any plausible explanation/evidence in his defence. The allegation of misconduct was proved against him, hence he was awarded major punishment of Dismissal from Service vie OB No. 86, dated 04.11.2020 in accordance with law/rules.

awarded major punishment of Dismissal from Service vide OB No. 86, dated 19.11.2020 in the light of Section 5(5) of Police Rules 1975 (Amended 2014):

> **"On receipt of the findings of the Inquiry Officer or where no such officer is appointed, on receipt of the explanation of the accused, if any, the authority shall determine whether the charge has been proved or not. In case the charge is proved the authority shall award one or more of major or minor punishments as deemed necessary".**

Copies of charge sheet, Inquiry, Final Show Cause Notice & Dismissal Order are Annexure-"A, B, C & D".

4. Correct to the extent that the departmental appeal of appellant has been filed by the Appellate Authority (Respondent No. 4) vide Order No. 1138-39/ES, dated 12.03.2021 after observing all the codal formalities. An opportunity of personal hearing was given to the appellant in orderly room held on 23.02.2021 but the appellant deliberately/intentionally not appear before the appellate authority. Hence the appellate authority rejected the appeal of appellant being meritless. ***"Copy Annex "E"***
5. That departmental appeal was rejected on 12/03/2021 and appellant was required to file revision within one month and after laps of 90 days to lodge service appeal but he failed to lodge the service appeal within statutory period. ***"Copy Annex "F"***
6. That appellant has lodged the instant service appeal after considerable delay which is not maintainable on the following grounds.

REPLY ON GROUNDS

i. Incorrect, the impugned orders are in accordance with law/rules. The appellant wilfully did not join the enquiry proceedings and has filed the service appeal after considerable delay.

ii. Incorrect. While the petitioner detailed for mandatory with Pak Army at Training Centre of South Wazirstan but failed to report at the Training Center vide letter No. 1935, dated 02.09.2020. He deliberately absent from mandatory training without prior approval/permission from the high ups.

iii. Incorrect. A charge sheet alongwith statement of allegation was issued vide No. 1711-13/EC/SWTD, dated 23.09.2020 and departmental inquiry was conducted by SDPO Sarwakai who found him guilty and recommended him for ex-parte action. Final Show Cause Notice vide No. 1708, dated 02.10.2020 was issued, but the appellant failed to prove his innocent. The allegation of misconduct was proved against him hence, he was awarded major punishment of dismissal from service vide OB No. 86, dated 04.11.2020 in accordance with law/rules.

iv. Incorrect. A Final Show Cause Notice vide No. 1708, dated 02.10.2020 was issued and ample opportunities of defence was provided to the appellant, but he failed to prove his innocence, hence the order was passed in accordance with law/rules.

v. Incorrect. That the appellant while selected for training with Pak Army in the training Center of South Waziristan vide SWTD office letter No. 1935 dated 02.09.2020 but he

viii. That respondents also seeks permission to raise further grounds at the time of arguments.

PRAYER

In view of above, it is prayed that on acceptance of these Parawise Comments, the instant appeal may kindly be dismissed, being meritless and time barred.

District Police Officer,
South Waziristan Lower
(Respondent No.5)
Farman Ullah Khan
Incumbent

Regional Police Officer,
Dera Ismail Khan
(Respondent No.4)
NASIR MEHMOOD SATTI (PSP)
Incumbent

Assistant Inspector General of Police,
Establishment, Khyber Pakhtunkhwa, Peshawar
(Respondent No. 3)
(SONIA SHAMROZ KHAN) PSP
Incumbent

DIG/Legal, CPO
For Inspector General of Police,
Khyber Pakhtunkhwa,
(Respondent No.2)
(DR. MUHAMMAD AKHTAR ABBAS)
Incumbent

Additional Chief Secretary
Home & Tribal Affairs Department,
Khyber Pakhtunkhwa, Peshawar
(Respondent No.1)
(ABID MAJEED)
Incumbent

Additional Chief Secretary
Home & Tribal Affairs Department
Khyber Pakhtunkhwa.

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AFFIDAVIT ON BEHALF OF RESPONDENTS

I, respondent do hereby solemnly affirm and declare on oath that the contents of comments-written reply to Appeal are true & correct to the best of my knowledge and nothing has been concealed from this Honourable 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/cost.

District Police Officer
South Waziristan Lower
(Respondent No.5)
Farman Ullah Khan
Incumbent

ATTESTED
Syed Muhammad Raz... Shah Advocate
Oath Commissioner
High Court Peshawar

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A U T H O R I T Y

Mr. Syed Asghar Ali Shah DSP/Inv: SWTD is hereby authorized to appear before the Service Tribunal Khyber Pakhtunkhwa, Peshawar on behalf of Respondents. He is also authorised to produce/ withdraw any application or documents in the interest of Respondents and the Police Department.

District Police Officer,
South Waziristan Lower
SWTD
(Respondent No.5)
Farman Ullah Khan
Incumbent

Regional Police Officer,
Dera Ismail Khan
(Respondent No.4)
NASIR MEHMOOD SATTI (PSP)
Incumbent

Assistant Inspector General of Police,
Establishment, Khyber Pakhtunkhwa, Peshawar
(Respondent No. 3)
(SONIA SHAMROZ KHAN) PSP
Incumbent

DIG/Legal, CPO
For Inspector General of Police,
Khyber Pakhtunkhwa,
(Respondent No.2)
(DR. MUHAMMAD AKHTAR ABBAS)
Incumbent

Additional Chief Secretary
Home & Tribal Affairs Department,
Khyber Pakhtunkhwa, Peshawar
(Respondent No.1)
(ABID MAJEED)
Incumbent

Additional Chief Secretary
Home & T.As Department
Khyber Pakhtunkhwa.