

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

Service Appeal No. 6350/2020

Date of Institution ... 29.06.2020

Date of Decision ... 09.11.2021

Aurangzeb Ex-Head Constable No. 1853
R/O District Mardan.

... (Appellant)

VERSUS

District Police Officer Mardan and two others.

... (Respondents)

MS. ROEEDA KHAN,
Advocate

--- For appellant.

MR. MUHAMMAD RASHEED,
Deputy District Attorney

--- For respondents.

MR. SALAH-UD-DIN
MR. ATIQ-UR-REHMAN WAZIR

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:-

Through this single judgment we intend to dispose of the instant service appeal as well as connected Service Appeal bearing No. 6351/2020 titled "Abdullah versus District Police Officer Mardan and two others" as well as Service Appeal bearing No. 6352/2020 titled "Ibrahim Versus District Police Officer Mardan and two others", as common question of law and facts are involved therein.

2. Precise facts giving rise to filing of the instant as well as connected service appeals are that the appellants were proceeded against departmentally on the allegations of their

charging in case FIR No. 2 dated 01.01.2019 under sections 365-A/34 PPC registered at Police Station Kalu Khan District Swabi. On conclusion of the inquiry, the appellants were dismissed from service and their departmental appeals also remained unfruitful, therefore, they have now approached this Tribunal through filing of the appeals for redressal of their grievance.

3. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions made by the appellants in their appeals.

4. Learned counsel for the appellants has contended that the inquiry proceedings were conducted at the back of the appellants and neither any opportunity of personal hearing was provided to them nor were they provided any opportunity of self defense; that the appellants were admittedly confined in prison at the time of inquiry proceedings against them, therefore, they were not in a position to properly defend themselves; that the inquiry proceedings were conducted in violation of relevant provisions of Khyber Pakhtunkhwa Police Rules, 1975, therefore, the impugned orders being void and illegal are liable to be set-aside; that the appellants were proceeded against on the allegations of their involvement in criminal case, however they have been acquitted by the competent court of law in the concerned criminal case; that the appellants were confined in prison and after their release, they approached the department for joining of their duty, however they came to know they have been dismissed from service, therefore, they filed departmental appeals, which were wrongly and illegally rejected; that the impugned orders being bereft of any legal sanctity may be set-aside and the appellants may be reinstated in service with all back benefits.

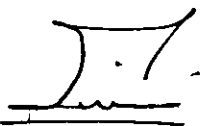
5. On the other hand, learned Deputy District Attorney for the respondents has contended that the appellants were involved in a criminal case of kidnapping for ransom and their illegal activities have stigmatized the police department; that

a regular inquiry was conducted against the appellants by complying all legal and codal formalities and as they were found guilty during the inquiry, therefore, they have rightly been dismissed from service; that the departmental appeals of the appellants were time barred, therefore, their service appeals are not maintainable and are liable to be dismissed with cost.

6. Arguments heard and record perused.

7. A perusal of the record would show that after charging of the appellants in the criminal case, they were arrested and sent to prison. They remained confined in prison and were released after their acquittal on 05.03.2020. The departmental appeals of the appellants were disposed by the Regional Police Officer Mardan vide separate orders dated 24.06.2020 and it is even evident from the said orders that the appellants were confined in prison at the time of inquiry proceedings against them. The said orders would also show that ex-parte action was taken against the appellants despite the facts that they were confined in prison, being charged in the criminal case registered against them. In this scenario, we are of the opinion that the appellants were not treated fairly, rather they were treated with discrimination. The impugned order dated 02.07.2019 also shows that the inquiry officer initially appointed for conducting inquiry in the matter had opined that the inquiry may be held in abeyance till the availability of the appellants, however the competent Authority disagreed with the inquiry officer and proceeded with the inquiry by appointing another inquiry officer for conducting inquiry in the matter. The procedure so adopted by the competent Authority has caused prejudice to the appellants in the inquiry proceedings against them.

8. Disciplinary action was taken against the appellants on the ground of their involvement in criminal case, however the appellants have been acquitted in the said criminal case by learned trial court vide judgment dated 05.03.2020. The



appellants were proceeded against on the ground of their involvement in the criminal case, however after their acquittal in the criminal case, the very charge, on the basis of which the appellants were proceeded against has vanished away. Nothing is available on the record, which could show that the acquittal of the appellants have been challenged by the department through filing of appeal before the higher forum. In this situation, the acquittal order of the appellants has attained finality. It is settled law that acquittal of an accused in a criminal case even if based on benefit of doubt would be considered as honourable.

9. The appellants were acquitted in the criminal case on 05.03.2020 and they have alleged in their application for condonation of delay that it was after their acquittal that they came to know about their dismissal from service, therefore, they filed departmental appeals on 02.04.2020. In this view of the matter, the departmental appeals of the appellants are within time. Reliance in this respect is placed on PLD 2010 Supreme Court 695, wherein the worthy apex court has held as below:-

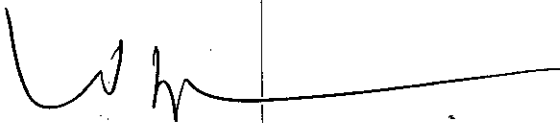
"We may also observe in this context that the respondent had been acquitted in the criminal case on 22.09.1998 and he had filed his departmental appeal on 12.10.1998, i.e within three weeks of his acquittal in the relevant criminal case. It would have been a futile attempt on the part of the respondent to challenge his removal from service before earning acquittal in the relevant criminal case and, thus, in the peculiar circumstances of this case we have found it to be unjust and oppressive to penalize the respondents for not filing his departmental appeal before earning his acquittal in the criminal case which had formed the foundation for his removal from service"

10. In light of the above discussion, the instant service appeal as well as connected Service Appeal bearing No. 6351/2020 titled "Abdullah versus District Police Officer Mardan and two others" as well as Service Appeal bearing No.

6352/2020 titled "Ibrahim, Versus District Police Officer Mardan and two others", are accepted by setting-aside the impugned orders. The appellants are reinstated into service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

09.11.2021



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



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

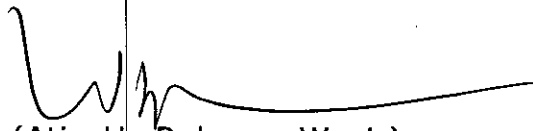
09.11.2021

Ms. Roeeda Khan, Advocate, for the appellant present. Mr. Muhammad Rasheed, Deputy District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the instant service appeal as well as connected Service Appeal bearing No. 6351/2020 titled "Abdullah versus District Police Officer Mardan and two others" as well as Service Appeal bearing No. 6352/2020 titled "Ibrahim Versus District Police Officer Mardan and two others", are accepted by setting-aside the impugned orders. The appellants are reinstated into service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

09.11.2021



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



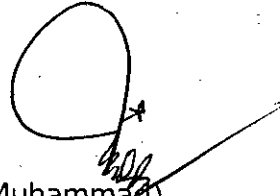
(Salah-Ud-Din)
Member (Judicial)

15.03.2021

Counsel for the appellant and Mr. Muhammad Rashid, DDA alongwith Mr. Khayal Roz, Inspector for the respondents present.

Former requests for adjournment as she has not prepared the brief.

Adjourned to 01.07.2021 before D.B.



(Mian Muhammad)
Member(E)



Chairman

01.07.2021

Learned counsel for the appellant present. Mr. Khalid Khan H.C alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

We being Members of Larger Bench, remained busy in hearing arguments in the appeals fixed before the Larger Bench, therefore, arguments in the instant appeal could not heard. Adjourned. To come up for arguments before the D.B on 09.11.2021



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



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

28.10.2020

Appellant in person present.

Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Zaheer Muhammad PASI for respondents present.

Written reply on behalf of respondents is still awaited. Representative of respondents made a request for adjournment in order to submit reply/comments; granted. To come up for written reply/comments on 23.12.2020 before S.B.



(Rozina Rehman)
Member (J)

23.12.2020

Appellant present through counsel.

Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Khyal Roz Inspector for respondents present.

Representative of respondents submitted reply/comments, placed on file. To come up for rejoinder, if any, and arguments on 15.03.2021 before D.B.



(Rozina Rehman)
Member (J)

20.08.2020

Counsel for the appellant present. Preliminary arguments heard and case file perused. Learned counsel for the appellant contended that the appellant was appointed as Constable in Police Department. That on 01.01.2019 while performing his duty at snap checking squad mobile-II Mardan a false and fabricated case FIR No.2 dated 01.01.2019 under Section 365-A/34 PPC Police Station Kalu Khan Swabi was lodged against the appellant. That on 02.01.2019, he was arrested and sent to judicial lockup on 03.01.2019. Later on, the appellant was acquitted of the charges by the Anti-Terrorism Court, Matta (Swat) at Mardan on 05.03.2020. Vide impugned order dated 02.07.2019 the appellant was awarded major penalty of dismissal from service. Against the said order he filed departmental appeal on 05.04.2020 which was rejected on 24.06.2020, hence the instant service appeal on 29.06.2020. Learned counsel for the appellant assailed and contended that the impugned order dated 02.07.2019 is void and ab-initio order as it has been passed without fulfilling codal formalities. The appellant has not been treated according to rules and due course of law has not been observed in the instant case. The appellant has been condemned unheard because no charge sheet/statement of allegations and show cause notice were served upon him. No proper enquiry has been conducted against the appellant which is against the spirit of natural justice and fair trial.

Points urged need consideration. Service appeal is admitted subject to all legal objections. Appellant is directed to deposit security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments for 28.10.2020 before S.B.

Appellant Deposited
Security & Process Fee

[Handwritten signature]
25/8/20

[Handwritten signature]



(MAIN MUHAMMAD)
MEMBER (E)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 5350 /2020


1S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	06/07/2020	<p>The appeal of Mr. Aurangzeb resubmitted today by Roeda Khan 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> <p>2-</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>20-08-2020</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Aurangzeb Ex- Head Constable received today i.e. 29-06-2020 by Roeeda Khan, Advocate is incomplete on the following score which is returned to his counsel for completion and resubmission within 15 days.

- 1- Pages are not in sequence.
- 2- Copy of charge sheet, statement of allegation, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.
- 3- 1 more copies of appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.


No. 1350 /S.T,

Dt. 02-07 /2020


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Roeeda Khan Adv, Peshawar.

objection No 1 & 3
has been Removed
while in response of
objection No 2 no charge
sheet & statement of
allegation has been issued
as served to the appellant


6/7/2020

BEFORE THE HON'BLE SERVICE TRIBUNAL
PESHAWAR

In Re S.A No. 6350 /2020

Aurangzeb Ex-Head Constable No.1853 R/o
District Mardan

Appellant

VERSUS

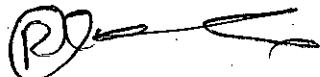
District Police Officer Mardan & others.

INDEX

S#	Description of Documents	Annexure	Pages
1.	Grounds of Petition.		1-6
2.	Affidavit.		- 7
3.	Addresses of parties		8
4.	Condonation of delay		9 to 12
5.	Copy of FIRs	"A"	11 to 12
6.	Copy of acquittal order	"B"	13 to 18
7.	Copy of dismissal order	"C"	19 to 24
8.	Copies of departmental appeal and rejection order	"D" & "E"	20 to 24
9.	Wakalatnama		


APPELLANT

Through


Roeda Khan
Advocate, High Court
Peshawar.

Dated: 27/06/2020

BEFORE THE HON'BLE SERVICE TRIBUNAL

PESHAWAR

(8)

Khyber Pakhtunkhwa
Service Tribunal

5692

Diary No.

29-6-2020

Dated

In Re S.A No. 6350 /2020

Aurangzeb Ex-Head Constable No.1853 R/o
District Mardan

Appellant

VERSUS

1. District Police Officer Mardan.
2. Regional Police Officer Mardan.
3. Provincial Police Officer Khyber Pakhtunkhwa Peshawar.

Respondents

APPEAL U/S-4 OF THE KHYBER
PAKHTUNKHWA SERVICES TRIBUNAL ACT
1974 AGAINST THE ORDER DATED 02/07/2019
WHEREBY THE APPELLANT HAS BEEN
AWARDED MAJOR PUNISHMENT OF
DISMISSAL FROM SERVICE AND AGAINST
WHICH THE APPELLANT FILED
DEPARTMENTAL APPEAL ON 05/04/2020
AGAINST THE ORDERS DATED 02/07/2019
WHICH HAS BEEN REJECTED ON 24/06/2020
ON NO GOOD GROUNDS

Filed to day
Registrar
28/6/20

Re-submitted to-day
and filed.

Registrar
29/6/2020

Prayer:-

(9)

ON ACCEPTANCE OF THIS APPEAL
BOTH THE IMPUGNED ORDERS DATED
02/07/2019 & 24/06/2020 MAY KINDLY BE
SET ASIDE AND THE APPELLANT MAY
KINDLY BE REINSTATED IN SERVICE
ALONG WITH ALL BACK BENEFITS.
ANY OTHER REMEDY WHICH THIS
AUGUST TRIBUNAL DEEMS FIT THAT
MAY ALSO BE ONWARD TRIBUNAL
DEEMS FIT THAT MAY ALSO BE
GRANTED IN FAVOUR APPELLANT.

Respectfully Sheweth,

1. That the Appellant has been initially appointed as Constable in Police department on 08.08.2008.
2. That the appellant performed his duty regularly and with full devotion and no complaint whatsoever has been made against the appellant.
3. That on 01.01.2019 while performing his duty at snap Checking squared mobile-II Mardan a false and fabricated case FIR No.2 dated 01.01.2019 U/S 365-A/34 PPC Police Station Kalu Khan (Swabi) has been

lodged against the appellant. **(Copy of FIR is attached Annexure "A")**.

23

4. That on 02.01.2019 the appellant has been arrested in the said false and fabricated case and was sent to Judicial Lockup on 03.01.2019, in which later on the appellant has been acquitted on 05.03.2020 from the above mentioned charge. **(Copy of acquittal order attached at annexure "B")**.
5. That the Respondent Department without fulfilling codal formalities and without providing opportunity of defense to the appellant, dismissed the appellant from service on 02/07/2019 on the ground of involvement of the said false and fabricated criminal cases. **(Copy of dismissal order is attached at annexure "C")**.
6. That after acquittal the appellant submitted department appeal on 05/04/2020 against the dismissal order dated 02/07/2019 which has been rejected on 24/06/2020 on no good grounds. **(Copies of departmental appeal and rejection order are attached at annexure "D" & "E")**.

7. That feeling aggrieved the Appellant prefers the instant service appeal before this Hon'ble Tribunal on the following grounds inter alia:-

GROUNDS:-

- A. That the impugned order 02/07/2019 is void and abinitio order because it has been passed without fulfilling codal formalities.
- B. That no charge sheet has been served or communicated to the appellant in this respect the appellant relied upon a judgment reported on 2009 SCMR page:615
- C. That no regular inquiry has been conducted by the Respondent department and no chance of personal hearing has been provided to the appellant in this respect the appellant relied upon the judgment dated 2008 SCMR Page:1369.
- D. It is a well settled maxim no one can be condemned unheard because it is against the natural justice of law in this respect the appellant relied upon a judgment reported on 2008 SCMR page:678.
- E. That no statement of witnesses has been recorded by the inquiry officer and there is no proof of involvement in the said criminal cases against the appellant by the Respondent department. Furthermore the appellant has been acquitted by the concern court of law from the charged level against him.

F. That no opportunity of cross examination has been provided to the appellant.

5

G. That no opportunity of personal hearing has been provided to the appellant which has been clarified from impugned order because the appellant has been arrested on 02/01/2019 and has been acquitted on 05/03/2020 and the impugned order has been issued on 02/07/2019.

H. That the respondent department should be waited for the decision of the criminal case before dismissal of the appellant which is against the law and rule.

I. That the punishment has been given by the Respondent department is harsh one.

J. That the innocence of the appellant has also been clarified from the acquittal order.

K. That the impugned order dated 02/07/2019 is also void because it has been passed from retrospective effects.

L. That any other ground not raised here may graciously be allowed to be raised at the time full of arguments on the instant service appeal.

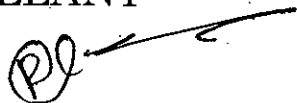
It is therefore, most humbly prayed that on acceptance of this Appeal both the impugned orders dated 02/07/2019 & 24/06/2020 may kindly be set aside and the appellant may kindly be reinstated in service along with all back benefits.

(6)

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

Appellant
APPELLANT

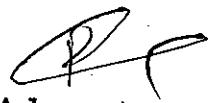
Through

(P) 
Roeeda Khan
Advocate, High Court
Peshawar.

Dated: 27/06/2020

NOTE:-

As per information furnished by my client, no such like appeal for the same petitioner, upon the same subject matter has earlier been filed, prior to the instant one, before this Hon'ble Tribunal.


Advocate.

BEFORE THE HON'BLE SERVICE TRIBUNAL
PESHAWAR

7

In Re S.A No. _____/2020

Aurangzeb Ex-Head Constable No.1853 R/o
District Mardan

AFFIDAVIT

I, **Aurangzeb Ex-Head Constable No.1853 R/o District Mardan**, do hereby solemnly affirm and declare that all the contents of the **instant appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Hon'ble Court.

Aurangzeb

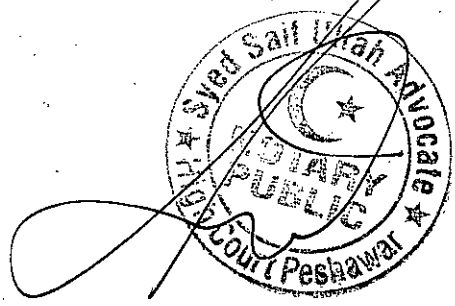
DEPONENT

Identified by:

[Signature]

Roeda Khan
Advocate High Court
Peshawar.

ATTESTED



29 JUN 2020

BEFORE THE HON'BLE SERVICE TRIBUNAL
PESHAWAR

(8)

In Re S.A No. _____/2020

Aurangzeb Ex-Head Constable No.1853 R/o
District Mardan

Appellant

VERSUS

District Police Officer Mardan & others.

Respondents

ADDRESSES OF PARTIES

PETITIONER.

Aurangzeb Ex-Head Constable No.1853 R/o
District Mardan.

ADDRESSES OF RESPONDENTS

1. District Police Officer Mardan.
2. Regional Police Officer Mardan.
3. Provincial Police Officer Khyber Pakhtunkhwa
Peshawar.

Aurangzeb

APPELLANT

Through

Roeeda Khan

Roeeda Khan

Advocate, High Court
Peshawar.

Dated: 27/06/2020

BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR



In Re S.A _____/2020

Aurangzeb

Versus

District Police Mardan and others

APPLICATION FOR CONDONATION OF DELAY (if any)

Respectfully Sheweth,

Petitioner submits as under:

1. That the above mentioned appeal is filing before this Hon'ble Tribunal in which no date is fixed for hearing so far.
2. That the false in fabricated FIR No.2 dated 01.01.2019 U/S 365A, 34 PPC PS Kalu Khan Swabi has been lodges against the appellant in which the appellant has been arrested on 02.01.2019 and sent to Judicial Lockup on 03.01.2019 while acquittal from the above charged on 05.03.2020 and after acquittal the appellant came to know regarding the dismissal order dated 02.07.2019 against which the appellant filed Departmental Appeal within one month to

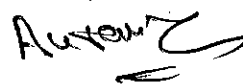
respondent department and after rejection file the instant service appeal.

(10)

Grounds:

- a. That the impugned orders are void order and no limitation run against the void orders.
- b. That the impugned dismissal order has been passed against the appellant without fulfill the codal formalities and his also been passed from retrospective effect which come under the definition the void order
- c. That it has been the consistent view of the Superior Courts that causes should be decided on merit rather than technicalities included limitation. The same is reported in 2004 PLC (CS) 1014 2003 PLC (CS) 769.

It is, therefore, requested that the limitation period (if any) may kindly be condone in the interest of justice.


Appellant

Through


Roeeda Khan

Advocate, High Court
Peshawar

ICPK... 2017-18... ابتدائی اطلاع رپورٹ... 2017-18... 2017-18...

کے کسٹم ہاؤس... 2017-18... 2017-18...

1	کارروائی پر پیش کیے متعلق کی کئی اطلاع دینا کرنے میں تاخیر اور اطلاع دینا کر	28-12-2017	29-12-2017
2	تھانہ سے روائی کی تاریخ و وقت	28-12-2017	29-12-2017
3	نام و سکونت پتہ	36 SA/36	
4	کارروائی پر پیش کیے متعلق کی کئی اطلاع دینا کرنے میں تاخیر اور اطلاع دینا کر		

ابتدائی اطلاع کے درجے میں... 28-12-2017... 29-12-2017... 36 SA/36... 2017-18...

PP E Thum 01-01-19

معدیہ... 28-12-2017... 29-12-2017... 36 SA/36... 2017-18... 2017-18...

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میں نے نام پڑھ کر کمال کر کے کیا ہی تو پرستیاں میں آ کر میری ساری باتوں کو سنا اور کہا کہ یہ سب
 میری طرف سے ہے اور ان کے لیے میں کچھ نہیں کر سکتا۔ آپ کو یہ سب بتا دینا چاہتا ہوں اور ان کے بارے میں
 کچھ بھی نہ کہے۔ میں نے ان کو یہ سب بتا دیا اور ان کے لیے میں کچھ نہیں کر سکتا۔ آپ کو یہ سب بتا دینا چاہتا ہوں
 اور ان کے بارے میں کچھ بھی نہ کہے۔ میں نے ان کو یہ سب بتا دیا اور ان کے لیے میں کچھ نہیں کر سکتا۔
 آپ کو یہ سب بتا دینا چاہتا ہوں اور ان کے بارے میں کچھ بھی نہ کہے۔ میں نے ان کو یہ سب بتا دیا
 اور ان کے لیے میں کچھ نہیں کر سکتا۔ آپ کو یہ سب بتا دینا چاہتا ہوں اور ان کے بارے میں کچھ
 بھی نہ کہے۔ میں نے ان کو یہ سب بتا دیا اور ان کے لیے میں کچھ نہیں کر سکتا۔ آپ کو یہ سب
 بتا دینا چاہتا ہوں اور ان کے بارے میں کچھ بھی نہ کہے۔ میں نے ان کو یہ سب بتا دیا اور ان
 کے لیے میں کچھ نہیں کر سکتا۔ آپ کو یہ سب بتا دینا چاہتا ہوں اور ان کے بارے میں کچھ
 بھی نہ کہے۔ میں نے ان کو یہ سب بتا دیا اور ان کے لیے میں کچھ نہیں کر سکتا۔

نقل سلطان احمد

نہایت نقل

PP Etman
01-01-19

323
512

میں نے ان کو یہ سب بتا دیا اور ان کے لیے میں کچھ نہیں کر سکتا۔
 آپ کو یہ سب بتا دینا چاہتا ہوں اور ان کے بارے میں کچھ بھی نہ کہے۔

20/03/19

میں نے ان کو یہ سب بتا دیا اور ان کے لیے میں کچھ نہیں کر سکتا۔
 آپ کو یہ سب بتا دینا چاہتا ہوں اور ان کے بارے میں کچھ بھی نہ کہے۔

20/03/19

20/03/19

57
21/03/19

میں نے ان کو یہ سب بتا دیا اور ان کے لیے میں کچھ نہیں کر سکتا۔
 آپ کو یہ سب بتا دینا چاہتا ہوں اور ان کے بارے میں کچھ بھی نہ کہے۔

20/03/19

میں نے ان کو یہ سب بتا دیا اور ان کے لیے میں کچھ نہیں کر سکتا۔
 آپ کو یہ سب بتا دینا چاہتا ہوں اور ان کے بارے میں کچھ بھی نہ کہے۔

20/03/19

اس وقت یہ سب بتا دینا چاہتا ہوں اور ان کے بارے میں کچھ بھی نہ کہے۔

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Num 'B'

13

**IN THE COURT OF RIAZ, AHMAD, JUDGE, ANTI-TERRORISM
COURT, MATTA (SWAT) AT MARDAN.**

Case No.....22/8 of 2019

Date of institution.....02/04/2019

Date of decision.....05/03/2020

State Vs.....

1. Ibrahim s/o Farman Ali r/o Gahri Kapora, 2. Abdullah s/o Qamresh r/o Gahri Kapora, 3. Aurangzeb s/o Abdul Malik r/o Ismaila, 4. Taseer s/o Nazar Muhammad r/o Ismaila, 5. Bilal s/o Abdul Qadir r/o Rashaki Nowshera and 6. Khan Zeb s/o Parveez r/o Iran Abad Mardan.

(Accused facing trial)

Case FIR No. 02 dated: 01-01-2019, Offences U/Ss: 365A-34 PPC of

PS Kalu Khan District Swabi

JUDGMENT

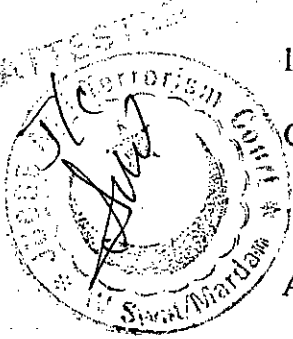
Dated 05.03.2020

✓ Senior Public Prosecutor for the State present. Accused facing trial

✓ 1. Ibrahim s/o Farman Ali r/o Gahri Kapora, 2. Abdullah s/o Qamresh r/o Gahri Kapora, 3. Aurangzeb s/o Abdul Malik r/o Ismaila, 4. Taseer s/o Nazar Muhammad r/o Ismaila, 5. Bilal s/o Abdul Qadir r/o Rashaki Nowshera and 6. Khan Zeb s/o Parveez r/o Iran Abad Mardan produced in custody.

This order is directed to dispose of an application submitted by the learned defense counsel for acquittal of the accused facing trial u/s 265-K Cr.PC.

Brief facts of the case as per FIR are that on 01-01-2011, Izhar Ali/complainant lodged a report vide Mad No. 07 daily diary dated 29-12-2018 to the local police of PS Kalo Khan regarding the abduction of his



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cousin Muhammad Shahid; that on the report, inquiry u/s 156(2) Cr.PC was initiated. That during the inquiry abductee Muhammad Shahid was left/dropped by the kidnappers at Mardan bypass road and he(abductee) met with police contingents at Ismaila stop and his statement was recorded u/s 161 Cr.PC, in which he charged the abductors namely Aurangzeb s/o Abdul Malik r/o Ismaila 2. Taseer Ali s/o Nazir Muhammad r/o Ismaila District Swabi 3. Abdullah s/o Qamresh r/o Garhi Kapora District Mardan 4. Ibrahim s/o Farman Ali r/o Garhi Kapora District Mardan 5. Bilal s/o Abdul Qadeer r/o Rashakai District Nowshera and 6. Khan Zeb ASI Public Volunteer Peshawar r/o Shah Dand Mardan. The abductee, Muhammad Shahid in his court statement recorded u/s 164 Cr.PC stated that he is a permanent resident of Karachi but for the last 3/4 months he is residing in Ismaila; that on 28-12-2018, as usual, he was present in his house that in the meanwhile someone knocked at the door; that on this, his (abductee) nephew came out of house and found three persons duly armed at the door and inquired him about the abductee. That he (abductee) came out of his house then he was told by the above named persons that they are police officials and came from Karachi for your arrest in compliance of execution of warrant. That they took him (abductee) in their custody and took him to some unknown place and tied him to a cot. That they snatched a CNIC from his possession and also put his thumb on the finger print machine and received a SIM in his (abductee) name. That they made contact on the same number to his (abductee) brother namely Muhammad Ishtiaq and also demanded rupees twenty lacs as ransom. That he (abductee) remained in their confinement



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for further two days and then his (abductee) eyes were taped and left him near Mardan bypass road. Thus he charged the above named persons/abductors for his abduction and the instant FIR was registered against them.

On receipt of Challan to this court, the accused was summoned through Zamim Bay from jail to whom copies of necessary documents supplied u/s 265-C Cr.PC. Accused facing trial was formally charge sheeted by the court for offence reported in this case. He pleaded his innocence and claimed trial. Thereafter, prosecution was directed to produce its evidence and after examination of twelve prosecution witnesses learned defense counsel submitted an application for acquittal of the accused on invoking the provision of section 265-K Cr.PC. Notice whereof was given to PP for the State.

Learned defense counsel argued that the evidence of star prosecution witnesses so far, recorded in the case is weak and on the basis of such evidence, there is no probability of his conviction in this case, hence further proceedings in his trial would be a futile exercise and prayed for the acquittal of the accused facing trial by invoking the provision of section 265-K Cr.PC.

Learned PP for the state on the other hand opposed the plea of acquittal of the accused and argued that the accused facing trial is directly charged in the FIR and argued that the acquittal of the accused facing trial due to non recording of remaining prosecution evidence is not just and requested that the case may be decided on merits after recording

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which he charged three unknown accused and that the complainant Izhar Ali is not the eye witness of the occurrence as the occurrence took place in night time. The witness PW-6 further stated that no source of light has been mentioned in the site plan on the place of occurrence and that during inquiry one SIM bearing No. 0344-8272444 has been taken into possession from the accused Aurangzeb by the police officials Niaz Gul which is mentioned in his card of arrest EX.PW-4/3. The witness PW-6 has admitted that all the recoveries which he has taken into possession from the PS during investigation was unsealed and thereafter he sealed the same. The witness PW-6 has further stated that there is no investigation/CDR report/biometric verification/ownership of the SIM bearing No. 0344-8272444 recovered from the pocket of accused Aurangzeb. The witness PW-6 has also admitted in his cross examination that it is correct that in the card of arrest EX.PW-4/3 of the accused Aurangzeb one SIM bearing No. 0344-8272444 has been taken into possession and mentioned while in the recovery memo EX.PW-5/1 a SIM bearing No. 0344-7282427 has been mentioned. It is worth mentioning here that the witness PW-5 has stated in his examination in chief that SIM bearing No. 0344-7282427 has been recovered from the possession of accused Aurangzeb which is mentioned in the recovery memo EX.PW-5/1 which shows clear contradiction in the statements of these prosecution witnesses.

So, in these circumstances, there is absolutely no chance of conviction of the accused facing trial in this case, even if the remaining prosecution evidence is recorded, rather it would be a futile exercise and would be mere wastage of precious time of the court.

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Hence, in view of the above while accepting the application in hand, accused facing trial namely 1. Ibrahim s/o Farman Ali r/o Gahri Kapora, 2. Abdullah s/o Qamresh r/o Gahri Kapora, 3. Aurangzeb s/o Abdul Malik r/o Ismaila, 4. Taseer s/o Nazar Muhammad r/o Ismaila, 5. Bilal s/o Abdul Qadir r/o Rashaki Nowshera and 6. Khan Zeb s/o Parveez r/o Iran Abad Mardan are acquitted u/s 265-K Cr.PC of the charges levelled against them. As, the accused facing trial are in custody, so they be released forthwith, if they are not required in any other case.

Case property if any, be kept intact till the expiry of the period of appeal/revision and thereafter the case property i.e motorcar bearing Registration No. AB 3636 and mobile sets recovered from the possession of the accused be returned to the actual/real owner after due satisfaction and verification if not required in any other case while the remaining case property be confiscated to the state.

After completion and compilation, police file along with copy of this judgment be returned to the PS concerned while judicial record of the case be sent to the Record Room at worthy Peshawar High Court Peshawar for consignment as contemplated u/s 25(2) of ATA 1997.

Order Announced
Dated: 05-03-2020

[Signature]
RIAZ AHMAD

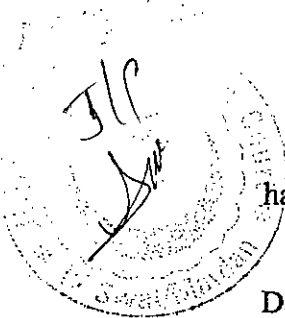
Judge Anti-Terrorism Court, Matta (Swat)
at Central Prison Mardan

Certified that this judgment consists of six (06) pages and each page has been signed by me.

Dated: 05-03-2020

[Signature]
RIAZ AHMAD

Judge Anti-Terrorism Court, Matta (Swat)
at Central Prison Mardan



remaining prosecution evidence. He lastly termed the plea of acquittal of the accused to be premature.

Remaining arguments heard and record of the case perused.

After hearing arguments of the learned defense counsel and learned PP for the state, this court is of the considered opinion that the evidence of the star prosecution witnesses i.e Investigating officer, abductee and complainant have been recorded in the present case as PW-6, PW-11 PW-12 respectively but there are glaring contradictions in the statements of these star prosecution witnesses and they have not supported the prosecution case, as the star prosecution witness PW-11 (abductee) has stated in his cross examination that he has not seen the faces of the accused as their faces were muffled and that he has no knowledge that to which place they have shifted him as his eye were tightened with a piece of cloth. The witness PW-11 has further stated that the I.O has dictated him about the recording of the statement against the accused and that he has not seen any of the accused facing trial during his abduction being muffled their faces, therefore, he is not charging the accused facing trial for the commission of offence. The witness PW-11 deposed that he has got no objection if the accused facing trial is acquitted by this court. The witness PW-12 (complainant) has stated in his cross examination that it is correct that he has not seen anyone at the time of occurrence and that another person has informed him that the abductee Shahid has been taken into possession by some unknown person. The witness PW-12 has further stated that after lodging the report he has not given any statement regarding the occurrence before any forum. The other star prosecution witness/PW-6 (Investigation Officer) stated in his cross examination that complainant Izhar Ali (PW-12) had made a daily report in

25/03/2019
 JUDGE
 JUDGE

JTC
 JTC



OFFICE OF THE
DISTRICT POLICE OFFICER,
MARDAN

Tel No. 0937-9230109 & Fax No. 0937-9230111
Email: dpo_mardan@yahoo.com

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No. 4076-78 /PA

Dated 2-17 /2019

ORDER ON ENQUIRY OF DRIVER/H.C AURANGZEB NO.1853

This order will dispose-off a Departmental Enquiry under Police Rules 1975, initiated against the subject official, under the allegation, that while posted at MT 51.11 Police Lines Mardan (now under suspension & in Central Jail Mardan), was placed under suspension and closed to Police Lines vide this office OIB No.24 dated 05-01-2019, issued vide order/endorsement No.114-117/OSI dated 07-01-2019, on account of charging in a case vide FIR No.02 dated 01-01-2019 U/S 365-A/34 PPC Police Station Kalu Khan (Swabi) and proceeded against departmentally through ASP Ziaullah SDPO Takht-Bhai vide this office Statement of Disciplinary Action/Charge Sheet No.04/PA dated 09-01-2019, who (I.O) after fulfilling necessary process, submitted his Finding Report to this office vide his office letter No.2071 dated 08-02-2019, concluding that the enquiry papers may be held in abeyance till the availability of defaulter official, but the undersigned didn't agree with the suggestion and conducted de-novo proceedings through Captain @ Ali Bin Tariq SDPO/City Mardan, who after completing necessary process, submitted his findings to this office vide his office letter No.2915 dated 09-05-2019, recommending the defaulter official for major punishment of dismissal from service.

The alleged official was served with a Final Show Cause Notice, under K.P.K Police Rules-1975, issued vide this office No.148/PA dated 14-05-2019, to which, his reply was received and found unsatisfactory.

Final Order

Being a member of disciplined/uniformed force, the involvement of HC Aurangzeb in such heinous crime is bringing a bad name for entire Police force in the eyes of general public, besides affecting other members of Police force, therefore, he is awarded major punishment of dismissal from service with effect from 01-01-2019 (FIR) with immediate effect, in exercise of the power vested in me under Police Rules-1975

OIB No. 1406

Dated 01/17 2019.

(SAJJAD KHAN) PSP
District Police Officer
Mardan

Copy forwarded for information & n/action to:-

- 1) The Regional Police Officer Mardan, please.
- 2) The District Police Officer, Swabi.
- 3) The SP/Operations Mardan.
- 4) The Superintendent-Central Jail Mardan, to inform the official concerned.
- 5) The DSP/HQs: Mardan.
- 6) The P.O & E.C (Police Office) Mardan.
- 7) The OSI (Police Office) Mardan w/ (P) Sheets

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To,

The Deputy Inspector General,
of Police, Mandan Region-2
Mandan.

Subject: Appeal against the order of DPO Mandan issued vide his
office C.B. No 1406 dated 01.7.2019, whereby the
appellant was awarded Major Punishment, of dismissal
from Service.

Respected Sir,

① It is submitted that the appellant was enlisted as constable in Police
department on 8.8.2008. Since then the appellant performed his
duty with zeal and efficiently. During the year 2019, the appellant remained
posted at (SNAP - CHECKING SQUAD) Mandan. On 28.12.2018
The appellant along with HE IBRAHEEM, Const. Abdullah were on
Yotine duty at Sugar Mills Road Mandan. On same day,
The appellant along with other official were summoned to
Police lines Mandan. On reaching to Police lines, the appellant
and his fellows were locked-up in Quarter Guard. The
appellant was confined there for 02 days. After 02 days, the
appellant with other colleague were handed over to the local
Police of PS, Kalu-ichan (Distt. Sindh). The Kalu-ichan
Police arrested them in a Criminal Case registered vide
FIR No 3 dated 1.1.2019 u/s 365A/3400 PS Kalu-ichan.
After necessary investigation, the appellant was sent to
judicial lock-up Central Jail Mandan.
(copy of FIR enclosed)

② The Trial of the case was commenced in the court of
Judge. Anti-terrorism court-matta (Sindh) at Central
Prison Mandan. On 05.3.2020, The Honourable court-
admitted the appellant honorably vide court judgment
dated 05.3.2020. (copy of judgment dated 5.3.2020
is enclosed.)

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- ③: That after release from the jail, on reaching to the village. The appellant was informed that some departmental enquiry was conducted against him in his absence and was dismissed from service. on 12.3.2020, the appellant visited the office of DPO Mandan. The staff of OASI branch disclosed that the appellant is dismissed from service and the offices are closed till 31.3.2020.
- ④ on 2.4.2020, the appellant again visited the office of DPO Mandan and applied for the copy of dismissal order and other relevant documents through written application. on the same day the worthy DPO Mandan marked the application to OASI/EC for necessary action. (copy of application dated 2.4.2020 is enclosed)
- 5) on 4.4.2020 the appellant received the copy of dismissal order issued vide O.B no 1406 dated 01.7.2019 by DPO Mandan. (copy of O.B no 1406 dated 1.7.2019 is enclosed)

Brief facts of Case File no 2 dated 1.1.2019 u/s 265-A/247Pc PS Khar.

That the contents of the above mentioned FIR consists of the following two parts.

- (A) :- on 29.12.2018, one Complainant - Ishaq Ali s/o Muhammad Shauk s/o Ismaila Swabi reported regarding the abduction of his cousin namely Muhammad Shahid against unknown accused at PP Itan (PS Kala Khan). His report was recorded in the daily diary vide DD no 07 dated 29.12.2018. on this report an inquiry u/s 156(2) CrPc was initiated.
- (B) :- During enquiry Muhammad Shahid (Abductee) was left chopped by ill kidnappers at Mandan by road and then the said Abductee met with Police, where his statement was recorded u/s 161 CrPc. Later on his statement was saved u/s 164 CrPc when in the chargesheet the appellant and others person for the commission of the offence. Thereafter the instant case was registered.

→ In response to the said Criminal Case, the appellant submits that he was falsely implicated in a fake and concocted case for mere allegations. Both the complainant and abductee have contradicted each other during

investigation and during trial of the case as well.

Judgment of the Court Anti-Terrorism

The trial of the case is commenced in the court of Judge - Anti-Terrorism court - Madras, vide Court judgment dated 05.3.2020. The hon'ble Court acquitted the appellant from the charges on following reasons: (Court judgment is enclosed)

- 1) During trial the alleged Abductee (Muhammad Shafiq) has stated in the court that he has not seen the faces of the Accused.
- 2) That the Abductee has no knowledge that to which place the Accused shifted him.
- 3) That the Abductee was dictated by the IO regarding the statement against the Accused.
- 4) The Abductee has not seen the Accused facing trial during his abductions.
- 5) The Abductee is not charging the Accused facing trial for the Commission of offence.
- 6) According to the complainant, he has not seen anyone at the time of offence.
- 7) According to the complainant, another person informed that the abductee has been taken into possession by some unknown persons.
- 8) The complainant has also confirmed that after lodging the report at PP items he has not given any statement regarding the occurrence before any forum.
- 9) According to the IO, Complainant - Ishaq Ali has charged 03 unknown person in his report but he is not the eye witness to the offence.
- 10) All the 03 star witnesses have not supported the Prosecution story during the trial.

→ From the court judgment, it is crystal clear that the Prosecution case is false and baseless. This clearly proves the innocence

of the appeal in the instant case.

Alleged Departmental findings

From the chronology of order, it is clear that - two different kinds of departmental enquiries were conducted against the appellant by two different EOs.

- (A): As per dismissed order initially the alleged departmental enquiry was conducted through ASP Ziaullah SDO/TBai who after fulfilling necessary process submitted his finding report to the office of DPO/Multan. The EO recommended that the enquiry papers may be held in abeyance till the availability of the defaulter official.

It would not be out of place to mention here that no charge sheet was served upon the appellant. The appellant was already confined in jail and was unable to join the enquiry proceedings.

- (B): On receipt of the above finding report, the DPO/MDN was not agreed with the recommendations/suggestions of SDO/TBai. A de-novo enquiry was conducted through Mr. Ali-Bin Tariq SDO/Jalymulhan into the matter.

During de-novo enquiry, again, the appellant was not served any charge sheet and was not examined. No opportunity of defence was given to the appellant. The second EO has mentioned in his finding report that he tried to contact the defaulter official (appellant) time and again but could not succeed. The EO also endorsed that in those days the appellant was in jail.

→ It is pertinent to mention here that despite of the facts that no charge sheet was served upon the appellant. Even then the EO has mentioned in finding report that the charge sheet was served upon the appellant when he (appellant) was in jail.

From both the enquiry finding report, it is crystal clear that - neither any charge sheet was served upon the appellant, nor the appellant was given the opportunity to join the enquiry proceedings. The second

EO has himself admitted, that - he tried his best - to contact the defaulting official but could not succeed. All these facts are evident - from the ending finding report of the SPO/ely malan. (copy of finding report of SPO/ely is enclosed)

c) The finding report of the SPO/ely malan was one sided and ex. parte action was taken by the EO against the appellant. It is the settled principle of justice that no one can be condemned unheard but here, this principle was thrown to the ground. The ending finding is full of certain omissions and errors. The ending so, concluded is against the legal procedure.

d) No doubt, that while in the jail, the appellant was served with FSCN. No 148-PA dated 14.5.2019. The appellant submitted his reply dated 21.5.2019 in response to the FSCN, but was not considered by the DPO/MDN. The worthy DPO/MDN was indeed in knowledge, that all the ending proceedings were made in the absence of the appellant, but even then, the DPO/MDN dismissed the appellant from service without personal hearing.

Grounds of Appeal.

- ① The appellant is innocent and has been falsely implicated in a fake and concocted case on mere allegations.
- ② The appellant was acquitted in the case honourably by the judge of Anti-terrorism court Malan.
- ③ That the default-makall ending was one sided and was conducted in the absence of the appellant.
- ④ That no change sheet was served upon the appellant.
- ⑤ That the appellant was not given an opportunity to join the ending findings.
- ⑥ That both the Comptt. and A. B. Chaudhary have not changed

The appellant for the Commission of officers.

- 7) That the enquiry proceedings are not according to the law and rules of the land.
- 8) That the appellant has been deprived from his fundamental rights during the proceedings of these enquiries.
- 9) That the learned Comd. has categorically explained and rebutted the verities of the prosecution during trial.
- 10) That the appellant has served for the department for more than 08 years and held Shining Service medal - The appellant was not punished throughout his services.
- 11) That the appellant is married with 03 kids and unmarried mother. The entire livelihood of this family is depend upon the police service of the appellant.

Keeping in view the facts and circumstances, it is humbly requested that the appeal of the appellant may kindly be accepted and the order of DPO/MON be set aside by re-instating the appellant in service from the date of dismissal plus 2.

Dated. 5.4.2020.

Yours obediently,

Ausab

EX - HE. Anwarang 2ab No 1853

DIST - Mandan.

Mobile phone: 0345-9292041

Amir E

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ORDER.


This order will dispose-off the departmental appeal preferred by Ex-Driver Head Constable Aurangzeb No. 1853 of Mardan District Police against the order of District Police Officer, Mardan, whereby he was awarded major punishment of dismissal from service vide OB: No. 1406 dated 11.07.2019. The appellant was proceeded against departmentally on the allegations that he while posted as Driver at MT Staff, Mardan was placed under suspension and closed to Police Lines, Mardan on account of involvement in a case FIR No. 02 dated 01.01.2019 u/s 365A/34PPC Police Station Kalu Khan District Swabi.

Proper departmental enquiry proceedings were initiated against him. He was issued Charge Sheet alongwith Statement of Allegations and Sub Divisional Police Officer, Takht Bhai, Mardan was nominated as Enquiry Officer. The Enquiry Officer after fulfilling codal formalities submitted his findings, recommending therein that enquiry may be held in abeyance till the availability of delinquent Official as he was confined in prison in connection with the above mentioned case. But the District Police Officer, Mardan did not agree with the suggestion of Enquiry Officer and conducted de-novo enquiry proceeding through Sub Divisional Police Officer City, Mardan. The enquiry Officer after fulfilling codal formalities submitted his findings wherein he found the delinquent Official guilty of misconduct and recommended him for major punishment.

He was issued Final Show Cause Notice to which his reply was received and found unsatisfactory.

In the light of above discussion, an ex-parte action was taken against the delinquent Official and he was awarded major punishment of dismissal from Service with effect from 01.01.2019 (from the date of registration of FIR) vide District Police Officer, Mardan OB: No. 1406 dated 11.07.2019.

Being a member of disciplined/uniformed force, the involvement of the delinquent Official in such heinous crime brought a bad name for entire Police force in the eyes of general public, besides affecting other members of Police force, therefore, he was awarded major punishment of dismissal from Service with effect from 01.01.2019 (from the date of registration of FIR) vide District Police Officer, Mardan OB: No. 1257 dated 13.06.2019.

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Feeling aggrieved from the order of District Police Officer, Mardan, the appellant preferred the instant appeal. He was summoned and heard in person in Orderly Room held in this office on 16.06.2020.

From the perusal of the enquiry file and service record of the appellant, it has been found that allegations against the appellant have been proved beyond any shadow of doubt. Because, the abductee after his release has directly charged the appellant for his abduction. However, during the course of trial, the appellant succeeded to manage the abductee. Hence, the retention of appellant in Police Department will stigmatize the prestige of entire Police Force as instead of fighting crime, he has himself indulged in criminal activities. Moreover, the appellant approached this forum at a belated stage without advancing any cogent reason regarding such delay and also failed to present any cogent justification in his defense which could warrant interference in the order passed by the competent authority.

Keeping in view the above, I, **Sher Akbar, PSP S.St Regional Police Officer, Mardan**, being the appellate authority, find no substance in the appeal, therefore, the same is rejected and filed, being time barred.

Order Announced.


**Regional Police Officer,
Mardan.**

No. 3884 /ES, Dated Mardan the 24 - 6 - 2020.

Copy forwarded to District Police Officer, Mardan for information and necessary w/r to his office Memo: No. 142/LB dated 04.06.2020. His service record is returned herewith.

(*****)

بعدالت حجاب سے پہلے طر مسنون
کا



اسلام شاہ
لوہا
ڈیپارٹمنٹ

2022ء پنجاب
ادنیٰ حجاب بنام

مورخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکہ

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

آن مقام کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف 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 روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں 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 وہوگا۔ کوئی تاریخ پیشی مقام دوزہ 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۔

2022ء

الرقوم 29 ماہ 29

العبد گواہ

کے لئے منظور ہے۔

مقام
ساہو

Asseph
Ry

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C

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.

Service Appeal No. 6350/2020

Aurangzeb Ex-Head Constable No.1853 r/o District
Mardan.....Appellant

VERSUS

1. The District Police Officer, Mardan
2. The Regional Police Officer, Mardan
3. The Provincial Police Officer Khyber Pakhtunkhwa,
Peshawar.....Respondents

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C

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

Service Appeal No. 6350/2020

Aurangzeb Ex-Head Constable No.1853 r/o District
Mardan.....Appellant

VERSUS

1. The District Police Officer, Mardan
 2. The Regional Police Officer, Mardan
 3. The Provincial Police Officer Khyber Pakhtunkhwa, Peshawar.
-Respondents

Para-wise comments by respondents:-

Respectfully Sheweth,

PRELIMINARY OBJECTIONS

1. That the appellant has not approached this Hon'ble Tribunal with clean hands.
2. That the appellant has concealed the actual facts from this Hon'ble Tribunal.
3. That the appellant has got no cause of action or locus standi to file the instant appeal.
4. That the appellant is estopped by his own conduct to file the instant Service Appeal.
5. That the appeal is unjustifiable, baseless, false, flawless and vexatious and the same is liable to be dismissed with special compensatory cost in favour of respondents.
6. That the Hon'ble Tribunal has no jurisdiction to adjudicate the matter.
7. That the appeal is bad for miss joinder and non joinder of necessary parties.
8. That the appeal is barred by law and limitation.

REPLY ON FACTS

1. Correct to the extent that the appellant was initially appointed as constable in Police Department.
2. Plea taken by the appellant is not plausible because service record of the appellant is tainted with bad entries (Copy of list of bad entries and punishment enclosed as Annexure "A").
3. Correct to the extent that the appellant while posted at Snap Checking Squad Mobile-II, while rest of Para is incorrect because he was involved in a criminal case vide FIR No. 02 dated 01.01.2019 u/s 365-A/34 PPC Police Station Kalu Khan District Swabi (Copy of FIR is annexed as "B").
4. Plea taken by the appellant is bereft of any substance because criminal and departmental proceedings are two different entities which can run parallel and the fate of criminal case will have no effects on the departmental proceedings.

5. Incorrect. Stance taken by the appellant is totally devoid of merit because he has been properly proceeded against departmentally by issuing him Charge Sheet with Statement of Allegations. The Enquiry Officer after fulfilling all legal and codal formalities, held the appellant responsible of misconduct. The competent authority issued Final Show Cause Notice to which his reply was received and found unsatisfactory. Hence, he was awarded appropriate punishment of dismissal from service, which does commensurate with the gravity of misconduct of the appellant (Copy of Charge Sheet with Statement of allegations are annexed as "C" & "D").
6. Correct to the extent that the appellant preferred departmental appeal which was also decided on merit because the appellant was provided full-fledged opportunity of defending himself by the appellate authority but he bitterly failed to produce any cogent reason in his defense, therefore, the same was rejected/filed being devoid of any merit and badly time barred.
7. That appeal of the appellant is liable to be dismissed on the following grounds amongst the others.

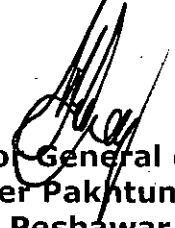
REPLY ON GROUNDS:

- A. Incorrect. Order passed by the competent authority is legal, lawful hence, liable to be maintained.
- B. Incorrect. Stance taken by the appellant is totally false and baseless, charge sheet with statement of allegations was received by the appellant himself on 26.04.2019 and in this regard he duly signed and thumb impressed the photo copy as token of its receipt (Copy of serving charge sheet is Annexed as "E")
- C. Incorrect. Stance taken by the appellant is totally devoid of merit because he has been properly proceeded against departmentally by issuing him charge sheet with statement of allegations. The Enquiry Officer after fulfilling all legal and codal formalities, held the appellant responsible of misconduct. The competent authority issued Final Show Cause Notice to which his reply was received and found unsatisfactory. Hence, he was awarded appropriate punishment of dismissal from service, which does commensurate with the gravity of misconduct of the appellant.
- D. Para explained earlier needs no comments.
- E. Stance taken by the appellant is not plausible because as discussed earlier criminal and departmental proceedings are two different entities which can run parallel and the fate of criminal case will have no effects on the departmental proceedings.

- F. Para explained earlier needs no comments.
- G. Incorrect. Para already explained needs no comments.
- H. Plea taken by the appellant is bereft of any substance because criminal and departmental proceedings are two different entities which can run parallel and the fate of criminal case will have no effects on the departmental proceedings.
- I. Incorrect. Para already explained needs no comments.
- J. Para explained earlier needs no comments.
- K. Incorrect. Story propounded by the appellant is totally based on illusion.
- L. The respondents also seek permission of this honorable tribunal to adduce additional grounds at the time of arguments.

PRAYER:-

Keeping in view the above narrated facts it is humbly prayed that the appeal of the appellant being badly time barred may kindly be dismissed with costs please.


**Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.**
(Respondent No. 03)


**Regional Police Officer,
Mardan.**
(Respondent No. 02)


**District Police Officer,
Mardan.**
(Respondent No. 01)

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

In Re S.A No. 6350/2020

Aurangzeb

VERSUS

The District Police Officer, Mardan & others

Reply to the application for condonation of delay:-

Respectfully Sheweth,

PRELIMINARY OBJECTIONS

1. That applicant has no cause of action to file the instant application.
2. That the application is barred by law.

REPLY ON FACTS


1. That the appeal filed by the applicant before this Honorable Tribunal may kindly be dismissed being a badly time-barred.
2. Incorrect. Plea taken by the appellant is not plausible, because he was involved in a criminal case vide FIR No. 02 dated 01.01.2019 u/s 365-A/34 PPC Police Station Kalu Khan District Swabi. He was arrested and sent to judicial lockup. Besides, he has been properly proceeded against departmentally by issuing him Charge Sheet alongwith Statement of Allegations. The Enquiry Officer after fulfilling all legal and codal formalities, held the appellant responsible of misconduct. Therefore, in light of recommendations of Enquiry Officer, the competent authority issued Final Show Cause Notice to which his reply was received and found unsatisfactory. Hence, he was awarded appropriate punishment of dismissal from service, which does commensurate with the gravity of misconduct of the appellant. It is pertinent to mention here that, stance of the appellant is baseless and he has preferred departmental appeal to the appellate authority with a delay of 278 days after his dismissal.

Reply on Grounds

1. Incorrect, stance taken by the applicant is not plausible because orders passed by the competent authority and that of appellate authority are in accordance with law, hence, the same are fall within the purview of those orders against which limitation do run.

2. Incorrect. Stance taken by the appellant is totally devoid of merit because he has been properly proceeded against departmentally by issuing him Charge Sheet alongwith Statement of Allegations. The Enquiry Officer after fulfilling all legal and codal formalities, held the appellant responsible of misconduct. Therefore, in light of recommendations of Enquiry Officer, the competent authority issued Final Show Cause Notice to which his reply was received and found unsatisfactory. Hence, he was awarded appropriate punishment of dismissal from service, which does commensurate with the gravity of misconduct of the appellant.
3. Incorrect, plea taken by the applicant is whimsical / concocted rather fanciful hence, liable to be set at naught. As the apex court of Pakistan has held that the question of limitation cannot be considered a "technicality" simpliciter as it has got its own significance and would have substantial bearing on merits of the case.

Keeping in view the above submission, it is humbly prayed that application of the applicant regarding condonation of delay may very kindly be dismissed please.


**Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.**
(Respondent No. 03)


**Regional Police Officer,
Mardan.**
(Respondent No. 02)


**District Police Officer,
Mardan.**
(Respondent No. 01)

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

Service Appeal No. 6350/2020

Aurangzeb Ex-Head Constable No.1853 r/o District
Mardan.....Appellant


VERSUS

1. The District Police Officer, Mardan
2. The Regional Police Officer, Mardan
3. The Provincial Police Officer Khyber Pakhtunkhwa, Peshawar.

.....Respondents

COUNTER AFFIDAVIT.

We, the respondents do hereby declare and solemnly affirm on oath that the contents of the Para-wise comments in the service appeal cited as subject are true and correct to the best of our knowledge and belief and nothing has been concealed from this Honourable Tribunal.


**Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.**
(Respondent No. 03)


**Regional Police Officer,
Mardan.**
(Respondent No. 02)


**District Police Officer,
Mardan.**
(Respondent No. 01)

Serial No.

ORDER

Promoted to the rank of Driver & Head Constable in BDS-9 (11770-730-338) w.e.f 17-12-08 and pay fixed Rs. 16800/-

OB No. 2522
D/17-12-18

Verified
in: 01/20/19

Dist. Controller of Accounts
Mardan
4/1/19

District Police Officer
Mardan

ORDER

Being charged in care vido FIR No. 02 dt 01-01-09 U/s 365-A/34 PPC PS Kalo Khan. He is hereby placed under Suspension and closed to Police lines Mardan

OB No. 240
05-01-09

YK
DPO/Mardan

ORDER:-

He is hereby awarded Major Punishment & dismissal from Service w.e.f 01-01-09 (FIR) with immediate effect

OB No. 1406
01-07-09

YK
DPO/Mardan

15-CENSURES AND PUNISHMENTS.

Charge: Absented from duty with effect
 from 23 ⁴/₁₀ to 25 ⁴/₁₀.

Punishment: one day counted as leave without
 pay.

OB No. 96
 19-5-10

[Signature]
 DPO/Quart

ORDER

He is hereby suspended and closed
 to Police with immediate effect as he was
 involved in Case PIR no. 406 dt. 4-9-15 u/s
 506/34 PS Kalo Lanan Ghat, Swabi.

OB no ¹⁶⁶⁶/_{10/9/15}

[Signature]
 DPO/Mardan

ORDER

He is hereby re-instated
 in service from the date of suspension
 and awarded minor punishment of
 'Censure' with immediate effect.

OB No. 2071

OB 8-11-15.

[Signature]
 DPO/Mardan

ORDER

Being the appellate authority
found no substance in the appeal
therefore the same is ~~rejected~~ and
filed being time barred vide DPC/Mardan
order Crd# 16-388/Es, dt: 24.6.2020.

DPC/Mardan
Y

15-CENSURES AND PUNISHMENTS-Contd.

Serial No.

Charges:- Remained as Absentee from duty
the period from 25.11.08 to 29.11.08
(04) days with out pay

OB No-264

2.12.08

Assistant Inspector Gen
CID, NWFP Peshawar

Pakistan for 1 years
suspended to drive a
LTV. ONE



Charges:- (12) days Absentee from duty
the period from 05.06.2009 to 17.06.2009
12 days with out pay

OB No. 112

22.6.09

Assistant Inspector General of Police
CID, NWFP Peshawar

Charges:- (04) days Absentee from duty
the period from 14.08.09 to 18.08.09
04 days with out pay

OB No. 178

20.8.09

Assistant Inspector General of Police
CID, NWFP Peshawar

Charge: Absentee from duty w.e.f. 30.3.09 to 2.4.09
Punish: (1) Counted as leave w.e.f. 30.3.09 to 2.4.09

(2) Stoppage of two increments without
accumulative effect.

Date: 19
dt 23/1/10

Signature

Signature/Thumb
impression
7 3 01-8 3 7 3 3

M. M. Peshawar
5.1.10

12
32
3-8-2
29
4



**OFFICE OF THE
DISTRICT POLICE OFFICER,
MARDAN**

Tel No. 0937-9230109 & Fax No. 0937-9230111
Email: dpo_mardan@yahoo.com

2019

No. 04 /PA

Dated 9/1/2019

DISCIPLINARY ACTION

I, SAJJAD KHAN (PSP), District Police Officer Mardan, as competent authority am of the opinion that Driver HC Aurangzeb No.1853, himself liable to be proceeded against, as he committed the following acts/omissions within the meaning of Police Rules 1975.

STATEMENT OF ALLEGATIONS

Whereas, Driver HC Aurangzeb No.1853, while posted at MT Staff Police Lines (now under suspension Police Lines), has been charged in a case vide FIR No.02 dated 01.01.2019 U/S 365-A/34 PPC Police Station Kalo Khan (Swabi).

For the purpose of scrutinizing the conduct of the said accused official with reference to the above allegations, ASP Ziaullah SDPO/TBI is nominated as Enquiry Officer.

The Enquiry Officer shall, in accordance with the provision of Police Rules 1975, provides reasonable opportunity of hearing to the accused Police Officer, record/submit his findings and make within (30) days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused Official.

Driver HC Aurangzeb is directed to appear before the Enquiry Officer on the date + time and place fixed by the Enquiry Officer.

(SAJJAD KHAN) PSP
District Police Officer,
Mardan.

please



**OFFICE OF THE
DISTRICT POLICE OFFICER,
MARDAN**


Tel No. 0937-9230109 & Fax No. 0937-9230111
Email: dpo_mardan@yahoo.com

2019

CHARGE SHEET

I, **SAJJAD KHAN (PSP)**, District Police Officer Mardan, as competent authority, hereby charge **Driver HC Aurangzeb No.1853**, while posted at MT Staff Police Lines (now under suspension Police Lines), as per attached Statement of Allegations.

1. By reasons of above, you appear to be guilty of misconduct under Police Rules, 1975 and have rendered yourself liable to all or any of the penalties specified in Police Rules, 1975.
2. You are, therefore, required to submit your written defense within **07 days** of the receipt of this Charge Sheet to the Enquiry Officer, as the case may be.
3. Your written defense, if any, should reach the Enquiry Officers within the specified period, failing which, it shall be presumed that you have no defense to put-in and in that case, ex-parte action shall follow against you.
4. Intimate whether you desired to be heard in person.


(SAJJAD KHAN) PSP
District Police Officer,
Mardan.



2
**OFFICE OF THE
DISTRICT POLICE OFFICER,
MARDAN**

Tel No. 0937-9230109 & Fax No. 0937-9230111
Email: dpo_mardan@yahoo.com

2019

No. 148 /PA

Dated 14 /05/2019

FINAL SHOW CAUSE NOTICE

Whereas, you **Driver/HC Aurangzeb No.1853**, while posted at MT Staff Police Lines (now under suspension and in Central jail Mardan), has been charged in a case vide FIR No 02 dated 01.01.2019 U/S 365-A/34 PPC Police Station Kalo Khan (Swabi).

In this connection, during the course of Departmental (De-novo) Enquiry conducted by Captain ® Ali Bin Tariq, ASP/SDPO/City Mardan vide his Office letter No.891/S dated 09-05-2019, in pursuance of this Office Statement of Disciplinary Action/Charge Sheet No.04/PA dated 09-01-2019, holding responsible you of gross misconduct and recommended for major punishment of dismissal from service.

Therefore, it is proposed to impose Major/Minor penalty as envisaged under Rules 4 (b) of the Khyber Pakhtunkhwa Police Rules 1975.

Hence, I Sajjad Khan (PSP) District Police Officer Mardan, in exercise of the power vested in me under Rules 5 (3) (a) & (b) of the Khyber Pakhtunkhwa Police Rules 1975, call upon you to Show Cause Finally as to why the proposed punishment should not be awarded to you.

Your reply shall reach this office within 07 days of receipt of this Notice, failing which; it will be presumed that you have no explanation to offer.

You are liberty to appear for personal hearing before the undersigned.

Received by Aurangzeb 17301-3573356-5

Dated: 14 /5/2019

(SAJJAD KHAN) PSP
District Police Officer
Mardan

03459292041
Copy to RI/Police Lines (**Attention Reader**) to deliver this Notice upon the alleged official & the receipt thereof, shall be returned to this office within (05) days positively for onward necessary action.

BEFORE THE DISTRICT POLICE OFFICER, MARDAN.

In Ref
Show Cause Notice No 148/PA

Aurangzeb (Head Constable No 1853) post at MT staff
Police Lines District Mardan.....(Petitioner).

Subject:

REPLY TO FINAL SHOW CAUSE NOTICE
DATED 14/05/2019.

Sir,

I beg to submit as under:-

1. That on the petitioner is law abiding citizen and belongs to motherland Pakistan.
2. That the petitioner is behind the bar at judicial lockoff at central jail Mardan ever since his arrest i-e 02-05-2019.
3. That on 20/05/2019 the petitioner receive one show cause notice in central jail Mardan regarding his job and personal hearing before District Police Officer Mardan.
4. That the petitioner is unable to come for personal hearing due to judicial confinement in central jail Mardan in a fake and concocted allegation against the petitioner by the complainant with the help of local police.
5. That the said case mention in show cause notice is mere allegations and trail has already commence before ATC court Mardan.
6. That the petitioner never confessed nor prosecution have any strange evidence to prove his case against the petitioner.
7. That the petitioner is accused in the instant case not convicted so far and according to the superior court judgments accused is innocent child of law so far no convicted.
8. That the petitioner have strange proof to show his innocence under the court.

Handwritten notes:
 1. 11/05/2019
 2. 11/05/2019
 3. 11/05/2019
 4. 11/05/2019
 5. 11/05/2019
 6. 11/05/2019
 7. 11/05/2019
 8. 11/05/2019

9. That the petitioner from the date of his appointed in police department has performed his duty with complete responsibility and obeyed the order of the senior officers.
10. That there is no previous history of the petitioner in such like cases and the instant case is mere allegation from the complainant side.
11. That from the day of the instant FIR the petitioner is behind the bar in District Jail Mardan.
12. That the absence was not deliberate due to confinement in judicial lock off.

I may please be exonerated this time and obliged.

Dated 21/05/2019

Yours Sincerely
Aurangzeb
Constable No.1853

Sir,

He is still in Mardan jail

PH
27/5
19

please



**OFFICE OF THE
DISTRICT POLICE OFFICER,
MARDAN**

Tel No. 0937-9230109 & Fax No. 0937-9230111
Email: dpo_mardan@yahoo.com

2019

No. 4076-28 /PA

Dated 21/7/2019

ORDER ON ENQUIRY OF DRIVER/H.C AURANGZEB NO.1853

This order will dispose-off a Departmental Enquiry under Police Rules 1975, initiated against the subject official, under the allegations that while posted at MT Staff Police Lines Mardan (now under suspension & in Central Jail Mardan), was placed under suspension and closed to Police Lines vide this office OB No.24 dated 05-01-2019, issued vide order/endorsement No.114-117/OSI dated 07-01-2019, on account of charging in a case vide FIR No.02 dated 01-01-2019 U/S 365-A/34 PPC Police Station Kalu Khan (Swabi) and proceeded against departmentally through ASP Ziaullah SDPO Takht-Bhai vide this office Statement of Disciplinary Action/Charge Sheet No:04/PA dated 09-01-2019, who (E.O) after fulfilling necessary process, submitted his Finding Report to this office vide his office letter No:220/ST dated 08-02-2019, concluding that the enquiry papers may be held in abeyance till the availability of defaulter official, but the undersigned didn't agree with the suggestions and conducted de-novo proceedings through Captain @ Ali Bin Tariq SDPO/City Mardan, who after completing necessary process, submitted his findings to this office vide his office letter No.891/S dated 09-05-2019, recommending the defaulter official for major punishment of dismissal from service.

The alleged official was served with a Final Show Cause Notice, under K.P.K Police Rules-1975, issued vide this office No.148/PA dated 14-05-2019, to which, his reply was received and found unsatisfactory.

Final Order

Being a member of disciplined/uniformed force, the involvement of HC Aurangzeb in such heinous crime is bringing a bad name for entire Police force in the eyes of general public, besides affecting other members of Police force, therefore, he is awarded major punishment of dismissal from service with effect from 01-01-2019 (FIR) with immediate effect, in exercise of the power vested in me under Police Rules-1975.

OB No. 1406

Dated 01/7 2019.

(SAJJAD KHAN) PSP
District Police Officer
Mardan

Copy forwarded for information & n/action to:-

- 1) The Regional Police Officer Mardan, please.
- 2) The District Police Officer, Swabi.
- 3) The SP/Operations Mardan.
- 4) The Superintendent Central Jail Mardan, to inform the official concerned.
- 5) The DSP/HQTS: Mardan.
- 6) The P.O & E.C (Police Office) Mardan.
- 7) The OSI (Police Office) Mardan with 10 Sheets.

The Assistant Superintendent of Police,
City Circle.

The Worthy District Police Officer,
Mardan.

/S dated Mardan, 09/05/2019.

Subject:
Memo:

ENQUIRY AGAINST DRIVER HEAD CONSTABLE AURANG ZEB NO.1853

Kindly refer to your office diary No.04/PA dated 09.01.2019, on the subject noted above.

STATEMENT OF ALLEGATIONS.

Whereas, Driver Head Constable Aurang zeb No. 1853, while posted at MT Staff Police Lines Mardan (now under suspension Police Lines), has been charged in a case vide FIR No.02 dated 01.01.2019 u/s 365-A/34 PPC Police Station Kalo Khan (Swabi).

PROCEEDINGS:-

The defaulter Driver Head Constable Aurang zeb No. 1853 was tried the best to contact many times but could not succeed. On verification from PS Kalo Khan Swabi and found that the said Driver HC is in Jail in the above mentioned case. The copy of charge sheet was served upon him in jail through police local on 26.04.2019 with the direction to submit reply to the charge sheet within 07 days as per rules but failed, his previous record was obtained from establishment clerk, there are 09 bad entries with 01 good entries.

FINDING:

From the perusal of the above circumstances, it is crystal clear that the defaulter Driver Head Constable has no defense to offer, beside this, the said Driver Head Constable Aurang zeb No. 1853 is no more interested in police service.

CONCLUSION/RECOMMENDATION

Keeping the above mentioned facts and figures in view, the defaulter Driver Head Constable Aurang zeb No. 1853 is recommended for major punishment of dismissal from service, if agreed.

Encl: (5)

Sub-Divisional Police Officer,
City Circle, Mardan

Issue P.S.O.N

DPQ MDN
19/05/19

please

(2)

ORDER.

This order will dispose-off the departmental appeal preferred by Ex-Driver Head Constable Aurangzeb No. 1853 of Mardan District Police against the order of District Police Officer, Mardan, whereby he was awarded major punishment of dismissal from service vide OB: No. 1406 dated 11.07.2019. The appellant was proceeded against departmentally on the allegations that he while posted as Driver at MT Staff, Mardan was placed under suspension and closed to Police Lines, Mardan on account of involvement in a case FIR No. 02 dated 01.01.2019 u/s 365A/34PPC Police Station Kalu Khan District Swabi.

Proper departmental enquiry proceedings were initiated against him. He was issued Charge Sheet alongwith Statement of Allegations and Sub Divisional Police Officer, Takht Bhai, Mardan was nominated as Enquiry Officer. The Enquiry Officer after fulfilling codal formalities submitted his findings, recommending therein that enquiry may be held in abeyance till the availability of delinquent Official as he was confined in prison in connection with the above mentioned case. But the District Police Officer, Mardan did not agree with the suggestion of Enquiry Officer and conducted de-novo enquiry proceeding through Sub Divisional Police Officer City, Mardan. The enquiry Officer after fulfilling codal formalities submitted his findings wherein he found the delinquent Official guilty of misconduct and recommended him for major punishment.

He was issued Final Show Cause Notice to which his reply was received and found unsatisfactory.

In the light of above discussion, an ex-parte action was taken against the delinquent Official and he was awarded major punishment of dismissal from Service with effect from 01.01.2019 (from the date of registration of FIR) vide District Police Officer, Mardan OB: No. 1406 dated 11.07.2019.

Being a member of disciplined/uniformed force, the involvement of the delinquent Official in such heinous crime brought a bad name for entire Police force in the eyes of general public, besides affecting other members of Police force, therefore, he was awarded major punishment of dismissal from Service with effect from 01.01.2019 (from the date of registration of FIR) vide District Police Officer, Mardan OB: No. 1257 dated 13.06.2019.

Feeling aggrieved from the order of District Police Officer, Mardan, the appellant preferred the instant appeal. He was summoned and heard in person in Orderly Room held in this office on 16.06.2020.

From the perusal of the enquiry file and service record of the appellant, it has been found that allegations against the appellant have been proved beyond any shadow of doubt. Because, the abductee after his release has directly charged the appellant for his abduction. However, during the course of trial, the appellant succeeded to manage the abductee. Hence, the retention of appellant in Police Department will stigmatize the prestige of entire Police Force as instead of fighting crime, he has himself indulged in criminal activities. Moreover, the appellant approached this forum at a belated stage without advancing any cogent reason regarding such delay and also failed to present any cogent justification in his defense which could warrant interference in the order passed by the competent authority.

Keeping in view the above, I, Sher Akbar, PSP S.St Regional Police Officer, Mardan, being the appellate authority, find no substance in the appeal, therefore, the same is rejected and filed, being time barred.

Order Announced.


Regional Police Officer,
Mardan.

No. 3884 /ES, Dated Mardan the 24 - 6 - /2020.

Copy forwarded to District Police Officer, Mardan for information and necessary w/r to his office Memo: No. 142/LB dated 04.06.2020. His service record is returned herewith.

(****)

3414
29.6.20
28/6/2020



2
**OFFICE OF THE
DISTRICT POLICE OFFICER,
MARDAN**

Tel No. 0937-9230109 & Fax No. 0937-9230111
Email: dpo_mardan@yahoo.com



No. 148 /PA

Dated 14 /05/2019

FINAL SHOW CAUSE NOTICE

Whereas, you **Driver/HC Aurangzeb No.1853**, while posted at MT Staff Police Lines (now under suspension and in Central jail Mardan), has been charged in a case vide FIR No.02 dated 01.01.2019 U/S 365-A/34 PPC Police Station Kalo Khan (Swabi).

In this connection, during the course of Departmental (De-novo) Enquiry conducted by Captain @ Alf Bin Tariq, ASP/SDPO/City Mardan vide his Office letter No.891/S dated 09-05-2019, in pursuance of this Office Statement of Disciplinary Action/Charge Sheet No.04/PA dated 09-01-2019, holding responsible you of gross misconduct and recommended for major punishment of dismissal from service:

Therefore, it is proposed to impose Major/Minor penalty as envisaged under Rules 4 (b) of the Khyber Pakhtunkhwa Police Rules 1975.

Hence, I Sajjad Khan (PSP) District Police Officer Mardan, in exercise of the power vested in me under Rules 5 (3) (a) & (b) of the Khyber Pakhtunkhwa Police Rules 1975, call upon you to Show Cause Finally as to why the proposed punishment should not be awarded to you.

Your reply shall reach this office within 07 days of receipt of this Notice, failing which; it will be presumed that you have no explanation to offer.

You are liberty to appear for personal hearing before the undersigned.

Received by Aurangzeb

Dated: 14/5/2019

(SAJJAD KHAN) PSP
District Police Officer
Mardan

Copy to RI/Police Lines (**Attention Reader**) to deliver this Notice upon the alleged official & the receipt thereof, shall be returned to this office within (05) days positively for onward necessary action.



**OFFICE OF THE
DISTRICT POLICE OFFICER,
MARDAN**


Tel No. 0937-9230109 & Fax No. 0937-9230111
Email: dpo_mardan@yahoo.com



CHARGE SHEET

I, **SAJJAD KHAN (PSP)**, District Police Officer Mardan, as competent authority, hereby charge **Driver HC Aurangzeb No.1853**, while posted at MT Staff Police Lines (now under suspension Police Lines), as per attached Statement of Allegations.

1. By reasons of above, you appear to be guilty of misconduct under Police Rules, 1975 and have rendered yourself liable to all or any of the penalties specified in Police Rules, 1975.
2. You are, therefore, required to submit your written defense within **07 days** of the receipt of this Charge Sheet to the Enquiry Officer, as the case may be.
3. Your written defense, if any, should reach the Enquiry Officers within the specified period, failing which, it shall be presumed that you have no defense to put-in and in that case, ex-parte action shall follow against you.
4. Intimate whether you desired to be heard in person.


(SAJJAD KHAN) PSP
District Police Officer,
Mardan.

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

Service Appeal No. 6350/2020

Aurangzeb Ex-Head Constable No.1853 r/o District
Mardan.....Appellant


VERSUS

1. The District Police Officer, Mardan
2. The Regional Police Officer, Mardan
3. The Provincial Police Officer Khyber Pakhtunkhwa, Peshawar.

.....Respondents

AUTHORITY LETTER.

Mr. Khyal Roz Khan Inspector Legal Branch, (Police) Mardan is hereby authorized to appear before the Honourable Service Tribunal, Khyber Pakhtunkhwa, Peshawar in the above captioned service appeal on behalf of the respondents. He is also authorized to submit all required documents and replies etc. as representative of the respondents through the Addl: Advocate General/Govt. Pleader, Khyber Pakhtunkhwa Service Tribunal, Peshawar.


**Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.**
(Respondent No. 03)


**Regional Police Officer,
Mardan.**
(Respondent No. 02)


**District Police Officer,
Mardan.**
(Respondent No. 01)



**KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

No. 2359 /ST

Dated: 01/12 /2021

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 District Police Officer,
Government of Khyber Pakhtunkhwa
Mardan.

Subject: JUDGMENT IN APPEAL NO. 6350/2020 MR. AURANGZEB & TWO OTHERS.

I am directed to forward herewith a certified copy of Judgement dated 09.11.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

DB II

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

Put up to the worthy chairman
with relevant appeal.



Service Appeal No. 6350/2020

Aurangzeb & two others

Versus

Police Department

APPLICATION FOR EARLY HEARING.

Respectfully Sheweth:

Brief facts leading to the instant application are under:

- 1) That the instant appeal and others two connected Service appeal No. 6351/2020 and 6352/2020 are pending adjudicating before this Hon'ble Tribunal and fixed for hearing on 9/10/2021 in this Hon'ble Court.
- 2) That the dismissal orders of the Appellants has been passed on the grounds of involvement of false and fabricated criminal case. In which the Appellants have been equated in the above criminal charge by the court concerned.
- 3) That the innocence of the Appellants has been clarified from the acquittal order, furthermore the

NFA

27/7/2021


Deerdu

16/2/21

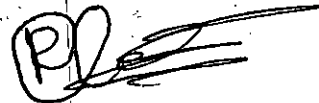
impugned order has been passed without providing opportunity of personal hearing to the Appellants.

It is, therefore, humbly prayed that on acceptance of the instant application, the above mentioned appeals may kindly be fixed for early hearing.

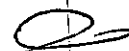
Dated 16/07/2021


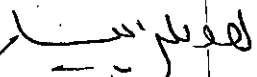

Applicants / appellants

Through


Roeeda Khan
Advocate High Court,

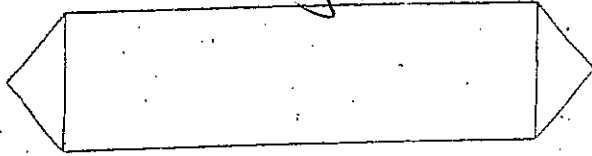
AFFIDAVIT

I, Aurnagzeb Ex head constable No. 1853 R/o District Mardan do hereby solemnly affirm and declare on oath that the contents of the application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal. 

ATTESTED

DEPONENT


طراحی و ترمیم

بعد از ثبت ملک و سند



مورثه
مقدمه
دعوی
جرم

2021ء منجانب

بنام

عبدلہ بک
میرزا

مورثہ

بابت تخریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کا ہوائی متعلقہ

آن مقام کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کمال اختیار ہوگا۔ نیز

وکیل صاحب کو راضی نامہ کرنے و تقریر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال و دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی و عمری اور زر خواست ہر قسم کی تصدیق

زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا ایٹیل کی براندگی

اور منسوخی نیز دائر کرنے ایٹیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت

مقدمہ مذکور کے کل یا جزوی کارروائی 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 با اختیارات حاصل ہوں گے

اور اس کا ساختہ پر داخست منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے

سبب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حدت باہر ہو تو وکیل صاحب پابند ہوں

گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

الرقوم 16 ماہ 2021ء

کے لئے منظور ہے۔

عدنان مستثنیٰ مارت
بیک مشکوئی شاہراہی ڈان. 2220193.
Mob: 0345-9223229

مقام
Acceptance
B 1

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

In S.A # 6350/2020

Aurangzeb

Versus

District Police Officer Mardan & others

REJOINDER ON BEHALF OF
APPELLANT

Respectfully Sheweth,

All the Preliminary objection raised by the Respondents are incorrect and baseless and not in accordance with law and rules rather the Respondents are stopped due to their own conduct to raised any objection at the stage on the appeal.

Facts

All the facts of the appeal are correct while reply of the Respondent Department is incorrect wide abinitio and illegal, because the appellant has been arrest on 02.01.2019 on the ground of involvement in a false and fabricated case FIR No.2 dated 01.01.2019 U/S 365-A 34 PPC Police Station Kalo Khan and was acquitted in the above mentioned case on 05.03.2020 while the impugned dismissal order has been issued without fulfilling the codal formality on 02.07.2019 when the appellant was behind the bar which has been clarified from the card of arrest of the appellant,

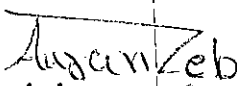
so no charge sheet, no statement of allegation has been served to the appellant, no statement of witness has been recorded, no opportunity of personal hearing has been provided to the appellant, no statement of local police has been recorded by the inquiry officer and so concern the bad entries of the appellant it was a past and close chapter which has no relevancy in the instant case. (copy of copy of order attached)

ON GROUNDS:-

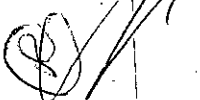
All the grounds of the appeal are correct and accordance with law and prevailing rules and that of the Respondents are incorrect baseless and not in accordance with law and rules hence denied, because the appellant has not been treated according law and rules. Because the impugned order has been issued without fulfilling the codal formalities and without providing opportunity of defense. The innocent of the appellant is also clarified from the acquittal order

It is, therefore, requested that the appeal may kindly be accepted as prayed for.

Dated 15/03/2021


Petitioner

Through


ROEDA KHAN
Advocate, High Court
Peshawar.

خلیم

کارڈ گرفتاری زیر دفعہ 62 UP

مقدم عدالت ر حرم 05/01/19 365 A ققانی کالو خان
34

نام: 1 اورنگزیب ولد عبدالعزیز بن علی اسماعیل

حنا عالی

مقدم عنوان بالا اصل ملزم بالا کو اسب حرم 05/01/19 کو وقت
18105۔ صوبہ اطلاع وٹمانڈی خیر بہ مقام دو بیان اسٹریٹ صبیح
دوران نام بڑی مسواری موٹر کار نمبری AB 3636 ہند ابرنگ
سید صاحب کرنل شہر اسٹریٹ صبیح سید یا بوا کھڑا کر کے موٹر کار
کے کھولے سب سے سبکی آٹارا صاحب طرح تلاش لینے پر روز کو (20 سالہ
والی صبیح سے آئیٹ عدد 7 جو بائیل سمینگ سٹریٹ والی ابرنگ
بیان و آئیٹ عدد ہم نمبری ٹیلی نار 0344-8272444 برآحد بنو کر
مروڑے فرد مقدمہ لوہیل میں کر کے ملزم بالا کوہ خلیم ذیل مقدمہ ہذا
میں حسب ماہل گرفتار کر کے کارڈ گرفتاری ملزم جاری ہو کر ہے
اطلا عالی گزارش ہے۔

بند

Mob = 0311-9947515
0345-9892041
CNIC = 17301-6573356-5

ic/si - P. Eatham
02-01-019

خلیم ملزم

قد 5-11
بصر 33/34 سال



بند بدن
بیان دارھی رکھی ہوئی ہے
انگریزی میں بیان

تعلیم FA