BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 645/2018

Date of institution ... 15.05.2018
Date of judgment ... 12.04.2019

Ali Shan S/o Toor Gul
R/o Kaghazi Hangu Road, Kohat. ... (Appellant)

VERSUS

1. Commandant FRP, Khyber Pakhtunkhwa, Peshawar.
2. Superintendent of Police, FRP, Kohat Range, Kohat.
3. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.

... (Respondents)

APPEAL UNDER SECTION-4 OF SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 07.11.2017 PASSED BY RESPONDENT NO. 2 BY WHICH MAJOR PENALTY OF "DISMISSAL FROM SERVICE", AND HIS ABSENCE PERIOD OF 05 DAYS IS TREATED AS ABSENCE FROM DUTY WITHOUT PAY, HAS BEEN AWARDED TO THE APPELLANT AND AGAINST THE ORDER DATED 18.04.2018 PASSED BY RESPONDENT NO. 1 WHEREIN THE REPRESENTATION/DEPARTMENTAL APPEAL FILED BY APPELLANT HAS BEEN DISMISSED.

Mr. Shahid Qayum Khattak, Advocate .. For appellant.
Mr. Riaz Ahmad Paindakheil, Assistant Advocate General .. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI .. MEMBER (JUDICIAL)
MR. AHMAD HASSAN .. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Counsel for the appellant present. Mr. Riaz Ahmad Paindakheil, Assistant Advocate General for the respondents present. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant was serving in Frontier Reserve Police as Constable. He was imposed major penalty of dismissal from service vide order dated 07.11.2017 on the allegation

of his involvement in criminal case vide FIR No. 265 dated 21.09.2017 under section 9-C CNSA/15AA P.S Usterzai District Kohat for having in possession 1100 gms "Chars" and 01 Pistol (30 Bore) with 17 rounds of the same bore without license as well as absence from duty with effect from 21.09.2017 to 26.09.2017 total absence period of 5 days. The appellant filed departmental appeal on 20.11.2017 but the same was rejected by the departmental authority vide order dated 18.04.2018 hence, the present service appeal on 15.05.2018.

3. Respondents were summoned who contested the appeal by filing of written reply/comments.

4. Learned counsel for the appellant contended that the appellant was serving in Frontier Reserve Police as Constable. It was further contended that the appellant was falsely involved in criminal case FIR No. 265 dated 21.09.2017 under section 9-C CNSA/15AA P.S Usterzai District Kohat. It was further contended that the appellant was hon'ble acquitted by the competent court vide detailed judgment dated 23.03.2018. It was further contended that neither charge sheet, statement of allegation was served upon the appellant nor proper inquiry was conducted nor opportunity of cross examination was provided to the appellant nor any final show-cause notice alongwith copy of inquiry report was issued to the appellant therefore, the impugned order of dismissal from service of the appellant is illegal and liable to be set-aside.

5. On the other hand, learned Assistant Advocate General for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was serving in Frontier Reserve Police but ~~the~~ he was involved in case FIR No. 265 dated 21.09.2017 under section 9-C CNSA/15AA P.S Usterzai District Kohat. It was further contended that the appellant also remained absent from duty for a period of five days. It was further contended that the appellant was proved guilty by the inquiry officer and on the basis of inquiry, the competent authority has rightly dismissed him from service.

6. Perusal of the record reveals that the appellant was serving in Frontier Reserve Police as Constable. He was involved in aforementioned criminal case and also allegedly remained absent for a period of five days therefore, departmental proceeding was initiated against the appellant and after conclusion of departmental proceeding, the appellant was imposed major penalty of dismissal from service vide order dated 07.11.2017 but the record reveals that the inquiry officer has recorded the statement of witnesses during inquiry proceeding namely Rashif S/o Yar Muhammad, Head Constable Zaheer Shah, Constable Mudassir, Constable Farman and Inspector Gul Janan. Copy of statement of those witnesses has been furnished by the representative of the respondent-department at the time of arguments and the same is placed on record, which shows that the inquiry officer has recorded their statements, the inquiry officer has himself put some question on some of the witnesses but has not provided opportunity of cross examination to the appellant therefore, the appellant was condemned unheard which has rendered the whole proceeding illegal and liable to be set-aside. As such, we partially accept the appeal, set-aside the impugned order, reinstate the appellant into service with the direction to the respondent-department to conduct de-novo inquiry including opportunity of cross examination to the appellant and also give final show-cause notice alongwith copy of inquiry report and opportunity of personal hearing and defence. The issue of back benefits will be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
12.04.2019

Muhammad Amin
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

(AHMAD HASSAN)
MEMBER

08.1.2019 Appellant in person and Addl. AG alongwith Ihsanullah, ASI for respondents present.

The representative of the respondents submitted written reply which is placed on file. To come up for arguments on 08.03.2019 before the D.B-II. The appellant may submit rejoinder, if so advised, within 15 days.

Chairman

08.03.2019 Appellant alongwith his counsel and Mr. Riaz Ahmad Paindakheil, Assistant AG for the respondents present. Learned counsel for the appellant submitted rejoinder and seeks adjournment for arguments. Adjourn. To come up for arguments on 12.04.2019 before D.B.

(M. AMIN KHAN KUNDI)
MEMBER

(M. HAMID MUGHAL)
MEMBER

12.04.2019 Counsel for the appellant present. Mr. Riaz Ahmad Paindakheil, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of three pages placed on file, we partially accept the appeal, set-aside the impugned order, reinstate the appellant into service with the direction to the respondent-department to conduct de-novo inquiry including opportunity of cross examination to the appellant and also give final show-cause notice alongwith copy of inquiry report and opportunity of personal hearing and defence. The issue of back benefits will be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
12.04.2019

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

(AHMAD HASSAN)
MEMBER

13.09.2018 Appellant Ali Shan in person present. Mr. Kabirullah Khattak, Addl: AG for respondents present. Written reply not submitted. The learned AAG requested for adjournment. Granted. Case to come up for written reply/comments on 01.10.2018 before S.B.

Chairman

01.10.2018 None present on behalf of the appellant. Mr. Kabirullah Khattak, Additional AG for the respondents present. Written reply not submitted. Learned Additional AG requested for further adjournment. Adjourned. To come up for written reply/comments on 19.11.2018 before S.B. Notice be also issued to appellant and his counsel for attendance for the date fixed.

(Muhammad Amin Khan Kundi)
Member

19.11.2018 Neither appellant nor his counsel present. Mr. Kabirullah Khattak, Additional AG on behalf of the respondents present. Representative of the respondent-department is not in attendance therefore, notice be issued to the respondents with the direction to direct the representative to attend the court and submit written reply on the next date positively. Adjourned. Case to come up for written reply/comments on 08.01.2019 before S.B. Notice be also issued to appellant and his counsel for attendance for the date fixed.

Muhammad Amin Khan Kundi
Member

13.07.2018 Appellant in person present and requested for adjournment. Adjourned. To come up for preliminary hearing on 01.08.2018 before S.B.

(Muhammad Amin Kundi)
Member

01.08.2018 Appellant Ali Shah in person alongwith his counsel Mr. Shahid Qayum Khattak, Advocate present and heard in limine.

Contends that the respondents imposed major punishment upon the appellant on the charge of his involvement in the narcotics case but in the said case he has been acquitted by the competent court of law.

Points raised need consideration. The appeal is admitted to full hearing, subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 13.09.2018 before S.B.

Appellant Deposited
Security & Process Fee

Chairman

Form-A

FORMOF ORDERSHEET

Court of_____

Case No. 645/2018

S.No.	Date of order proceedings	Order or other proceedings with **signature** of judge
1	2	3
1	15/05/2018	The appeal of Mr. Ali Shan presented today by Mr. Shahid Qayyum Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please. REGISTRAR 15/5/18
2-	18/05/18.	This case is entrusted to S. Bench for preliminary hearing to be put up there on 01/06/18. CHAIRMAN
	01.06.2018	Mr. Shahab Fahim Khattak junior to counsel for the appellant Mr. Shahid Qayum Khattak, Advocate present and requested for adjournment as senior counsel for the appellant is not in attendance. Granted. To come up for preliminary hearing on 13.07.2018 before the S.B. Chairman

BEFORE THE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 645 /2018

Ali Shan ..... Appellant

Versus

Commandant FRP and others.....Respondents

INDEX

Appellant

Through

Shahid Qayum Khattak
Advocate, High Court
Peshawar
Mob No. 0333-9195776

Dated: /05/2018

&

Shahab Faheem
Advocate

(1)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 645 /2018

Khyber Pakhtukhwa Service Tribunal
Diary No. 688
Dated 15-5-2018

Ali Shan S/o Toor Gul R/o Kaghazi Hangu Road, Kohat ..... Appellant

Versus

1. Commandant FRP, Khyber Pakhtunkhwa, Peshawar
2. Superintendent of Police, FRP, Kohat Range, Kohat
3. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar

.....Respondents

APPEAL UNDER SECTION 4 OF SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 07/11/2017 PASSED BY RESPONDENT NO. 2 BY WHICH MAJOR PENALTY OF "DISMISSAL FROM SERVICE", AND HIS ABSENCE PERIOD OF 05 DAYS IS TREATED AS ABSENCE FROM DUTY WITHOUT PAY, HAS BEEN AWARDED TO THE APPELLANT AND AGAINST THE ORDER 18/04/2018 PASSED BY RESPONDENT NO. 1 WHEREIN THE REPRESENTATION/ DEPARTMENTAL APPEAL FILED BY APPELLANT HAS BEEN DISMISSED.

Filed to-day
Registrar
15/5/18

PRAYER

By accepting this service appeal, the punishment awarded to the appellant through impugned orders dated 07/11/2017 and 18/04/2018 may graciously be set aside by declaring it illegal, void, unlawful, without authority, based on mala fide, void abinitio and thus not sustainable and the appellant is entitled for reinstatement with all back benefits of pay and service.

Respectfully Sheweth;

1. That appellant was serving as constable in FRP Platoon No. 109 District Kohat. On 21/09/2017 appellant while retuning back to PS from performing polo duty that one Mr. Rashif Muhammad his co-villager call him from P.S Astarzai telephonically and being his co-village he went to the said P.S wherein the SHO concerned with mala fide intention charged appellant in the criminal case instead of Mr. Rashif Muhammad. The Said Rashif Muhammad has recorded his statement before the I.O to that effect.

2. That respondent No. 2 issued a Charge Sheet alongwith Statement of Allegation and thereafter final show cause notice was issued which was properly replied but the same has not been taken into consideration and passed impugned order dated 07/11/2017 and appellant has been Dismissed from service.
(Copy of documents are attached as Annexure "A" "B" "C" & "D")

3. That appellant filed departmental appeal against the impugned order before worthy respondent No. 1 on 20 /11/2017 who vide order dated 18/04/2018 dismissed the same. (Copy of the Representation and order are attached as Annexure " E" & "F")

7. That the appellant feeling aggrieved from the impugned orders hence, filling this appeal on the following amongst other grounds inter alia

GROUNDS:

a. That impugned order dated 07/11/2017 and 18/04/2018 passed by respondents are illegal, unlawful, without authority, based on mala fide intention, against the nature justice, violative of the Constitution and Service Law and equally with out jurisdiction, hence, the same are liable to be set aside in the best interest of justice.

b. That both the impugned orders passed by respondents are very much harsh, without any evidence based on surmises & conjectures and is equally against the principle of natural justice.

c. That respondent No. 2 has not taken into consideration the detail and plausible reply to the show cause notice but brushed aside it without any reason, grounds and without conducting any legal enquiry. Furthermore respondent No. 2 has not adopted proper procedure and passed impugned order which is liable to be set aside.

d. That no regular inquiry has been conducted for confirming the allegation and scrutinizing the conduct of appellant with reference to the charges therefore, the very foundation of the impugned order was baseless and groundless and not sustainable under the law and rules.

e. That the allegation leveled against the appellant are baseless, without any proof and cogent evidence and is based on malafide intention and are concocted one. No proper opportunity of personal hearing has been provided to appellant. Respondents have not adopted proper procedure nor any statement of any witness has been recorded.

f. That previous unblemished record of appellant has not been taken into consideration. Further more mere charge in criminal case is no ground for removal from service, until and unless the charge has been proved against appellant.

g. That the trial of the criminal case is still pending adjudication before the competent Court of law and pre-trail conviction order of removal from service is not justified.

h. That both the impugned orders have been passed in violation of law and rules of disciplinary proceedings and principles of natural justice. The authority wrongly and malafidly based the impugned orders on assessments and speculations, therefore the impugned order is bad in law.

i. That the disciplinary proceedings against appellant suffered from gross infirmities, illegalities and irregularities as no evidence what so ever has been produce or cited in the respondents nor any witness has been examined.

j. That major penalty of dismissal from service has been passed against appellant without conducting any regular inquiry and without examining any witness in support of the charges. Similarly no documentary evidence was brought on record to substantiate the allegations leveled against appellant, therefore, the impugned orders based on assessment is bad in law and has been passed in violation of settled principles governing the disciplinary action against the Police Officers.

k. That respondent No. 1 has also not adopted proper procedure while rejecting the same.

l. That the learned respondent has not taken into consideration that the rules under which the appellant has been charged are not applicable on him which clearly shows that the act of respondent is totally based on discrimination undue victimization beside that the impugned order is suffered from gross infirmities, illegality , based on no evidence totally contradictory to the enquiry and two penalties has been awarded to appellant.

m. That the entire service record of the appellant is unblemished therefore, the impugned order would be a black stigma on the clean service career of the appellant, therefore, the same is liable to be set aside.

It is, therefore, most humbly prayed that on accepting this service appeal, the punishment awarded to the appellant through impugned orders dated 07/11/2017 and 18/04/2018 may graciously be set aside by declaring it illegal, void, unlawful, without authority, based on mala fide, void abinitio and thus not sustainable and the appellant is entitled for reinstatement with all back benefits of pay and service.

Any other relief not specifically prayed for but deem appropriate in the circumstances of the case may also be granted.

Appellant

Through

Shahid Qayum Khattak
Advocate, High Court
Peshawar

Dated: /05/2018

&

Shahab Faheem
Advocate

Certified that as per instruction of my client no such appeal has been filed before this Hon'ble Forum.

Advocate

Affidavit

I, Ali Shan S/o Toor Gul R/o Kaghazi Hangu Road, Kohat do hereby solemnly affirm and declare on Oath that the contents of the above appeal are true and correct to the best of my knowledge and belief and nothing has been kept secret from this Hon'ble Tribunal.

Deponent

0 7 MAY 2018

ATTESTED

Hafiz Muhammad Sadiq Narrani
Oath
Commissioner
Advocate High Court Peshawar

(6)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. /2018

Ali Shan .... Appellant

Versus

Commandant FRP and others.....Respondents

ADDRESSES OF THE PARTIES

APPELLANT

Ali Shan S/o Toor Gul R/o Kaghazi Hangu Road,
Kohat

RESPONDENTS

1. Commandant FRP, Khyber Pakhtunkhwa, Peshawar
2. Superintendent of Police, FRP, Kohat Range, Kohat
3. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar

Appellant

Through

Shahid Qayum Khattak
Advocate, High Court
Peshawar

Dated: /05/2018

No. 437 /PA/FRP

(7)

Annexure-A
PA/CH Sheet-2

Dated 26 / 09 /2017

CHARGE SHEET

I) I, Mian Imtiaz Gul, SP FRP Kohat as competent authority, am of the opinion that you Constable Ali Shan No. 1109 of FRP Platoon No. 109 District Kohat have committed the following acts/omission as defined in Rule 2 (iii) of Police Rules 1975.

a) As intimated vide SP Investigation Kohat office letter No. 5196/GC dated 25.09.2017, you were charged/arrested vide case FIR No. 265 dated 21.09.2017 U/S 9-C CNSA/15AA P.S Usterzai District Kohat for having in your possession 1100 gms "Chars" and 01 Pistol (30 Bore) with 17 rounds of the same bore without licence. Secondly you also remained absent vide DD No. 04 dated 21.09.2017 till date. Previously you had remained absent for 16 days and were awarded punishment for the same but you did not mend your trend. Thus you have committed a gross "Misconduct" as defined in Rule 2 (iii) of Police Rules 1975.

II). By reason of the above, you seem to be guilty as sufficient materials is placed before the undersigned, therefore it is decided to proceed against you in general police proceeding.

III). You are; therefore, required to submit your written reply within 07 days of the receipt of this charge sheet to the Enquiry Officer.

IV). Your written reply, if any, should reach the Enquiry Officer within specific period, failing which it shall be presumed that you have no defense to offer and in case, ex-parte action shall follow against you.

V). Intimate as to whether you desire to be heard in person or not?

VI) A statement of allegation is enclosed.

Attested

Shan

(Mian Imtiaz Gul)
Superintendent of Police, FRP
Kohat Range, Kohat

DISCIPLINARY ACTION

I, Mian Imtiaz Gul, SP FRP Kohat as competent authority, am of the opinion that you Constable Ali Shan No. 1109 of FRP Platoon No. 109 District Kohat, have committed the following acts/omission as defined in Rule 2 (iii) of Police Rules 1975.

STATEMENT OF ALLEGATION

1. a) As intimated vide SP Investigation Kohat office letter No. 5196/GC dated 25.09.2017, you were charged/arrested vide case FIR No. 265 dated 21.09.2017 U/S 9-C CNSA/15AA P.S Usterzai District Kohat for having in your possession 1100 gms "Chars" and 01 Pistol (30 Bore) with 17 rounds of the same bore without licence. Secondly you also remained absent vide DD No. 04 dated 21.09.2017 till date. Previously you had remained absent for 16 days and were awarded punishment for the same but you did not mend your trend. Thus you have committed a gross "Misconduct" as defined in Rule 2 (iii) of Police Rules 1975 and have rendered yourself liable to be proceeded against departmentally.

2. For the purpose of scrutinize the conduct of said Constable with reference to the above allegations, SI Noor Ali LO FRP Kohat is appointed as enquiry officer.

3. The enquiry officer shall conduct proceeding in accordance with provision of Police Rules 1975 and shall provide reasonable opportunity of defense and hearing to the accused official, record it is finding and make with twenty five (25) days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused official.

4. The delinquent official shall join the proceeding on the date, time and place fixed by the officer.

(Mian Imtiaz Gul)
Superintendent of Police, FRP
Kohat Range, Kohat

Attested
Ali Shan

FINAL SHOW CAUSE NOTICE

Annexure – B

Whereas you Constable Ali Shan No. 1109/FRP, while posted in FRP Platoon No. 109 deployed at District Kohat as intimated vide SP Investigation Kohat office letter No. 5196/GC dated 25.09.2017, you were charged/arrested vide case FIR No. 265 dated 21.09.2017 U/S 9-C CNSA/15AA P.S Usterzai District Kohat for having in your possession 1100 gms "Chars" and 01 Pistol (30 Bore) with 17 rounds of the same bore without licence. Secondly you also remained absent w.e.f 21.09.2017 vide DD No. 04 dated 21.09.2017 to 26.09.2017 (total absence period is 05 days). Previously you had remained absent for 16 days and were awarded punishment for the same but you did not mend your trend.

Accordingly departmental Inquiry was conducted against you. The E.O in his finding report has found you guilty of the charges leveled against you and has recommended you for major punishment.

NOW, THEREFORE, I, Mian Imtiaz Gul, Superintendent of Police, FRP Kohat Range, Kohat in exercise of the powers vested in me under the Khyber Pakhtunkhwa Police Rules – 1975 hereby call upon you Constable Ali Shan No. 1109/FRP, through this Final Show Cause Notice to explain your position within 07 days of the receipt of this notice as to why you should not be awarded one or more Major or Minor Punishment as mentioned in Rule (4) of KP Police Rules 1975. In case of non receipt of reply within the stipulated period, an ex-parte action will be taken against you. Also state in writing as to whether you desire to be heard in person or not. Copy of finding report of Enquiry Officer is enclosed herewith.

No. 461 /PA

Dated 24/10 /2017

Attested

Ali Shan

(Mian Imtiaz Gul)
Superintendent of Police, FRP,
Kohat Range, Kohat

(10)

Annexure - C

بحضور جناب ایس پی صاحب ایف آر پی کوھاٹ رینج کوھاٹ

عنوان: جواب فائنل شوکاز نوٹس

جناب عالی!

بحوالہ فائنل شوکاز نوٹس نمبری 46/PA مورخہ 24-10-2017 عرض ہے۔ کہ بروز وقوعہ میں کمال خیل میں پولیو ڈیوٹی سرانجام دینے کے بعد بطرف پولیس لائن حاضری کی رپورٹ کرنے آ رہا تھا۔ کہ راستے میں راشف محمد عرف یاسر سکنہ دیہہ ام نے فون کر کے مجھے تھانہ استرزئی آنے کا کہا۔ چنانچہ راشف محمد سے تھانہ استرزئی میں ملنے اور بعد میں رپورٹ حاضری کرنے کا سوچ کر میں تھانہ استرزئی گیا۔ جہاں راشف کو حوالات میں بند پایا۔ دریافت پر بتایا۔ کہ SHO صاحب نے اس کے قبضہ سے چرس و پستول برآمد کر کے بند بہ حوالات تھانہ کیا ہے۔

SHO صاحب نے مجھے دیکھ کر راشف محمد کو حوالات سے باہر کرنے اور مجھے حوالات میں بند کرنے کا حکم دے کر میرے خلاف پرچہ کٹوایا۔ اس وقت تک کوئی مقدمہ درج رجسٹر نہ ہوا تھا۔ SHO صاحب کے ساتھ پہلے سے رنجش تھی۔ جس کی وجہ سے موقع پر غنیمت جان کر مجھے ناجائز طور پر مقدمہ میں ملوث کر کے راشف محمد کی بجائے مجھے ملزم ٹھہرایا۔ بدیں وجہ مورخہ 21-09-2017 کو میں اپنی حاضری کی رپورٹ پولیس لائن میں نہ کر سکا۔

راشف محمد نے رہائی پانے کے بعد تفتیشی افسر کو حلفیہ بیان حوالہ کر کے چرس و پستول برآمد شدہ کو اپنی ملکیت ظاہر کیا۔ تفتیشی افسر نے بھی اپنی تفتیش میں واضح طور پر تحریر کیا ہے۔ کہ مقدمہ علت نمبر 265 موورہ 21-09-2017 جرم 9C CNSA/15AA کے اندراج کے وقت راشف محمد مذکورہ بالا تھانہ استرزئی میں موجود تھا۔ انکوائری آفیسر نے بھی اپنی رپورٹ میں اس حقیقت کا اظہار کیا ہے۔ مزید یہ کہ راشف محمد کی تھانہ استرزئی کے حوالات میں بندش فوٹو گرافس سے بھی واضح ہے۔ جو کہ راشف محمد نے حوالہ تفتیشی افسر بعد رہائی کیے ہیں۔

مجھے بدنیتی کی بناء پر مقدمہ بالا میں ملوث کیا گیا ہے۔ مزید یہ کہ انکوائری افسر نے میرے خلاف موصولہ گمنام ڈائری میں لگائے گئے الزامات کی بنیاد پر مجھے چرس فروخت کرنے کا مورد الزام ٹھہرایا ہے۔ لیکن اندریں بارہ نہ تو کسی غیر جانبدار، لاتعلق شخص کا بیان لیا گیا ہے۔ اور نہ ہی میرے خلاف کوئی دستاویزی شہادت فراہم کر چکا ہے۔

مزید یہ کہ بروز وقوعہ میں جائے وقوعہ پر موجود ہی نہ تھا۔ تو مجھ سے برآمدگی ممنوعہ اشیاء کیسے ہوئی۔ جملہ گواہان استغاثہ SHO کے ماتحت ہونے کی وجہ سے اس کے زیر اثر تھے۔ لہٰذا انہوں نے میرے خلاف SHO صاحب تھانہ استرزئی کے کہنے پر گواہی دی ہے۔ میں ناکردہ گناہ ہوں۔ مجھے قربانی کا بکرا ناجائز طور پر بنایا گیا ہے۔

جہاں تک سابقہ غیر حاضری کا تعلق ہے۔ اندریں بارہ عرض ہے کہ مجھے اس بناء پر سزا دی گئی ہے۔ دوبارہ اسی موضوع پر سزا یابی قرین انصاف نہ ہوگی۔

لہٰذا استدعا ہے کہ میرے خلاف محکمانہ کارروائی داخل دفتر کیے جانے کا حکم صادر فرمائیں۔

Attested

مورخہ 03-11-2017

العارض

کنسٹیبل علی شان نمبر 1109 ایف آر پی

پلاٹون نمبر 109 حال FRP لائن کوھاٹ

Ali Shan

(11)

Annexure - D

ORDER

My this order will dispose off departmental enquiry conducted against accused Constable Ali Shan No. 1109/FRP Platoon No. 109, under Khyber Pakhtunkhwa Police Disciplinary Rules 1975 (Amended in 2014).

The allegations against accused official as intimated by SP Investigation Kohat vide his office letter No. 5196/GC dated 25.09.2017, are that he, while posted in platoon No.109 deployed at District Police Lines Kohat, was charged and arrested in case FIR No. 265 dated 21.09.2017 U/S 9-C CNSA/15AA PS Usterzai District Kohat for having in his possession 1100 gms "Charas" and 01 pistol (30 Bore) with 17 rounds of the same bore without license. Secondly he also remained absent vide DD No. 04 dated 21.09.2017 to 26.09.2017 (total absence period is 05 days). In this regard, proper departmental enquiry was conducted against him through LO FRP Kohat who, in his finding found him guilty of the charges levelled against him and further recommended him to be removed from service. In the light of findings of E.O, he was issued Final Show Cause Notice vide this office No. 461/PA dated 24.10.2017 which was received by him personally on 25.10.2017. In response to which he submitted reply where in he denied the allegation levelled against him and contended that the said "Charas" was not recovered from him rather the same was recovered from his friend Rashid Muhammad who had submitted an affidavit to this effect before the I.O, copy of which was produced by accused official and placed on record.

He was called in OR and heard in person. During personal hearing he repeated the same contention which was given by him in his reply to final show cause notice but he failed to produce any un-rebuttable evidence before the undersigned as well as Enquiry Officer to prove his innocence and false involvement in the present case. It is worth mentioning here that on 21.09.2017 after performing Polio Eradication duty he did not make arrival report in his platoon and thus his absence report was recorded in Roznamcha. Thereafter he was apprehended in the present case.

His Service record perused which revealed that he was appointed as Constable on 14.09.2015. There are 08 bad entries against him with 01 good entry in his credit. As such he has less than 03 years service. After going through the enquiry papers it is evident that the accused official has been found involved in the said case and allegation has been established against him. Moreover an anonymous complaint regarding his involvement in criminal activites was also received in this office during course of departmental enquiry against him which was inquired into by LO and placed on record. It indicates that he does not possess good moral character. Retention of such official in the department will bring bad name for the whole department.

Therefore, I, Mian Imtiaz Gul SP FRP Kohat Range, Kohat in exercise of powers vest in me under Rule 5(5) of Khyber Pakhtunkhwa Police Rules-1975 (Amended in 2014), award him a major punishment of "Dismissal From Service" and his absence period w.e.f 21.09.2017 to 26.09.2017 (05 days) is treated as absence from duty i.e. without pay.

OB No. 795

(Mian Imtiaz Gul)
Superintendent of Police, FRP,
Kohat Range, Kohat.

Dated 07/11/2017

Copy of above is submitted for favour of information to the:-

1. Worthy Commandant FRP, Khyber Pakhtunkhwa Peshawar for favour of information in continuation to this office order Endst: No. 718 dated 26.09.2017, please.
2. Pay Officer
3. Reader
4. SRC
5. OHC

For necessary action and copy of order be served upon him

(Mian Imtiaz Gul)
Superintendent of Police, FRP,
Kohat Range, Kohat.

Attested

Ali Shan

Annexure-E

(12)

BEFORE THE COMMANDANT FRP, KHYBER PAKHTUNKHWA PESHAWAR

Subject: APPEAL AGAINST THE ORDER OF SP/FRP KOHAT RANGE KOHAT BEARING OB NO. 795 DATED 07-11-2017 WHEREBY THE APPELLANT EX-CONSTABLE ALI SHAH NO. 1109/FRP PLATOON NO. 109 WAS DISMISSED FROM SERVICE AND THE PERIOD OF ABSENCE W.E.F: 21-092017 TO 26-09-2017 (05 DAYS) TREATED WITHOUT PAY.

Respectfully Sheweth:

With veneration, the appellant prefers the instant appeal on the basis of the following facts and grounds for your kind consideration:

FACTS:

Briefly stated allegations against the appellant were that he was arrested by Mr. Gul Janan SHO P.S Usterzai Kohat vide case FIR No. 295 dated 21-09-2017 U/S 9C CNSA / 15AA for being found in possession of 1100 grams charras and an unlicensed pistol with 17 rounds of 30 bore.

Secondly that the appellant remained absent from duty w.e.f 21-09-2017 to 26-09-2017.

On the above allegations, the appellant was proceeded against departmentally which culminated in the dismissal of the appellant and the period of five days absence from duty treated without pay by SP / FRP Kohat Range Kohat vide the impugned order. Hence this appeal.

Attested

Ali Shah

GROUNDS:

a. That the allegations leveled against the appellant are baseless, incorrect and concocted. The actual facts have been twisted by Gul Janan SHO P.S Usterzai. The real facts are that the appellant was deputed for polio education duty at Kamal Khel, Kohat the appellant had proceeded for the above mentioned duty from police lines Kohat vide naqalmad No. 30 dated 17-09-2017 (copy enclosed)

After performing the duty, the appellant was on his way to police lines Kohat when he received a call from Rashif S/o Yar Muhammad the appellant's co-villager to reach P.S Usterzai since he was detained by Gul Janan SHO P.O Usterzai for being found in possession of narcotics and a pistol with rounds licensed in his father name. being co-villager I went to P.O Usterzai to pacify hm and then to come back to police lines Kohat for entering my arrival report in the D.D on 21-09-2017 Reaching there, I found the siad Rashif behind the bars. The said Rashif condemned SHO Gul Janan and used harsh words in respect of the SHO present in the vicinity. The SHO snubbed the appellant for coming after Rashif. On being responded that the appellant had committed no sin by visiting Rashif, the SHO got annoyed and told the appellant that he would teach a lesson to the appellant. Thereafter the SHO released Rashif and registered the case against the appellant to satisfy his ego. The photographs showing Rashif behind the bars in P.S Usterzai are enclosed herewith.

b. That the appellant had performed polio enductaion duty till 18;00 hours on 21-09-2017 at Kamal Khel and reached Kohat at 19:00 hours after covering distance of 35/40 KM whereas the time of occurrence mentioned vide FIR No 295 dated 21-09-207 U/S 9C CNSA / 15 AA P.S Usterzai

Attested

Khan

was 18:30 hours. The spot mentioned in the FIR was Kacha road leading to Sepah which was about 30 K from Kohat. How such a long distance (about 70 KM) from Kamal Khel to the spot could be covered in 30 minutes when appellant had no conveyance at his disposal. The appellant was made an accused in the case by SHO Gul Janan when the appellant started reasoning with SHO in PS Usterzai.

c. That Rashif named above had submitted an affidavit to the investigation officer of the above mentioned criminal case admitting therein that the narcotics and pistol etc. were recovered from his possession and the appellant was falsely implicated in the criminal case by SHO Gul Janan. The enquiry officer had also mentioned the fact of presentation of affidavit by Rashif to the investigation officer, vide his finding report but failed to summon and examine him during the enquiry proceedings. This established the fact that the departmental enquiry was not conducted properly and fairly by the enquiry officer. Copy of the affidavit submitted by Rashif is enclosed.

d. That the competent authority i.e. SP / FRP Kohat Range was also influenced by an anonymous dairy submitted against the appellant by unknown person containing false allegation against the appellant. No stance of the involvement of the appellant in any immoral activity or registeration of any case in the past against the appellant was quoted therein. The submission of such anonymous complaint during the enquiry proceedings was meaningful intended to harm the appellant. Al least someone should have been examined in supprt of the versioin of the anonymous scriber of the complaint or any documentary evidence brought on record by the enquiry officer.

e. As far as 05 days absence from duty was concerned, it was due to the arrest of the appellant w.e.f. 21-09-2017 to 26-

Attested

09-2017 during which period the appellant remained in jail and could not make his arrival report in the DD on 21-09-2017 after performing the duty at Kamal Khel. As such the absence of the appellant from duty was not intentional deliberate.

Prayer:

In view of the above submission, it is prayed that by accepting the instant appeal, the impugned order may be set-aside and the appellant re-instated in service from the date of his dismissal. The appellant may also be heard in person please.

Dated: 20-11-2017

Yours Obediently

Ex-Constable Ali Shan S/o Toor Gul
R/o Kaghazai, P.S Cantt Kohat

Attested

Annxure-F

(16)

ORDER

This order will dispose of the departmental appeal preferred by Ex- constable Ali Shan No. 1109 of FRP Kohat Range against the order of dismissal from service passed by SP FRP Kohat Range, Kohat vide Order OB No. 795, dated 07.11.2017. The applicant was proceeded against on the allegations that he while posted in Platoon No. 109 deployed at District Police Line Kohat, was charged and arrested in case FIR No. 265 dated 21.09.2017 U/S 9-C CNSA/15AA PS Usterzai District Kohat for having in his possession 1100 grams "Chars" and 01 Pistol (30 Bore) with 17 rounds of the same bore without license. Besides, he also remained absent from duty vide DD report No. 04 dated 21.09.2017 till to 26.09.2017 for a period of 05 days.

In this regard, proper departmental enquiry initiated against him through Line Officer FRP Kohat Range. After completion of enquiry the Enquiry Officer submitted his findings, wherein he found him guilty of the charges leveled against him and recommended for major punishment of removal from service.

In the light of findings of Enquiry Officer, he was issued Final Show Cause Notice, to which he replied, wherein he denied the allegation leveled against him and contended that the "Chars" was not recovered from his possession rather the same was recovered form his friend namely Rashid Muhammad.

He was called in OR and heard in person by the competent authority. During the course of personal hearing he repeated the same contention which was given by him in his reply to Final Show Cause Notice, but he failed to produce any un-rebuttable evidence before the competent authority as well as Enquiry Officer to prove his innocence.

In the light of recommendation of Enquiry Officer and other material available on record, he was awarded major punishment of dismissal from service vide office OB No. 795, dated 07.11.2017.

Feeling aggrieved against the impugned order of SP FRP Kohat Range, Kohat, the applicant preferred the instant appeal. The applicant was summoned and heard in person in Orderly Room.

During the course of personal hearing the appellant contented that he is innocent, while the said criminal case has malafidely registered against him. In this regard a denovo (impartial) enquiry was conducted against the applicant through DSP FRP HQ Peshawar to dig out the actual facts.

After conducting denovo enquiry DSP FRP HQ (Enquiry Officer) submitted his findings, wherein he reported that during the course of denovo enquiry the statements of the eye witnesses i.e SHO Mr. Gul Janan alongwith other Police Party were recorded who present on the spot and recovered the Chars from the possession of the applicant. According to the statements of Police Party concerned the said Chars was recovered from the possession of the applicant. So it is abundantly clear that the delinquent official has been found involved in a criminal case with the intent of moral turpitude.

Based on the findings narrated above, I, **Muhammad Ijaz Khan PSP** Commandant FRP Khyber Pakhtunkhwa, Peshawar, being the competent authority has found no substance in the appeal, therefore, the same is rejected and filed being meritless.

Order Announced.

Commandant
Frontier Reserve Police
Khyber Pakhtunkhwa, Peshawar

No 5791-92/EC, dated Peshawar the 18/4/2018.

Copy of above is forwarded for information and necessary action to the

1. SP FRP Kohat Range, Kohat. His service record alongwith D file sent herewith.
2. Ex Ali Shan No. 1109 S/O Toor Gul, village Kaghazai, Police Station Cantt District Kohat.

Attested

Shan

(17)

پولیس سٹیشن جرنلم نمبر ۳

ابتدائی اطلاع رپورٹ

کونٹر

ذیلی) ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ ۱۵ مجموعہ ضابطہ فوجداری

تھانہ استرزئی - ضلع کوہاٹ

نمبر 265 تاریخ و وقت وقوعہ 17/9/21، وقت 18:30 بجے

تاریخ و وقت رپورٹ	17/9/21، وقت 19:00 بجے
روانگی تاریخ و وقت	17/9/21، وقت 19:45 بجے
اطلاع دہندہ و مستغیث	انسپکٹر گل جہان SHO تھانہ استرزئی - 0332-9866722 - 1301-1615662-5
کیفیت جرم (معہ دفعہ) حال اگر کچھ لیا گیا ہو	9CCNSA/15AA (چرس 1150 گرام) کیتول، چارجر، کارتوس
وقوعہ فاصلہ تھانہ سے اور سمت	ملزم کا علاقہ غیر تاندرہ ڈیرہ سے ملحقہ ڈیرہ تقریباً 2 کلومیٹر
نام و سکونت ملزم	علی شان ولد طورگل کلنہ کا رہنے والا - 16301-7669150-7
وجوہ تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو	برسبیل مراسلہ درج کیا جاتا ہے -
تھانہ سے روانگی کی تاریخ و وقت	برسبیل ڈاک

ابتدائی اطلاع نیچے درج کرو ایک تحریری مراسلہ موصول ہوا کہ محمد جہان SHO تھانہ استرزئی بدست لنبردار فرمان 95 موصول ہو کر درج ذیل ہے - تحریر کنندہ ہذا حسب کنٹیلان طبیر 95 HC ایلیٹ فورس، مدثر امان 382، فرمان 95 دم دراز لوئر لیسین تھانہ ہذا ناکہ بندی کیلئے موجود تھا - کہ بوقت بالا ایک جوان جانب سیاہ علاقہ غیر آکر جنگلہ پار کر کھڑا ہوا کہ جس کے ہاتھ میں ایک بلیک سٹک لفافہ برنگ سفید پکڑا ہوا گرد و نواح دیکھ کر چھوڑ کر بھاگنے لگا 1150 گرام نکلی - جو بدیں وجہ ملزم کو لینے پر مجبور ہوا کاس جری کھول کر جس میں سے ایک عدد کیتول 30 بور نمبر A4001 جس میں سینڈ ڈبہ 17 عدد کارتوس 30 بور برآمد کر کے چرس گرد و نواح [illegible] گرام [illegible] بنا بالا [illegible] علیشان ولد طورگل [illegible] کا رہنے والا [illegible] حسب ضابطہ کارروائی کر کے مراسلہ بدست فرمان 95 ارسال تھانہ ہے - لہذا مقدمہ درج رجسٹر تفتیش حوالہ KBI شامل ہوئے - دستخط انگریزی انسپکٹر گل جہان تھانہ استرزئی - 17-9-21 - کارروائی تھانہ آمدہ مراسلہ حرف بحرف درج کر کے مجرم بالا چالان ہو کر لنبردار رجسٹر مراسلہ لنبردار تفتیش حوالہ KBI [illegible]

Attested

Sam

(18)

حکومت پاکستان
قومی شناختی کارڈ
14301-3723932-3
علی ارشد حکیم
10/09/1990

Rupees 75 ۷۵ روپیہ

بیان حلفی

میں راشد محمود ولد بار محمد ساکن سمانہ غزنی کوہاٹ سابق
حلفیہ بیان کرتا ہوں کہ مقدمہ علت نمبر 265 مورخہ 21/9/17
جرم 9CCNSA/15AA تھانہ اسٹرزئی کوہاٹ میں مقدمہ
کے ملزمان اور مدعی مسمی ساکن سمانہ غزنی کوہاٹ کے خلاف
تھانہ اسٹرزئی پولیس کے SHO نے جو مقدمہ درج
کیا تھا جس میں 30 بور پستول نمبر A4001
میرے والد صاحب بار محمد صاحب کے ساکن سمانہ غزنی کوہاٹ
کے نام پر لائسنس یافتہ ہے۔ جس کے 30 بور پستول
1100 گرام چرس برآمد ہوئی تھی۔ ملزمان چونکہ
پولیس کے رشتہ دار ہیں۔ جن کا علم ہونے پر SHO صاحب
پر دباؤ ڈالا گیا تلخ کلامی ہوئی تھی SHO صاحب
نے موقع سے ملزمان کو گرفتار کرنے کے بجائے بے دخلی
دے کر ملزمان سے مقدمہ سے رہائی کر دیا

نوٹ: میں SHO تھانہ اسٹرزئی نے میرا لائسنس
غیر قانونی طور پر منسوخ کروایا۔ تحقیق کیا جائے اور
ملزمان کو قرار واقعی سزا دی جائے۔

Attested

سی سی رشف گلہ دیہ یار گلہ تھانہ غزنی کوہاٹ
اسپتال کا فرد کہ ہمیں کم 1100 گرام چینی
ہر ماہ 30 پرسنٹ سکول حدیث زاہد صاحب کا تھا۔
اور ہمیں نے جعلی پیپر اور انگوٹھے لگا کر
تقرری حاصل کی یہ بات رفیق رشف کے علم میں ہے
سرکاری زمین پر قبضہ کر کے حصول منافع
حقداران کو ان کے جائز حقوق سے محروم
رکھنے کی شکایت ہے۔

رشف گلہ
14301-3723052.3

14301-3332485.1
محمد جعفر ولد فیروز خان
تھانہ غزنی کوہاٹ

محمد ظہیر اللہ ولد ایوب خان
تھانہ غزنی کوہاٹ
14301-5585362.3

سٹرکچر کیا گیا ہے
رجسٹرڈ
0333-9614776

25.9.17.

SHER HAIDAR
Advocate
Oath Commissioner
Distt. Courts Kohat
25/9/17

بیان حلفی رشف گلہ دیہ یار گلہ تھانہ غزنی کوہاٹ
25/9/17

(18) (19)

BEFORE THE SUPERINTENDENT OF POLICE, FRP KOHAT REGION KOHAT

Subject: REPLY OF THE CHARGE SHEET

Respected Sir,

Kindly with reference to the charge sheet bearing No. 437/PA/FRP dated 26-09-2017, it is submitted that I have been falsely implicated in the case FIR No. 265 dated 21-09-2017 U/S 9C CNSA / 15AA P.S Usterzai by Mr. Gul Janan SHO P.S Usterzai on account of personal grudge. The fact of the matter is that on the relevant day, Rashif Muhammad S/o Yar Muhammad R/o Khadizai, Kohat was apprehended by the said SHO for being found in possession of Narcotics and a pistol. During detention he was asked by the SHO if he knew some policeman of Kaghazai and the said Rashif Muhammad named me. I was requested by Rashif Muhammad to visit him in the PS Usterzai. I received call from Rashif when I was proceeding form Kamal Khel to Kohat after performing Polio duty.

Being my co-villager, I went to PS Usterzai and found Rashif Muhammad behind the bars in the lock-up. The photo is enclosed. By then, no case was registered. The SHO on account of personal grudges, involved me in the case instead of the said Rashif Muhammad and released the said Rashif.

It is worth mentioning that subsequently Rashif produced an affidavit to the SHO stating therein hat the seized articles were recovered from his possession and nothing was recovered from the possession of constable Ali Shan but the affidavit presented by Rashif Muhammad was not entertained by Gul Janan SHO P.S Usterzai. The said Rashif still claims the recovery of the items from his possession. He also claimed that the seized pistol was licensed in the name of his father.

The actual facts could be gathered if Rashif Muhammad is personally heard in the matter. Copy of the affidavit presented to SHO P.S Usterzai by Rashif Muhammad is enclosed herewith for perusal.

It would be proper if the departmental proceeding are kept pending till the decision of the criminal case against me.

Yours Obediently

Constable Ali Shan
No. 1109
FRP Platoon No. 109, Kohat

Dated: 04-10-2017

Attested

BEFORE THE SERVICE TRIBUNAL PESHAWAR.

SERVICE APPEAL NO. 645/2018

Ex Constable Ali Shan .....Petitioner.

VERSUS

1. ***Addl: IGP/Commandant FRP Khyber Pakhtunkhwa Peshawar & Others.....Respondents***

S. NO	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGES
1.	Para-wise Comments		03
2.	Charge sheet	A	01
3.	Final showcase notice	B	01
4.	Enquiry report	C	02
Total			07

RESPONDENTS

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 645/2018.

Ali Shan Ex-constable No. 1109 FRP, Kohat.....Appellant

VERSUS

1. Commandant, Frontier Reserve Police
   Khyber Pakhtunkhwa, Peshawar.
2. Superintendent of Police,
   FRP Kohat Range, Kohat.
3. Government Khyber Pakhtunkhwa, Through
   Chief Secretary, Peshawar.....Respondents

PRELIMINARY OBJECTIONS

1. That the appeal is badly time barred.
2. That the appeal is not maintainable in the present form.
3. That the appellant is stopped by his own conduct to file the instant appeal.
4. That the appellant has no cause of action to file the instant appeal.
5. That the appellant has not come to this Honorable Court with clean hands.
6. That the appellant is trying to concealed material facts from this Honorable Tribunal.
7. That the appeal has not been based on facts.

WRITTEN REPLY ON BEHALF OF RESPONDENTS

RESPECTED SHEWETH:-

FACTS:-

1. Incorrect, as the SP Investigation Kohat intimated vide his office letter No. 5196/GC, dated 25.09.2017 that the appellant while posted in platoon No. 109 deployed at District Police Line Kohat, was charged and arrested in criminal case vide FIR No. 265 dated 21.09.2017 U/S 9-C CNSA/15AA PS Usterzai District Kohat for having in his possession 1100 grams "Chars" and 01 Pistal (30 Bore) with 17 rounds of the same bore, without license. Besides, he also remained absent from duty vide DD report No. 04 dated 21.09.2017 till to 26.09.2017 for a period of 05 days.
2. Incorrect that the appellant being a member of discipline force was involved in the above moral turpitude criminal case and in this regard he was proceeded against proper departmentally. The appellant was issued Charge Sheet with Summary of Allegations and thereafter Final Show Cause Notice was also issued by respondent No. 02, to which the appellant replied which was found unsatisfactory, therefore, after fulfillment of due codal formalities he was dismissed form service. (Copy of charge sheet, final show cause notice and enquiry report attached herewith as annexure "A, "B & "C)
3. Correct to the extent that departmental appeal of the appellant was thoroughly examined and rejected on sound grounds.

4. Incorrect the instant appeal may very kindly be dismissed on the following ground.

GROUNDS:-

a. Incorrect and denied. Both the orders dated 07.11.2017 and 18.04.2018 were passed in accordance with law and rules

b. Incorrect and denied. Orders passed by the respondents were totally based on evidence, suitable, on merit and in accordance with law & rules.

c. Incorrect and denied. Proper departmental proceedings were initiated against the appellant by issuing Charge Sheet with Summary of Allegations and thereafter Final Show Cause Notice. The appellant was also given chance of personal hearing. Hence, no injustice was done to the appellant throughout departmental proceedings.

d. Incorrect and denied. Proper departmental enquiry was conducted by appointing SI Noor Ali the then Line Office FRP Kohat as Enquiry Officer to unearth the real facts who conducted enquiry accordingly and submitted his finding report before respondent No. 02, wherein the appellant was found guilty of the charges leveled against him.

e. Incorrect and denied. The allegations against the appellant were proved and he was found guilty of the charges leveled against him. He was heard in person by respondent No. 02, but his contention was not found satisfactory. Proper departmental proceedings were initiated against him and it is evident from Charge Sheet Final Show Cause Notice.

f. Incorrect and denied. The appellant had badly blemished service record in just 03 years of his service. However, the unblemished service record does not exonerate a person from the futures wrong deeds.

g. Departmental and criminal proceedings are two different matters. Each is to be decided on its own merits as held by superior courts in various judgments. He had committed a departmental misconduct which was proved against him and he was awarded punishment for the same.

h. Incorrect and denied. The orders passed by the respondent were in accordance with law & rules.

i. Incorrect and denied. Disciplinary proceedings against the appellant were conducted in accordance with proper procedure and in light of law & rules.

j. Incorrect and denied. Proper departmental enquiry was conducted by appointing SI Noor Ali the then Line Office FRP Kohat as Enquiry Officer to unearth the real facts who conducted enquiry accordingly and submitted his finding report before respondent No. 02.

k. Incorrect and denied. Proper procedure was adopted by respondent No. 01 and no injustice was done to the appellant.

l. Incorrect and denied. The appellant was awarded only one major penalty i.e Dismissal from service while his absence from duty with effect from 21.09.2017 to 26.09.2017 total period of 05 days was treated as leave without pay. Moreover, prescribed rules were adopted and applied by the respondents. The act of respondent is not based on discrimination.

m. Incorrect and denied. The appellant had badly blemished service record in just 03 years of his service.

n. That any other points, if raised, shall be replied during arguments with permission of Honorable Court.

PRAYERS:-

It is therefore, most humbly prayed that in the light of aforesaid facts/submission the instant service appeal may kindly be dismissed with cost.

Commandant, FRP,
Khyber Pakhtunkhwa, Peshawar
(Respondent No.1)

Superintendent of Police,
FRP, Kohat Range, Kohat.
(Respondent No. 2)

Home Secretary,
Khyber Pakhtunkhwa, Peshawar
(Respondent No.3)

کانسٹیبل علی شان 1109 پلاٹون نمبر 109 ضلع کوہاٹ

'A'

PA/CH Sheet-2017

No. 437 /PA/FRP Dated 26 / 09 /2017

CHARGE SHEET

I) I, Mian Imtiaz Gul, SP FRP Kohat as competent authority, am of the opinion that you Constable Ali Shan No. 1109 of FRP Platoon No. 109 District Kohat have committed the following acts/omission as defined in Rule 2 (iii) of Police Rules 1975.

a) As intimated vide SP Investigation Kohat office letter No. 5196/GC dated 25.09.2017, you were charged/arrested vide case FIR No. 265 dated 21.09.2017 U/S 9-C CNSA/15AA P.S Usterzai District Kohat for having in your possession 1100 gms "Chars" and 01 Pistol (30 Bore) with 17 rounds of the same bore without licence. Secondly you also remained absent vide DD No. 04 dated 21.09.2017 till date. Previously you had remained absent for 16 days and were awarded punishment for the same but you did not mend your trend. Thus you have committed a gross "Misconduct" as defined in Rule 2 (iii) of Police Rules 1975.

II). By reason of the above, you seem to be guilty as sufficient materials is placed before the undersigned, therefore it is decided to proceed against you in general police proceeding.

III). You are; therefore, required to submit your written reply within 07 days of the receipt of this charge sheet to the Enquiry Officer.

IV). Your written reply, if any, should reach the Enquiry Officer within specific period failing which it shall be presumed that you have no defense to offer and in case ex-parte action shall follow against you.

V). Intimate as to whether you desire to be heard in person or not?

VI) A statement of allegation is enclosed.

شوکاز نوٹس کا جواب 7 یوم کے اندر اندر دفتر FRP کوہاٹ میں جمع کرایا جائے

(Mian Imtiaz Gul)
Superintendent of Police
Kohat Range, Kohat

علی شان 1109 پلاٹون نمبر 109 FRP کوہاٹ

0332-9553171

26-9-017 Mobile No

(5)

"A/1"

PA/CH Sheet-2017

DISCIPLINARY ACTION

I, Mian Imtiaz Gul, SP FRP Kohat as competent authority, am of the opinion that you Constable Ali Shan No. 1109 of FRP Platoon No. 109 District Kohat, have committed the following acts/omission as defined in Rule 2 (iii) of Police Rules 1975.

STATEMENT OF ALLEGATION

1. a) As intimated vide SP Investigation Kohat office letter No. 5196/GC dated 25.09.2017, you were charged/arrested vide case FIR No. 265 dated 21.09.2017 U/S 9-C CNSA/15AA P.S Usterzai District Kohat for having in your possession 1100 gms "Chars" and 01 Pistol (30 Bore) with 17 rounds of the same bore without licence. Secondly you also remained absent vide DD No. 04 dated 21.09.2017 till date. Previously you had remained absent for 10 days and were awarded punishment for the same but you did not mend your trend. Thus you have committed a gross "Misconduct" as defined in Rule 2 (iii) of Police Rules 1975 and have rendered yourself liable to be proceeded against departmentally.

2. For the purpose of scrutinize the conduct of said Constable with reference to the above allegations, SI Noor Ali LO FRP Kohat is appointed as enquiry officer.

3. The enquiry officer shall conduct proceeding in accordance with provision of Police Rules 1975 and shall provide reasonable opportunity of defense and hearing to the accused official, record it is finding and make with twenty five (25) days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused official.

4. The delinquent official shall join the proceeding on the date, time and place fixed by the officer.

(Mian Imtiaz Gul)
Superintendent of Police, FRP
Kohat Range, Kohat

بحوالہ انکوائری آرڈر کانسٹیبل علی شان 1109/FRP پلاٹون نمبر 109 حال FRP لائن کو مبینہ مقدمہ معروض ہوں کہ
مذکورہ کانسٹیبل مبینہ کے خلاف تھانہ اسٹیشن میں مقدمہ نمبر 265 مورخہ 21/9/017 جرم 9CCNSA/15AA تھانہ اسٹیشن زیر درج رجسٹر ہو چکا ہے
جس کا تفصیلی اور حقیقی منظر نامہ 519449/25/9/017 بابت کارروائی محکمانہ ... کارروائی آفیسران بالا کو بھیجوا کر
مذکورہ بالا کو چارج شیٹ کرنے اور آرڈر نمبر 718/25/9/017 دربارہ سسپنشن بغرض انکوائری حوالہ من 56/FRP/LC کیا گیا ہے
انکوائری کے سلسلہ میں مذکورہ کانسٹیبل بالا کو طلب کر کے چارج شیٹ مبینہ حوالہ کر کے حسب ضابطہ تعمیل کیا گیا۔ مذکورہ
نے چارج شیٹ کا جواب اور ایک عدد نقل اسٹام پیپر نمبر 1195/25/9/017 بنام راشف محمد عرف ماہر ولد یار محمد سکنہ کاغذائی
جس پر راشف محمد پوتے لالہ کے قریب تھانہ اسٹیشن کا نام لکھا ہوا تھا۔ اور ایک عدد اپنا بیان بزبان انگریزی دستخط
شدہ خود پیش کی۔ جو بدیں ملاحظہ شامل انکوائری کی۔ قابل ملاحظہ ہے۔ انکوائری کے سلسلہ میں تھانہ اسٹیشن
جا کر تھانہ میں اپنی آمد بحوالہ روزنامچہ 4 مورخہ 05/9/017 کرنے کا تعلق ہے انکوائری ہے۔ محرر تھانہ سے مذکورہ کانسٹیبل کے
FIR اور SHO کے متعلق دریافت کی۔ جس نے بتلایا۔ کہ SHO محرم الحرام کے قائم جلوس ڈیوٹی میں تھا۔
اور رات کو اپنی گشتی گاڑی میں موجود پا کر جس کے ساتھ مقدمہ ہذا کے سنت گنت رشتہ کے جس کا بیان
زیر دفعہ 161 ضابطہ فوجداری لیا جا کر لف انکوائری ہذا ہے اور قابل ملاحظہ ہے۔ محمد اعظم 56/011 سے مقدمہ ہذا کے چند کاغذات
کی نقول دینے کی استدعا کی۔ جس نے دینے سے انکار کیا۔ مورخہ 16/9/017 کو عبدالرحمٰن کانسٹیبل علی شان 1109 میں
انسپکٹر SHO گل خان اور دیگر ہمراہان۔ محرر تھانہ۔ ASI خان HC وقتاً فوقتاً ملا کر اندر میں بارہ بیانات لئے گئے
شامل انکوائری ہیں۔ اور قابل ملاحظہ ہیں۔ اسی طرح تفتیشی افسر محمد اعظم خان 56/011 تھانہ اسٹیشن نے بھی اپنی تفتیش
میں ظاہر کیا ہے کہ واقعی الزام علیہ کانسٹیبل علی شان کے ساتھ ایک دوسرا لڑکا راشف محمد عرف ماہر ولد یار محمد سکنہ کاغذ
اور تعلق تھانہ اسٹیشن سے فرنٹ چوکی پر چھوڑا گیا ہے اور بعد میں راشف محمد نے مورخہ 23/9/017 کو ایک اسٹام پیپر تحریر
کیا ہے جس میں مذکورہ حرس اور بقول اپنا وقتی بیان کیا ہے۔ دیگر متعلقین گواہان سے دریافت ہو کر بیانات
قلمبند کر کے شامل انکوائری کی۔ قابل ملاحظہ ہے اور مذکورہ کانسٹیبل کا بیان جس میں انسپکٹر گل خان
کے خلاف الزام ظاہر کیا ہے کہ انہوں نے کسی چوکی کے دوران اس سے تلخ کلامی ہوئی ہے اس کی بھی تصدیق
ہو کر ہر دو آفیسر میں کسی رسٹیشن پر تعینات نہیں ہوئے ہیں۔ اور نہ ہی ایک دوسرے کو
جانتے ہیں۔ اور نہ ہی کسی قسم کی تحریری رپورٹ وغیرہ موجود نہیں ہے۔ کانسٹیبل مذکورہ بہایت حرس نوشتہ
اور بیان پر بہ آخر قابل ذکر ہے کہ آج کل نوجوان نسل پولیس میں 95% حرس نوشی کے عادی ہوتے
اور ... کو ... 99% ...

اپنے آپکو چھوڑانے کی کوشش کی ہے لیکن آخر کار پولیس نے اسکو قابو کر کے جس سے
چور گرفتار ہو گیا ہے حقیقت پر مبنی ہے کہ مذکورہ چرس بیچنے کے علاوہ
چرس کا کاروبار دیگر پولیس ملازمان اور دیگر لوگوں پر فروخت کرنے کا الزام ہے
لیکن اس شہر میں ایس ایچ او راشد محمود کو سہارا بنا کر پولیس سیفٹی چرس فروخت
بنا کر دیگر تمام کام کرتا ہے چونکہ ایک سینئر پولیس آفیسر ہے اور وہ کسی بھی ماتحت
پولیس آفیسر کیساتھ اپنا ذاتی عناد کی بنیاد پر اتنا بڑا ظلم کبھی نہیں کر سکتا ہے
یہ ممکن نہیں ہے دوسری بات یہ ہے کہ مذکورہ کا مورخہ 21/2/017 کو پولیو ڈیوٹی کیلئے
لگایا تھا۔ دیگر ملازمان پولیو ٹیم سے واپس آ گئے مگر مذکورہ واپس نہ آیا جبکہ مورخہ
21/2/017 کو پولیو ٹیم حاضری دے کر گئی ہے۔ لہٰذا ٹیم حاضری نہ اسکو گئی ہے۔ شامل تفتیش ہے
اور اسی دن مذکورہ کیساتھ مشترکہ اور دیگر آفیسر تھانہ استغاثہ میں پکڑی گئی ہے اس سے
معلوم ہوتا ہے کہ مذکورہ کیساتھ غلط ٹیم سے چرس لدے ہوئے پولیس نے گرفتار کیا ہے۔
مقدمہ ہذا کے چند نقوات FIR نقشہ موقع۔ فرد مضبوطی۔ گواہان کے بیانات۔ بیان ملزم
اور جس ضمن میں تفتیشی آفیسر نے ایس ایچ او راشد محمود عرف بابر اشتہار لگایا تھا۔ نقل فرد جرم شامل انکوائری
ہے۔ شامل تفتیش ہیں۔ مذکورہ کیساتھ بالا کے خلاف کسی نے ایک گمنام درخواست دی اس سلسلہ میں
افسران بالا کو بھیجی گئی تھی واپس موصول ہو کر جو شامل انکوائری کی۔ مذکورہ کا یہ فعل محکمہ پولیس
کیلئے بدنامی کا باعث ہے اور مذکورہ محکمہ پولیس میں رہنا محکمہ پولیس کیلئے زیادتی ہے کیونکہ
اس واقعہ سے مذکورہ کی اور سنگین جرم کا ارتکاب کر سکتا ہے لہٰذا محکمہ
پولیس سے علیحدگی کی سفارش کی جاتی ہے تاکہ آئندہ کیلئے کوئی اور ملزم ایسی
قسم کی حرکات نہ کر سکے۔ اور محکمہ پولیس اس کالی بھیڑوں سے پاک ہو۔ ایس ایچ او

SI/LC
FP.KT
21.X.017

"C"

PA/FSCN – 2017

FINAL SHOW CAUSE NOTICE

Whereas you **Constable Ali Shan No. 1109/FRP**, while posted in FRP Platoon No. 109 deployed at District Kohat as intimated vide SP Investigation Kohat office letter No. 5196/GC dated 25.09.2017, you were charged/arrested vide case FIR No. 265 dated 21.09.2017 U/S 9-C CNSA/15AA P.S Usterzai District Kohat for having in your possession 1100 gms "Chars" and 01 Pistol (30 Bore) with 17 rounds of the same bore without licence. Secondly you also remained absent w.e.f 21.09.2017 vide DD No. 04 dated 21.09.2017 to 26.09.2017 (total absence period is 05 days). Previously you had remained absent for 16 days and were awarded punishment for the same but you did not mend your trend.

Accordingly departmental Inquiry was conducted against you. The E.O in his finding report has found you guilty of the charges leveled against you and has recommended you for major punishment.

NOW, THEREFORE, I, Mian Imtiaz Gul, Superintendent of Police, FRP Kohat Range, Kohat in exercise of the powers vested in me under the Khyber Pakhtunkhwa Police Rules – 1975 hereby call upon you **Constable Ali Shan No. 1109/FRP**, through this Final Show Cause Notice to explain your position within 07 days of the receipt of this notice as to why you should not be awarded one or more Major or Minor Punishment as mentioned in Rule (4) of KP Police Rules 1975. In case of non receipt of reply within the stipulated period, an ex-parte action will be taken against you. Also state in writing as to whether you desire to be heard in person or not. Copy of finding report of Enquiry Officer is enclosed herewith.

No. 461 /PA

Dated 24/10 /2017

(Mian Imtiaz Gul)
Superintendent of Police, FRP,
Kohat Range, Kohat

آپ کو مزید شوکاز نوٹس ہذا سے خوردہ کیا جاتا ہے

Shan
0332-9553184
dt. 25-10-17

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 645 /2018

Ali Shan ..... Appellant

Versus

Commandant, FRP and others.....Respondents

REJOINDER ON BEHALF OF APPELLANT

Respectfully Sheweth;

Preliminary objection

That the reply/para-wise comment has not been competently filed and nor any affidavit has been filed in accordance with law nor the same has been properly attested, hence the same has no value in the eyes of law.

Rejoinder to Preliminary objection

Preliminary objection raised by respondents are erroneous, frivolous, based on male fide intention and having no factual and legal backing. Respondents have failed to explain as how the appeal is time barred; how the appeal is not maintainable in the present form; how the appellant has been estopped to filed the instant appeal; why the appellant has no cause of action when he has been awarded punishment and filing appeal is his substantive right and he has aggrieved party hence filed this appeal ; that what material fact has been concealed by the appellant from this Hon'ble Tribunal; who the appeal is not based on facts. No plausible explanation has been given by the respondents. No specific and due objection regarding the controversial question of facts and law involved in the instant service appeal has provided, therefore, appellant is unable to submit proper rejoinder to the preliminary objection raised by the respondents.

Rejoinder to Facts of Reply/ Parawise comments

1. In response to Para No. 1 and 2 of the reply / parawise comments it is submitted that mere charging in criminal case is not a justified ground for awarding of major punishment unless the allegation is proved. Here the appellant has been acquitted by the competent court of the alleged allegation leveled against him, therefore, the impugned order is liable to be set aside. (Copy attached)

2. In response to para No. 3 & 4 it is submitted that appellant being a Civil Servant has wrongly been proceeded with under the Police Rules 1975 nor adopted proper procedure. Further it submitted that proper procedure for disposal of appeal has not been adopted by respondent No. 2 envisages in the N.W.F.P Civil Servants (Appeal) Rules, 1986. Hence, appellant left with no other option but to filed the present appeal.

Rejoinder to the Grounds of Reply/ Parawise comments

a) Para No. a- c of the reply / parawise comments are incorrect and that of memo of appeal are correct. Both the orders are illegal, unlawful, without authority, based on mala fide, void abinitio. The appellant has been proceeded with the rules and regulation which are not applicable to him nor proper procedure has been adopted by the respondents to determine the guilt of appellant. No evidence whatsoever has been procured against appellant. The statement recorded by the enquiry officer in absence of appellant also support the stance of appellant but the same has been used against appellant with obvious reason that he has been made escape goat to please high ups.

b) Para No. d- h of the reply / parawise comments are incorrect hence denied. Detail given in the memo of appeal is correct the same has not been properly replied. The appellant has been victimized without conviction in a criminal case which are main allegation

against him. Under the law in opportunity of cross examination of witnesses is the unalienable right of appellant but no opportunity of hearing has been provided to him, even then the statement recorded in his absence also support his stance but still the same has been used against him. The penalty imposed on appellant is only on the basis of surmises and conjunctures without taking into consideration the documents and evidence provided by the appellant. The stance forwarded by the appellant has not been taken into consideration. Whether a person can be penalized only on hearsay evidence and whether this important aspect of the case has been considered by the respondent while awarding punishment to appellant. And whether it is justified under any canon of law that a person has to be penalized on mare charging in criminal case without waiting for his conviction. No evidence whatsoever has been attached against the appellant with the Parawise Comments, which speaks about the veracity of the accusation.

c) Para No. i- m of the reply / parawise comments are incorrect hence denied. No proper procedure of enquiry or awarding of punishment has been adopted by the respondent. The appellant being Civil Servant has wrongly been proceeded with. It is the ultimate purpose of law and rights guaranteed by the Constitution that no body has to be condemned unheard but here the basic right of the appellant has been violated and he has been condemned unheard, hence both the orders are liable to be set aside in the best interest. The Learned respondent No. 2 has not adopted proper procedure as mentioned in the N.W.F.P Civil Servants (Appeal) Rules, 1986. The question arises that whether there is any evidence regarding the allegation leveled against appellant and whether the punishment awarded to appellant being a civil servant is in accordance with law, rule and regulation. The procedure adopted by the respondents clearly show male fide intention, discrimination and undue victimization of the appellant and the appellant approaches this Hon'ble Tribunal being the final and highest forum of appeal. Moreover, after the acquittal of petitioner by trial court which is proper forum, the allegations against him stands nullified .

It is therefore, most humbly prayed that by accepting this rejoinder and the ground of main appeal the order of respondent No. 1 & 2 may please be set aside.

Appellant

Through

Shahid Qayum Khattak
Advocate, Supreme Court

Dated: /03/2019

Affidavit

I, do hereby solemnly affirm and declare on Oath that the contents of the above rejoinder are true and correct to the best of my knowledge and belief and nothing has been kept secret from this Hon'ble Tribunal.

08 MAR 2019

ATTESTED

Hafiz Muhammad Sadiq Durrani
Oath Commissioner
Advocate High Court Peshawar

Deponent

In the court of Additional Sessions Judge-V/Judge Special Court, Kohat

Special case No.....53 of 2017
Date of Institution..... 14.11.2017
Date of Decision..... 23.06.2018

State through Inspector Gul Janan Khan SHO, PS Usterzai, Kohat
.....(*complainant*)

VERSUS

Ali Shan s/o Tor Gul *r/o Kaghazai, Kohat*
..... **(Accused Facing Trial)**

Present:
Mr. Zahoor Khan, APP for State
Mr. Faiz Muhammad Khan Advocate, counsel for accused

CASE FIR NO. 265 DATED 21.09.2017 U/S 9-C CNSA & 15 AA OF POLICE STATION USTERZAI, KOHAT

JUDGMENT

The prosecution story is that on 21.09.2017 the complainant along with constables Zahir Shah, Mudasir Aman, Farman and other police officials had made barricade at Kacha Road leading to Sepaya tribal territory; that at 1830 hours, a young person was coming from tribal territory Sepaya who was stopped on suspicion; that he having an envelope white color in his hand which was searched and chars *Garda* weighing 1100 grams was recovered and on further search one pistol 30 bore No.A-4001 with fixed/spare charger containing 17 live rounds of 30 bore which the accused had tied with his waist was also recovered. From the recovered chars five grams were separated for FSL and sealed into parcel No.1 while

aining chars were sealed in parcel No.2. The contraband along with ms and ammunitions were taken into possession. The accused disclosed his name Ali Shan s/o Tor Gul r/o Kaghazai who was arrested and murasila was drafted, which was sent to the PS for registration of the case, on the basis of instant case FIR Ex-P-A was registered against the accused.

After registration of the case, the case was investigated. During investigation, the investigation officer prepared the site plan and also dispatched the samples to the FSL for chemical examiner report and received report of FSL in affirmative, which was placed on file. The I.O, during investigation, recorded the statements of PWs u/s 161 Cr.P.C. After completion of investigation, complete challan was submitted against the accused for trial by the SHO.

On 13.11.2017, complete challan was received by this Court for the trial against accused. The accused, being on bail, was summoned who appeared before the Court and after compliance of provision of 265-C Cr.P.C, charge was framed against the accused on 30.11.2017, to which the accused pleaded not guilty and claimed trial, therefore, the prosecution was allowed to produce its evidence.

During the trial of the case, the prosecution examined seven PWs. On 26.04.2018, the prosecution closed its evidence and after closing the prosecution evidence, the statement of accused was recorded u/s 342 Cr.P.C. on 09.05.2018. The accused opted to produce one Rashif s/o Yar

Muhammad as his defense witness whose statement was recorded as DW-1 on 17.05.2018 and the case was fixed for final arguments.

The gist of the prosecution is as under:

PW-1 is the statement of constable Aftab Ahmed LHC who took the samples to the FSL. PW-2 is the statement of Sami ur Rehman MHC who kept the case property in safe custody in Malkhana of the PS. PW-3 is the statement of Gul Janan Inspector/SHO, the seizing officer, who supported the contents of murasila in his statement. PW-4 is the statement of Zaheer Shah HC who is the marginal witness to the recovery memo. PW-5 is the statement of Abdul Hameed No.1104, Moharrir Police Lines, Kohat, who lodged Naqal Mad No.14 dated 21.09.2017. PW-6 is the statement of Azam Khan SI who after receipt of FIR investigated the case and during investigation prepared the site plan on the pointation of complainant, recorded statements of marginal witnesses and other proceedings were conducted. PW-7 is the statement of Raza Khan HC who on the receipt of murasila chalked out case FIR Ex:PA against the accused.

The learned APP for the State argued that the accused is arrested red handed along with the huge quantity of chars and being a single accused substitution is a rare phenomena, that the samples were taken from the contraband that were in safe custody of the police, which was timely sent to the FSL, that the FSL report is in positive which supports the version of prosecution, that the case property was produced before the Court, which

was exhibited, that the association of the private witnesses is not necessary which has been specifically excluded by Section 25 of the CNSA, that the official witnesses are good witnesses and their evidence cannot be discarded only on the ground that they are police officials, that the PWs are consistent in their statements who supported the recovery from the accused, the learned APP lastly argued that the prosecution has proved the case against the accused beyond any shadow of doubt.

On the other hand, learned counsel for accused opposed the arguments of learned APP for the State and argued that the prosecution witnesses are not consistent in their statements and there are major contradictions on material points in the statements of prosecution witnesses, which create doubts in the case of prosecution, that the samples were sent to the FSL on 24.09.2017, which was not received by the FSL on the same date and was received on 25.09.2017, which affected the authenticity of FSL report, that the alleged contraband is planted against the accused who had come to the PS against one Rashif s/o Yar Muhammad who is neighbor of accused who has called the accused to reach PS Usterzai as the police had brought him from his house and had also brought the licensed pistol 30 bore with rounds belonging to his father, that the version of the accused is supported by the defense witness and photographs available on filet, that the case of prosecution is full of doubts, the benefit of which may be extended to the accused.

Arguments of learned APP for the State and learned counsel for the accused heard and available record perused.

The case of the prosecution is that the complainant had made barricade at Kacha Road leading to Sepaya tribal territory and the accused was coming towards them from tribal territory who was stopped and the chars *Garda* along pistol 30 bore was recovered from his possession. After cautious analysis of prosecution story and material on record it would evince that it is not appealable to a prudent mind that the accused who is also a police constable, allegedly having chars in his hand and as per statement of PW-4, was at a distance of 30 yards from the police who could make his escape good after seeing the police shall proceed towards the Police who had made barricade, so that the police may register a case against him, which makes the story of the prosecution not believable. Furthermore, the accused was on Polio Duty on 21.09.2017 as stated by PW-5 Abdul Hameed No.1104 Moharrir Police Lines, Kohat, therefore, when on 21.09.2017 the accused was on Polio Duty then his presence, arrest and recovery of contraband and pistol at the place of occurrence is also doubtful.

Besides that there are also material contradictions in the statements of prosecution witnesses which has rendered the statement of prosecution witnesses unworthy of any credit. PW-4 stated in his cross examination that he was told by the SHO to put a barricade as there were some prior information about the accused however, the complainant has not mentioned in the murasila Ex:PW-3/2 regarding any prior information and if there was

any prior information then the complainant was required to call private witnesses to witness the recovery which is omitted in the present case. PW-3 Gul Janan Inspector stated in his cross examination that he has not mentioned the affixation of three stamps with monograms on the parcels in the recovery memo as well as in the murasila whereas the recovery memo Ex:PW-3/1 shows that three stamps with monogram of "IG" have been affixed on the parcels which negates the contents of murasila and recovery memo. PW-3; Seizing Officer further stated that the murasila and recovery memo are not in his hand writing who has been negated by PW-4 Zaheer Shah IHC who stated that the SHO first drafted the murasila which was sent to the PS, which makes the presence of the seizing officer on the spot and recovery of contraband by him from accused doubtful. Furthermore, the Sizing Officer further stated that he has sealed the arms and ammunitions into parcels after it was examined by the Arms Expert while the report of Arms Expert EX-PW-6/5 shows that the Arms Expert examined the arms on 22.09.2017 whereas, as per statement of PW-4, who stated in his cross examination that the parcel Ex:P-2, which bears the signature of SHO prepared on 21.09.2017 and the stamps are intact on the parcels, which further negates the version of complainant. The samples were sent to the FSL vide road certificate Ex:PW-1/1 on 24.09.2017 whereas the application, vide which the samples were sent to the FSL, bears date of road certificate as 25.09.2017 and the sample was received in the FSL on 25.09.2017 on the next date. It is not explained in the statement of PWs that why the parcel

No.01 was not deposit in the FSL on the same date i.e 24-09-2017 on which the sample was dispatched to the FSL which also put a dent in the case of prosecution and raise a question mark on the authenticity of FSL report.

The accused, during his statement u/s 342 Cr.P.C took the defense plea that in fact his co-villager one Rashif s/o Yar Muhammad r/o Kaghazai who is his neighbour called him from PS Usterzai that he has been brought by the police to the PS along with a licensed pistol 30 bore in the name of his father and being the said Rashif his neighbor, he went to PS Usterzai to meet the above named Rashif who was confined in the lockup of PS Usterzai. That in the meanwhile, Gul Janan SHO came there and snubbed the accused on his visit to the PS due to which oral altercation took place between the accused and complainant, which resulted the registration of instant FIR against the accused. The accused produced Rashif as his defense witness and recorded his statement as DW-01. The plea of the accused is fully supported by the defense witness DW-1. The defense plea of the accused and statement of DW-1 could not be shattered by the prosecution during cross examination of DW-1. Furthermore, the defense plea of the accused is also supported by the photograph Ex:DW-1/2 of Rashif DW-1 which has been drawn when Rashif DW-1 was in the lockup and the accused had come to the police station after he was called by Rashif. The defense plea is further supported by the fact that the pistol is licensed in the name of Yar Muhammad, as stated by the accused in his defense plea and DW-1, which has been returned to the said Yar Muhammad vide order dated

27/6/18

10.04.2018 and the license of the said pistol Ex:DW-1/1 is also available on file.

The initial burden of proof of the offence against the accused was on the prosecution however the prosecution badly failed to discharge its initial burden of proof as the story of prosecution and statement of the prosecution witnesses are not worth reliable. The accused through his defense evidence and material brought on record fully proved his innocence in the case which can be relied upon particularly when the prosecution case is full of doubts.

It is not essential that there should be many circumstances creating doubts in the case of prosecution even a single circumstance that create a reasonable doubt in a prudent mind regarding the guilt of accused then the accused shall be entitled to such benefit not as a matter of grace or concession but as a matter of right. In the case against accused, there are numerous doubts, the benefit of which shall be extended to the accused as a matter of right as it is better that ten guilty persons escape than that one innocent suffer.

As sequel to the above discussion, the prosecution has failed to bring home the guilt of the accused beyond any reasonable shadow of doubt therefore; the accused is acquitted in the instant case from the charges leveled against him by extending him the benefit of doubt. The accused is on bail, his sureties are discharged from the liabilities of bail bonds. The case property i.e. contraband be kept intact till the expiry of period of

appeal/revision and where after the same be dealt according to law. The pistol 30 bore along with live rounds has already been returned to the original licensee, its sureties are also discharged from the liabilities of bail bonds.

File be consigned to District Record Room Kohat after necessary completion and compilation.

Announced
23rd June, 2018

(Shaukat Ali)
Additional Sessions Judge-V/Judge Special Court,
Kohat

CERTIFICATE

Certified that this judgment consists of -09- pages. Each page has been read, corrected wherever necessary and signed by me.

Additional Sessions Judge-V/Judge Special Court,
Kohat

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Khyber Pakhtukhwa Service Tribunal
Diary No. 239
Dated 12-3-2019

In Service Appeal No. 645 /2018

Put up to the Court with relevant appeal.

Ali Shan

Versus

P.P.O & Others

APPLICATION FOR EARLY HEARING IN THE CAPTIONED CASE WHICH IS FIXED FOR 08/03/2019.

Respectfully Sheweth,

1. That the above mentioned Appeal is pending before this Hon'ble Service Tribunal and fixed for 08/03/2019.

2. That the applicant has been removed from services on the basis of a criminal case pending against him which has been decided and he has been acquitted from the charges.

3. That the applicant being a sole bread earner of his family and is facing serious financial concerns rendering him in great distress and mental agony.

4. That the applicant being innocent in instant case and due to his financial crisis the instant matter being of urgent nature, need to be fixed by this Hon'ble' Forum as early as possible.

It is, therefore, humbly prayed that on acceptance of this Application that the case may kindly be heard as soon as possible to meet the end of justice.

Dated: ~~09/02/2019~~
12/02/2019

Appellant

Through

SHAHID QAYUM KHATTAK
Advocate, High Court,
Peshawar.

AFFIDAVIT:-

I, the appellant/ applicant do hereby solemnly affirm and declare on Oath that the contents of this application are true and correct to the best of my knowledge and belief and nothing has been concealed herein.

Deponent

14301-7669150-7
0332-9553171

12 FEB 2019
ATTESTED
Hafiz Muhammad Sadiq Durrani
Oath Commissioner
Advocate High Court Peshawar

ATTESTED

Hafiz Muhammad Sadiq Durrani
Oath
Commissioner
Advocate High Court Peshawar

بیان از ان Ex کنسٹیبل علی شان RPP 1109 کوہاٹ

جناب عالی!

معروض خدمت ہوں کہ مورخہ [illegible] کو تقریباً شام کے قریب میں پولیس ڈیوٹی سے فارغ ہو کر میرے دوست راشف عرف پاسر نے کال کیا اور بتایا کہ مجھے کوہاٹ پولیس نے تالاب موڑ میں پکڑا ہے جلدی آجائے۔ پس میں جائے وقوعہ تالاب موڑ پہنچ گیا وہاں پر ظہیر HC سے مل کر اپنے دوست راشف کے بارے میں بات کرنے لگا۔ بات چیت کے دوران HC ظہیر کے ساتھ تلخ کلامی ہوئی۔ اس کے بعد HC ظہیر نے میرے دوست پاسر کو چھوڑ کر من سائل کو پک اپ سرکاری گاڑی میں بٹھا کر تھانہ لے گیا اور مجھے بند بہ حوالات کر کے میرے خلاف FIR درج کیا۔ میں حلفیاً اور قرآن پاک پر قسم اٹھاتا ہوں کہ نہ تو مجھ سے ظہیر نے چرس برآمد کیا ہے اور نہ یہ چرس میرا تھا۔ بلکہ میں تو اپنے دوست پاسر کے پیچھے مدد کرنے کے لیے گیا تھا۔

پس یہی میرا بیان ہے جو حقیقت پر مبنی ہے۔

Ex کنسٹیبل علی شان RPP 1109 کوہاٹ

0332 - 9553171

بیان از ان مسمی راشف عرف یاسر ولد یار محمد ساکنہ کانسٹیبل کوہاٹ۔

جناب عالی!

بدریافت بیان ہوں کہ مورخہ 21-09-2017 کو میں پیدل بجانب سپلائے علاقہ
پشین آ رہا تھا۔ وہاں پر میں نے دوکاندار طاہر عرف تارو سے مبلغ 1800 روپے
کا چرس خرید کر اور میرے ساتھ والد کے نام کا پستول نمبری A 4001
بھی موجود تھا۔ بمقام سپلائے تالاب فوڑ میں پولیس والے ہیڈ کانسٹیبل
ظہیر نے مجھے پکڑ کر کے میرے قبضے سے چرس اور پستول برآمد کیا۔
اس دوران میں نے میرے دوست علی شان کو کال فون کیا۔ کیونکہ وہ میرا
دوست تھا۔ علی شان جائے وقوعہ پر پہنچا۔ اور میں سرکاری پولیس موبائل
میں بیٹھا تھا۔ علی شان آ کر ظہیر HC کے ساتھ گفتگو ہو گیا۔ علی شان اور
ظہیر آپس میں بات کر کے بعد ازاں پتہ نہیں ان لوگوں کے درمیان کیا باتیں
ہو گئی۔ جس پر ظہیر HC نے مجھے گاڑی سے اتار کے موٹر سائیکل پر سوار کر کے
میرے پیچھے پولیس کانسٹیبل بٹھا کر کے تھانہ استرزئی کیطرف روانہ کیا۔ تھانہ
استرزئی سے کچھ فاصلہ پہلے SHO گل جان خان آ گیا۔ ظہیر HC نے SHO
صاحب کے آنے کے ٹائم میرے پیچھے سے کانسٹیبل اتارا اور مجھے چھوڑ دیا۔ اور علی شان
کو تھانہ استرزئی لے گئے۔ بعد ازاں مجھے پتہ چلا کہ علی شان کیخلاف SHO
صاحب نے FIR درج کرایا ہے۔

راشف عرف یاسر ولد یار محمد

0333-9631681

بیان از ~~ملزم~~ کنسٹیبل ظہیر شاہ 136 ڈسٹرکٹ کوہاٹ

جناب عالی!

بدریافت بیان ہوں کہ میں پولیس تھانہ ہنگو واقع کچہری روڈ روزانہ علاقہ
گشت 02 ریلیف فورس کنسٹیبل کے ہمراہ ڈیوٹی پر موجود تھا۔ اطلاع تھی کہ علاقہ غیر سے
مشکوک افراد کی آمد متوقع ہے اس دوران ایک موٹر سائیکل سوار سامنے سے آیا۔
جس کو میں نے روک کر اس کی جامہ تلاشی و نفری لی جس سے کچھ برآمد نہیں ہوا
اس کے موبائل پر بار بار کال آ رہی تھی۔ تاہم اس نے Attend نہیں کی۔ مذکورہ
موٹر سائیکل سوار سے کچھ برآمدگی نہ ہونے پر اس کو میں نے چھوڑ دیا۔ چند منٹ
بعد مخالف سمت سے پیدل ہماری جانب ایک شخص آتا ہوا پایا جسے روک کر اس
سے پتہ پوچھا کہ آپ کے پاس کچھ آپتی چیز ہے تو دکھاؤ۔ اس
نے اپنے شلوار سے ایک عدد پستول اور ایک سفید شاپر میں چرس نکال
کر ہمارے حوالہ کی۔ نیز اس دوران بنگش بائی پاس میں پولیس کنسٹیبل حوں میں
نے بحوالہ بنگش بائی پاس SHO صاحب کا انتظار شروع اور حکم ہے میں ان سے
استدعا کرونگا۔ کچھ منٹوں کے بعد موقعہ میں SHO صاحب خود پہنچے جن کو
میں نے کنسٹیبل علی شان کو حوالہ کر کے ان سے رحم اور امداد کرنے کی استدعا کی۔
دیگر کنسٹیبل علی شان کو وہ اپنے ہمراہ تھانہ لے گئے اور مقدمہ درج رجسٹر ہوا
ہوا۔ میں عین اخفیہ بیان ہے جو کہ درست ہے۔

ظہیر شاہ 136 ڈسٹرکٹ کوہاٹ
0342-7548287

س:۔ کیا علی شان کے ہمراہ کوئی دوسرا شخص اس دوران
یا اس کے بعد آپ سے ملاقاتی ہوا ہے۔

ج:۔ علی شان کو گرفتاری سے قبل میں نے ایک موٹر سائیکل جس کا نام مجھے یاد نہیں آ رہا تھا
جس کو میں نے بعد از سرچ کچھ برآمد نہ ہونے پر چھوڑ دیا تھا۔ جس کے پانچ دس منٹ بعد
وہی جانب سے علی شان آتا ہوا پایا گیا جس نے اس کو روکا چرس اور پستول برآمد کی۔
مجھے گمان ہے کہ ہم پولیس پارٹی کو دیکھنے کے بعد ملزم علی شان اپنے ساتھی موٹر سائیکل
سوار سے اتر کر پیدل آیا۔

P.T.O

س:- کیا آپ کے ساتھ چرس و پستول کے برآمدگی کے بعد ملزمان نے کوئی مزاحمت تکرار یا جھگڑا کیا؟

ج:- نہیں بلکہ مجھے بتایا کہ میں پولیس والا ہوں اسی دوران SHO صاحب آ گئے پھر میں نے انکو پولیس کنیکٹبل ہونے کے ناطے سفارش بھی کی۔

س:- کیا اس سے قبل آپ سے کوئی بیان لیا گیا ہے؟

ج:- جی ہاں محکمانہ کاروائی میں کوہاٹ میں لکھوا چکا ہوں جسکی میں تصدیق کرتا ہوں۔

س:- ملزمان حلفیہ بیان دیتے ہیں کہ چرس اور پستول اُس کی نہیں اور نہ ہی اُس سے پکڑی گئی ہے بلکہ اُس کے دوست سے پکڑی گئی ہے۔

ج:- قسم کھا کر کہتا ہوں کہ یہ جھوٹ ہے اُس وقت میں بلکہ SHO صاحب نے بھی اُس سے سوال دوست کو لانے کا بتایا کہ تفتیش کی جائیگی لیکن اُس نے مجبوراً کہا کہ ذرا سر روپے میں میں نے یہ خریدا ہے اس لئے کسی کو نہیں بتا سکتا اور نہ ہی بتا سکتا۔ دیگر مقدمہ کی عدالت میں ٹرائل شروع ہے۔

بیان از ذاں کنسٹیبل عدد نمبر 382 تھانہ اشرفی

میں تھانہ اشرفی SHO صاحب کے ساتھ گشت کے ڈیوٹی سرانجام دے رہا تھا میں
تھانہ اشرفی میں موجود تھا کہ SHO صاحب گل جان نے موبائل میں علی خان
ملزم کنسٹیبل کو لایا۔ اور ہمیں بتایا کہ اس کے ساتھ ایک کلو چرس برآمد
ہوا ہے۔ مقدمہ پولیس کنسٹیبل میں نے انکاری کی کہ ان کے خلاف 9CNSA میں
پرچہ نہ دیں۔ بلکہ 9B میں پرچہ دیں کیونکہ ملزم کنسٹیبل سے اعداد کی جانا
کنسٹیبل ASI فرید خان SHO صاحب کے ہمراہ دفتر میں بیٹھے تھے انہوں نے
کنسٹیبل پر پرچہ درج کیا اور فرد پر مجھ سے دستخط لیا۔ میں یہی میرا
خلاصہ بیان ہے جو کہ درست ہے۔

کنسٹیبل ذاں 382 تھانہ اشرفی
0306 - 8012 330

بیان از ذیل کنسٹیبل فرمان 95 حال گنر SHO گل جہان خان تھانہ KDA کوہاٹ

جناب عالی!

بدریافت بیانی حضور کہ میں تھانہ اُستروئی میں انسپکٹر گل جہان خان کے ساتھ بحیثیت گنر ڈیوٹی سرانجام دے رہا تھا۔ حال میں اب بھی تھانہ KDA کے SHO گل جہان خان کے ساتھ بحیثیت گنر ڈیوٹی سرانجام دے رہا تھا۔ بروز وقوعہ میں SHO صاحب کے ہمراہ جائے وقوعہ پہنچے۔ تو HC ظہیر شاہ نمبر 136 نے مسمی علی شان ولد طور گل کو پیش کر کے بتایا کہ اُس کے ساتھ انہوں نے چرس بمقدار 1100 گرام پکڑی ہے جس پر جناب SHO گل جہان نے مراسلہ تحریر کر کے من کنسٹیبل کے سپرد کیا تاکہ تھانہ میں مقدمہ رجسٹرڈ کیا جائے میں نے مراسلہ تھانہ لا کر HC رضا خان کے سپرد کیا جا کہ تاکہ مقدمہ درج رجسٹر ہو انہوں نے علت نمبر 965 مورخہ 19/09/21 بجرم 9CCNSA تھانہ KDA استروئی مقدمہ درج رجسٹر کیا گیا۔

کنسٹیبل فرمان 95 تھانہ KDA کوہاٹ ڈسٹرکٹ
0336-1595801

س:۔ مرقومہ کنسٹیبل EX/HC علی شان ولد طور گل اکیلا تھا یا کوئی اور اُس کے ہمراہ تھا؟

ج:۔ وہ اکیلا تھا اور کالے شیشے شاپر میں اُس کے ساتھ چرس تھا۔

س:۔ علی شان کو آپ لوگوں کے سامنے آنے سے پہلے ظہیر نے روک کر تلاشی لی یا آپ کے آنے سے قبل اُس نے پکڑ کر ریکوری کی تھی؟

ج:۔ چونکہ وہاں پہ ناکہ بندی تھی اور HC ظہیر شاہ وہاں پہ دیگر نفری کے ہمراہ موجود تھا۔ جنہوں نے علی شان سے چرس کی ریکوری اور گرفتاری کی تھی۔

س:۔ کیا آپ علی شان ولد طور گل کو جانتے ہیں؟

ج:۔ جی ہاں علی شان ریکارڈ کورس کا فرد ہے اور اُس وقت جب اُس کو HC ظہیر شاہ نے SHO صاحب کے پاس حصہ چرس لا کر پیش کیا۔ تو PT بندی کے خاطر میں نے SHO صاحب کو رحم کرنے کی درخواست کی لیکن علی شان نے SHO صاحب کے ساتھ گستاخی کرنے کے ساتھ اپنا نام اور پتہ درست نہ بتانے جھوٹے جھگڑے پہ اتر آیا۔ حالانکہ میں نے بذات خود سمجھایا کہ اس سے آپکی نوکری کو پہنچ سکتا ہے لیکن اُس نے بجواباً کہا کہ میں نوکری نہیں کرنا چاہتا۔

P.T.O

سوال: کیا اس وقت کوئی اس کا دوست یا کوئی ساتھی اس کے ہمراہ چیک پوسٹ پر تھا؟

ج: اس وقت بر موقع کوئی دیگر شخص نہیں تھا۔ البتہ ہم ناکہ بندی کے جانب جانے والے ہوئے ایک موٹر سائیکل سوار اور چند پیدل اشخاص کو بھی جمع تلاشی کر کے چیک کیا۔ جن کے پاس کچھ بھی نہیں تھا۔ مجھے علی شان نے خود بتلایا کہ میرے ساتھ موٹر سائیکل پر دوسرا ساتھی تھا جس کو میں نے چھوڑ کر خود یہ چرس پائی ہے۔ میں نے اسے کہا کہ اس شرط کو لے آؤ اس پر SHO صاحب سے کہہ کر مقدمہ درج کر لیا جائیگا لیکن اس نے بھوانا کیا وہ میرا گھر ہے اور دوست ہے میں اس کی تفصیل نہیں بتا سکتا

سوال: کیا آپ کے ساتھ کوئی دوسرا گنر تھا؟

ج: جی پاس نشیبل مدثر ڈیوٹی پر تھا

سوال: اس کے بعد فرد کی تکمیل کیا ہوئی؟

ج: تھانہ میں فرد کی تکمیل ہوئی جب کہ ناکہ بندی پر SHO صاحب نے مراسلہ تحریر کیا

سوال: کیا یہ درست ہے کہ ناکہ بندی پر ظہیر اور نشیبل علی شان کے درمیان تلخ کلامی ہوئی؟

ج: ظہیر جب علی شان کو ہمارے SHO صاحب کے سپرد کیا تو اس نے بحیثیت پولیس والا اس کے ساتھ نرمی کی استدعا کی جس میں گواہ ہوں۔ دیگر اس نے یا علی شان نے ظہیر کے ساتھ کوئی تکرار وغیرہ کا ذکر نہیں کیا

بیان از ان انسپکٹر گل جان حال SHO تھانہ KDA

بروز ہفت میزان کو مورخہ 24/9/17 بوقت 18.30

سایہ روڈ پر بحد تاریب تھانہ بنڈن پر موجود تھے

کہ اطلاع ملی کہ سایہ روڈ پر ایک جوان آکر کوشش کرے

مذکورہ کا تقریب ایک بیگ کلشاخ رنگ سفید قبضہ میں

کرنے کی خیال پر وہیں گرفتار کر آلہ ہیروئن کی وزن کرنے پر 1100

گرام نکلی جس کو بروئے قاعدہ بند پارسل کرکے بروئے فرد

قبضہ پولیس میں کرکے فرد پر ہمراہ ملزمان سنا اللہ ولد شاہ

حضرت خان 382 ، فرمان 93 سے دستخط فرد پر لیے گئے

ہیں۔ مزید ارسال تھانہ کرکے جس پر مقدمہ علت 265 جرم

9-C-CNSA تھانہ اشتراکی درج رجسٹر ہوا ہے اور باقاعدہ تفتیش

انسپکٹر اعظم خان SI نے تفتیش کی جس زیر سماعت عدالت

ہے۔ محکمہ ہذا اشتراکی کے نوٹس میں لائے گئے

ہمراہ بیان ہے قبل ازیں بھی بیان ہذا

کر چکا ہوں۔ جس کی تائید کرتا ہوں

INSP | SHO | KDA
18/1/18