

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 9408/2020

Date of Institution ... 19.08.2020

Date of Decision ... 18.01.2022

Farman Ullah Ex Head Constable No. 1540, Counter Terrorism Department,
Operation Team Dir Upper. ... (Appellant)

VERSUS

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

Fazal Shah Mohmand,
Advocate

... For Appellant

Asif Masood Ali Shah,
Deputy District Attorney

... For respondents

AHMAD SULTAN TAREEN
ATIQU-UR-REHMAN WAZIR

...
...

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

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

Brief fact of the

case are that the appellant while serving as Constable in Police Department, was charged in FIR U/Ss 302/324/34 PPC dated 03-08-2018 and was arrested the same day. The appellant was also proceeded departmentally on the charges of registration of FIR against him and was ultimately dismissed from service vide order dated 26-09-2018. In the meanwhile, the appellant was acquitted of the charges vide judgment dated 19-12-2019 and was released from jail. The appellant filed departmental appeal dated 26-12-2019, which was rejected vide order dated 10-02-2020. The appellant filed revision petition dated 11-02-2020, which was also rejected vide order dated 11-08-2020, hence the instant service appeal with prayers that the impugned orders dated 26-09-2018, 10-02-2020 and

11-08-2020 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the appellant was not proceeded as per mandate of law, hence his rights secured under the law has badly been violated; that respondents were required to suspend the appellant and to wait for decision in the criminal case, instead he was proceeded hastily and was dismissed from service, which is against law, facts and norms of natural justice; that the appellant was acquitted of the criminal charges vide judgment dated 19-12-2019, hence there remains no ground to maintain such penalty; that the appellant was proceeded in absentia as during the departmental proceedings, the appellant was behind the bar and before his release, he was dismissed from service, which was illegal and unlawful.

03. Learned Deputy District Attorney for the respondents has contended that the appellant was found involved in a criminal case FIR U/Ss 302/324/34PPC Dated 03-08-2018 and on the same very charges, the appellant was proceeded departmentally; that proper charge sheet/statement of allegation was served upon the appellant and a proper inquiry to this effect was conducted; that proper showcuase notice was also served upon the appellant; that the inquiry officer proved the allegation leveled against him; that upon recommendation of the inquiry officer, the appellant was dismissed from service vide order 26-09-2018; that departmental appeal as well as revision petition of the appellant were rejected being barred by time.

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

05. Record reveals that the appellant after being charged in FIRs, was proceeded departmentally in absentia as the appellant was in jail, who was released on 19-12-2019, but before his release from jail, the appellant was

dismissed on 26-09-2018, hence the appellant in the first place was not afforded opportunity of defense, as the appellant was not associated with proceedings of the departmental inquiry. To this effect, the august Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 have held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice.

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

07. The criminal case was decided vide judgment dated 19-12-2019 and the appellant was exonerated of the charges. In a situation, if a civil servant is dismissed from service on account of his involvement in criminal case, then he would have been well within his right to claim re-instatement in service after acquittal from that case. Reliance is placed on 2017 PLC (CS) 1076. In 2012 PLC (CS) 502, it has been held that if a person is acquitted of a charge, the

presumption would be that he was innocent. Moreover, after acquittal of the appellant in the criminal case, there was no material available with the authorities to take action and impose major penalty. Reliance is placed on 2003 SCMR 207 and 2002 SCMR 57, 1993 PLC (CS) 460. It is a well-settled legal proposition that criminal and departmental proceedings can run side by side without affecting each other, but in the instant case, we are of the considered opinion that the departmental proceedings were not conducted in accordance with law. The authority and the inquiry officer badly failed to abide by the relevant rules in letter and spirit. The procedure as prescribed had not been adhered to strictly. All the formalities had been completed in a haphazard manner, which depicted somewhat indecent haste. Moreover, the appellant was acquitted of the same charges by the criminal court; hence, there remains no ground to further retain the penalty so imposed.

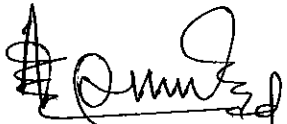
08. On the question of limitation contention of the appellant, hold force, as the appellant filed departmental appeal just after acquittal from criminal charges.

In a situation, if a civil servant is dismissed from service because of his involvement in criminal case, then he would have been well within his right to claim re-instatement in service after acquittal from that case. Reliance is placed on 2017 PLC (CS) 1076. The august Supreme Court of Pakistan in its judgment reported as PLD 2010 SC 695 has held that it would have been a futile attempt on part of civil servant to challenge his removal from service before earning acquittal in the relevant criminal case. It was unjust and oppressive to penalize civil servant for not filing his departmental appeal before earning his acquittal in criminal case, which had formed the foundation for his removal from service. Moreover, it is a well settled legal proposition that decision of cases on merit is always encouraged instead of non-suiting litigants on technical reason including ground of limitation, Reliance is placed on 2004 PLC (CS) 1014 and 1999 SCMR 880, where as the appellant has a strong case on merit and the respondents have no arguments

except limitation. In view of situation, the delay so occurred is condoned. We are of the considered opinion that absence of the appellant cannot be counted as absence, as the appellant was behind the bars and facing criminal proceedings

09. We are of the considered opinion that the appellant has not been treated in accordance with law and was removed from service without adhering to the method prescribed in law. Now in case of his acquittal from the same charge, upon which he was dismissed, has vanished away. In circumstance, we are inclined to accept the instant service appeal. The impugned orders are set aside and the appellant is re-instated in service with all back benefits. Parties are left to bear their own costs.

ANNOUNCED
18.01.2022



(AHMAD SULTAN TAREEN)
CHAIRMAN



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

ORDER

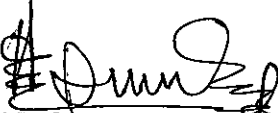
18.01.2022


Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for respondents present. Arguments heard and record perused.

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

ANNOUNCED

18.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


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



15.07.2021


Appellant present through counsel.

Muhammad Adeel Butt learned Additional Advocate General alongwith Muhammad Saleem Section Officer for respondents present.

Former made a request for adjournment; granted. To come up for arguments on 25.11.2021 before D.B.



(Rozina Rehman)
Member (J)



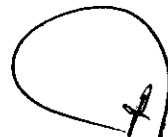
Chairman

25.11.2021

Appellant in person present.

Mr. Muhammad Adeel Butt, Additional Advocate General for respondents present.

Learned Member Executive (Mr. Atiq-ur-Rehman Wazir), is on leave, therefore, case is adjourned. To come up for arguments on 18.01.2022 before D.B.



(Rozina Rehman)
Member (J)

12.01.2021

Miss. Rabia Muzaffar, Advocate, for appellant is present. Mr. Kabirullah Khattak, Additional AG for the respondents is also present.

Neither written reply on behalf of respondent submitted nor representative of the department is present, therefore, learned Additional Advocate General is directed to contact the respondents and furnish written reply/comments on the next date of hearing. Adjourned to 25.02.2021 on which date file to come up for written reply/comments before S.B.

(MUHAMMAD JAMAL KHAN)

25.02.2021

Appellant is present in person. Mr. Kabirullah Khattak, Additional Advocate General and Mr. Wajid, ASI, for the respondents are also present.

Written reply on behalf of respondents not submitted. Representative of the department is seeking further time for submission of written reply/comments. Last chance is given to the respondents for filing of written reply/comments on 30.03.2021 before S.B.

(Muhammad Jamal Khan)
Member

30.03.2021

Counsel for the appellant and Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Wajid, ASI for the respondents present.

Representative of the department submitted para-wise reply on behalf of respondents No. 1 to 3 which is placed on file. Adjourned to 15.07.2021 for rejoinder and arguments before D.B.

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

21.09.2020

Counsel for the appellant present.

Contends that the appellant, after involvement in a criminal case recorded through FIR No. 463 dated 03.08.2018, remained throughout in custody. On 19.12.2019 the appellant was acquitted from the charges, however, on 26.09.2018 the impugned order of removal from service was passed against him. The record itself suggests that during the departmental proceedings the appellant, due to his confinement, was not provided with any opportunity of participation and setting forth his defence. In the impugned order, reference regarding his confessional statement was borrowed from the investigation record which case resulted in the acquittal of appellant.

Subject to all just exceptions, instant appeal is admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 23.11.2020 before S.B.

Appellant Denied
Security & Process Fee


25/9/20


Chairman

23.11.2020

Learned counsel for appellant is present. Mr. Kabirullah Khattak, Additional Advocate General and Mr. Wajid, S.I, for the respondents are also present.

Written reply on behalf of respondents not submitted. Representative of the department seeks further time for submission of written reply/comments. Time given. File to come up for written reply/comments on 12.01.2021 before S.B.

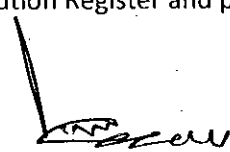


(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 9408 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	19 /08/2020	<p>The appeal of Mr. Farman Ullah presented today by Mr. Fazal Shah Mohmand 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>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>21/09/2020</u> .</p> <p style="text-align: right;"> CHAIRMAN</p>
2-		

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 9408/2020

Farman Ullah.....Appellant

V E R S U S

PPO & others.....Respondents


I N D E X

S. No	Description of Documents	Annexure	Pages
1.	Service Appeal		1-3
2.	Application for condonation of delay with Affidavit		4
3.	Copy of FIR	A	5
4.	Copy of Show Cause Notice, Reply & Charge Sheet	B, C & D	6-8
5.	Copy of Judgment dated 19-12-2019	E	9-25
6.	Copy of Order dated 26-09-2018, Departmental appeal dated 26-12-2109 & Order dated 10-02-2020	F, G & H	26-30
7.	Copy of Revision Petition & Order dated 11-08-2020	I & J	31-36
8.	Vakalat Nama		37

Dated:-18-08-2020


Appellant
(Farman Ullah)

Through


Fazal Shah Mohmand
Advocate,
Supreme Court of Pakistan.

OFFICE:- Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell# 0301 8804841
Email:- fazalshahmohmand@gmail.com

110H
1-
Khyber Pakhtunkhwa
Service Tribunal

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 9408 /2020

Diary No. 8967
Dated 19-8-2020

Farman Ullah Ex Head Constable No 1540, Counter Terrorism Department, Operation Team Dir Upper.....**Appellant**

V E R S U S

1. Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
2. Deputy Inspector General of Police, Counter Terrorism Department, Khyber Pakhtunkhwa Peshawar.
3. Superintendent of Police, Counter Terrorism Department, Malakand Region at Swat.....**Respondents**

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE OFFICE ORDER DATED 11-08-2020 PASSED BY RESPONDENT NO 1 WHEREBY REVISION PETITION FILED AGAINST THE ORDER DATED 10-02-2020 OF RESPONDENT NO 2 WHICH THE APPELLANT HAD FILED AGAINST THE ORDER DATED 26-09-2018 OF RESPONDENT NO 3 WHEREBY THE APPELLANT WAS AWARDED THE PENALTY OF REMOVAL FROM SERVICE.

PRAYER:-

On acceptance of this appeal the impugned Orders 11-08-2020 of respondent No 1, order dated 10-02-2020 of respondent No 2 and order dated 26-09-2018 of respondent No 3 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

Respectfully Submitted:-

1. That the appellant was enlisted as Constable in District Police Dir Upper on 10-05-2006, was selected for Elite Course in the year 2009 and after qualifying the same was serving in Elite Force till March 2014 when the appellant was selected for Upper School Course and after qualifying which the appellant was transferred to Counter Terrorism Department Operation Team Dir Upper. Since appointment the appellant performed his duties with honesty and full devotion and to the entire satisfaction of his high ups.
2. That on 03-08-2018 the appellant while lastly posted to Counter Terrorism Department Operation Team Dir Upper, was falsely involved in criminal case vide FIR No 463 dated 03-08-2018 U/Ss 302/324/PPC of Police Station Dir and was arrested the same day. **(Copy of FIR is enclosed as Annexure A).**

Filed to-day

Registrar

19/8/2020

- . 2 -
3. That the appellant while in custody was issued Show Cause Notice on 06-08-2018 which the appellant replied in detail refuting the allegations where after Charge Sheet was issued to the appellant which was also replied by the appellant accordingly. **(Copy of Show Cause Notice, Reply and Charge Sheet is enclosed as Annexure B, C & D).**
 4. That after the conclusion of trial by the Court of competent jurisdiction, the appellant was acquitted of the charges vide Judgment dated 19-12-2019. **(Copy of Judgment dated 19-12-2019 is enclosed as Annexure E).**
 5. That after acquittal the appellant reported for duty however he was told that he has been removed from service by respondent No 3 vide order dated 26-09-2018, which order was never communicated to the appellant, where after the appellant obtained copy of the same order and filed departmental appeal before respondent No 2 which was filed being time barred vide order dated 10-02-2020. **(Copy of order dated 26-09-2018, departmental appeal dated 26-12-2019 & order dated 10-02-2020 is enclosed as Annexure F, G & H).**
 6. That the appellant then filed Revision Petition under Rule 11-A of Police Rules 1975 which was also rejected vide order dated 11-08-2020. **(Copy of Revision Petition & Order dated 11-08-2020 is enclosed as Annexure I & J).**
 7. That the impugned Orders dated 11-08-2020 of respondent No 1, order dated 10-02-2020 of respondent No 2 and order dated 26-09-2018 of respondent No 3 are against the law, facts and principles of natural justice on grounds inter-alia as follows:

GROUND S:-

- A. That the impugned orders are illegal and void ab-initio.
- B. That the appellant did nothing that would amount to misconduct.
- C. That the impugned order of removal is void being without lawful authority as respondent No 3 is not the competent authority in case of the appellant, in which case even limitation becomes irrelevant.
- D. That mandatory provisions of law and rules have badly been violated and the appellant has not been treated according to law and rules and the appellant did nothing that amounts to misconduct.

- E. That the appellant was proceeded on the allegations of being involved in criminal case only from which he has been acquitted by the Court of competent jurisdiction and as such he is entitled to be reinstated in service.
- F. That the impugned order of removal was never communicated to the appellant thus rejection of departmental appeal and revision petition on the ground of limitation is not tenable in the eyes of law.
- G. That no inquiry was conducted in the matter to had found out the true facts and circumstances thus too the impugned orders are liable to be set at naught.
- H. That the appellant was never afforded opportunity of personal hearing.
- I. That the appellant never reminded absent from duty rather was in custody besides no proceedings on the charge of absence were ever taken against him.
- J. That the appellant has more than 12 years' service with unblemished service record and is jobless since his illegal removal from service.
- K. That the appellant seeks the permission of this honorable tribunal for further/additional grounds at the time of arguments.

It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for in the heading of the appeal.

Any other relief deemed appropriate and not specifically asked for, may also be granted in favor of the appellant.

Dated:-18-08-2020


Appellant
(Farman Ullah)

Through


Fazal Shah Mohmand
Advocate,
Supreme Court of Pakistan.

-4-

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No _____/2020

Farman Ullah.....Appellant

V E R S U S

PPO & others.....Respondents

Application for condonation of delay if any

Respectfully Submitted:-

1. That the accompanying appeal is being filed today in which no date of hearing has been fixed so far.
2. That the grounds of appeal may be considered as integral Part of this application.
3. That as the impugned order of removal was never communicated to the appellant and there is no fault on part of the appellant rather the appellant is not guilty of misconduct the limitation becomes irrelevant.
4. That respondent No 3 is not the competent authority so the impugned order of removal is void
5. That the law as well as the dictums of the superior Courts also favors decisions of cases on merit.

It is therefore prayed that on acceptance of this application, the delay if any in filing of appeal may kindly be condoned.

Dated:-18-08-2020

(Signature)
Appellant
(Farman Ullah)

Through

(Signature)
Fazal Shah Mohmand
Advocate,
Supreme Court of Pakistan.

ATTESTED



AFFIDAVIT

I, Farman Ullah Ex Head Constable No 1540, Counter Terrorism Department, Operation Team Dir Upper, do hereby solemnly affirm and declare on oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

(Signature)
DEPONENT



11A
5-

گورنمنٹ ہیرس چٹاؤر ہاؤس، لاہور، پاکستان۔ فون: 2286/13۔ ڈیڑھ سڑک، لاہور۔ 20.06.2011ء کو (فارم نمبر 34) میں

فارم نمبر 34 (1)

ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ 154 جرمہ ضابطہ نوحدہ کی

EX PA

دیہ بالا

تاریخ وقت رپورٹ	30/30	تاریخ	8/8/03
نام و سکونت اطلاع دہندہ مستفیض	محمد مہتاب ولد سید بی بی مومن سوانی بزمہ سید 30/30 سال کے کوچیل دیہ	محل وقوع	8/8/03
مختصر کیفیت جرم (معدومہ) حال اگر کچھ لیا گیا ہو۔	P.P.C 302-34	تاریخ	8/8/03
جائے وقوعہ فاصلہ تھانہ سے اور سمت	دائیں جانب واقع املوت کوہ محلہ کوچیل بھلاہ قریب 5 km جاگدہ ہے اور تھانہ	تاریخ	8/8/03
نام و سکونت لڑکے/خبر نامی علی و نام مستفیض	انعام ولد علی امین 9 شریف علی ولد غلام علی ساکنان کوہ	تاریخ	8/8/03
کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو	بہ و سید کی مدد سے پتہ چلا گیا۔	تاریخ	8/8/03
تھانہ سے روانگی کی تاریخ و وقت		تاریخ	8/8/03

بھیانے خان مذکورہ خانہ ابتدائی اطلاع نے درج کر کے
 آئندہ ایوارڈ کے ساتھ دیہ سے اطلاع مینال دیہ میں وارد آکر جاہد یانی بہ نمل شہ
 نیش آذان سیدی ولد شوان محلہ ساک کوچیل لیا یا یا۔ نیشن کیا تو بہ آشن
 بالا بول دیو، نیش کے نام سے ایروز میں مدد والہ ام مقول سید محمد بازوم کہ محلے سے گزرتے
 خود جاہ سے تو جیسے بوقت 18:45 بجتا ہوا کوچیل کو جاہاں پہ سیمان 9 نہ مائل ہوا
 شریف علی 9 انعام ولد علی امین 9 شریف علی ولد غلام علی ساکنان کوہ محلہ
 بیوت نے جاہ دست ساقو تکرار شروع کی تاکہ آکر لے لیں تینوں ہی گئی تھی کہ پورا
 استعمال نہ کرے۔ والد ام نے لہو چڑھا یا پتا نہ پھا پورا ناستہ ہے، استفادہ کئے پر
 اسان ہاا شعل ہو کر شریف علی 9 انعام نے والد ام کو پکڑ کر جبکہ سنی نہ مان ملی کے
 والد ام بہ فری کے بے دردی کے اشارے کرتے ہیں والد ام بلان کے فٹنگ جھلون پہ
 لگے کہ وہ دفع بد جان بھولا۔ جو نیش والد ام کو اہلیان دیہ کے اہلکار سے لہ
 تانوں تھار مانا، ڈانڈی ممانہ مینال دیہ لایا ہوا۔ وقوہ میرے ملاوہ جہازاد
 ام تاج ملا خٹک ولد تاج محمد خان، سیرت میں ولد علی امین ساکنان دیہ ام کے ملاوہ
 دیکھ کر تھارے کا چشم دید ہے۔ جہ جہ ملاوہ ملاوہ راستہ ہے۔ سب والد ام کی متل ہوا
 تاج محمد کو کوچیل جہازاد ام کے دیورٹ ہاا کی نامیہ کرا تا ہوا۔ نشان انکوشے
 جہاں والی پولیس سے گفتہ سائیل دیورٹ ہوا۔ نشان انکوشے۔ نشان انکوشے
 کیا دستہ تسلیم کرتے ہیں دیورٹ ہوا۔ نشان انکوشے۔ نشان انکوشے۔ نشان انکوشے
 کہ تاہوں۔ جیکہ داد آٹھ کے بطور نامیدی نشان انکوشے ثبت کی۔ جیکہ میں لہو
 قلمیہ کرتے ہیں جسے وائے جوالا ڈانڈی ہونے۔ مقول کے قائمذات
 ہر 11/11/03 تک ملاوہ سائیل دیورٹ ہوا۔ نشان انکوشے۔ نشان انکوشے۔ نشان انکوشے
 P.P.C

پتہ: دیہ بالا، کوہ محلہ، کوچیل بھلاہ، لاہور۔ P.T.O

S/A

مہربانہ سے منسلک خط 627 کی کاپی ہے۔ جس میں
تفصیل بیان کیا گیا ہے کہ اس کا بطور سیتل ریورڈ ہٹ گڈ آرڈر میں
ریڈی خانہ آدہ خانہ 440 میں ہے۔ یہ 305 ہمارا ہی قبضہ
ہے۔ اس کا حوالہ یہ ہے کہ وہ 2000 میں ہی ہمیں مل گیا تھا۔
اس لیے یہ نقل کر کے ہمیں ہمارے قبضہ میں لے کر آئے۔
مافی ہے۔ آمینہ ان ما آدہ بطور سیتل ریورڈ اطلاع
دیں۔

(اعتاد علیہ)

Asst. Ps. Dir
5308-018

ATTESTED

رہنما اور سب سے اہم کاموں کو انجام دینے کے لیے اس کا حوالہ دیا گیا ہے۔ اس کے لیے اس کا حوالہ دیا گیا ہے۔ اس کے لیے اس کا حوالہ دیا گیا ہے۔

Whereas you HC Farman Ullah No 1540 of this unit
operation Team CTD District Div Upper due to being the following
omission/Commission on your part

That you Ullah No 1540 while posted to CTD in Rawalpindi Region
District Div Upper were repeatedly found involved in criminal case FIR No 483
dated 03-08-2018 U/S 302/324 PPCPS Div District Div Upper.

Your this act of negligence on your part you are therefore served
with the show cause. Within 07 days of the receipt of the reply to be filed
you may not be subjected to proper departmental action.

Tenant of Police
Department
at Swat

Copy to

1 Working Deputy Inspector General of Police Counter Terrorism Department
Khyber Pakhtunkhwa Peshawar
District Div Upper

کاپی کے لئے
484

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تو کار ہوا کا ایک کاپی کے لئے
کو حوالہ دینے کے لئے
میں نے اس کے لئے
دراصل میں نے اس کو
تو کار ہوا کا جواب

6/8/18
1/2 CTD DIR U

BETTER COPY OF THE PAGE NO. 6-

SHOW CAUSE NOTICE

No. 720/CTD/MKD, Dated 06/08/2018

Whereas you HC Farman Ullah No. 1540 of this unit Operation Team CTD District Dir Upper due to committing the following omissions/committing on your part.

That you HC Farman Ullah No. 1540 while posted to CTD Malakan require District Dir Upper were repeatedly found involved in cimrinal case FIR No. 463, dated 03/08/2018 U/S 302/324 PPC, PS Dir District Dir Upper.

Your this act of negligence on your part you are therefore served with the show cause notice within 07 days of the receipt of the reply by filed.

You may not be subjected to proper departmental action against you.

Superintendent of Police
Counter Terrorism Department
Malakand Region at Swat

No. 721-22/CTD/MKD, Dated 06/08/2018.

Copy for information:

1. Worthy Deputy Inspector General of Police Counter Terrorism Department, Khyber Pakhtkunkhwa.
2. I/C DFU District Dir Upper.

Superintendent of Police
Counter Terrorism Department
Malakand Region at Swat

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Subject:- SHOW CAUSE NOTICE.

"C"

-7-

Respected Sir,

Kindly refer to your good-357 office letter bearing Memo: No. 720/CTD/MKD - dated 6.8.2018 on the subject cited above.

It is submitted that at the time of occurrence I was neither present on the spot nor have committed the offence. The allegations levelled against me are not based on facts. I have been charged merely on account of malvolence.

The daily diary clearly shows my presence on my duty in D.F.U. At about 21:00 hrs police party came, informed me and the Incharge of D.F.U Inspector Tameezuddin Khan regarding my charging in the case. Thereafter, the matter was brought into the notice of high-ups. I was handed-over to the police party for interrogation and further investigation. Submitted please



H.C. Farmanullah No. 1540
C.T.D. MKD operation team

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~~بسم الله الرحمن الرحيم~~
~~الحمد لله رب العالمين~~

(P)

~~0379795010~~

21

~~0340~~
~~222145~~

"D"
-8-**SUMMARY OF ALLEGATIONS.**

1. I, Hussain Badshah, SUPERINTENDENT OF POLICE, CTD, MALAKAND REGION SWAT, am of the opinion that HC Farman Ullah No. 1540/ of CTD Malakand Region, has rendered himself liable to be proceeded against as he committed the following acts/ omission within the meaning of Police Rules, 1975 read with amendments 2014.

Statement of allegations.

That you HC Farman Ullah No. 1540, of CTD Malakand Region You HC Farman Ullah No. 1540, while posted to operation team CTD District Dir Upper were reportedly found involved in criminal case FIR No. 463 dated 03-08-2018 U/s 302-324-PPC PS: Dir District Dir Upper, and also you deliberately and without permission or leave, absented yourself w.e.f. 03-08-2018 till date. You have been marked absent vide DD. No. 06 dated 03-08-2018 CTD Dir Upper and informed accordingly to report back at your duty station in Dir Upper. In spite of that, you deliberately avoid to report back on your official duty. All this speak highly adverse on your part and is against Police Rules, 1975 read with amendments 2014.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations, MR. Muhammad Zaman Khan (DSP CTD Dir Lower) of this unit is nominated as enquiry officer, to conduct enquiry under the Rules.
3. The Enquiry Officer, shall in accordance with the provision of the Police Rules, 1975 provide reasonable opportunity of hearing to the accused, record finding and make within 7 days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused.

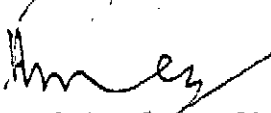

**Superintendent of Police,
 Counter Terrorism Department,
 Malakand Region at Swat.**

No. 732-34 CTD/MKD. Dated. 9-8 /2018.

Copy of above is forwarded to the: _____

1. Worthy Deputy Inspector General of Police, Counter Terrorism Department, for information.
2. Enquiry officer of this unit are directed to initiate departmental proceedings against the accused under the relevant Rules.
3. HC Farman Ullah No. 1540/CTD to appear before the enquiry officer on the date time and place fixed by the enquiry officer for the purpose of enquiry proceedings.

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**Superintendent of Police,
 Counter Terrorism Department,
 Malakand Region at Swat.**

"E"
-9-

IN THE COURT OF
MUHAMMAD TAYYIB JAN
ADDITIONAL SESSIONS JUDGE-II/IZAFI ZILLA QAZI, DIR UPPER

Sessions Case No:- SC 69/2
Date of Institution:- 26/09/2018
Date of Transfer:- 05/04/2019
Date of Decision :- 19/12/2019

State through the complainant Irfan Ullah S/O Said Muhammad R/O Kochkal Amlook Khwar, Tehsil & District Dir Upper.

.....(Complainant)

VS

Farman Ullah S/O Sharif Ullah R/O Kotkay, Tehsil & District Dir Upper.

.....(Accused facing trial)

(1) Sharif Ali S/O Ghulam Ali (2) Inam S/O Gul Amin R/O Kotkay, Tehsil & District Dir Upper.

.....(Absconding Accused)

FIR No. ----- 463
Dated: ----- 03/08/2018
U/S ----- 302/34 PPC & 15-AA
Police Station ----- Dir.

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J U D G E M E N T

1.

The accused named above faced the trial in case FIR No. 463 dated 03/08/2018 u/s 302/34 PPC & 15-AA of Police Station Dir.

2.

Brief facts of the case, as per FIR & Murrasila, are that the complainant Irfan Ullah has reported the matter to the local police that on 03/08/2018, he alongwith his deceased father namely Said Muhammad were coming back to home from Kotkay Bazar and

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when they reached the place of occurrence, the accused facing trial alongwith absconding accused started altercation with them on account of the thoroughfare. On reply of his father that it is their old pathway, the accused party became flared up and the accused Sharif Ali and Inam caught hold of his father whereas the accused facing trial Farman Ali stabbed him with dagger (پیش قبض). Resultantly, he received injuries on different parts of his body and died on the spot. Occurrence is stated to have been witnessed by Taj Mulla Khan, Sher Amin and many others beside the complainant. Motive of the occurrence is dispute over the thoroughfare. Hence, the FIR.

3.

The Prosecution submitted Challan against the accused facing trial. He was summoned through process of the court. He was produced from jail and necessary copies u/s 265-C Cr.PC were provided to him. Formal charge was framed against him, to which he did not plead guilty and claimed trial.

4.

Prosecution was directed to produce its evidence against the accused facing trial.

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5.

The prosecution in support of its case produced and examined as many as twelve (12) witnesses. Statements of all the witnesses in brief are reproduced as under:

6.

SW-1 Suliman DFC No. 999 PS Dir. Deposed that he has executed warrants u/s 204 Cr.PC against the absconding accused and has prepared his reports. Warrants are ExSW-1/1 and ExSW-

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1/2 whereas his reports are ExSW-1/3 and ExSW-1/4. Similarly, he has also executed proclamations u/s 87 CrPC issued against the absconding accused and has prepared his reports. Proclamations are ExSW-1/5 and ExSW-1/6 whereas his reports are ExSW-1/7 and ExSW-1/8.

7. PW-1 Muhammad Siyar Khan SHO PS Dir. Deposed that he has submitted complete Challan against the accused facing trial whereas Challan u/s 512 Cr.PC against the absconding accused. Challan is ExpW-1/1 which correctly bears his signature.

8. PW-2 Constable Akbar Shah No. 66 PS Dir. Deposed that he has taken two parcels of blood stained shirt of the deceased and blood stained earth and pebbles to the FSL vide docket ExpW-2/1 and receipt ExpW-2/2.

PW-3 Nasar Khan Constable No. 768 PS Dir. Deposed that he has brought blood stained dagger (پیش قبض) to FSL vide receipt ExpW-3/1.

10. PW-4 Aftab Alam ASI PS Dir. Deposed that after receipt of Murrasila, he has converted its contents into FIR ExPA which correctly bears his signature and name.

PW-5 Dr. Khadim RHC Barawal. Deposed that he has examined the deceased Said Muhammad Khan and found the following injuries on his body.

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1. 3 inches incised wound on left lower chest interiorly extending to chest cavity.
2. 5 inches incised wound on right side of umbilicus, extending to abdominal cavity with protrusion of omentum and intestines with multiple wound/ incision in intestines.
3. 4 inches incised wound on right iliac fossa, extending to abdominal cavity with protrusion intestines.
4. 1 inch incised wound on left ring finger dorsom. Bone exposed with clothed blood.
5. 2-1/2 inches incised wound right wrist dorsum, bone exposed.
6. 3 inches incised wound right arm, bone exposed anteriorly.
7. 2-1/2 inches incised wound right arm posteriorly, bone exposed.

Whole body was contaminated with clothed blood.

Nature of Injuries. 1,2,3 Jurha Jaifa, 4,5,6 Jurha Ghair Jaifa Mudihah

Kind of Weapon Used. Sharp.

Probable Cause of death: (1) Pneumothorax, (2) Severe Blood loss secondary to multiple incised wound.

Probable Duration. less then 12 hours.

His report is ExPW-5/1 which correctly bears his signature.

12.

PW-6 Ahmad Hassan LHC PS Dir. Deposed that he has handed over blood stained shirt of the deceased, blood stained earth and pebbles vide application ExPW-2/1 to constable Akbar Shah who has taken it to FSL vide receipt ExPW-2/2. Similalry, he has handed over blood stained dagger to constable Nasar Khan who handed it over in the FSL vide receipt ExPW-3/1.

13.

PW-7 Irfan Ullah S/O Said Muhammad R/O Kochkal Amlook Khwar. He is the complainant of the case and has reiterated the same story as mentioned in the FIR. He has made report which was reduced in shape of Murrasila ExPA/1 which correctly bears his

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signature. Later on, he has handed over blood stained shirt of his deceased father ExP-1 to police which was taken into possession by them vide recovery memo ExPC. On the next day of occurrence, I.O has prepared the site plan on their pointation.

14. PW-8 Sher Amin S/O Gul Min R/O Kochkal. He is the eyewitness of the occurrence and has recorded his statement in support of the prosecution story. He is the marginal witness of the recovery memo ExPC vide which the police have taken into possession the blood stained shirt of the deceased which correctly bears his signature. On the next day of occurrence, the police came to the spot and prepared the site plan on their pointation, took into possession the blood stained earth and pebbles ExP-2 vide recovery memo ExPC/1 which correctly bears his and signature of marginal witness Taj Mula.

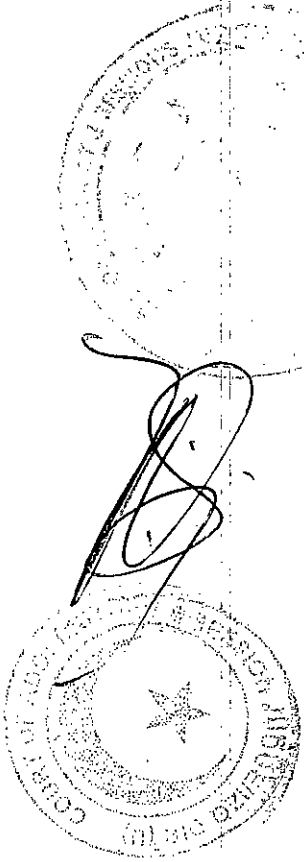
15. PW-9 Bakhtawar Said IHC PS Dir. Deposed that he is the marginal witness of the recovery memo ExPW-9/1 vide which the I.O has taken into possession weapon of offence i.e dagger ExP-1 on pointation of the accused facing trial. He is also the marginal witness of the recovery sketch and pointation memo ExPW-9/2. He has verified the signatures of Gohar Zaman Khan OII on memo of recovery and sketch.

16. PW-10 Roidad Ali Khan SI PS Dir. Deposed that he is also the marginal witness of the pointation memo ExPW-9/2 and recovery

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memo of weapon of offence ExpW-9/1 which correctly bear his signature.

17. PW-10 Gohar Zaman Inspector PS Dir presently Special Branch Headquarter Peshawar. Deposed that after registration of FIR, investigation of the case was entrusted to him. That he has prepared the recovery memo ExPC of blood stained shirt of deceased Exp-1, site plan ExpW-10/1, recovered blood stained earth and pebbles Exp-2 vide recovery memo ExPC/1, prepared list of LRs of deceased ExpW-10/2, searched the house of accused vide search memo ExpW-10/3, obtained two days police custody of the accused vide application ExpW-10/4, recovered weapon of offence i.e dagger Exp-1 vide recovery memo ExpW-9/1, prepared sketch of weapon of offence ExpW-10/5, recovery sketch ExpW-10/6, site plan ExpW-9/2 on pointation of witnesses, issued Parwana ExpW-10/7 for insertion of section 15-AA, handed over case property to Muharrir for sending it to FSL vide docket ExpW-2/1, recorded statements of witnesses u/s 164 CrPC before the court vide application ExpW-10/8, recorded statements of witnesses u/s 161 CrPC, handed over case property/weapon of offence to Muharrir vide docket ExpW-10/9, produced the accused facing trial before the court for recording his confessional statement u/s 164/364 CrPC vide application ExpW-10/10, obtained warrants u/s 204 CrPC against the absconding accused vide application ExpW-10/11 and proclamations u/s 87 CrPC vide application ExpW-10/12, issued Parwana ExpW-10/13 for



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correction of name of accused facing trial and handed over case to SHO for submission of Challan after completion of investigation.

18. PW-11 Khan Zada Khan SHO PS Dir presently SHO PS Akhgram. Deposed that he has reduced the report of the complainant into Murrasila ExPA/1, prepared the injury sheet of the deceased ExPW-11/1, inquest report of the deceased ExPW-11/2 and has handed over the dead body of the deceased to his son Irfan Ullah vide memo ExPW-11/3. That all the exhibited documents correctly bear his signatures.

19. PW-12 Mustaqim Shah Khan SI PS Dir presently Hangu Training Centre. Deposed that after arrest of the accused, he has issued his arrest card ExPW-12/1 which correctly bears his signature.

20. Rest of the PWs were abandoned by the prosecution and hence, the prosecution closed its evidence.

21. After close of the prosecution evidence, the statement of the accused facing trial was recorded U/S 342 Cr.PC. The accused claimed innocence and pleaded his false implication in the instant case by the complainant. The accused also did not wish either to be examined U/S 340(2) Cr.PC or to produce evidence in his defense.

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22. Arguments heard and record perused.

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23. Learned APP for the state argued that in the instant case the prosecution has successfully proved its case against the accused.

The accused has been directly charged in the case occurred in a broad daylight with effective role resulting into the death of an innocent person. That all the material placed on record, sufficiently connects the accused with the commission of the offence, therefore, he be convicted with exemplary punishment. He placed reliance on the case laws reported as; (1) PLD 1993 Federal Shariat Court 44 (2) NLR 1996 Criminal 386.

24. On the other hand, the learned defense counsel submitted that a false and concocted case has been made out against the accused. He contended that there are contradictions in the statements of the PWs inter-se and that the eye witnesses are interested ones being closed relatives of the complainant. That the proper autopsy of the deceased has not been conducted which creates doubts in the manner of the commission of the offence and nature of death. He further contended that the prosecution has not proved its case against the accused and that the case of the accused is full of doubts, therefore, the accused is entitled to be acquitted in the instant case. The learned counsel further cemented his arguments by placing reliance on the following case laws; (1) 2017 MLD 1737 (2) 2018 PCrLJ 1495 (3) 2017 MLD 1042 (4) 2016 PCr.LJ 1134 (5) 2017 YLR 775.

25. Perusal of the record reveals that there are four eyewitnesses of the occurrence alongwith the complainant namely Irfan Ullah, who is the complainant in the instant case and son of the deceased, Najeeb

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Ullah who is the eyewitness and son in law of the deceased, Sher Amin who is the eyewitness and brother in law of the deceased and Taj Mula Khan who is also the eyewitness and nephew of the deceased. All the three eyewitnesses have appeared before the court of learned Judicial Magistrate/Senior Civil Judge Dir Upper and have recorded their statements being the eyewitnesses of the occurrence u/s 164 CrPC, however, during the trial, only the complainant Irfan Ullah has recorded his statement as PW-7 and Sher Amin, the brother in law of the deceased has recorded his statement as PW-8 whereas rest of the eyewitnesses have been abandoned.

26. As for as statement of the PW-8 namely Sher Amiri is concerned, although he has narrated the same story as per the FIR in his statement recorded u/s 164 CrPC but when appeared as PW-8 in the witness box, he has given an improved statement stating in his examination in chief that after receiving the knife/dagger blows, the deceased fell down on the ground whereafter, he alongwith others have taken the deceased up alongwith his bowels/intestines lying outside his body and by placing them into his body and put him on the cot.

27. Moreover, when subjected to cross examination, he has denied recording of any other statement except the statement recorded before the police, however, his statement recorded u/s 164 CrPC is placed on file showing him to be telling a lie before the court.

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Thus, by keeping in view his dishonestly improved statement before the court and his falsity, it cannot be safely relied upon. Here the guidance is drawn from the case law reported as 2017 PCr.LJ 779, the relevant Para of which is reproduced as under for ready reference;

Witness---Improvements and contradictions in the statement of prosecution witnesses---Effect---Improvements made by the prosecution witnesses in order to strengthen its case, lost its credibility and evidentiary value ---Witness making contradictory statements or improvements in order to bring in line his testimony with the prosecution case, if found deliberate and dishonest, cast serious doubt on his veracity.

28.

Now coming to the statement of the complainant, it is worth mentioning here that he claims to be present on the spot and was going home alongwith his father who was going 3-4 paces ahead of him whereas he was following him which relevant portion of his cross-examination is reproduced hereunder for ready reference;

”یہ درست ہے کہ جائے وقوعہ کے ارد گرد ملزمان کے اراضیات موجود نہ ہیں۔ ہم راستے پر بہ طرف غرب اپنے گھر کی طرف جا رہے تھے۔ میرا والد مجھ سے 3/4 قدم آگے جا رہا تھا۔ گواہان چشم دید ہمارے پیچھے تقریباً 10 قدم کے فاصلے پر آ رہے تھے۔“

29.

Now comparing this statement with the site plan, it appears that it is totally against the site plan as in the site plan, the complainant has been shown ahead of his father/the deceased. Moreover, it is also not appealable to a prudent mind that two persons have caught hold of the deceased and the third one was fearlessly stabbing him

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to death whereas the three closed relatives of the deceased were present there at a distance of 10 to 20 feet and that they are neither making any effort either to rescue the deceased or to present any resistance to the assailants nor any of them is pursuing them. Here also the guidance is drawn from the case law reported as 2017 PCr.LJ 713, the relevant Para of which is reproduced as under for ready reference;

---Appreciation of evidence---Benefit of doubt---Statement of eye-witnesses---Allegation against the accused was that he made firing with his pistol on the deceased while he was going on car along with two witnesses---Ocular account was furnished by two witnesses---said witnesses alleged that they were present in the car with the deceased, when accused made firing on the deceased---said witnesses stated that at the time of alleged occurrence, window glasses of the car were closed---said witnesses had stated that firing was made from a very close range, but such firing only hit the deceased and both the witnesses seated in the car did not receive any firearm injury nor any damage was caused to the car---Window glasses of the car were not broken despite the facts that windows were closed at the time of firing from outside---Both the witnesses though were on the target of accused, but only deceased was hit---said fact or did not appeal to the logic that by killing a person in presence of his close relative, no effort was made to cause any injury/kill the said persons/witnesses leaving them for evidence--- Presence of said alleged eye-witnesses with the deceased at the time and place of occurrence was highly doubtful---Conviction and sentences recorded against accused by Trial Court were set aside.

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30. Apart from the above contradictions, even the doctor who has recorded his statement as PW-5 has clearly admitted in the cross examination as under;

"یہ درست ہے کہ مقتول کو بذریعہ پولیس جس کا تفصیل میں نے کالم نمبر 3 میں دیا ہے جو کہ ضیال الدین پولیس سٹیشن در نمبر 691 لایا تھا۔"

31. Further admitted that;

"میں نے رپورٹ پولیس کو اسی روز 09:50 PM کو حوالہ کی ہے۔ میں نے رپورٹ ضیال الدین کنسٹیبل کو واپس حوالہ کی ہے۔ مقتول کے ملاحظہ بدن پر اور رپورٹ کی تیاری پر تقریباً ایک گھنٹے کا وقت صرف ہوا تھا۔ یہ درست ہے کہ میں نے نوعیت زخمت کا خانہ پر نہیں کیا ہے۔"

32. It means that the complainant was neither present on the spot with his father nor was present in the hospital as in the medical report the name of the relative of the deceased has been mentioned to be Taj Mula, the nephew of the deceased and it has also been mentioned that it has been handed over to the police constable Zia uddin police station Dir creating serious doubts about the presence of the complainant.

33. Now coming to the recovery of the weapon of offence i.e a knife (پیش قبض), it has been recovered on 05/08/2018 as per the recovery memo ExPW-9/1 and ExPW/10/5. The marginal witness of the recovery memo namely Bakhtawar Said IHC PS Dir has appeared as PW-9 whereas the second marginal witness of the recovery memo namely Roidad Khan SI PS Dir has appeared as PW-10 and have recorded their respective statements verifying their signatures on the same. When they were subjected to cross examination, PW-

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9 has admitted in the cross examination that they have gone to the place of occurrence first and thereafter have gone to the place of recovery of the weapon of offence i.e. پیش قبض . He has further admitted in his cross examination as under;

"ہم جائے وقوعہ پہلے گئے تھے۔ چھری آلہ قتل ملزم کے مکان سے برآمد ہوئی تھی۔ جس مکان سے برآمدگی ہوئی تھی وہ ملزم کا رہائشی مکان تھا۔ ملزم کے مکان میں اس کے دیگر برادران بھی رہائش پذیر تھے۔"

34. Contradicting his this statement, the other marginal witness namely Roidad Ali Khan has appeared as PW-10 and has deposed in the cross examination as under;

"ہم تھانہ سے تقریباً 10 بجے جائے وقوعہ کے طرف روانہ ہوئے تھے۔ پہلے ہم جہاں سے چھری برآمد ہوا تھا پہلے وہاں گئے تھے۔"

35. As regarding the place of recovery of offence, the witness has deposed and contradicted the other marginal witness as under;

"جس جگہ سے برآمدگی ہوئی تھی وہ ایک زیر تعمیر کھنڈر تھا۔ مذکورہ کھنڈر تین کمروں پر مشتمل تھا تاہم اسکی چار دیواری موجود نہ تھی۔ آلہ قتل کمرے سے برآمد کیا گیا تھا۔ مذکورہ کمرے کے دروازے نہیں تھے البتہ شیڈیک لگا ہوا تھا۔"

36. Moreover, the recovery memo of the قبض پیش shows the date of the recovery to be 05/08/2018 and the receipt by which it has been sent to the FSL showing the date to be 08/08/2018 and has been received in the FSL on 09/08/2018 vide receipt ExPW-3/1 which creates serious doubts that how it was sent to the FSL after the lapse of three days and receipt in the FSL on the fourth day of the recovery of the same and where and whose custody was it lying?

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37. Since recovery was a corroborative piece of evidence, which by itself was not sufficient to convict accused without substantive piece of evidence. Substantive piece of evidence of eye-witnesses, in the case having already been discarded, no conviction could be based on the recovery alone. **(2007 MLD 310)**

38. It is evident from the record that the occurrence has taken place on 03/08/2018 at 18:40 hours, while the report was made to the local police on the same day at 20:30 hours with a delay of about two hours for which no plausible explanation has been furnished. The distance of the police station from the place of occurrence is only 4/5 kilometers for which such delay is debatable. Here also the judgment of the worthy Peshawar High Court, Peshawar reported as 2012 MLD 964 provides the guiding principles, the relevant Para of which is reproduced hereunder for ready reference:

“S.302(b)/34---Qatl-e-amd---Appreciation of evidence--- Registration of case after an unexplained delay of two & a half hours had cast doubt about the prosecution story and presence of eyewitnesses at the scene of occurrence. Conduct of the prosecution witnesses, three sons of the deceased, who had gone to their house after the occurrence, had besides being highly strange made the prosecution case suspicious...Ocular testimony was contradictory and mutually destructive Medical evidence was in conflict with ocular account of occurrence. Positive report of Firearms Expert had no evidentiary value, as the recovered arms and ammunition had been sent to expert after an unexplained delay of sixteen days without disclosing as to where the same

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remained during this period...Benefit of doubt was extended to accused in circumstances and they were acquitted accordingly.

39.

It is also the established principle of law that a single infirmity creating reasonable doubt in the story of the prosecution is sufficient to give its benefit to the accused as it has been held by the August Supreme Court of Pakistan in the Judgment below, the relevant portions of which are reproduced for ready reference as under;

2019 SCMR 129

"---Once a single loophole was observed in a case presented by the prosecution, such as conflict in the ocular account and medical evidence or presence of eye-witnesses being doubtful, the benefit of such loophole/lacuna in the prosecution case automatically went in favour of an accused."

2009 SCMR 230

"---For giving the benefit of doubt it is not necessary that there should be many circumstances creating doubts---Single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefits, not as a matter of grace and concession, but as a matter of right."

40.

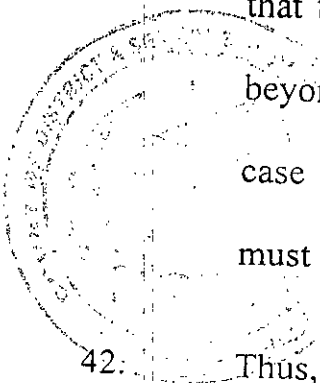
Moreover, the accused facing trial has remained in police custody but has not made any judicial confession. Similarly, the accused is not a hardened and desperate criminal as per record.

41.

So in light of the above discussion, when the ocular account of the case very weak and unreliable and the recovery of the weapon of offence i.e the Pesh Qabz (پیش قبض) is highly dubious, it is held

ATTESTED

that the prosecution has miserably failed to prove the allegations beyond any reasonable doubts against the accused facing trial. The case of the prosecution being full of doubts, the benefit of which must be given to none other than the accused.



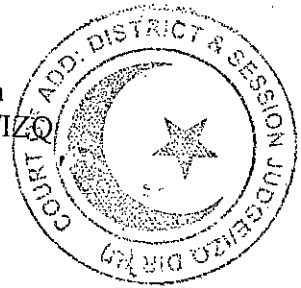
42. Thus, while extending the benefit of doubt, this court is left with no other option but to acquit the accused facing trial. The accused namely **Farman Ullah** is, therefore, acquitted of all the charges leveled against him. Accused is in custody, so, he be set at liberty if not required to be detained in any other case.

43. Case property, if any, be kept intact till the arrest and final disposal of trial of absconding accused.

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

ANNOUNCED
19/12/2019

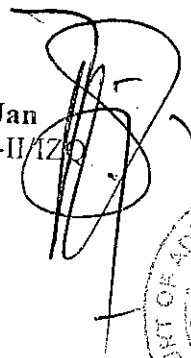
Muhammad Tayyib Jan
Additional Sessions Judge-II/IZO
Dir Upper



CERTIFICATE

Certified that this judgment consists of sixteen (16) pages. Each page has been read, checked and signed by me after making corrections, where necessary.

Muhammad Tayyib Jan
Additional Sessions Judge-II/IZO
Dir Upper



No	3616
Date of Preparation	26-12-19
Name of Defendant	فارمان اہل خانہ
Word	1700
Fee	35
Signature of Clerk	Rah
Date of Preparation	26-12-19
Date of Delivery	

ATTESTED



-25-

IN THE COURT OF
MUHAMMAD TAYYIB JAN
ADDITIONAL SESSIONS JUDGE-II/IZAFI ZILLA QAZI, DIR UPPER

FIR NO. 463 DATED 03/08/2018 U/S 302//34 PPC & 15-AA P.S DIR.

Or 31
19/12/2019

APP Mr. Waheed Ullah for the state present. Accused Farman Ullah in custody present. Complainant also present.

Arguments heard and record perused.

Vide my detail judgment of today comprising of (16) pages, separately written and placed on the case file, the court holds that the prosecution has miserably failed to prove the allegations beyond reasonable doubts against the accused facing trial. The case of the prosecution is full of doubts, the benefit of which must be given to none other than the accused.

Thus, while extending the benefit of doubt, this court is left with no other option but to acquit the accused facing trial. The accused namely Farman Ullah is, therefore, acquitted of all the charges leveled against him. Accused is in custody, so, he be set at liberty if not required to be detained in any other case.

Case property, if any, be kept intact till the arrest and final disposal of trial of absconding accused.

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

ANNOUNCED
19/12/2019

Muhammad Tayyib Jan
Additional Sessions Judge-II/IZQ
Dir Upper/

ATTESTED

Attest
26-12-019

OFFICE OF SUPERINTENDENT OF POLICE
CENTRAL TERRORISM DEPARTMENT MALAKAND REGION

"F"
-26-

OFFICE:-

This order will dispose of the departmental enquiry against HC Farman Ullah No. 1540 worked in operation wing CTD, Malakand Region at Dir Upper.

The mentioned HC Farman Ullah No. 1540 has rendered himself liable to be proceeded under the Rules 5(iii) of the KPK Police Rules 1973 for following misconduct.

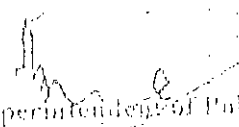
During his above assignment, he was alleged for the commission of a criminal act vide FIR No. 463 dated 03-08-2018 U/s 302/34 PPC, Police Station Dir District Dir Upper. He committed a gross misconduct as a government official.

Moreover, he absented himself from duty intentionally and deliberately without any kind of leave or permission from his superiors w.e.f 03-08-2018 till date, a report to the effect was lodged vide DD, No. 06 dated 03-08-2018 CTD Dir Upper.

He was issued Show Cause Notice followed by a Charge Sheet along with statement of allegations and Mr. Muhammad Zaman Khan DSP CTD District Dir Lower, was appointed as enquiry officer. The enquiry officer conducted proper departmental enquiry against the delinquent official and recorded the statements of all concerned. He was provided an ample opportunity for his defence. The enquiry officer expressed in his finding report, that in the cited case the delinquent official confessed and witness of the case admitted that he had killed a person namely Said Muhammad as recovered Batis knife from the spot on the identification of the accused as also proved him guilty. The Enquiry officer recommended order punishment of removal from service.


It is patently evident that the delinquent HC Farman Ullah No. 1540, is addicted to chronic absence and directly involved in case FIR No. 463 dated 03-08-2018 U/s 302/34 PPC, Police Station Dir District Dir Upper. In view of the above the undersigned is of considered opinion that his further retention in service is bound to affect the discipline of the entire force. Therefore, in exercise of the power vested in the undersigned under Rules 2(iii) of Police Discipline Rules-1973 added with the authority vested in the order No. 4346/PA/CTD dated 11-06-2016, of the worthy Deputy Inspector General Counter Terrorism Department (CTD), Ferozshah Baskoch, Sr. Counter Terrorism Department, Islamabad, the competent authority, am constrained to award him the punishment of removal from service with immediate effect.

Submitted please.


Superintendent of Police,
Counter Terrorism Department,
Malakand Region at Swat.

No. 913-16/CTD/1130, dated 26-9-2018

Copy for information to the Worthy Deputy Inspector General of Police, Counter Terrorism Department Khyber Pakhtunkhwa, Peshawar, with reference your cited official letter No. 4346/PA/CTD dated 11-06-2016.


Superintendent of Police,
Counter Terrorism Department,
Malakand Region at Swat.

ATTESTED

OFFICE OF SUPERINTENDENT OF POLICE
COUNTER TERRORISM DEPARTMENT, MALAKAND REGION

ORDER:-

This order will dispose off the departmental enquiry against HC Farman Ullah 1540 posted in operation wing CTD, Malakand Region at Dir Upper.

The mentioned HC Farman Ullah No. 1540 has rendered him of liable to be proceeded under the Rules 5(iii) of the KPK Police Rules 1975 for following misconduct.

During his above assignment, he was alleged for the commission of the criminal act vide FIR No. 463, dated 03/08/2018, U/S 302/34 PPC, Police Station Dir District Dir Upper. He committed a gross misconduct as a government official.

Moreover, he absented himself from duty intentionally and deliberately without any kind of leave or permission from his superiors w.e.f 03/08/2018 till date, a report to the effect was lodged vide DD No. 66 dated 03/08/2018 CTD Dir Upper.

He was issued Show Cause Notice followed by the Charge Sheet along with statement of allegations and Mr. Muhammad Zaman Khan, DSP, CTD District Dir Lower, was appointed as enquiry officer. The enquiry officer conducted proper departmental enquiry against the delinquent official and recorded the statements of all concerned. He was forward an ample opportunity for his defence. The enquiry officer expressed in his finding report, that in the cited case the delinquent official confessed and where of the case admitted that he has killed a person namely Said Muhammad as recovered Bosia knife team the spot on the identification of the accused as also proved him guilty. The Enquiry officer recommended major punishment of removal from service.

It is patently evident that the delinquent HC Farman Ullah No. 1540, is addicted to chose absence and directly involved in case FIR No. 463 dated 03/08/2018 U/S 302/34 PPC, Police Station Dir, District Dir Upper. In view of the above the undersigned if of considered opinion that his further retention in service is bound to affect the discipline of the entire force. Therefore, in exercise of the power vested in the undersigned under rules to 2(iii) of Police Discipline Rules 1975 added with the authority vested in order No. 6846/PA/CTD dated 11/06/2016 of the worth Deputy Inspector General Counter Terrorism Department CTD, I Hussain Badshah SP Counter Terrorism Department ----- competent authority are constrained to award him the punishment of removal from service with immediate effect.

Submitted Police.

Superintendent of Police
Counter Terrorism Department
Malakand Region at Swat

No. 913-14/CTD/MKD dated 26/09/2018

Copy for information:

1. Worthy Deputy Inspector General of Police Counter Terrorism Department, Khyber Pakhtkunkhwa Peshawar with reference your letter No.

Superintendent of Police
Counter Terrorism Department
Malakand Region at Swat

ATTESTED

-27-

"G"

BEFORE THE DEPUTY INSPECTOR GENERAL OF POLICE
C.T.D, KP, PESHAWAR

APPEAL AGAINST THE ORDER OF
S.P, C.T.D, MALAKLAND RANGE AT
SWAT DATED 26.09.18 WHEREBY
THE APPELLANT WAS REMOVED
FROM SERVICE.

Prayer:

That the orders may please be declared against law and material on record and the appellant may please be reinstated in service with all back benefits.

Respected Sir,

1. That the appellant was serving in CTD Malakand Range at District Dir Head Quarters.
2. That the appellant was innocently charged in a murder case vide FIR No. 463, dated 03.08.2018 u/s 302/34 PPC P.S Dir.
3. That the FIR was registered on 03.08.2018 at 2120 hrs the occurrence had taken place the same day at 1845 hrs.
4. That the appellant was on duty at that time in office of C.T.D District Dir and was actually unaware of the occurrence and the IO came to the office on the same day and arrested the appellant and subsequently sent to Jail.

ATTESTED

5. That the appellant remained in Trial till 19.12.2019 and after trial the appellant was acquitted by Additional Sessions Judge II / Additional Zila Qazi Dir Upper and released from trial.
6. That show cause notice was served upon the appellant by the S.P. to which the appellant pleaded not guilty to the murder.
7. That thereafter the SP, C.T.D, Malakand Range at Swat, charge sheeted the appellant and the charge sheet was served up in the appellant in trial.
8. That the appellant submitted explanation to the charge sheet stating that he was innocent.
9. That thereafter the impugned order was passed.
(Annexure A)
10. That as the appellant was in Trial and the case was also under trial the appellant could not submit appeal and when the appellant acquitted in the case, the appellant submits appeal on the following grounds.
 - A. *That the appellant is innocent and falsely charged and the copy of court of judgment dated 19.12.2019 is enclosed which is self explanations. (Annexure B)*

ATTESTED

- B. That besides the above order of acquittal, the SP has not granted any opportunity of personal hearing to the appellant.
- C. That the respondents S.P. was supposed to keep under suspension till the decision of trial.
- D. That the S.P. served the appellant show cause notice on 06.08.2018 first and to which the appellant submitted explanation and thereafter served charge sheet to which the appellant also pleaded not guilty, but no opportunity of personal hearing was granted to the appellant.
- E. That no witness was examined in the case by the S.P. what to say of their cross examination.
- F. That the appellant has put in 13 years clean service.
- G. That legally the acquittal means innocence and as such the appellant may please be reinstated in service with all back benefits.

That the delay in submission of appeal may please be condoned as the appellant was in Jail and that the case was under trial and result of the case was awaited.

26-12-19

ATTESTED

Yours Obediently

Farman Ullah
No. 1540
CTD, Malakand Range Dir,
(Personnel No. 00287921)



OFFICE OF THE,
DEPUTY INSPECTOR GENERAL OF POLICE,
COUNTER TERRORISM DEPARTMENT,
KHYBER PAKHTUNKHWA, PESHAWAR.

"H"
-30-

ORDER

As approved by the competent authority, the appeal of Ex-HC Farmanullah No. 1540 requesting therein for his re-instatement in services is hereby filed due to badly time barred.

OB No. 74 CTD
Dated: 10/02/2020

SP/HQrs:

For Deputy Inspector General of Police,
CTD, Khyber Pakhtunkhwa,
Peshawar.

No/684-87/EC/CTD

Dated Peshawar the

10/02/2020

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

- i. Ex-HC Farmanullah No. 1540
- ii. Accountant, OASI,/SRC CTD HQrs: Peshawar.

ATTESTED

- 31 -

BEFORE THE INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA

REVISION PETITION AGAINST THE ORDER
OF DEPUTY INSPECTOR GENERAL OF
POLICE CTD KHYBER PAKHTUNKHWA
DATED 10.02.2020 WHEREBY THE APPEAL
DATED 26.12.2019 SUBMITTED BY THE
APPELLANT AGAINST THE ORDER DATED
29.09.2018 FOR REINSTATEMENT IN
SERVICE WAS FILED BEING TIME
BARRED.

2/2020

On acceptance of his petition; the order dated
26.12.2019 and 10.02.2020 may kindly be declared as
illegal, without lawful authority and the petitioner may
kindly be re-instated in service with all back benefits.

Respected Sir,

ATTESTED

1. That the appellant was
Range at District Dir Head Quarters.
2. That the appellant was dishonestly charged in a
murder case vide FIR No. 463, dated 03.08.2018 u/s
302/34 PPC P.S Dir.

3. That the FIR was registered on 03.08.2018 at 2120 has the occurrence had taken place the same day at 1845 hrs.
4. That the appellant was innocent and was having no hand in the crime and this fact is established that he was on duty at that time in office of C.T.D District Dir and was actually unaware of the occurrence and the IO came to the office on the same day and arrested the appellant and subsequently sent to Jail.
5. That the appellant remained in Jail during Trial till 19.12.2019 and after trial the appellant was acquitted by Additional Sessions Judge-II / Additional Zila Qazi Dir Upper and released from Jail.
6. That show cause notice was served upon the appellant by the S.P during pendency of the trial to which the appellant pleaded not guilty to the murder case.
7. That thereafter the SP, C.T.D, Malakand Range at Swat, charge sheeted the appellant and the charge sheet was served upon the appellant in Jail.
8. That the appellant submitted his explanation to the charge sheet stating that he was innocent.

ATTESTED

The explanation was not regarded and the signed order dated 26.09.2018 was passed whereby the appellant was removed from service. *Copy of order dated 26.09.2018 is attached as annexure __).*

10. That soon after the acquittal on 19.12.2019 the appellant submitted departmental appeal dated 26.12.2019 before the DIG, CTD KP Peshawar but the same was filed vide the order dated 10.02.2020 being time barred. *(Copy of appeal and order dated 10.02.2020 are attached as __)*

11. That as the appellant was in Jail and the case was also under trial therefore the appellant could not submit appeal and when the appellant was acquitted in the case, the appellant submits appeal on the following grounds.

A. *That the appellant is innocent and falsely charged and the copy of court of judgment dated 19.12.2019 is enclosed which is self explanatory. (Annexure B)*

B. *That besides the above order of acquittal, the SP has not granted any opportunity of personal hearing to the appellant, Similarly the DIG, CTD KP Peshawar has also overlooked the fact that the appellant was in jail and soon after his acquittal*

ATTESTED

he did not waste time rather file appeal which was turn down on the basis of unsound and fanciful reason.

- C. That the respondents S.P. was supposed to keep the petitioner under suspension till the decision of trial but the order of removal was passed without lawful authority having no legal sanctity and this material point has been also disregarded by the learned DIG, CTD KP Peshawar while deciding departmental appeal.
- D. That the S.P. served the appellant show cause notice on 06.08.2018 first and to which the appellant submitted explanation and thereafter served charge sheet to which the appellant also pleaded not guilty, but no opportunity of personal hearing was granted to the appellant so much so the order of the DIG, CTD, KP Peshawar dated 10.02.2020 is against the norms of justice and is not sustainable in the eye of law.
- E. That no witness was examined in the case by the S.P. what to say of their cross examination moreover the order dated 26.09.2018 and 10.02.2020 is in violation of the settle principles of the natural justice and the petitioner has been condemned unheard.

ATTESTED

F. That the appellant has put 13 years unblemished service in the department and the said fact has not taken into consideration by the authority while his removal from service.

G. That legally the acquittal means innocence and as such the appellant may please be reinstated in service with all back benefits.

H. That it is by now a settled law that technically should not come in the way substantive justice therefore if there is any delay in filing of appeal then too otherwise the case of petitioner is fit for reinstatement in service being acquitted from the charges therefore on the sole ground of delay his appeal should not be have been filed.

That the delay in submission of appeal may please be condoned as the appellant was in jail and that the case was under trial and result of the case was awaited.

Dated: 11.02.2020

Yours Obediently



Farman Ullah

No. 1540

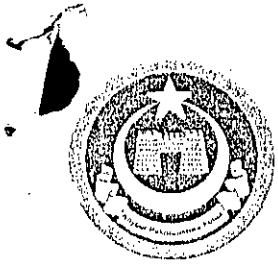
CRD, Malakand Range Dir.

(Personnel No. 00287921)

03339532484

03007348917

ATTESTED



-36-

"JU"

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
PESHAWAR.

No. S/ 3290 /20, dated Peshawar the 11/10/2020.

ORDER

This order is hereby passed to dispose of Revision Petition under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 (amended 2014), submitted by Ex-FC Farman Ullah No. 4540. The petitioner was removed from service by Supdt. of Police, CTD Malakand at Swat vide order Endst: No. 913-14/CTD/MKD, dated 26.09.2018 on the allegations of involvement in criminal case vide FIR No. 463, dated 03.08.2018 u/s 302/34 PPC PS Dir District Dir Upper and absence himself from duty w.e.f 03.08.2018 till date of removal from service i.e. 26.09.2018 for total period of 01 month & 23 days. His appeal was filed being badly time barred by Deputy Inspector General of Police, CTD, Khyber Pakhtunkhwa, Peshawar vide order Endst: No. 1684-87/EC/CTD, dated 10.02.2020.

Meeting of Appellate Board was held on 21.07.2020 wherein petitioner was heard in person. During hearing petitioner contended that he has been acquitted by the court of Addl: Session Judge-II, Dir Upper vide judgment dated 19.12.2019.

Petitioner was acquitted on the benefit of doubt by the court of Addl: Session Judge-II, Dir Upper vide judgment dated 19.12.2019. The acquittal from the court does not absolve the petitioner from the liability. Moreover, his petition is also badly time barred. The Board see no ground and reasons for acceptance of his petition, therefore, the Board decided that his petition is hereby rejected.

This order is issued with the approval by the Competent Authority.

Sd/-

DR. ISHTIAQ AHMED, PSP/PPM
Additional Inspector General of Police,
HQs: Khyber Pakhtunkhwa, Peshawar.

No. S/ 3291 - 97 /20,

Copy of the above is forwarded to the:

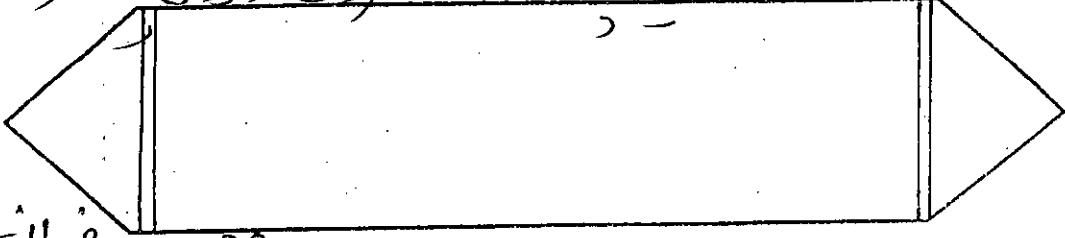
1. Deputy Inspector General of Police, CTD, Khyber Pakhtunkhwa, Peshawar. One Service Roll and one Fauji Missal of the above named Ex-FC received vide your office Memo: No. 3227/EC/CTD, dated 13.03.2020 is returned herewith for your office record.
2. Supdt. of Police, CTD Malakand at Swat.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. PA to Addl: IGP/HQs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQs: Khyber Pakhtunkhwa, Peshawar.
6. PA to AIG/Legal, Khyber Pakhtunkhwa, Peshawar.
7. Office: Supdt. E-IV CPO Peshawar.

ATTESTED

(KASHIF ZULFIQAR) PSP
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

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بعدالت محمد علی کاسروس کیسوں کو



فرمان اللہ 2020ء پنجاب فرمان اللہ
فرمان اللہ بنام PPO و پیرو

اپریل 2020ء/08/09

موزخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و کل کاروائی متعلقہ
آن مقام لبنان کیلئے مفضل شاہ صہند ASC + البحر مظفر اللہ

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب ہر صوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ بر حلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ارضی 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 اختیار 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 با اختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھد یا کہ سند ہے۔

الرقوم 18
ماہ الکت 2020

کے لئے منظور ہے۔
Attested & Accepted
Adv

بمقام
مشاور
Accepted
Rahim

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA.

Service Appeal No. 9408/2020

Farman Ullah (Ex- Head Constable No. 1540)..... **(Appellant)**

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Inspector General of Police, CTD, KPK, Peshawar.
3. Superintendent of Police, CTD Malakand Region.

..... **(Respondents)**

Subject:- **PARAWISE REPLY BY RESPONDENTS.**

Respectfully Sheweth

Preliminary Objections:-

- a) The appellant has no cause of action and locus standi.
- b) The appeal is not maintainable in the present form.
- c) The appeal is bad for mis-joinder and non-joinder of necessary and proper parties.
- d) The appellant is estopped to file the appeal by his own conduct.
- e) The appeal is barred by law and limitation.
- f) The appellant has not come to the Honorable Tribunal with clean hands.

FACTS:-

1. Correct to the extent that on 03.08.2018, the appellant was directly charged in case FIR No. 463 dated 03.08.2018 u/s 302/34 PPC PS Dir, District Upper Dir. He absented himself from his lawful duties on the same day and remained absent till his removal from service order issued on 26.09.2018. He was issued show-cause Notice followed by charge sheet with statement of allegations and Mr. Muhammad Zaman Khan: DSP CTD District Dir Lower was appointed as enquiry officer. The Enquiry officer conducted proper departmental enquiry against the appellant and recorded statements of all concerned. He was provided proper opportunity of defence and his statements as well as eye witnesses were recorded. Appellant has killed a person namely Said Muhammad with Knife. The investigation officer also recovered the weapon of offence i.e Knife on the appellant's pointation which is sufficient proof to prove him guilty, hence recommended for appropriate punishment. Superintendent of Police Counter Terrorism Department Malakand region being competent authority issued order of his removal after observing all codal formalities (Copy of entire record is attached).

2. Incorrect: Detail reply to this para has already been explained in facts of para 1.
3. Incorrect: As per the statement of eye witnesses, he killed a person namely Said Muhammad with Knife and the weapon of offence i.e Knife was also recovered by investigation officer on his pointation.
4. Incorrect: The appellant was acquitted by the court due to "benefit of doubt" i.e technical grounds. Criminal and departmental proceedings are distinct from each other. In departmental probe, the charges of misconduct have been fully established.
5. Incorrect: Proper departmental enquiry was conducted. Appellant was provided all the opportunities of defence but he badly failed to disprove the charges. After collecting sufficient evidence regarding his involvement in murder case, the enquiry officer recommended the appellant for major punishment in his findings report.
6. Incorrect: Revision petition of appellant was filed on the grounds that he was acquitted only due to benefit of doubt which does not exonerate him from the misconduct liability. Moreover, as explained earlier, statements of two eye witnesses of the occurrence of offence were also recorded by enquiry officer. Furthermore, the case of the appellant was badly time barred.
7. Incorrect: Detail reply have been given in Paras ibid.

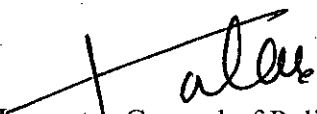
GROUND:-

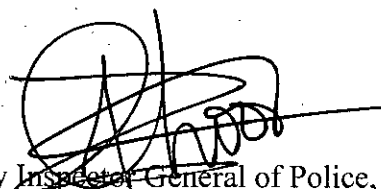
- A. Incorrect: The orders of removal from service and filing of appeal being time barred are legal, lawful, based on facts and justice.
- B. Incorrect: The appellant was involved in killing of a person namely Said Muhammad and accordingly he was charged in case FIR No. 463 dated 03.08.2018 u/s 302/34 PPC PS Dir wherein weapon of offence was also recovered from appellant.
- C. Incorrect: Appellant's removal order is legal and passed by the competent authority.
- D. Incorrect: No provision of law and rule has been violated rather all codal formalities of a departmental enquiry were adopted. Appellant was given proper opportunity to defend himself but failed to disprove the charges.
- E. Incorrect: Appellant was directly charged in FIR and was seen by two persons while murdering a person namely Said Muhammad. Their statements were also recorded. Mere acquittal on the basis of extending benefit of doubt is not sufficient to exonerate him from liability of misconduct.
- F. Incorrect: Detail reply regarding his involvement in murder case and departmental enquiry was explained earlier charges of misconduct have been proved against the appellant in departmental probe.


- G. Incorrect: Departmental enquiry was conducted in accordance with law & rules. The statements of eye witnesses were also recorded and weapon of offence was also recovered on the pointation of appellant which are sufficient proof for establishment of departmental misconduct on the part of appellant.
- H. Incorrect: All the formalities of departmental enquiry were adopted. Appellant was time and again personally heard but he failed to disprove the charges.
- I. Incorrect: Appellant willfully absent from duty without leave and committed homicide in brutal manner.
- J. Incorrect: Appellant has committed heinous offence during service for which he was responsible and committed gross misconduct being a member of discipline force.
- K. That respondents also seek permission of this Hon'ble Tribunal to raise additional grounds at the time of arguments.

Prayer:

It is therefore, prayed that the appeal of appellant being baseless, devoid of merits, against law & facts may be dismissed with costs.


Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 1)


Deputy Inspector General of Police,
CTD, Khyber Pakhtunkhwa,
Peshawar
(Respondent No. 2)


Superintendent of Police,
CTD, Malakand Region.
(Respondent No. 3)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA.

Service Appeal No. 9408/2020

Farman Ullah (Ex- Head Constable No. 1540)..... (Appellant)


VERSUS

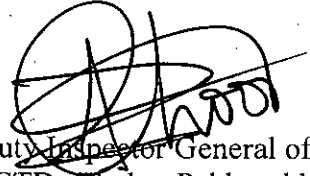
1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Inspector General of Police, CTD, KPK, Peshawar.
3. Superintendent of Police, CTD Malakand Region.

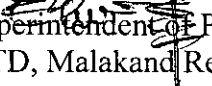
..... (Respondents)

AFFIDAVIT

We, the below mentioned respondents do here by solemnly affirm and declare on oath that the contents of reply submitted is correct and true to the best of our knowledge and belief and that nothing has been kept concealed from this Honorable Court.


Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 1)


Deputy Inspector General of Police,
CTD, Khyber Pakhtunkhwa,
Peshawar
(Respondent No. 2)


Superintendent of Police,
CTD, Malakand Region.
(Respondent No. 3)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.9408/2020

Farman Ullah.....**Appellant.**

V E R S U S

PPO & Others.....**Respondents.**

REPLICATION ON BEHALF OF THE APPELLANT.

REPLY TO PRELIMINARY OBJECTIONS.

All the objections raised by the respondents are incorrect and as such denied. The appellant has got a valid cause of action and locus standi to bring the present appeal and is maintainable in its present form. The instant appeal in which all necessary and proper parties have been impleaded, the appellant is not estopped by his conduct to file instant appeal, is according to law and rules on the subject besides being maintainable and the appellant has come to this honorable tribunal with clean hands.

REPLY TO FACTS/GROUNDS:

Comments of the respondents are full of contradictions, rather amounts to admissions and are based on malafide. Respondents have failed to show that the version of the appellant is incorrect. Even respondents have failed to show and substantiate their version referring to any law and rules. In the circumstances the appellant has been deprived of his rights without any omission or commission on his part and he has been deprived of his rights guaranteed by the Constitution and law of the land. Respondents have admitted that the appellant was proceeded on the allegations of being falsely involved in criminal case from which he has been acquitted and thus is entitled to be reinstated in service. While in custody, issued Show Cause Notice and where after Charge Sheet were issued to him thus, both were replied by the appellant in detail refuting the allegations accordingly. After acquittal the appellant reported for duty however he was told that he has been awarded the punishment of '**Removal from Service**' by the respondents, which impugned order of removal was never communicated to him, where after he filed departmental appeal before respondents which was filed for being time barred. After then, the appellant filed revision petition under rule 11-A of Police Rules 1975 which was also rejected by the respondents. Thus, the impugned order of removal is void being without lawful authority as being not a competent authority and which order never communicated to him in which case even limitation becomes irrelevant. Even rejection of departmental appeal and revision petition on the ground of limitation is not

tenable in the eyes of law. No proper inquiry was conducted and nor was he afforded the opportunity of personal hearing on clear violation of principles of natural justice besides law on the subject. Hence, both impugned orders are illegal, void. Thus, the appellant did nothing that would amount to misconduct. The superstructure built on these allegations is nothing but a tool used by them against the appellant.

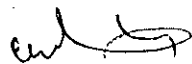
Respondents have tried to twist the facts, and tried to cover their, omissions, commissions and lacunas. The valuable rights of the appellant are involved from which he cannot be deprived. In the circumstances the appellant has not been treated according to law and rules being his fundamental right.

It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for.

Dated: 06 -07-2021


Appellant

Through


Fazal Shah Mohmand
Advocate,
Supreme Court of Pakistan.

&


Rabia Muzaffar
Advocate Peshawar

AFFIDAVIT

I, Farman Ullah Ex Head Constable No 1540, Counter Terrorism Department, Operation Team Dir Upper (the appellant), do hereby solemnly affirm and declare on oath that the contents of this **Replication** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.




DEPONENT



**KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

No. 908 /ST

Dated: 13-4-2022

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

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

To

The Superintendent of Police Counter Terrorism Department,
Government of Khyber Pakhtunkhwa,
Malakand Division at Swat.

Subject: JUDGMENT IN APPEAL NO. 9408/2020, MR. FARMAN ULLAH

I am directed to forward herewith a certified copy of Judgement dated 18.01.2022 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR

KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR