

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 647/2018

Date of Institution ... 09.05.2018

Date of Decision ... 21.01.2022

Sajjad Ahmad Ex-Constable No. 5568 R/o Nasir Bagh Road Kanal Town House No. 8, Street No. 8, Peshawar. ... (Appellant)

VERSUS

Capital City Police Officer Peshawar and others. ... (Respondents)

Roeeda Khan,
Advocate

... For Appellant

Muhammad Adeel Butt,
Additional Advocate General

... For respondents

AHMAD SULTAN TAREEN ...
ATIQU-UR-REHMAN WAZIR ...

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are

that the appellant while serving as Constable in Police Department, was charged in FIR Dated 19-07-2014 U/S 17(3) Haraba in Police Station Mardan and was arrested. The appellant was proceeded departmentally and was ultimately dismissed from service vide order dated 26-08-2015. The appellant was acquitted of the criminal charges vide judgment dated 18-01-2018 and after acquittal, the appellant filed departmental appeal, which was rejected on 12-04-2018, hence the instant service appeal with prayers that the impugned orders dated 26-08-2015 and 12-04-2018 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the impugned orders are against law, facts and norms of natural justice, therefore not tenable and liable to be set aside; that the appellant was acquitted of the same charges, upon which he was dismissed from service, hence there remains no ground to maintain such penalty; that respondents were required to suspend the appellant as per Police Rules, 1934 and to wait for conclusion of the criminal case, but the respondents without waiting for conclusion of the criminal case, dismissed the appellant in an arbitrary manner; that the impugned order and attitude of the respondents department is in sheer violation of Article 4, 25 and 38 of the Constitution; that the impugned order was passed without fulfilling the requisite formalities; that the appellant was condemned unheard and has not been treated in accordance with law.

03. Learned Additional Advocate General for the respondents has contended that upon registration of FIRs against the appellant, the appellant went in hiding and remain fugitive from law for some time, who later on was arrested by police. The appellant was proceeded departmentally and was awarded with major punishment of dismissal from service; that proper procedure was adopted by issuing charge sheet/statement of allegation to the appellant; that proper inquiry was conducted against the appellant and the appellant was afforded appropriate opportunity of defense, but the appellant did not opt to be associated with departmental proceedings, hence he was proceeded ex-parte; that the appellant filed departmental appeal with delay of almost two years and six months, which is badly time barred; that the appellant though acquitted of the criminal charges but it is a well settled legal proposition that criminal and departmental proceedings can run side by side without affecting each other; that the appellant has been treated in accordance with law and was awarded with appropriate punishment after fulfillment of all the codal formalities.

04. We have heard learned counsel for the parties and have perused the record.

05. Record reveals that the appellant being involved in case FIR, was proceeded departmentally in absentia as the appellant was in jail and was acquitted from the criminal charges vide judgment dated 18-01-2018 but before his acquittal from criminal charges, the appellant was dismissed on 28-02-2014, hence the appellant in the first place was not afforded opportunity of defense, as the appellant was not associated with proceedings of the departmental inquiry, as he was proceeded against in absentia. To this effect, the Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 have held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice.

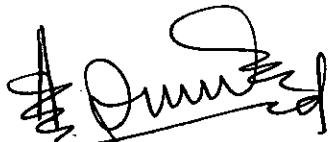
06. Being involved in a criminal case, the respondents were required to suspend the appellant from service under section 16:19 of Police Rules, 1934, which specifically provides for cases of the nature. Provisions of Civil Service Regulations-194-A also supports the same stance, hence the respondents were required to wait for the conclusion of the criminal case, but the respondents hastily initiated departmental proceedings against the appellant and dismissed him from service before conclusion of the criminal case. It is a settled law that dismissal of civil servant from service due to pendency of criminal case against him would be bad unless such official was found guilty by competent court of law. Contents of FIR would remain unsubstantiated allegations, and based on the same, maximum penalty could not be imposed upon a civil servant. Reliance is placed on PLJ 2015 Tr.C. (Services) 197, PLJ 2015 Tr.C. (Services) 208 and PLJ 2015 Tr.C. (Services) 152.

07. The criminal cases were decided in favor of the appellant and the appellant was acquitted of the criminal charges. In a situation, if a civil servant is dismissed from service on account of his involvement in criminal case, then he would have been well within his right to claim re-instatement in service after acquittal from that case. Reliance is placed on 2017 PLC (CS) 1076. In 2012 PLC (CS) 502, it has been held that if a person is acquitted of a charge, the presumption would be that he was innocent. Moreover, after acquittal of the appellant in the criminal case, there was no material available with the authorities to take action and impose major penalty. Reliance is placed on 2003 SCMR 207 and 2002 SCMR 57, 1993 PLC (CS) 460. Supreme Court of Pakistan in its judgment reported as PLD 2003 SC 187 have held that where the departmental proceedings were initiated only on the basis of criminal charge, which was not subsequently proved by the competent court of law and resulted in acquittal, would be entitled to be re-instated in service. It is a well-settled legal proposition that criminal and departmental proceedings can run side by side without affecting each other, but in the instant case, we are of the considered opinion that the departmental proceedings were not conducted in accordance with law. The authority badly failed to abide by the relevant rules in letter and spirit. The procedure as prescribed had not been adhered to strictly. All the formalities had been completed in a haphazard manner, which depicted somewhat indecent haste. Moreover, the appellant was acquitted of the same charges by the criminal court; hence, there remains no ground to further retain the penalty so imposed. Accused civil servant in case of his acquittal was to be considered to have committed no offense because the criminal court had freed/cleared him from the accusation or charge of crime – such civil servant, therefore, was entitled to grant of arrears of his pay and allowances in respect of the period. Reliance is placed on 1998 SCMR 1993 and 2007 SCMR 537.

08. We are also mindful of the question of limitation, as the appellant filed departmental appeal with considerable delay after earning acquittal from the criminal charges leveled against him, The Supreme Court of Pakistan in its judgment reported as PLD 2010 SC 695 has held that it would have been a futile attempt on part of civil servant to challenge his removal from service before earning acquittal in the relevant criminal case. It was unjust and oppressive to penalize civil servant for not filing his departmental appeal before earning his acquittal in criminal case, which had formed the foundation for his removal from service. Moreover, it is a well settled legal proposition that decision of cases on merit is always encouraged instead of non-suiting litigants on technical reason including ground of limitation. Reliance is placed on 2004 PLC (CS) 1014 and 1999 SCMR 880.

09. In view of the foregoing discussion, the instant appeal is accepted. The impugned orders are set aside and the appellant is re-instated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
21.01.2022



(AHMAD SULTAN TAREEN)
CHAIRMAN




(ATIQU-UR-REHMAN WAZIR)
MEMBER (E)

ORDER
21.01.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the instant appeal is accepted. The impugned orders are set aside and the appellant is re-instated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
21.01.2022

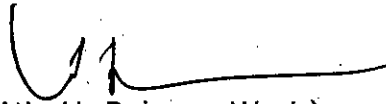

(AHMAD SULFAN TAREEN)
CHAIRMAN


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

19.01.2022

Roeeda Khan, Advocate for appellant present and submitted fresh Wakalatnama, duly executed. Placed on file. Mr. Muhammad Riaz Khan Paindakhel, Asstt. AG for the respondents present.

Due to paucity of time, arguments could not be heard. To come up for arguments on 21.01.2022 before the D.B.


(Atiq-Ur-Rehman Wazir)
Member (E)


Chairman

15.04.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 09.08.2021 for the same as before.


Reader

09.08.2021

Muhammad Arshad bearing CNIC No.17301-9350104-1 brother of the appellant on behalf of appellant present.

Javid Ullah learned Assistant Advocate General for respondents present.

Former made a request for a short adjournment in order to engage a counsel; granted. To come up for arguments on 20.10.2021 before D.B.



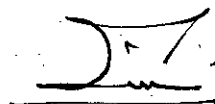
(Rozina Rehman)
Member (J)


Chairman

20.10.2021

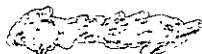
Appellant in person present. Mr. Noor Zaman, District Attorney for the respondents present.

Appellant again made for a request for adjournment in order to engage a counsel; granted. Case to come up for arguments on 19.01.2022 before D.B.



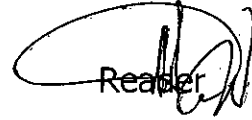
(Salah-Ud-Din)
Member (Judicial)


Chairman



24.08.2020

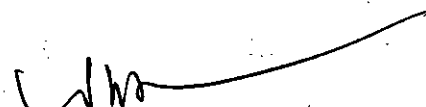
Due to summer vacation case to come up for the same on 28.10.2020 before D.B.


Reader

28.10.2020

Junior to counsel for the appellant and Zara Tajwar, DDA for the respondents present.

The Bar is observing general strike, therefore, the matter is adjourned to 05.01.2021 for hearing before the D.B.


(Atiq-ur-Rehman Wazir)
Member



Chairman

05.01.2021

Appellant in person present.

Riaz Khan Paindakhel Assistant Advocate General for respondents present.

Former requests for adjournment as his counsel is busy before District Courts, Mingora. Adjourned. To come up for arguments on 15.04.2021 before D.B.


(Atiq-Ur-Rehman Wazir)
Member (E)


(Rozina Rehman)
Member (J)

30.01.2020

Appellant in person present. Mr. Ziaullah, DDA for respondents present. Due to General Strike of the bar on the call of Khyber Pakhtunkhwa Bar Council, the instant case is adjourned. To come up for further proceedings/arguments on 25.03.2020 before D.B.


Member


Member

24.03.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 10.06.2020 before D.B.


Reader

10.06.2020

Bench is incomplete as one learned Member (J) is on leave. Therefore, the case is adjourned. To come up for the same on 24.08.2020 before D.B.


Reader

06.08.2019

No one present on behalf of appellant. Written reply not submitted. Muhammad Raziq H.C representative of the respondent department absent. Respondents as well as absent representative be put to notice with direction to furnish written reply/comments. Adjourn. To come up for written reply/comments on 19.09.2019 before S.B.


Member

19.09.2019

Nemo for appellant. Addl. AG alongwith Muhammad Raziq, Reader for the respondents present.

Representative of the respondents submitted reply on behalf of respondents No. 1, 2 & 3. The appeal is assigned to D.B for arguments on 27.11.2019. The appellant may submit rejoinder, within a fortnight, if so advised.


Chairman

27.11.2019


Appellant in person present. Addl: AG alongwith Mr. Aziz Shah, Reader for respondents present. Appellant seeks adjournment as his counsel is not available today. Adjourn. To come up for arguments on 30.01.2020 before D.B.


Member


Member

01.04.2019

None for the appellant present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Muhammad Raziq, H.C for respondents present. Written reply not submitted. Requested for adjournment. Adjourned. Case to come up for written reply/comments on 02.05.2019 before S.B.


(Ahmad Hassan)
Member

02.05.2019

Junior to counsel for the appellant and Mr. Usman Ghani, District Attorney alongwith Muhammad Raziq, H.C for the respondents present.

Representative of respondents requests for further time. Adjourned to 20.06.2019 for written reply/comments of the respondents as a last chance.


Chairman

20.06.2019

None present on behalf of the appellant. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Muhammad Raziq, Head Constable for the respondents present. Representative of the department requested for further adjournment to submit written reply. Adjourned to 06.08.2019 for written reply/comments before S.B. Notice be also issued to the appellant for attendance for the date fixed.


(Muhammad Amin Khan Kundi)
Member

12.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 28.12.2018. Written Not received. Mr. Muhammad Raziq H.C representative of respondents absent.


Reader

28.12.2018

Clerk to counsel for the appellant present. Written reply not submitted. No one present on behalf of respondent department. Notice be issued to the respondent department with direction to furnish written reply. Adjourn. To come up for written reply/comments on 18.02.2019 before S.B


Member

18.02.2019 Nemo for the appellant. Mr. Kabirullah Khattak Addl; AG alongwith Mr. Raziq H.C for the respondents present.

Representative of the respondents requests for further time to submit the requisite reply. Adjourned to 01.04.2019 on which date the reply/comments shall positively be furnished.


Chairman

31.05.2018

Counsel for the appellant present. Preliminary arguments heard and case file perused. Learned counsel for the appellant argued that vide impugned order dated 26.08.2015, he was dismissed from service w.e.f 05.09.2014. He filed departmental appeal on 21.01.2018 which was rejected on 12.04.2018, hence, the instant service appeal. As he was behind the bars so got knowledge of the impugned order on 20.01.2018. As the impugned order was passed with retrospective effect the same was void ab-initio and no limitation runs against a void order.

Points urged need consideration. Admit, subject to limitation. Appellant is directed to deposit of security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments for 13.08.2018 before S.B.

Appellant Deposited
Security & Process Fee

(AHMAD HASSAN)
MEMBER

13.08.2018

Counsel for the appellant and Mr. Kabirullah Khattak AAG present. None present on behalf of the respondent. Therefore, fresh notice be issued to the respondent department for attendance. Written reply not submitted. Learned AAG requested for adjournment. Adjourned. To come up for written reply/comments on 10.10.2018 before S.B

(Muhammad Amin Kundi)
Member

10.10.2018



Counsel for the appellant Mst. Sophia Noreen, Advocate present. Mr. Kabirullah Khattak, Addl. AG for the respondents present and made a request for adjournment. Granted. To come up for written reply/comments on 12.11.2018 before S.B.

Chairman

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 647/2018

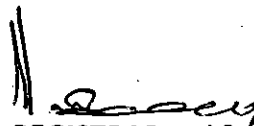
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	16/05/2018	<p>The appeal of Mr. Sajjad Ahmad resubmitted today by Sophia Noreen Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	18/05/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>31/05/18.</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Sajjad Ahmad Ex-Constable No. 5568 received today i.e. on 09.05.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Memorandum of appeal is not signed by the appellant.

No. 999 /S.T,

Dt. 10/05 /2018.


REGISTRAR 10/5/18
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Sophia Noreen Adv. Pesh.

Respected Sir,

Resubmitted after due
Completion.

S.
16/5/2018

**BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR**

In Re S.A 647 /2018

Sajjad Ahmad

Versus

Capital City Police Officer Peshawar and others


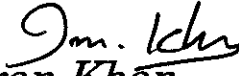
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Dated: 08/05/2018

Appellant

Through


Sophia Noreen
& 
Imran Khan
Advocates, High Court
Peshawar.

①

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

In Re Service Appeal 647 /2018

Khyber Pakhtukhwa
Service Tribunal

Diary No. 674

Dated 09-5-2018

Sajjad Ahmad Ex-Constable No. 5568 R/o Nasir Bagh Road
Kanal Town House No. 8, Street No. 8 Peshawar.

-----*(Appellant)*

VERSUS

1. Capital City Police Officer Peshawar.
2. Superintendent of Police Head Quarters Peshawar.
3. Inspector General of Police Khyber Pakhtunkhwa Peshawar.

-----*(Respondents)*

APPEAL U/S 4 OF SERVICE TRIBUNAL 1974,
AGAINST THE IMPUGNED ORDER DATED
26/08/2015 PASSED BY THE RESPONDENT
NO. 2 COMMUNICATED ON 20/01/2018
WHEREBY THE APPELLANT WAS
DISMISSED FROM SERVICE, AND AGASINT
THE IMPUGNED ORDER DATED 12/04/2018,
COMMUNICATED ON. 14/04/2018, PASSED
BY THE RESPONDENT NO. 12 WHEREBY
THE DEPARTMENTAL APPEAL OF THE
APPELLANT IS REJECTED WITHOUT ANY
GOOD GROUND.

Filed to-day
Registrar
9/5/18

Re-submitted to -day
and filed.

Registrar
16/5/18

Prayer:-

ON ACCEPTANCE OF INSTANT
APPEAL THE IMPUGNED DISMISSAL
ORDER DATED 26/08/2015 AND
REJECTION ORDER ON
DEPARTMENTAL APPEAL DATED
12/04/2018, PASSED BY THE
RESPONDENTS MAY KINDLY BE SET
ASIDE AND THE APPELLANT BE
REINSTATED IN HIS SERVICE WITH
ALL BACK BENEFITS.

Respectfully Sheweth:-

1. That the appellant was initially appointed / enlisted as constable on 19/06/1999 in the Respondent department.
2. That the appellant was falsely implicated in a case FIR No. 752 dated 19/07/2014 U/S 17(3) offences against property (enforcement of hadood) 1979 in Police station city Mardan and was behind the bar since his arrest the appellant duly income the department about the

occurrence in registration against the appellant.

(Copy of the FIR is attached as annexure "A")

3. That a formal departmental inquiry was conducted at the back of the appellant without serving any show cause, statement of allegation, final show cause and no opportunity of personal hearing was granted to the appellant and finally the appellant was dismissed from service on 26/08/2015 while the dismissal order was never communicated to the appellant rather the same was handed over on 20/01/2018 after the acquittal of the appellant.
4. That the appellant was later on acquitted honorably from the charges leveled against him, by the additional session Judge Mardan on 18/01/2018 (Copy of the acquittal order is attached as annexure "B")
5. That as soon as after acquittal the appellant approached the Respondent department for taking charge of his service, but unexpectedly an order of dismissal from service was handed

over to the appellant on 20/01/2018 by the Respondent department. (Copy of dismissal order is attached as annexure "C")

6. That the appellant has filed a departmental appeal against the dismissal order before the Respondent No. 1~~2~~ which was rejected on 12/04/2018 and communicated to the appellant on 14/04/2018. (Copy of departmental appeal and rejection order is attached as annexure "D & E").
7. That being aggrieved from the impugned dismissal order dated 26/08/2015 and rejection order dated 12/04/2018, the appellant having no other alternate remedy available accept to knock the door of this Hon'ble Tribunal in its appellate jurisdiction under section 4 on the following grounds amongst the others.

Grounds:

- A. That the impugned dismissal order dated 26/08/2015 & departmental appeal rejection order dated 12/04/2018 passed by the Respondents, are against the law, facts procedure, without lawful authority, without jurisdiction, against the natural justice hence liable to be set aside and the appellant be

reinstated in his service with all back benefits.

- B. That both the impugned order mention above are the clear violation of Article 4 and against the natural justice.
- C. That he requirement of procedure for inquiry were not fulfilled by the Respondents, which are mandatory while passing such a harsh punishment dismissal.
- D. That the appellant has not been treated in accordance with law and procedure provided by the law.
- E. That the appellant as acquitted from all the criminal charges leveled agasint him.
- F. That the appellant was never served with any charge sheet, statement of allegation, final show cause notice, which are basic requirement under the law.
- G. That the so called inquiry was conducted at the back without associating the appellant, which is violation of Article 10-A of constitution of Islamic Republic of Pakistan 1973.

H. That the appellant is honorably acquitted from all the charges leveled against him.

I. That the appellant has served the Respondent department about 18 years with all his honesty and with the entire satisfaction of his high-ups and the impugned dismissal order is very harsh.

J. That the absence from duty was neither willful nor deliberate, rather the same was beyond the control of appellant

K. That the Respondent never provided any opportunity of defense to the appellant which is against the rule of audi atriun Paltrium.

L. That the present appeal is within time.

M. That any other ground would be raised at the time of arguments with the prior permission of this Hon'ble Tribunal.

It is, therefore, most humbly prayed that on acceptance of the instant Service Appeal the impugned order dated 26/08/2015 whereby the appellant is dismissed from

service, and rejection order dated 12/04/2018 on departmental appeal, may kindly be set aside and the appellant be reinstated with all back benefits.

Any other relief not specifically asked for may also graciously be extended in favour of the appellant in the circumstances of the case.

Dated: 08/05/2018

SAJew
Appellant

Through

SJ
Sophia Noreen
& *Im. Idin*
Imran Khan
Advocates High Court
Peshawar.

NOTE:-

No such like appeal for the same appellant, upon the same subject matter has earlier been filed by me, prior to the instant one, before this Hon'ble Tribunal.

SJ
Advocate.

BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR

In Re S.A _____/2018


Sajjad Ahmad

Versus

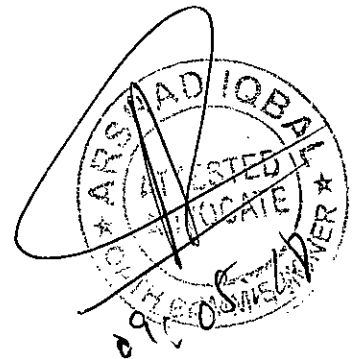
Capital City Police Officer Peshawar and others

AFFIDAVIT

I, Sajjad Ahmad Ex-Constable No. 5568 R/o Nasir Bagh Road Kanal Town House No. 8, Street No. 8 Peshawar, do hereby solemnly affirm and declare that all the contents of the accompanied service appeal are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Hon'ble Tribunal.

Identified By: 
Sophia Noreen
Advocate High Court
Peshawar.

SA Jan
DEPONENT
17301-0360742-5



**BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR**

In Re S.A _____/2018

Sajjad Ahmad

Versus

Capital City Police Officer Peshawar and others

ADDRESSES OF PARTIES

APPELLANT.

Sajjad Ahmad Ex-Constable No. 5568 R/o Nasir Bagh Road
Kanal Town House No. 8, Street No. 8 Peshawar.

RESPONDENTS:

1. Capital City Police Officer Peshawar.
2. Superintendent of Police Head Quarters Peshawar.
3. Inspector General of Police Khyber Pakhtunkhwa
Peshawar.

Dated: 08/05/2018

Through *Appellant*

S
Sophia Noreen

& Imran Khan
Imran Khan

Advocates, High Court
Peshawar.

Order---28
18-01-2018.

Accd (1) Sajjad son of Fazal Ghani (2) Sabir son of Nadar Khan (3) Muhammad Ali son of Munir Khan (4) Bashir son of Alla Khan present on bail alongwith their counsel. (5) Accd Nawazish son of Saad Ullah produced in custody. He is on bail in this case. In some other case he is behind the bars. Accd Gul Akbar son of Gul Muhammad and Nadar son of Shah Jehan are absent. Their counsel is in attendance who requested for their exemption from personal appearance for today. Dy.PP for the state present. Official witnesses summoned through special diary while unofficial through warrant of arrest but none of them is in attendance. Complainant Fateh Muhammad reportedly had gone abroad while Mst.Sarwar Jabeen had died. PW Imran Amjid was not found. Similarly other unofficial PWs were also not traceable. Official witnesses have been informed through the Muharrir of the police stations where they are posted but were reportedly busy in "Polio" duty. On the previous dates also these reports were submitted by the DFC. Complete challan in this case has been submitted on 10-05-2016. Charge against the accd framed on 26-04-2017. Despite passage of about nine months, prosecution has not been able to produce a single witness in support of the charge.

On the previous date application for acquittal of accd under section 265-K Cr.P.C was submitted. Notice of the said application was issued to the prosecution.

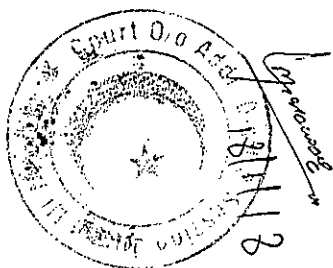
Learned counsel for the accd requested for acquittal of the accd under section 265-K Cr.P.C on the ground that from the available record, accd facing trial cannot be connected with the commission of offence and there is no probability of the accd being convicted of any offence. Dy.PP for the state resisted the application and requested that prosecution be given opportunity to prove its case against the accused.

Accd facing trial have been challaned in this case FIR No.752 dated 19-07-2014 under section 17(3) Offences Against Property (Enforcement of Hudood) Ordinance 1979 of Police station City Mardan.

According to prosecution case, complainant Fateh Muhammad Khan on 19-07-2017 at 20.30 hours made report to Majid Khan SI that on the said date after "Aftari" he alongwith his wife Mst. Sarwar Jabeen was present in his house. Someone rang bell of the door. That he came out and opened the door. That he saw four young persons. That they told him that they were police personals and they want to search his house. That all of them entered into his house, took out their pistols, locked him and his wife in a room and started search of the rooms. That after some 35 minutes, they locked the door of their room from outside confining him and his wife in the room. That they came out from the room through window and checked the rooms of the house. That the accd had taken away 25 tolas gold ornaments, Rs.05,00,000/- lacs cash, a 32 bore Lama pistol No.285486 and two in number Nokia Mobile sets. He charged unknown persons for the commission of offence. Report of the complt was reduced into writing in the shape of murasila and sent to police station for registration of case. Hence this case.

Arguments heard. Record perused.

Perusal of the record would show that none of the accd was charged in the murasila/FIR. On 05.09.2014 the complt recorded his statement under section 164 Cr.P.C. In the said statement he charged accd facing trial (1) Gul Akbar (2) Malik Muhammad Ali (3) Bashir (4) Nadar and (5) Nawazish. This statement was recorded after one month and sixteen days of the occurrence but nothing else was added in the list of stolen/taken away property nor any source of information or satisfaction was shown for charging the accused. Another statement under section 164 Cr.P.C of the complt was recorded on 17-09-2014 i.e after 12 days of recording of Ist statement under section 164 Cr.P.C. Astonishingly he added new things in the stolen/taken away property i.e a Nokia Mobile, a Lap top, prize bonds of different amounts valuing four lacs and Thirty five thousands as well as six in number saving certificates each valuing rupees 5/5 Lakhs. He charged accd Nawazish Ali alias doctor, Gul Akbar, Muhammad Ali, Bashir Khan, Nadar, Sabir Khan and Sajjad for the commission of offence. This second statement under section 164



Cr.P.C of the complainant was very astonishing. Neither in the FIR nor in the first statement under section 164 Cr.P.C statement, prize bonds, third Nokia mobile set and saving certificates were mentioned in the stolen/taken away property despite the fact that first statement under section 164 Cr.P.C of the complainant was recorded after one month and sixteen days of the occurrence. Question arise that during search/checking of the house for one month and sixteen days, the complt did not find the above mentioned one Nokia Mobile set, prize bonds and saving certificates to be missing. This changing stance of the complt cast serious doubts upon the whole prosecution case.

According to recovery memo dated 18-09-2014 four in number saving certificates each amounting to Rs.05,00,000/- was shown to be recovered at the instance of accd Bashir Khan, Muhammad Ali, Nadar and Gul Akbar. All the four saving certificates were shown to be recovered from a room No.03. Key of the room was allegedly provided by accd Nawazish while from one Iron box the remaining four accd Gul Akbar, Bashir Khan, Muhammad Ali and Nadar taken out 1/1 saving certificate each amounting to Rs.05,00,000/-. It is not clear from the available record that to whom the said room belonged. These saving certificates were not mentioned in the FIR nor in the first statement under section 164 Cr.P.C of the complainant, therefore, these cannot be termed as stolen property nor the said recovery can be believed. On the face of it, the local police had tried to connect these accused with the commission of offence, therefore in the second statement under section 164 Cr.P.C of the complainant, saving certificates were also included in the stolen/taken away property. Vide another recovery memo dated 18-09-2014, the local police has shown recovery of a 30 bore pistol and cash amount of Rs.15000/- from the clinic of accused Nawazish. 30 bore pistol was not stolen property. Similarly, Rs.15,000/- cash amount might be the personal amount of the accused.

Nothing has been shown to be recovered either from the possession or on the pointation of the accused Sajjad and Sabir.

There is identification parade of accd Muhammad Ali and Gul Akbar on the record. According to the same, the complainant

had picked and identified these two accused. These identification tests are also not believable on the ground that these two accd Muhammad Ali and Gul Akbar have shown to be arrested on 15-09-2014 but their identification parades were conducted on 01-10-2014 i.e after sixteen days of their arrest. There was every possibility of meeting the complt with these accused before conducting the identification parades/tests.

None of the stolen/taken away property shown in the murasila/FIR was shown to be recovered from any of the accused. The above noted facts and circumstances of the case and evidence collected by the prosecution during the investigation of the case, cannot connect any of the accused with the commission of the offence in any manner whatsoever. There is no probability of the accused being convicted of any offence. Further proceedings in the instant case would amount to a futile exercise and wastage of public time. Accused facing trail are therefore, acquitted in the instant case under section 255-K Cr.P.C. They are on bail, their bail bonds stand cancelled and sureties are discharged from the liability of their bail bonds. Case property be dealt in accordance with law subject to period of appeal/revision. File be consigned to the record room after completion.

Announced:
18.01.2018.



14

1328
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ORDER

This office order relates to the disposal of formal departmental enquiry against Constable Sajjad No. 5568 of Capital City Police Peshawar on the allegations that he while posted at Police Lines absented himself from lawful duty from 05.09.2014 till date without taking permission or leave.

In this regard, he was issued charge sheet and summary of allegations. SDPO City was appointed as E.O. He conducted the enquiry and submitted his report that defaulter official is habitual absentee. The E.O further recommended major punishment for the defaulter official vide Enquiry Report No.3918/E/ST dated 11.18.2015.

Upon the fining of E.O, he was issued final show cause notice which delivered to him on home address but he failed to submit reply of the said notice within stipulated period of 07-days or appear before this office as yet.

Beside the above, the delinquent official has also been involved in criminal case vide FIR No.752 dated 19.07.2014 u/s 17 (3) Haraba PS City Mardan. He is PO in this case.

In the light of recommendations of E.O & other material available on record, the undersigned came to conclusion that the alleged official found guilty of prolong absence/involvement in criminal case. Therefore, he is hereby dismissed from service under Police & Disciplinary Rules 1975 with immediate effect. Hence, the period he remained absent from 05.09.2014 till date is treated without pay.

Encl
28

**SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR**

OB. NO. 3213 / Dated 26/8 /2015

No. 3408 - 15/PA/SP/dated Peshawar the 26/8 /2015

Copy of above is forwarded for information & n/action to:

- ✓ Capital City Police Officer, Peshawar.
- ✓ DSP/HQrs, Peshawar.
- ✓ Pay Office, OASI, CRC & FMC along-with complete departmental file.
- ✓ Officials concerned.

28
Encl

Attentel to be
have copy
SH

بخدمت جناب کیپٹل سٹی پولیس افسر صاحب ضلع پشاور

مضمون: محکمانہ اپیل بر خلاف حکم نمبری 3213 مورخہ 26-8-2015 مجاریہ زیر دستخطی جناب SP صاحب ہیڈ
کو اٹرز پشاور

جناب عالی!

سائیل محکمہ پولیس میں بطور کنسٹیبل بھرتی ہو کر پولیس ٹریگ سنٹر ہنگو سے ٹریگ پاس کر کے ضلع پشاور
میں مختلف پرخطر مقامات پر تعینات کر کے بے داغ ملازمت انجام دی ہے۔

ریکروٹ ٹریگ کورس پاس کرنے کے علاوہ مختلف قسم کے دیگر محکمانہ کورسز پاس کر کے ATS سنٹر میں
بطور انسٹرکٹر تعینات رہا۔ سائیل نے دوران ملازمت ملک دشمن عناصر اور مختلف قسم کے شریپندوں سے مقابلہ
کر کے کئی شریپندوں کو کیفر کردار تک پہنچایا ہے۔ اور یوں پولیس کا نام روشن کیا ہے۔

یہ کہ کچھ ناگزیر وجوہات اور ناگتہ بہ حالات کے پیش نظر سائل بہ امر مجبوری ڈیوٹی سے قاصر رہ کر سائل کو
مورخہ 5-9-2014 سے غیر حاضر کیا جا کر محکمانہ کارروائی عمل میں لائی جا کر سائل کی عدم موجودگی میں پایہ انجام
تک پہنچایا۔ اور سائل کو سماعت کا موقع نہیں دیا ہے۔ یہ کہ سائل کو ایک من گھڑت جرم نمبر 752 مورخہ
9-7-2014 H(3)17 میں ناجائز طور پر نامزد کیا جا کر جس سے چٹکارا پانے کی چٹکر میں سائل نوکری سے مزید
غیر حاضر رہا۔ اور یوں نوکری سے درخواست کیا گیا۔

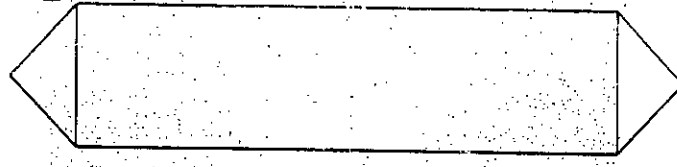
اس کیلئے درخواست ہے کہ چونکہ سائل مقدم عنوان بالذمہ عدالت سے باعزت طور پر بری ہو کر نوکری
کرنے کا خواہاں ہے۔ لہذا سائل کو درجہ بالا حقیقت کے پیش نظر نوکری پر دوبارہ بحال کر کے مشکور فرمائیں۔

ایکتابدار سجاد احمد جان نمبر H.C 5568

موبائل نمبر: 9297217-0333

20/1/2018

Attested to be
true copy
SLL



2018ء پنجاب

9 مئی

مورخہ

سجاد احمد بنام

Service Appeal

مقدمہ

CCPO & others

دعویٰ

جرم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
 آن مقام پشاور کیلئے موصوفہ لکھیں، عمران خان ایڈووکیٹس
 مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوفہ کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
 وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور
 بصورت ڈگری کرنے اجراء اور وصولی چیک و ریپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
 زرائے پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
 اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت
 مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
 تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے
 اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے
 سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
 گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

2018

9 مئی

ماہ

9

المرقوم

الع د گ واه الع

کے لئے منظور ہے۔

پشاور

مقام

Sl

Im. Idris

Accepted

سجاد احمد ولد
 فضل عی خان سکنہ
 ناہرا ٹھکانہ روڈ کینال
 ٹاؤن بوڈ پشاور
 سال

17301-0360742-5

Sl

BEFORE THE KYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service appeal No.647/18

Sajjad Ahmad Ex- Constable No.5568 CCP, Peshawar..... Appellant .

Versus

1. Capital City Police Officer, Peshawar.
2. SP/HQrs: Capital City Police, Peshawar.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar..... Respondents

Reply on behalf of respondents No.1, 2, & 3.

Respectfully Sheweth:-

PRELIMINARY OBJECTIONS.

1. That the appeal is badly time barred.
2. That the appeal is bad for mis-joinder and non-joinder or necessary parties.
3. That the appellant has not come to this Tribunal with clean hands.
4. That the appellant has no cause of action.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant concealed the material facts from Honorable Tribunal.
7. That the appellant got no locus standi and cause of action to file the instant appeal.

FACTS:-

- 1- Para No.1 pertains to record with respect to appellant's enlistment in Police department however the appellant is a habitual absentee. The appellant has earned 13 bad entries in his service, which clearly shows that he was an unwilling and ^{not} ~~not~~ professional officer, thereby not interested in discharging his official duties.
- 2- Para No.2 is incorrect. In fact the appellant was proceeded departmentally on allegations that he deliberately absented himself from his lawful duty from 05.09.2014 to 26.08.2015 (Total 11 Months & 14 days), and also involved himself in a Criminal Case vide FIR No.752 dated 19.07.2014 u/s 17(3) Haraba PS City Mardan. In this regard proper charge sheet and statement of allegations was issued to him and SDPO/City was appointed as enquiry officer. (Copy of charge sheet and statement of allegations are annexure as "A"."B")
- 3- Para No.3 is incorrect. In fact proper charge sheet and statement of allegations were issued to appellant. Proper departmental enquiry was conducted against him by SDPO City. He summoned time and again but he did not bother to attend the enquiry proceedings. On receipt of the enquiry, the appellant was issued final show cause notice. After fulfilling all the codal formalities, he was awarded major punishment of dismissal from service.(copy of Enquiry report, summoned and FSCN are annexure as "C"D"E")

- 4- Para No.4 correct, however the appellant deliberately absented himself from his lawful duty for a long time without prior approval from competent authority.
- 5- Para No.5 incorrect. The appellant absented himself from his lawful duty. The appellant also involved in a criminal case and was declared as proclaimed offender.
- 6- Para No.6 correct to the extent that the appellant filed departmental appeal which after due consideration was filed/rejected on the ground that his appeal was badly time barred for about 02 years & 06 Months.
- 7- That appeal of the appellant being devoid of merits may kindly be dismissed on the following grounds.

GROUND:-


- A- Incorrect. The orders are just, legal and have been passed in accordance with law.
- B- Incorrect. The punishment orders passed by the competent authority in accordance with law/rules and no provision of law has been violated.
- C- Incorrect. Proper departmental enquiry was conducted against the appellant with completion of all codal formalities.
- D- Incorrect. The appellant was treated as per law/rules.
- E- Para pertains to court hence needs no comments.
- F- Incorrect. Proper charge sheet, statement of allegations were issued to appellant. Proper enquiry was conducted and a final show cause notice was issued before passing the punishment order.
- G- Incorrect. Proper departmental enquiry was conducted against him. He was called time and again to appear before the enquiry officer and defend himself, but he did not turn up.
- H- Incorrect. The appellant absented himself from his lawful duty and also involved in a criminal case.
- I- Incorrect. First part of para is pertains to record, and rest of para is denied on the ground that the appellant is a habitual absentee.
- J- Incorrect. The appellant deliberately absented himself from his lawful duty.
- K- Incorrect. The appellant was associated in the enquiry proceedings and proper opportunity of defense was provided to appellant. He failed to defend the charges leveled against him.
- L- Incorrect. The appeal is badly time barred.
- M- That respondent may also be allowed to advance any additional ground at the time of hearing of the appeal.

PRAYER.

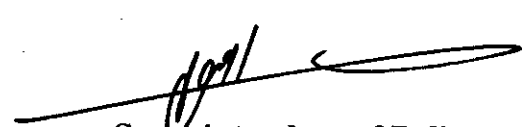
It is therefore most humbly prayed that in light of above facts and submissions, the appeal of the appellant being devoid of merits and legal footing, may kindly be dismissed.



**Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.**



**Capital City Police Officer,
Peshawar.**



**Superintendent of Police,
HQrs: Peshawar.**

BEFORE THE KYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service appeal No.647/18

Sajjad Ahmad Ex- Constable No.5568 CCP, Peshawar..... Appellant


Versus

1. Capital City Police Officer, Peshawar.
2. SP/HQrs: Capital City Police, Peshawar.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar..... Respondents

AFFIDAVIT

We respondents No. 1 ,2 & 3 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal.


**Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.**


**Capital City Police Officer,
Peshawar.**


**Superintendent of Police,
HQrs: Peshawar.**

(8)

CHARGE SHEET

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge that Constable Sajjad No.5568 of Capital City Police Peshawar with the following irregularities.

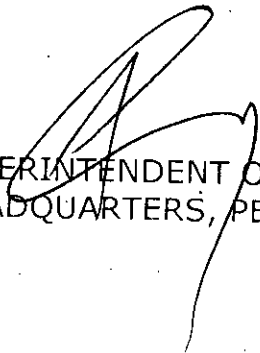
"That you Constable Sajjad No.5568 while posted at Police Lines, Peshawar were absent from duty w.e.f. 05.09.2014 till date without taking permission or leave. This amounts to gross misconduct on your part and is against the discipline of the force."

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 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

7

DISCIPLINARY ACTION

I, Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that Constable Sajjad No.5568 has rendered him-self liable to be proceeded against under the provision of Police Disciplinary Rules-1975.

STATEMENT OF ALLEGATION

"That Constable Sajjad No.5568 while posted at Police Lines, Peshawar absented himself from duty w.e.f 05.09.2014 till date without taking permission or leave. 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 SDPO City is appointed as Enquiry Officer.

2. The Enquiry Officer shall, in accordance with the provisions of the Ordinance, 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.

SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 138 /E/PA, dated Peshawar the 19/06/2015

1 SDPO City is directed to finalize the aforementioned departmental proceeding within stipulated period under the provision of Police Rules-1975.

2. Official concerned

Reader/steuo
TO proceed

Q
DSP City
24-06-15

FINDING U/S 6(5) OF POLICE RULES 1975,
AGAINST CONSTABLE SAJJAD NO. 5568.

The enquiry in hand was referred to this office to ascertain the misconduct, committed by the subject Police Constable vide order of enquiry No.138/E/PA, dated 19/06/2015.

Short facts are that accused Constable Sajjad No.5568, posted to Police Lines, Peshawar remained absent from lawful duty w.e.f **05/09/2015** till date without approval and prior permission from the competent officer hence he was charge sheeted and summary of allegations.

The accused constable could not submit his reply within stipulated period despite of fact that he was summoned to join the enquiry proceedings. Furthermore, **as per the report of MM Police Lines, Peshawar, the above name Constable is absent from his duty vide DD No.16, dated 05/09/2014 till date** (report is attached). This shows a total lack of interest in the duty and shows slackness.

In circumstances, it is crystal clear that accused Constable is habitual absentee, not interested in his service and it would not be exaggerated that he is stigma for the force, hence does not deserve be retained in the force anymore. He is, therefore recommended to be awarded **Major penalty of Dismissal from Service, provided u/r 4(1)(b)(iv)** of Police Rules 1975.

All relevant papers are attached herewith please,

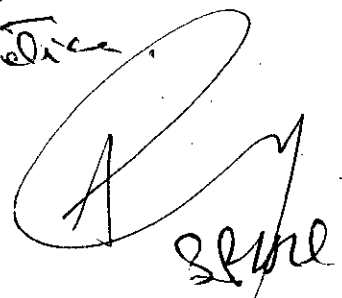

DEPUTY SUPERINTENDENT OF POLICE,
CITY-I SUB-DIVISION, PESHAWAR.

Worthy Superintendent of Police,
Head Quarters, Peshawar.

No. 3918 /E/ST, dated Peshawar the 11 /08/2015.

Encl: (11 Sheets).

Issue Final Show
cause notice.



FINAL SHOW CAUSE NOTICE

138/E/PA
DA. 18-8-2015
3

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, Constable Sajjad No.5568 the final show cause notice.

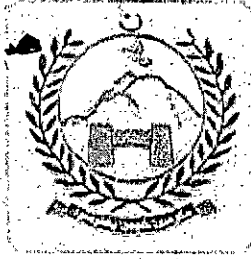
The Enquiry Officer, SDPO City, after completion of enquiry proceedings, has recommended you for major punishment for you Constable Sajjad No.5568 as the charges/allegations leveled against you in the charge sheet/statement of allegations.

And whereas, the undersigned is satisfied that you Constable Sajjad No.5568 deserve the punishment in the light of the above said enquiry reports.

I, competent authority, have decided to impose upon you the penalty of minor/major punishment under Police Disciplinary Rules 1975 for misconduct.

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 as ex-parte action shall be taken against you.
3. The copy of the finding of the enquiry officer is enclosed.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR



KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

No. 916 / ST

Dated: 25-4- 2022

All communications should be addressed to the Registrar, KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

To

The Superintendent of Police, Headquarters
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: JUDGMENT IN APPEAL NO: 647/2018, MR. SAJJAD AHMAD

I am directed to forward herewith a certified copy of Judgement dated 21.01.2022 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR

KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.6875/2020.

Ex- Constable Shahab Alam No.3899 of CCP, Peshawar.....**Appellant.**

VERSUS.

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Superintendent of Police City Peshawar**Respondents.**

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3.	Copy of bad entry list	A	5
4.	Copy of charge Sheet	B	6
5.	Copy of allegations	C	7
6.	Copy of inquiry report	D	8
7.	Copy of summoned	E	9
8.	Copy of FSCN	F	10

BEFORE THE KYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service appeal No.647/18

Sajjad Ahmad Ex- Constable No.5568 CCP, Peshawar..... Appellant

Versus

1. Capital City Police Officer, Peshawar.
2. SP/HQrs: Capital City Police, Peshawar.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar..... Respondents

Reply on behalf of respondents No.1, 2, & 3.

Respectfully Sheweth:-

PRELIMINARY OBJECTIONS.

1. That the appeal is badly time barred.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has not come to this Tribunal with clean hands.
4. That the appellant has no cause of action.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant concealed the material facts from Honorable Tribunal.
7. That the appellant got no locus standi and cause of action to file the instant appeal.

FACTS:-

- 1- Para No.1 pertains to record with respect to appellant's enlistment in Police department however the appellant is a habitual absentee. The appellant has earned 13 bad entries in his service, which clearly shows that he was an unwilling and ^{not} ~~not~~ professional officer, thereby not interested in discharging his official duties.
- 2- Para No.2 is incorrect. In fact the appellant was proceeded departmentally on allegations that he deliberately absented himself from his lawful duty from 05.09.2014 to 26.08.2015 (Total 11 Months & 14 days), and also involved himself in a Criminal Case vide FIR No.752 dated 19.07.2014 u/s 17(3) Haraba PS City Mardan. In this regard proper charge sheet and statement of allegations was issued to him and SDPO/City was appointed as enquiry officer. (Copy of charge sheet and statement of allegations are annexure as "A"."B")
- 3- Para No.3 is incorrect. In fact proper charge sheet and statement of allegations were issued to appellant. Proper departmental enquiry was conducted against him by SDPO City. He summoned time and again but he did not bother to attend the enquiry proceedings. On receipt of the enquiry, the appellant was issued final show cause notice. After fulfilling all the codal formalities, he was awarded major punishment of dismissal from service.(copy of Enquiry report, summoned and FSCN are annexure as "C"D"E")

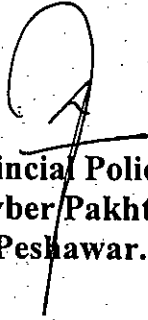
- 4- Para No.4 correct, however the appellant deliberately absented himself from his lawful duty for a long time without prior approval from competent authority.
- 5- Para No.5 incorrect. The appellant absented himself from his lawful duty. The appellant also involved in a criminal case and was declared as proclaimed offender.
- 6- Para No.6 correct to the extent that the appellant filed departmental appeal which after due consideration was filed/rejected on the ground that his appeal was badly time barred for about 02 years & 06 Months.
- 7- That appeal of the appellant being devoid of merits may kindly be dismissed on the following grounds.

GROUND:-


- A- Incorrect. The orders are just, legal and have been passed in accordance with law.
- B- Incorrect. The punishment orders passed by the competent authority in accordance with law/rules and no provision of law has been violated.
- C- Incorrect. Proper departmental enquiry was conducted against the appellant with completion of all codal formalities.
- D- Incorrect. The appellant was treated as per law/rules.
- E- Para pertains to court hence needs no comments.
- F- Incorrect. Proper charge sheet, statement of allegations were issued to appellant. Proper enquiry was conducted and a final show cause notice was issued before passing the punishment order.
- G- Incorrect. Proper departmental enquiry was conducted against him. He was called time and again to appear before the enquiry officer and defend himself, but he did not turn up.
- H- Incorrect. The appellant absented himself from his lawful duty and also involved in a criminal case.
- I- Incorrect. First part of para is pertains to record, and rest of para is denied on the ground that the appellant is a habitual absentee.
- J- Incorrect. The appellant deliberately absented himself from his lawful duty.
- K- Incorrect. The appellant was associated in the enquiry proceedings and proper opportunity of defense was provided to appellant. He failed to defend the charges leveled against him.
- L- Incorrect. The appeal is badly time barred.
- M- That respondent may also be allowed to advance any additional ground at the time of hearing of the appeal.

PRAYER.

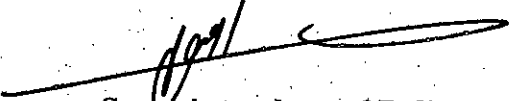
It is therefore most humbly prayed that in light of above facts and submissions, the appeal of the appellant being devoid of merits and legal footing, may kindly be dismissed.



**Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.**



**Capital City Police Officer,
Peshawar.**



**Superintendent of Police,
HQrs: Peshawar.**

BEFORE THE KYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service appeal No.647/18

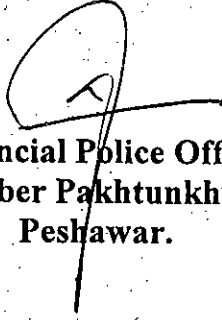
Sajjad Ahmad Ex- Constable No.5568 CCP, Peshawar..... Appellant

Versus

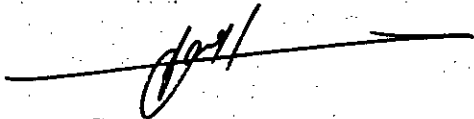
1. Capital City Police Officer, Peshawar.
2. SP/HQrs: Capital City Police, Peshawar.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar..... Respondents

AFFIDAVIT

We respondents No. 1 ,2 & 3 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal.


**Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.**


**Capital City Police Officer,
Peshawar.**


**Superintendent of Police,
HQrs: Peshawar.**

(8)

CHARGE SHEET

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge that Constable Sajjad No.5568 of Capital City Police Peshawar with the following irregularities.

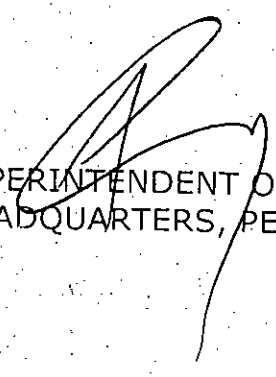
"That you Constable Sajjad No.5568 while posted at Police Lines, Peshawar were absent from duty w.e.f. 05.09.2014 till date without taking permission or leave. This amounts to gross misconduct on your part and is against the discipline of the force."

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 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

7

DISCIPLINARY ACTION

I, Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that Constable Sajjad No.5568 has rendered him-self liable to be proceeded against under the provision of Police Disciplinary Rules-1975.

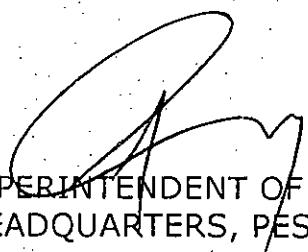
STATEMENT OF ALLEGATION

"That Constable Sajjad No.5568 while posted at Police Lines, Peshawar absented himself from duty w.e.f 05.09.2014 till date without taking permission or leave. 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 SDPO City is appointed as Enquiry Officer.

2. The Enquiry Officer shall, in accordance with the provisions of the Ordinance, 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.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 138 /E/PA, dated Peshawar the 19/06/2015

1. SDPO City is directed to finalize the aforementioned departmental proceeding within stipulated period under the provision of Police Rules-1975.

2. Official concerned

Reader / Shero
TO proceed

DSP CITY
24-06-15

FINDING U/S 6(5) OF POLICE RULES 1975,
AGAINST CONSTABLE SAJJAD NO. 5568.

The enquiry in hand was referred to this office to ascertain the misconduct, committed by the subject Police Constable vide order of enquiry No.138/E/PA, dated 19/06/2015.

Short facts are that accused Constable Sajjad No.5568, posted to Police Lines, Peshawar remained absent from lawful duty w.e.f **05/09/2015** till date without approval and prior permission from the competent officer hence he was charge sheeted and summary of allegations.

The accused constable could not submit his reply within stipulated period despite of fact that he was summoned to join the enquiry proceedings. Furthermore, **as per the report of MM Police Lines, Peshawar, the above name Constable is absent from his duty vide DD No.16, dated 05/09/2014 till date** (report is attached). This shows a total lack of interest in the duty and shows slackness.

In circumstances, it is crystal clear that accused Constable is habitual absentee, not interested in his service and it would not be exaggerated that he is stigma for the force, hence does not deserve be retained in the force anymore. He is, therefore recommended to be awarded **Major penalty of Dismissal from Service, provided u/r 4(1)(b)(iv) of Police Rules 1975.**

All relevant papers are attached herewith please,

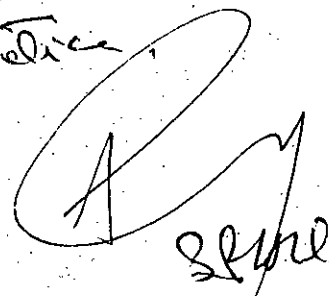

DEPUTY SUPERINTENDENT OF POLICE,
CITY-I SUB-DIVISION, PESHAWAR.

Worthy Superintendent of Police,
Head Quarters, Peshawar.

No. 3918 /E/ST, dated Peshawar the 11 /08/2015.

Encl: (11 Sheets).

Issue Final Show
cause notice



FINAL SHOW CAUSE NOTICE

138/E/PA
18-8-2015
3

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, Constable Sajjad No.5568 the final show cause notice.

The Enquiry Officer, SDPO City, after completion of enquiry proceedings, has recommended you for major punishment for you Constable Sajjad No.5568 as the charges/allegations leveled against you in the charge sheet/statement of allegations.

And whereas, the undersigned is satisfied that you Constable Sajjad No.5568 deserve the punishment in the light of the above said enquiry reports.

I, competent authority, have decided to impose upon you the penalty of minor/major punishment under Police Disciplinary Rules 1975 for misconduct.

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 as ex-parte action shall be taken against you.
3. The copy of the finding of the enquiry officer is enclosed.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

سجاد احمد خان

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 1666 /2016

Sabir Hussain Ex-IH constable No.5568
Capital City Police Peshawar.

(APPELLANT)

VERSUS

1. The Provincial Police Officer, KPK, Peshawar.
2. The Capital City Police, Officer, Peshawar.
3. The Superintendent of Police, Head Quarters, Peshawar.

S.W.F. Province
Service Tribunal
Diary No. 540
Dated 27-5-2016

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974 AGAINST THE ODER DATED 02.05.2016, WHEREBY THE DEPARTMENT APPEAL OF THE APPELLANT AGAINST THE ORDER DATED 14.03.2016, WHEREIN PENALTY OF DISMISSAL FROM SERVICE WAS IMPOSED UPON APPELLANT HAS BEEN REJECTED FOR NO GOOD GROUNDS.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 02.05.2016 AND 14.03.2016 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant joined the police force in the year 1996 and completed all his due training etc and also have good service record throughout and promoted to IH Constable with the passage of time.
2. That the appellant was falsely involved in a criminal case and lodged F.I.R No. 752 dated 19.07.2014 U/S 17(3) Haraba PS city Mardan against the appellant. **(Copy of FIR is attached as annexure-A).**

27/5/16

Re-submitted to -day
and filed.


20.6.16
Registrar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Appeal No. 666/2016

Date of Institution ... 27.05.2016

Date of Decision ... 27.06.2019

Sabir Hussain, Ex-IH constable no. 5568,
Capital City Police Peshawar.

... (Appellant)

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and two others.

... (Respondents)

MR. MUHAMMAD ASIF YOUSAFZAI,
Advocate

--- For appellant.

MR. MUHAMMAD JAN,
Deputy District Attorney

--- For respondents.

MR. AHMAD HASSAN,
MR. HUSSAIN SHAH

--- MEMBER(Executive)

--- MEMBER(Executive)

JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for

the parties heard and record perused.

ARGUMENTS

2. Learned counsel for the appellant argued that he joined the Police Department as Constable in 1986 and later on elevated to the rank of IHC. He was falsely implicated in a criminal case lodged through FIR no. 752 under section-17(3) Haraba PS City Mardan dated 19.07.2014. On the basis of above FIR, firstly, a show cause notice was issued to the appellant, to which he replied. Thereafter, formal disciplinary proceedings were initiated against the appellant. As he was in police custody so charge sheet and statement of allegations were not served on him. Enquiry proceedings were conducted at the back of the appellant.

Upon release from jail, he submitted reply to the charge sheet and statement of allegations. In this case three enquiries were conducted but all of them remained inconclusive. The moot point in all the above enquiries was to keep the departmental proceedings pending till the decision of the criminal case. However, these instructions were not followed by the competent authority and major penalty of dismissal from service was awarded to him vide impugned order dated 14.03.2016. He filed departmental appeal on 28.03.2016, which was turned down through order dated 02.05.2016, hence, the present service appeal.

3. Neither statements of witnesses were recorded by the enquiry officer nor opportunity of cross examination was afforded to the appellant. Charges leveled against him were not established during the enquiry proceedings. He was acquitted by Addl: Sessions Judge-III Mardan vide judgment dated 18.01.2018. Reliance was placed on case law reported as 2018 PLC (C.S)454, 2007 SCMR 192, 2002 SCMR 57, 2008 609 and judgment of this Tribunal in a case of identical nature rendered in service appeal no. 1025/17 decided on 03.07.2018.

4. On the other hand learned Deputy District Attorney argued that charge sheet and statement of allegations were served on him on 11.11.2014 but he submitted reply on 03.11.2015 without giving any justification for the inordinate delay caused in submission of reply. Objection raised by the learned counsel for the appellant in the present service appeal were not raised by the appellant during departmental proceedings. On the strength of case law reported as 2001 SCMR 2018, departmental and criminal proceedings can run parallel. He was awarded major penalty on the basis of departmental enquiry as his action constituted serious mis-conduct.

CONCLUSION

5. The record placed before us revealed that Professor (R) Fateh Muhammad Khan lodged FIR no.752 under Section-17(3) Haraba P.S Mardan dated 19.7.2014 against unknown accused. During investigation the complainant in his 2nd statement under Section-164 Cr.P.C nominated the appellant is co-accused. The respondents under Rule-5(3) of Police Rules 1975 served a show cause notice dated 14.10.2014 on the appellant to which he replied. The appellant was confined to Quarter guard vide D.D no. 11 dated 06.09.2014 and remained there for fifty eight days. That departmental proceedings were initiated against the appellant by serving charge sheet and statement of allegations. It would not be out of place to mention here that he was arrested by the police in November, 2014. As he was in jail therefore, charge sheet and statement of allegations were not served on the appellant. This fact has never been denied by the respondents. It also goes against the procedure laid down in Police Rules, 1975. He was released on bail on the orders of Peshawar High Court, Peshawar on 06.01.2015. Though, learned Deputy District Attorney held that appellant guilty of submitting reply to the charge sheet/statement of allegations after considerable delay but was unable to defend the respondents for dragging the enquiry proceedings for two years without any cogent reason.

6. In the present case the task of conducting departmental enquiry was assigned to SDPO Town. The matter was probed by the enquiry officer thrice as is evident from the report dated 03.08.2015, 25.08.2015 and 13.11.2015. One thing is common in all the reports that the enquiry officer recommended to keep the case pending till decision of the criminal case pending against the appellant in the

competent court of law. Opinion of DSP(Legal) was also obtained which is reproduced below:-

I have gone through the enquiry in hand, which reveals that the Enquiry Officer has not submitted clear findings/conclusion vide which they could be punished or exonerated. The E.O may collect evidence in light of which may forward a decisive conclusion for its disposal.

7. In the presence of above opinion, there is hardly any ambiguity that enquiry was not conducted in the mode and manner prescribed in the rules. We are afraid that in the absence of statement of the complainant the inquiry report in hand is worthless. During the course of enquiry the enquiry officer failed to establish the charge leveled against the appellant. It is pertinent to point out that on the basis of statement of Inspector/I.O Bashir Muhammad of CTD, Mardan, the appellant was held guilty of the charges leveled against him. However, this statement was not available on the case file nor produced by the respondents during the hearing of the appeal. The enquiry report replete with that deficiencies and shortcomings. Neither, statements of witnesses were recorded nor opportunity of cross examination was afforded to the appellant. It was a valid ground for rendering the entire proceedings as nullity in the eyes of law.

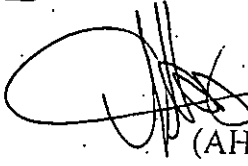
8. Perusal of para-7 & 8 of the enquiry report would reveal that the competent authority travelled beyond his jurisdiction/mandate and procedure laid down in Police Rules 1975. He was under obligation to decide this case according to Rule-5 of Police Rules-1975. This action on his part was patently illegal and unlawful. It further validated that stance of the appellant being innocent and also exposed arbitrary, whimsical, highhanded of the respondents in handling the departmental proceedings.

9. To set the record straight that the appellant after registration of FIR surrendered to law and was placed under suspension as per para-2 of the impugned order. He was entitled for subsistence allowance for the period, he remained under suspension. This action of the respondents was in line with CSR-194. Moreover, it further confirmed that the appellant never remained absconder after registration of FIR and this fact is not disputed.

10. The appellant was acquitted by the Addl: Sessions Judge-III Mardan vide order dated 18.01.2018. No doubt criminal and departmental proceedings can run parallel but in the present service appeal one thing is common that in both the cases no incriminating evidence was collected against the appellant. The only charge on the basis of which major penalty was awarded to the appellant is no more in the field. On the strength of case law relied upon by the learned counsel for the appellant there is ample room for setting aside the impugned order referred to above.

~~As a sequel to above, the appeal is accepted, impugned order dated 14.03.2016 and 02.05.2016 are set aside and the appellant is reinstated in service. He is entitled for subsistence allowance for the period under suspension. The intervening period shall be treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.~~


(HUSSAIN SHAH)
MEMBER


(AHMAD HASSAN)
MEMBER

ANNOUNCED
27.06.2019

قیمت
50 روپے



102543

ایڈویکٹ:

بار کونسل/ ایسوسی ایشن نمبر:

رابطہ نمبر: 03330264955

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: حکومت خیبر پختونخواہ

	دعویٰ:
	علت نمبر:
	مورخہ:
	جرم:
	تھانہ:

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ

آن مقام کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز ذیل صاحب کو راضی نامہ کر کے و تفریقات و فیصلہ بر حلف دینے جو اب دعویٰ اقبال دعویٰ اور درخواست از جرم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یا طرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل گرانٹی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ بلائے جائے تفریقات اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ با اختیار حاصل ہوں گے اور ان کا ساختہ پر داخلہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

الرقوم: 20
PESHAWAR BAR ASSOCIATION
KHAYBER PAKHTUNKHA

مقام کے لیے منظور ہے۔

Accepted By PO

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔