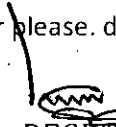



Form-A
FORM OF ORDER SHEET

Court of _____
Case No.- 889 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	10/02/2020	<p>The appeal of Mr. Nusratullah resubmitted today by Mr. Saadullah Khan Marwat Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please. decrease</p> <p style="text-align: right;"> REGISTRAR <u>10/2/2020</u></p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>13/03/2020</u></p> <p style="text-align: right;"> CHAIRMAN</p>

13.03.2020

Learned counsel for the appellant present. Preliminary arguments heard.

The appellant has filed the present service appeal against the order dated 21.04.2012 whereby he was dismissed from service and against the order dated 19.12.2019 through which his departmental appeal was rejected.


Learned counsel for the appellant contended inter-alia that the appellant was behind the bar from the date of his alleged absence being involved in the criminal case and after his acquittal vide judgment dated 12.09.2019 he submitted departmental appeal for his reinstatement in service however the departmental appeal filed by the appellant was rejected vide order dated 19.12.2019.

Submissions made by the learned counsel for the appellant, need consideration. The present service appeal is admitted for regular hearing subject to all just legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 08.05.2020 before S.B.


Member

08.05.2020

Due to COVID19, the case is adjourned to 22.07.2020 for the same as before.


Reader

Service Appeal No. 889/2020

22.07.2020

Mr. Arbab Saif-ul-Kamal, Advocate for appellant is present and submitted an application for extension of time for submitting court fees.

Application is accepted. The appellant is allowed to deposit the security and process fee within three working days from today. After the requisite deposit notices be issued to the respondents for submission of reply/comments on 14.09.2020 before S.B.

Arbab Saif-ul-Kamal
Security & Process Fee

(MUHAMMAD JAMAL KHAN)
MEMBER

14.09.2020

Junior to counsel for the appellant and Addl. AG for the respondents present.

Learned AAG seeks time to furnish reply/comments on behalf of the respondents. Adjourned to 03.11.2020 on which date the requisite reply/comments shall positively be furnished.

[Signature]
Chairman

03.11.2020

Nemo for appellant. Mr. Kabirullah Khattak, Additional Advocate General is present.

Neither written reply on behalf of respondents submitted nor any representatives on their behalf are present, therefore, notices be issued to them for submission of written reply/comments. File to come up for written reply/comments on 19.01.2021 before S.B.

(Muhammad Jamal Khan)
Member (Judicial)

19.01.2021

Appellant present through counsel.

Kabir Ullah Khattak learned Additional Advocate General alongwith Muhammad Raziq H.C for respondents present.

Written reply was not submitted. Representative of respondents made a request for time to furnish reply/comments. Last chance is given. To come up for written reply/comments on 17.03.2021 before S.B.



(Rozina Rehman)
Member (J)

17.03.2021

Due to tour of Camp Court Abbottabad and shortage of Members at Principal Bench Peshawar, the case is adjourned to 26.05.2021 before S.B.



Reader

26.05.2021

Appellant in person and Mr. Kabirullah Khattak, Addl. AG alongwith Abdur Razaq, H.C for the respondents present.

Respondents have furnished reply. Placed on file. The appeal is assigned to D.B for arguments on 14.09.2021.




Chairman

14.09.2021

Ms. Uzma Syed, Advocate, for the appellant present. Mr. Riaz Ahmed Paindakheil, Assistant Advocate General for the respondents present.

Learned counsel for the appellant stated that as connected nature service appeal is fixed on 10.01.2022, therefore, the same be also fixed on the said date. Adjourned. To come up for arguments before the D.B on 10.01.2022.


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


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

10.01.2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Addl: AG for respondents present.

Due to non-availability of Hon'able Member (J), the case could not be heard. Adjourned. To come up for arguments on 22.04.2022 before D.B


(MIAN MUHAMMAD)
MEMBER (E)

22nd April, 2022

Counsel for the appellant present. Mr. Kabirullah Khattak,
Addl. AG for the respondents present.

Learned counsel for the appellant states that another connected appeal No. 888/20 has been fixed for arguments on 25.04.2022 and requested that instant appeal may also be adjourned to the same date. Request is accepted. To come up for arguments on 25.04.2022 before the D.B.


(Fareeha Paul)
Member(E)


Chairman

25th April, 2022

Counsel for the appellant present. Mr. Kabirullah Khattak,
Addl. AG for the respondents present.

Arguments heard. To come up for order on 11.05.2022
before this D.B.


(Fareeha Paul)
Member(E)


Chairman

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 889/2020

BEFORE: **MR. KALIM ARSHAD KHAN,** ... **CHAIRMAN**
MISS. FAREEHA PAUL, ... **MEMBER(E)**

Nusrat Ullah Khan S/O Dilawar Khan, R/O Shaho Khel, Hangu, Ex-Constable No.4356, Police Line, Peshawar.

....(*Appellant*)

Versus

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

....(*Respondents*)

Mr. Arbab Saiful Kamal,
Advocate

For appellant.

Mr. Kabirullah Khattak,
Addl. Advocate General

For respondents.

Date of Institution.....03.01.2020
Date of Hearing.....25.04.2022
Date of Decision.....11.05.2022

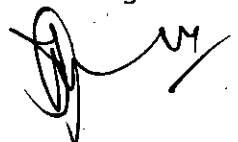
JUDGEMENT

FAREEHA PAUL MEMBER (E). The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned orders dated 21.04.2012 whereby the appellant was dismissed from service and his period of absence was treated as leave without pay and the appellate order dated 19.12.2019 whereby his departmental appeal for reinstatement was rejected on the grounds that it was badly barred by time by 07 years and 07 months. Both orders have been impugned and are under scrutiny for adjudication before us.

2. Brief facts, as per memorandum of appeal, are that the appellant was enlisted as constable in the year 1994, in the respondent department. He was nominated in FIR No. 10 dated 10.02.2011 for possessing/transporting opium under section 9(C) CNSA by Anti Narcotics Force (ANF) Lahore, and was remanded to judicial lockup at Lahore. The appellant was convicted by the special Court CNS, Lahore vide judgement dated 21.05.2014 and sentenced to death with fine of Rupees One Million or in default thereof to undergo 03 Years SI. The appellant filed an appeal in the Lahore High Court on 24.05.2014 against the aforesaid judgement which came up for hearing on 12.09.2019 wherein his conviction and sentence was set aside and he was acquitted of the charges levelled against him. During the time he remained absent from duty, he was issued charge sheet and statement of allegations on 04.04.2011 and resultantly he was dismissed from service. His departmental appeal dated 21.11.2019 was rejected on the ground that it was badly time barred. The appellant approached the Service Tribunal on 02.01.2020 for redressal of his grievance.

3. Respondents were put on notice who submitted their written replies/comments on contents of the appeal.

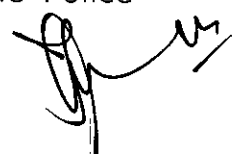
4. We have heard learned counsel for the appellant as well as the Addl. Advocate General and perused the case file alongwith connected documents thoroughly. Learned counsel for the appellant argued that the appellant was behind the bar serving his sentence at Lahore and that the charge sheet and statement of allegations did not reach him nor was he given an opportunity of personal hearing



by the Inquiry Officer and was punished with major penalty of dismissal from service on his back. By the time he was acquitted as a result of setting aside his conviction and sentence by the Lahore High Court, he appealed the competent authority for setting aside the penalty but it was rejected and the penalty was upheld on the ground that it was badly time barred by 7 years and 7 months.

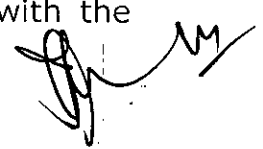
5. Learned Addl. Advocate General contended that the appellant was issued charge sheet and statement of allegations and was called time and again by the Inquiry Officer but he failed to turn up. The inquiry was finalized and report thereof submitted to the authority. A final show cause notice was also issued to him at his home address, after which he was awarded major penalty of dismissal from service. The appellant appealed at belated stage on 21.11.2019 which was rejected being badly time barred under the Limitation Act, 1908.

6. Khyber Pakhtunkhwa Police Rules 1975 clearly provide the procedure of Departmental Inquiry. Rule 6 (i) (a) provides that the authority shall frame a charge and communicate it to the accused together with statement of allegations explaining the charge and of any other relevant circumstances which are proposed to be taken into consideration. The same rules further provides in its part (b) that the accused is given 7 days from the day the charge has been communicated to him and required to put in a written defense and to state at the same time whether he desires to be heard in person. Record reveals that the departmental proceedings were conducted against the appellant in absentia without having him associated with the proceedings which is a glaring violation of Rule 6 of the Police



Rules 1975 which provides that the charge sheet and statement of allegations is to be communicated to the accused. Record further reveals that the charge sheet and statement of allegations was issued to the appellant without taking into consideration whether he received it or not? This deprived the appellant of the right to fair trial and it is also a violation of Article 4 of the Constitution of Islamic Republic of Pakistan which provides that every individual has the right to be dealt with in accordance with law, etc. Before awarding major penalty the Inquiry Officer must have ensured whether the charge sheet was received by the appellant. Even when the final show cause notice was served at his home address, the respondent department might have ascertained the whereabouts of the appellant that he was behind the bar and would have made arrangements for his personal hearing even within jail premises. The appellant upon his acquittal on 12.09.2019 submitted his departmental appeal on 21.11.2019 against the impugned order dated 21.04.2012 which was no doubt time barred. But it is also a fact that he was serving his sentence in Lahore and not in a position to present himself before Inquiry Officer at Peshawar.

7. As a sequel to the preceding paras, we have arrived at the conclusion that the appellant was not given fair chance to present his case before the Inquiry Officer. Before awarding major penalty of dismissal from service, the competent authority should have ensured that relevant clauses of laws/rules had been fully adhered to and the Inquiry Officer had given an opportunity of personal hearing to the appellant. The appeal in hand is therefore allowed by setting aside the impugned order. The appellant is reinstated in service with the



directions to the respondents to conduct de-novo inquiry strictly in accordance with the Law & Rules within 60 days of the receipt of copy of this judgement failing which the appellant shall be considered to have been reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 11th day of May, 2022.*



(KALIM ARSHAD KHAN)
Chairman

(FAREEHA PAUL)
Member (E)

Service Appeal No. 889/2020

Mr. Arbab Saiful Kamal Advocate for the appellant present. Mr. Kabirullah Khattak Addl. Advocated General for the respondents present.

2. Vide our detailed judgement containing 05 pages, we have arrived at the conclusion that the appellant was not given fair chance to present his case before the Inquiry Officer. Before awarding major penalty of dismissal from service, the competent authority should have ensured that relevant clauses of laws/rules had been fully adhered to and the Inquiry Officer had given an opportunity of personal hearing to the appellant. The appeal in hand is therefore allowed by setting aside the impugned order. The appellant is reinstated in service with the directions to the respondents to conduct de-novo inquiry strictly in accordance with the Law & Rules within 60 days of the receipt of copy of this judgement failing which the appellant shall be considered to have been reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 11th day of May, 2022.*



(KALIM ARSHAD KHAN)
Chairman

(FAREEHA PAUL)
Member (E)



KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

No: 1176 /ST Dated: 25 / 5 /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

Superintendent of Police Headquarter
Peshawar.

Subject: JUDGMENT IN APPEAL NO.889 Mr. Nusrat Ullah khan

I am directed to forward herewith a certified copy of judgment dated 11.05.2022 passed by this Tribunal on the above subject for compliance please.

Encl:As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

The appeal of Mr. Nusratullah Khan son of Dilawar Khan r/o Shaho Khel Hangi Ex- Constable No. 4356 Police Line Peshawar received today i.e. on 03.01.2020 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Index of the appeal may be prepared according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 2- Memorandum of appeal is unsigned which may be got signed.
- 3- Annexures of the appeal may be attested.
- 4- Annexures of the appeal may be flagged.
- 5- Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.
- 6- Annexures B, C and D are missing.
- 7- Annexures of the appeal are not in sequence which may be annexed serial wise as mentioned in the memo of appeal.
- 8- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 22 /S.T,

Dt. 7-1- /2020.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Saadullah Khan Marwat Adv. Pesh.

Sir

Request for further time.

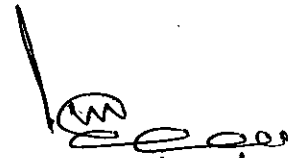


10 days further extended.

Sir,

Re-submitted after completion.

All the objections are removed. As for as objection No. 5 is concerned the same are not available with appellant and will be placed on file when received.


24/01/20.

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

S.A. No. 889/2020

Nusrat Ullah

versus

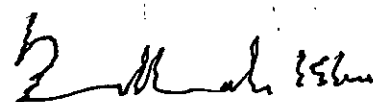
Superintendent & Others

INDEX

S. No.	Documents	Annex	P. No.
1.	Memo of Appeal		1-4
2.	FIR, dated 10-02-2011	"A"	5
3.	Conviction / Judgment by Special Judge CNS dated 21-05-2014	"B"	6-17
4.	Dismissal order dated 21-04-2012	"C"	18
5.	Judgment of Lahore HC dt. 12-09-19	"D"	19-27
6.	Representation dated 21-11-2019	"E"	28-31
7.	Rejection order dated 19-12-2019	"F"	32

Through

Appellant



Saadullah Khan Marwat
Advocate
21-A, Nasir Mansion,
Shoba Bazaar, Peshawar
Ph: 0300-5872676
0311-9266609

Dated: 02-01-2020

BEFORE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. 889/2020

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 192

Dated 3-1-2020

Nusrat Ullah Khan S/O Dilawar Khan,
R/O Shaho Khel Hangu,
Ex - Constable No. 4356,
Police Line Peshawar Appellant

Versus

- 1. Superintendent of Police
Hqr: Peshawar.
- 2. Capital City Police Officer,
Peshawar.
- 3. Provincial Police Officer,
KP, Peshawar Respondents

⇔<=>⇔<=>⇔<=>⇔<=>⇔

APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974
AGAINST OB NO. 1591 DATED 21-04-2012 OF R. NO.
1, WHEREBY APPELLANT WAS DISMISSED AND
PERIOD OF ABSENCE WAS TREATED AS LEAVE
WITHOUT PAY OR OFFICE ORDER NO. 1795-1800 /
PA, DATED 19-12-2019 OR R. NO. 2, WHEREBY
DEPARTMENTAL APPEAL OF APPELLANT WAS

Filed to-day
[Signature]
Registrar
03/01/2020

Re-submitted to - day
and filed. **REJECTED:**

⇔<=>⇔<=>⇔<=>⇔<=>⇔

[Signature]
Respectfully Sheweth;
10/2/2020

- 1. That appellant was enlisted as Constable in the year 1994.
- 2. That FIR No. 10 dated 10-02-2011 Police Station ANF Lahore was lodged against appellant along with two others U/S 9 (C) CNSA. (Copy as annex "A")

3. That on the said date, 10-02-2011 appellant was arrested by the ANF staff and was remanded to Judicial Lockup at Lahore.
4. That after completion of the investigation and recording of evidence in pro & contra in the case, appellant was convicted by the Learned Session Judge / Judge Special Court CNS, Lahore vide judgment dated 21-05-2014 sentenced him to death and with fine of Rs. One million or in default thereof to undergo three years SI. (Copy as annex "B")
5. That on 21-04-2012, appellant was dismissed from service and period of absence from 12-02-2011 was treated as without pay. (Copy as annex "C")
6. That on 24-05-2014, appellant filed appeal in the Lahore High Court, Lahore against the aforesaid judgment for setting aside the conviction and sentence which came up for hearing on 12-09-2019 and the hon'ble court was pleased to allow the appeal, the conviction and sentence of the appellant etc was set aside and they are acquitted from the baseless charges. (Copy as annex "D")
7. That on 21-11-2019, appellant submitted appeal before R. No. 02 for reinstatement in service which was rejected on 19-12-2019. (Copies as annex "E" & "F")

Hence this appeals, inter alia, on the following grounds:

GROUND S:

- a. That on 08-02-2011, appellant was awarded with shahbashi leave for 03 days and then he left with one friend whose brother was also serving as Armyian at Lahore and to see him there, appellant also accompanied him for tour to visit Lahore.
- b. That appellant has no concern with the commission of offence as the vehicle was managed and brought by Pervez Ahmad, driver for the purpose of tour.
- c. That appellant was not in conscious possession of the contra-band item but the same was managed by the driver.

- d. That as and when appellant was released from Jail he reported for duty but was informed that he has been dismissed from service on 21-04-2012 which order was then received from the office on 20-11-2019 at personal level.
- e. That in fact the vehicle was intercepted by the ANF staff on 09-02-2011 and the search of the contra-band items was never carried out in presence of appellant, yet on 10-02-2011 the said FIR was registered in Police Station ANF Lahore by implicating appellant with the commission of the offence.
- f. That on 12-02-2011, appellant informed the Incharge of the Police Station on telephone by implicating him in the said case.
- g. That the department was well aware with the case as appellant was arrested by the ANF staff Lahore on 09-02-2011 but no Charge Sheet, Statement of Allegations, Show Cause Notice was served upon him at Lahore what to speak of holding of enquiry as per the mandate of law being mandatory.
- h. That even the impugned order dated 21-04-2012 was not served / addressed to appellant, despite the fact that respondents were well aware about the confinement of appellant at Central Jail Lahore.
- i. That in the impugned order, double punishments were imposed upon appellant i.e. dismissal from service and treating absence period without pay which is against the law.
- j. That as and when absence period was treated as leave without pay, then services of appellant was regularized and in such a situation, order of dismissal from service becomes of no legal effect.
- k. That appellant was acquitted from the baseless charges by the competent Court of Law i.e. hon'ble High Court Lahore, so he is legally entitled for reinstatement in service.

- I. That before issuing of the impugned order mandatory provision of law was not complied with, so the impugned order dated 21-04-2012 and 19-12-2019 becomes null and void and the same are based on malafide.

It is, therefore, most humbly prayed that on acceptance of the appeal, orders dated 21-04-2012 or 19-12-2019 of the respondents be set aside and appellant be reinstated in service with all consequential, with such other relief as may be deemed proper and just in circumstances of the case.



Appellant

Through



Saadullah Khan Marwat

||



Arbab Saiful Kamal



Amjad Nawaz

Advocates

Dated: 02-01-2020

پولیس رپورٹ نمبر 154 نمبر ضابطہ نو جڈاری

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11-02-11

تاریخ وقت رپورٹ	تاریخ وقت ڈیوٹی	تاریخ وقت رپورٹ	تاریخ وقت ڈیوٹی
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مذکورہ بالا بیان کے مطابق...

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ANF 11-02-2011

15-02-2011

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IN THE COURT OF NISAR AHMAD,
 JUDGE, SPECIAL COURT CONTROL OF NARCOTIC SUBSTANCES,
 LAHORE

The State

Vs.

1. Pervaiz Ahmad s/o Qadar Khan, 58 years, cultivator, caste Durani, r/o Jhamat, P.O, Amba Dheer, Tehsil & District Charsadha,
2. Sajjad Ahmad s/o Saeed Khan, 31 years, sepoy r/o Street/ Mohallah . Kozcham, P.O. Seejand But Khela, Tehsil Swat, District Malakand &
3. Nusaratullah Khan s/o Dilawar Khan, 45 years, Havaladar caste Orakzai, r/o Aziz Building, Kali Bady, Tipu Sultan Road, House No.7, Peshawar. Permanent Address, Shahew Khel, Tehsil & District Hangu.

Case FIR No.10/2011 dated 10.02.2011 of PS ANF Lahore,
 U/section 9-C /15 of Control of Narcotic Substances Act, 1997.

Present.

Rana Schail Iqbal SP for the state.
 Mr. Muhammad Rasheed Ch. Adv. for Pervaiz accused.
 Mr. Major ® Aftab Ahmad Adv. for Sajjad accused.
 Ch. Iftikhar Ahmad Adv. for Nusaratullah accused.

JUDGMENT

The prosecution story in brief is that Nouman Ghous SI, Khadim Hussain Subedar, Mazhar Havl., Abdul Majeed Tahir/HC, Zaheer-ul-Hassan, Bashir, Tariq, Quraish, Asif, Ismail, Shafqat sepoy Hameed driver and Munawar driver under the supervision of Sahib Khan Assistant Director, while boarding in official vehicles at about 11.40 p.m reached Motorway Ravi Toll Plaza, Lahore and made a Naka Bandi there, on receipt of information that huge quantity of narcotics would be transported through car bearing registration No.AGP-813/Sindh Toyota Corolla white colour by Nusratullah Khan, Sajjad Ahmad and Pervaiz r/o K.P.K. On 10.2.2011 at about 12.15 a.m (night) the car No.AGP-813/Sindh attracted at M/way Ravi Toll Plaza and on the pointing out of informer, raiding party, overpowered three persons sitting in it. The driver of the car disclosed his name Pervaiz s/o Qadar Khan,

Attends

Attested True Copy
 Registrar Special Court, CNS,
 Lahore

7

whereas the person who was sitting on the front seat disclosed his name Sajjad Ahmad s/o Saeed Khan and the person who was sitting on the rear seat disclosed his name Nusratullah s/o Dilawar.

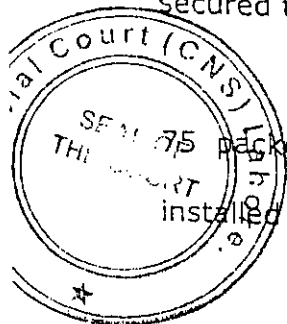
On inquiry about narcotics, Pervaiz accused brought out 05 packets of charas from underneath the driving seat and 05 packets of charas from the secret cavities of right front door of the car, on weighing, each packet of charas was of 1200 gram. Thus, the total recovered charas became 12 kgs. 10 grams charas was separated from each packet for chemical analysis and I.O prepared 10 sealed sample parcels. Remaining charas was also separately sealed into a parcel. Complainant took sample parcels and case property P-1, into possession vide recovery memo Ex.PB, attested by Sahib Khan AD/(P.W-4) and Abdul Majeed Tahir /HC.

During the course of personal search of Pervaiz accused, PKR.810/- P-6, photocopy of ID card P-7, mobile phone P-8, purse P-9 and misc. papers were recovered and I.O. took it into possession, vide recovery memo Ex.PE.

On inquiry about narcotics, Sajjad Ahmad accused handed over two packets of charas lying underneath his feet, on weighing, each packet of charas was of 1200 grams. Thus, the total recovered charas became 2400 grams. 10 grams charas was separated from each packet for chemical analysis and I.O prepared 2 sealed sample parcels. Rest of the charas was also separately sealed into a parcel. Complainant took sample parcels, case property P-2, into possession, vide recovery memo Ex.PC, attested by Sahib Khan AD/(P.W-4) and Abdul Majeed Tahir /HC.

During the course of personal search of Sajjad Ahmad accused, cell phone P-10, service card P-11, purse alongwith misc. papers P-12, ID Card P-13, wrist watch P-14 and PKR.10/- P-15 were recovered and I.O. secured the same, vide seizure memo Ex.PF.

On inquiry about narcotics, Nusratullah accused got recovered 75 packets of charas and 20 packets of opium from the secret cavities installed in the back seat of the car. On weighing, each packet of charas was



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of 1200 grams. Thus, the total recovered charas became 90 kgs. On weighing, each packet of opium was of 1200 grams. Thus, the total recovered opium became 24 kgs. Investigation officer separated 10/10 grams charas and opium from each packet for chemical analysis and prepared 75 sealed sample parcels of charas and 20 sealed sample parcels of opium, while rest of the charas and opium were also separately sealed into two parcels. Complainant took sample parcels, case properties P-3, P-4 and car P-5, into possession, vide recovery memo Exh.PD, attested by Sahib Khan AD/(P.W-4) and Abdul Majeed Tahir /HC.

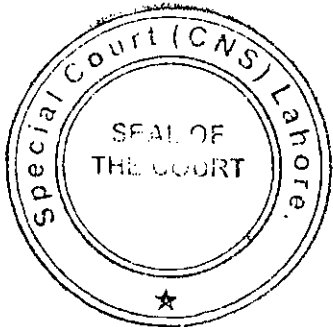
During the course of personal search of Nusratullah accused, mobile phone P-16, registration book AGP-813 P-17, ID card P-18, purse alongwith misc. papers P-19 and PKR.4390/- P-20, were recovered and I.O. took it into possession, vide recovery memo Ex.PG.

The seizing officer/complainant recorded the Murasila Exh.PH and sent it to PS ANF, Lahore through Ismail sepoy where on the basis of which F.I.R Exh.PA, was registered against the accused.

After usual investigation accused were found involved in the crime in question and report U/S 173 Cr. P. C, was submitted in the court. Copies as required U/S 265-C, Cr. P. C were supplied to the accused. Charge in this case was framed on 22.06.2011 by Mr. Muhammad Azhar Ch. the then Learned Judge, Special Court (Control of Narcotic Substances), Lahore, to which accused pleaded not guilty and claimed trial. In order to substantiate the charge against the accused, prosecution examined four witnesses in all. Gist of their evidence is hereby re-produced below:-

P.W-1, Muhammad Saleem/HC deposited 87 sealed sample parcels said to contain charas and 20 sealed sample parcels said to contain opium in the office of Chemical Examiner, Lahore, intact.

P.W-2 Muhammad Shafique/ASI is author of F.I.R. Exh.PA, he kept 87 sealed sample parcels said to contain charas and 20 sealed sample parcels said to contain opium, 04 sealed parcels of recovered charas & 01 parcel of recovered opium and other belongings recovered from the accused alongwith relevant



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documents for safe custody in malkhana. On 12.02.2011, he handed over 87 sample parcels of charas and 20 sample parcels of opium to Muhammad Saleem/HC, for its onward transmission to the office of Chemical Examiner, Lahore.

P.W-3, Noman Ghous S.I is complainant/I.O. of this case.

P.W-4, Sahib Khan/AD, is recovery witness.

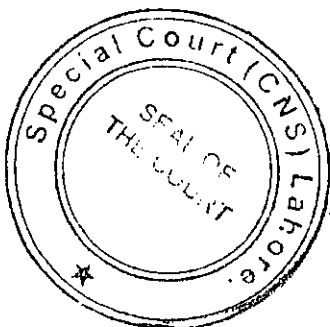
Abdul Majeed Tahir /HC was given up by learned SP, tendered in evidence reports of Chemical Examiner Exh.PJ, Exh.PK, Exh.PL & Exh.PM and closed prosecution evidence.

3. On close of prosecution evidence, accused were examined U/S 342 Cr. P. C. Describing themselves scapegoats, they denied the charges, professed innocence and stated to have falsely been implicated. Pervaiz and Sajjad Ahmad accused opted to produce defence evidence. However, the accused did not opt to appear in the witness box as required U/S 340(2) Cr. P. C. In reply to question why this case against you and why P.Ws deposed against you, Pervaiz accused replied as under:-

"I was arrested on 8.2.2011, when I was coming from K.P.K. During the checking of wagon at Gujranwala, officials of ANF off-loaded me from the wagon. I protested why they off-loaded me. Later on, they brought me at Lahore and confined me in unknown place. After some days, I was produced before the court. Then I came to know that this case has been registered against me and other persons. I did not know the other persons. I belong to Charsada. I have no relationship with other accused. Staff of Gujranwala involved me on the ground that I protested over my off-loading from wagon. I was not arrested at Ravi Toll Plaza. No photograph was produced as I have been shown as driver of the car. The said car is not owned by me. This case has been filed malafidely."

Sajjad Ahmad replied the same question as follow:-

"I am serving as Constable in District Peshawar. My brother was serving in Pakistan Army stationed at Lahore. I came to see him and de-boarded from the Bus at Badami Bagh Lorry Adda, Lahore. Suddenly, a private Dala stopped near me and the person sitting in the Dala asked my whereabouts. During this conversation, the man sitting in the Dala got annoyed as



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I did not answer their questions. Hot words were exchanged and they forcibly took me to their head quarter. I was kept for one day at PS. During this period, A.N.F. officials arrested four persons belonging from K.P.K. I was also made the member of that team when 2 kgs charas was stated to be recovered from me. Nothing was recovered from me".

Nusratullah Khan accused replied as under:-

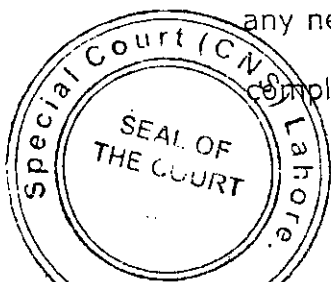
"May have ANF officers/officials apprehended drug paddlers but subsequently they were released and I have been implicated and involved in this case and made me scapegoat just to show efficiency on their part as myself is Govt. official serving as Head Constable in K.P.K while apprehending me from the Derbar Data Ganj Buxh r.a. The P.Ws have deposed against me because I.O. is Junior to Sahib Khan Assistant Director, second recovery witness/Incharge Raiding party and they deposed against me to fulfill their whims and wishes of their high ups".

Ijaz Ahmad (D.W-1) had stated that in the month of February, Sajjad his brother came to see him, he went to Badami Bagh to receive him and in his presence hot words were exchanged between police and his brother. Police officials brought his brother to PS ANF Johar Town, and involved him in this case.

Mohsin Ali (D.W-2) had stated that on 8.2.2011, at about 12:30/12:45 p.m. ANF officials stopped their vehicle near Gujranwala and picked Pervaiz Khan and no contraband was recovered from the accused"

C.W-1 Dr. Zaman Mehdi ® Assistant Chemical Examiner had deposed that chemical reports Exh.PJ, to Ex.PM were issued and signed by him. He verified these reports as correct. .

04. Learned defence counsel has contended that there is nothing on record to connect the accused with the crime; that prosecution has failed to prove the recovery of huge quantity of charas and opium from the accused; that they were not apprehended on the date, time and place mentioned by prosecution witnesses; that there is nothing on record that the accused have any nexus with the car; that provisions of Section 103 Cr. P. C had not been complied with; that the witnesses who have deposed against them are



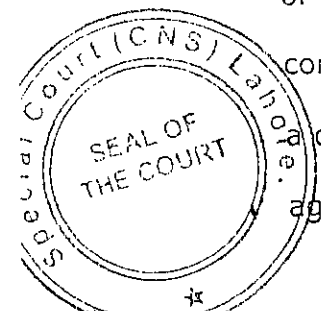
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officials of ANF and to show their efficiency to their high-ups they have falsely deposed against the accused; that there are material contradiction in the statements of P.Ws.; that finger print in present case has not been obtained and receipt of Toll Plaza has not been produced in the court.

05. On the other hand, learned SP for the state argued that accused were caught red-handed alongwith the car from where huge quantity of charas and opium was recovered; that accused had full conscious knowledge about the huge quantity of narcotics concealed in the car. He pleaded that recovery of huge quantity of narcotics from the possession of the accused is proved. Elaborating his view-point he stated that prosecution version is fully supported by direct evidence and positive reports of Chemical Examiner.

06. HEARD

07. Court has heard the learned counsel for the parties and has gone through record with their kind assistance. The record shows that Nouman Ghous SI (P.W-3) and Sahib Khan AD (P.W-4) have furnished ocular account in this case. They have deposed that their his high ups received prior information about the intended transportation of contraband by the accused via Motorway Ravi Toll Plaza, Lahore through car bearing registration No.AGP-813/Sindh. On this information, a raiding party consisting of ANF officials reached pointed place at 11.40 p.m. and remained alert over there, when on 10.2.2011 at about 12:15 a.m, above mentioned car alongwith three passengers reached there. They were stopped and charas and opium as mentioned in the F.I.R. Exh.PA and recovery memos Exh.PB, Exh.PC and Exh.PD were recovered. The car was taken into custody alongwith the recovered contraband. The accused were caught red-handed at the spot and F.I.R. was registered by Muhammad Shafiqe /ASI (P.W-2). Both these prosecution witnesses have demonstrated complete unanimity on all aspects of the case. Learned defence counsel could not point out any material contradiction in the statements of the prosecution witnesses, so as to create doubt in the prosecution case. No enmity, ill-will or grudge has been alleged against the prosecution witnesses to falsely implicate the accused and



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 Lahore

despite lengthy and searching cross-examination, their veracity could not be shattered and nothing favourable to the defence could be extracted from their statement. The most important aspect of the case is that huge quantity of contraband weighing 114 kgs was recovered from conscious possession of Nusratullah Khan accused. Likewise, 12 kgs charas was recovered from the conscious possession of Pervaiz Ahmad accused whereas 2.400 kgs charas was recovered from Sajjad Ahmad accused. Such huge quantity of contraband could not be thrust upon the accused in absence of any tangible and concrete enmity. More over, it is not possible for the P.Ws to arrange such a huge quantity of narcotics against the accused having no previous relation, enmity or ulterior motive which has not been proved by defence. For just decision of the case, some important excerpts of cross-examination of P.W-3 and P.W-4 are hereby reproduced below:-

P.W-3

"The vehicle used by the accused was a private one"

"Two packets of charas recovered from accused Sajjad lying openly between the feet of accused".

"The charas was in a compact form in the two packets recovered from Sajjad accused".

"It is correct that two packets of charas were found lying underneath the feet of Sajjad accused while sitting on front seat of the car and same was visible while standing nearest to front glasses of the car".

"I took out two samples from the slabs recovered from Sajjad".

"According to version of my complaint, white car was coming from Islamabad side which was stopped by me and my officials and contraband was recovered".

"The charas recovered from the accused was in a form of slabs".

"The opium was in a form of packet".

"The packets of opium were in round shapes".

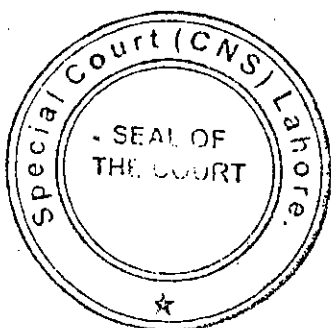
"The contraband was produced before me by Nusratullah accused himself".

"Charas and opium were wrapped in polythene papers".

"The first recovery was produced before me by Pervaiz accused".

"The fard maqbozgi was prepared in the name of Nusratullah".

NUSRAH AHMAD
21-5-14 Judge
CNS



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"The accused Nusratullah lastly produced the alleged recovery".

"The car was being driven by Pervaiz accused".

"The samples were sealed which were taken from each slab of the charas but the remaining charas was sealed in a bag of cloth".

P.W-4

"The contraband was lying between the two feet of Sajjad accused".

"In the preliminary investigation of the I.O., all accused are friends and deal in business of narcotics jointly. Volunteered that Sajjad and Nusratullah are police officials".

"The charas recovered from Sajjad accused was wrapped in solo-thin-multi-coloured paper."

(At the request of learned counsel of Sajjad accused, P-2/case property is de-sealed) solo-thin-multi-coloured paper was torn by the counsel of the accused before this court".

"The sample parcels were taken from the slabs".

"The car was encircled by the raiding party".

"The charas was in a form of slab".

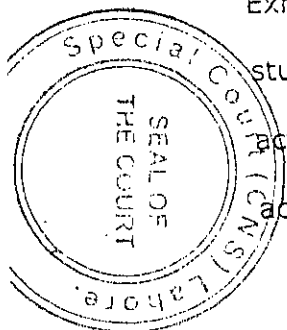
"The opium was in round shape".

"03 recovery memos were prepared regarding narcotics whereas 03 memos of personal belongings were prepared in this case".

The result of above detailed discussion is that defence leave no stone unturned to prove the prosecution story as narrated in the F.I.R and deposed by the P.Ws on oath in the court.

08. There is nothing in the cross-examination of both the P.Ws, which may give an impression that the raiding party was all out to implicate Pervaiz Ahmad, Sajjad Ahmad and Nusratullah Khan accused, falsely or for that matter they were prompted by anyone to foist such huge quantity of narcotics upon them. In fact, their testimony is free from any material infirmity.

09. The reports of Chemical Examiner Exh.PJ, Exh.PK, Exh.PL and Exh.PM are available on record and perusal of the same would show that the stuff recovered, from Pervaiz and Sajjad Ahmad accused which was in their active control was in fact, charas and stuff recovered from Nusratullah Khan accused was in his active control was in fact, charas and opium. The



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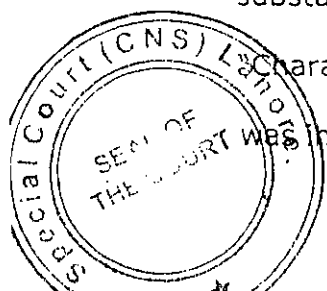
prosecution in support of said reports has got examined Muhammad Saleem /HC (P.W-1) and Muhammad Shafique /ASI (P.W-2).

10. It is in the evidence of Muhammad Shafique /ASI (P.W-2) that on arrival of the I.O. to the P.S, he handed over to him 87 sealed sample parcels said to contain charas, 20 sealed sample parcels of opium, 04 sealed parcels of charas and one sealed parcel of opium. He further stated that on 12.02.2011, he handed over the sealed sample parcels to Muhammad Saleem /HC (P.W-1) for taking it to the office of Chemical Examiner. The statement of above named witnesses remained unchallenged. C.W.1 Assistant Chemical Examiner (R) further verified that reports were issued and signed by him.

11. From the version of above two witnesses, who as stated earlier, have been examined by the prosecution in support of Chemical Examiner's reports Exh.PJ, Exh.PK, Exh.PL and Exh.PM, one could reach an irresistible conclusion that reports of Chemical Examiner are free from any doubt.

12. No doubt that all witnesses are police officials, but now it is settled principle of law that police officials are as good as other witnesses unless any kind of motive, grudge or ill-will is shown on their part leading to a conclusion that because of that reason they opted to give false evidence against the accused. There is no plausible material on the record which may persuade the Court to hold that the prosecution witnesses opted to come forward with an untrue story and planted a huge quantity of narcotics against the accused.

In the case of Mst. Rasheeda Bibi v. state (2010 P Cr. LJ 900), it has been held that application of Section 103, Cr. P. C, having been excluded by Section 25 of Control of Narcotic Substances Act, 1997, objection about non-association of any private witness in the recovery proceedings, had no substance. Complainant police officer was a witness to the recovery of "Charas" weighing 6 kgs from the accused. Report of Chemical examiner was positive. Conviction and sentence were maintained in circumstances".



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From the above cited case law, as well as the provisions of Section 25 CNS Act, it is crystal clear that the non-association of private mashir for the recovery of narcotics would not defeat the case of the prosecution by referring the provisions of Section 103, Cr. P.C, particularly in present case, when the alleged recovery of narcotics were made at 12:15 a.m at Highway, therefore, the process of recovery of narcotics could not be discarded on the above account.

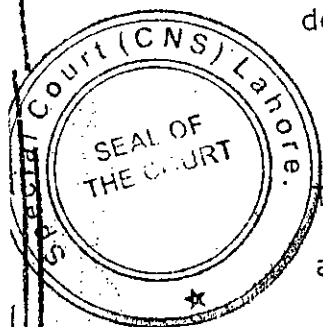
13. It is appropriate to note over here that learned defence counsel hotly contended that secret cavities are not present at the back of the rear seat. My learned predecessor during the cross-examination of P.W-3 observed that car in question shall be inspected by the court at the time of final arguments regarding the existence of secret cavities. Today, the car No.AGP-813/Sindh was inspected in presence of accused persons and found that secret cavities are present therein as mentioned in the complaint Exh.PH.

14. **DEFENCE PLEA**

It has already been reproduced in detail. Briefly, the plea of all the accused is that they are innocent. It is worth mentioning that according to record, it was not first version of the accused before police. Last but not least it is evident from the testimony of D.W-1 that he failed to disclose date and time of arrival of Sajjad Ahmad accused at Badami Bagh, Lahore when confronted learned defence counsel failed to wriggle out from the same. Likewise, testimony of Mohsin Ali (D.W-2), is of no use to Pervaiz accused in the given circumstances of the case in hand. Last but not least, Nusratullah Khan also took the plea of substitution. However, plea of substitution was denied by Sahib Khan AD (P.W-4) when to a specific question of learned defence counsel, he replied that:-

"It is incorrect that one Amanullah was arrested at the Naka and he was substituted to present accused Nusratullah".

There is no earthly reason that why the complainant would substitute the accused for the real culprit. Even otherwise, Nusratullah accused badly failed

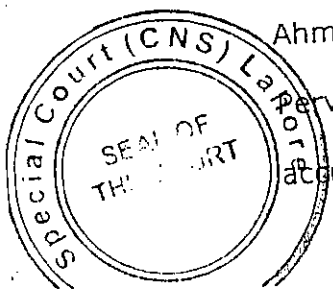


to substantiate his plea. It does not appeal to the mind that complainant and P.Ws would let off the real culprit in order to falsely implicate and involved Nusratullah accused. It is established from record that Nusratullah accused and his co-accused were caught red-handed and huge quantity of narcotic substances was recovered from their conscious possession. It can be safely, therefore, said that plea of Nusratullah and his co-accused is afterthought.

15. The defence plea raised by above named accused persons is nothing but a cock and bull story. It is well-settled when a specific plea is advanced by the accused then burden shift on them to prove the same. The accused during trial failed to substantiate that they were not present in car No.AGP-813/Sindh from where huge quantity of charas and opium was recovered from their conscious possession, therefore, merely raising plea that they were not present in the car and arrested earlier is not sufficient to exonerate them from the charge.

It is provided in Section 29 of the Act that it may be presumed, unless and until contrary is proved, that the accused has committed the offence under this Act in respect of any narcotic drug, psychotropic substance or controlled substance and once prosecution establishes recovery beyond doubt then the burden shifted to defence to discharge innocence of the accused. The defence version that the recovered charas and opium have been foisted upon the accused, is neither plausible nor born out from record. The prosecution has been able to prove that at the time of apprehension the car was under the control of above named accused persons. Pervaiz accused was driving the car whereas Sajjad Ahmad was sitting on the front seat and Nusratullah Khan was present on the rear seat, hence, whatever articles lying in it would be under their control and possession.

17. As a result of above discussion, the prosecution has proved its case beyond any reasonable shadow of doubt against Pervaiz Ahmad, Sajjad Ahmad and Nusratullah Khan accused. 12 kgs charas was recovered from Pervaiz, whereas 2.400 kgs charas was recovered from Sajjad Ahmad accused. 90 kgs charas and 24 kgs opium was recovered from Nusratullah



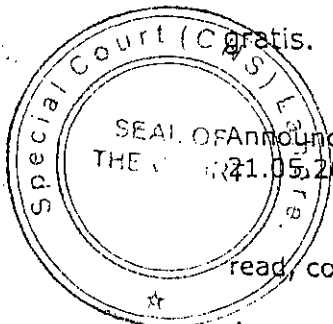
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Khan accused, therefore, all the accused are held guilty, convicted U/S 9 © of C.N.S Act, 1997 and sentenced as under:-

- i) Pervaiz Ahmad accused is sentenced to imprisonment for life with a fine of Rs.10,00,000/- (One million) or in default thereof to undergo three years S.I.
- ii) Sajjad Ahmad accused is sentenced to R.I for five years and six months with a fine of Rs.25,000/- (twenty five thousand) or in default thereof to undergo five months and fifteen days S.I.
- iii) Pervaiz and Sajjad Ahmad convicts are given benefit of Section 382-B, Cr. P. C.
- iv) Nusratullah Khan accused is sentenced to death. He is also burdened with Rs.10,00,000/- (One million) as fine or in default thereof undergo 03 years S.I. Convict shall be hanged by the neck till declare dead. Sentence of death shall not be executed until its confirmation by Hon'ble Lahore High Court, Lahore.

Record of this case and exhibited articles be sent to Hon'ble High Court, Lahore for confirmation of sentence of death. Nusratullah convict has been informed that he can prefer an appeal against this conviction and sentence within 07 days.

18. Since, Pervaiz Ahmad, Sajjad Ahmad and Nusratullah Khan have been sentenced for a period exceeding three years; therefore, all their assets derived from trafficking of narcotics shall be forfeited in favour of Federal Government, unless this court is satisfied otherwise. Personal belongings of the convicts except cash be handed over to them and recovered narcotics from convicts be destroyed after efflux of time of appeal/revision, if any. Car No.AGP-813/Sindh P-5 shall remain intact till the decision of appeal/revision, if any. Copy of the judgment be supplied to the convicts and SP for the state



gratis.
Announced:
THE COURT
21.05.2014

Announced:
21.05.2014

[Handwritten signature]

NISAR AHMAD
District & Sessions Judge,
Judge, Special Court CNS,
Lahore.

[Handwritten signature]
Registrar Special Court,
Lahore

Judge,
Special Court, CNS, Lahore

Certified that this judgment consists of twelve pages, which has been read, corrected and signed by me.

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LH

ORDER

This office order relates to the disposal of formal departmental enquiry against Constable Nasrat Ali No.4356 of Capital City Police Peshawar on the allegations that he while posted at Police Lines Peshawar absented himself from lawful duty w.e.f 12.02.2011 till date without taking permission or leave.

In this regard, he was issued charge sheet and summary of allegations vide No.91/PA/SP/H.Qrs, dated 04.04.2011. SDPO Faqirabad Peshawar was appointed as Enquiry Officer. He conducted the enquiry proceedings and submitted his report that the defaulter constable could not attend the enquiry proceedings. The E.O further recommended major punishment for delinquent official vides Enquiry Report No.11/ST dated 30.06.2011.

Upon the finding of E.O, he was issued final show cause notice and sent him on home address through local Police Station, but he failed to submit his explanation or appeared before this office as yet.

In view of the above and other material available on record, the undersigned came to conclusion that the alleged official found guilty of the charges. Therefore, he is hereby dismissed from service under Police Disciplinary Rules, 1975 with immediate effect. Hence, the period he remained absent 12.02.2011 till date be treated without pay.

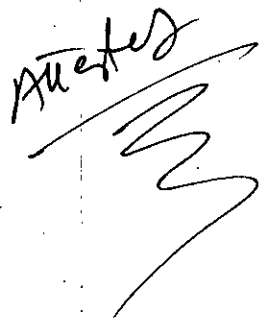

SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR

OB. NO. 1591 / Dated 21.4. /2012

No. 1726-32/PA/SP/dated Peshawar the 21/4 /2012

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

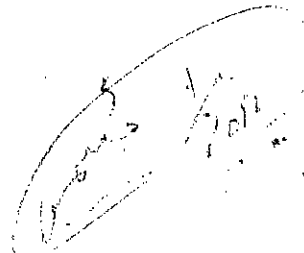
- ✓ Capital City Police Officer, Peshawar.
- ✓ DSP/HQrs, Peshawar.
- ✓ Pay Office/OASI/CRC & FMC along-with complete departmental file.
- ✓ Officials concerned.



SP/HQ.rs Punishment folder/Disposal order

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Encl: 17



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Page 11 A
51897

IN THE LAHORE HIGH COURT, LAHORE.

Assistant Registrar (C.R.)

Crl. Appeal. No. 1430 /2014.

District	Date of Filing of appeal	Name of Counsel	Stamp
Lahore	24-05-2014	1-Ch. Iftikhar Ahmad, Advocate High Court CC No. PLH-14269 2-Mahr. Abid Hussain Shammas, Advocate High Court. CC No. PSG-36187	

P.B
CNSA
Death



Nusrat Ullah Khan son of Dilawar Khan caste Aurakzai resident of Aziz Building Kali Badi, Tipu Sultan road House no 7 Pishawar. Permanent address, Shahu Khail, Tehsil and District Hangu (Presently confined in District Jail Lahore).

Examiner
Criminal Section
Lahore

.....Appellants.

VERSUS.

The State.

Case FIR No: 10/2011 Dated: 10-02-2011

Offence U/s. 9-C, 15 CNSA 1997

Police Station. ANF, Lahore

CRIMINAL APPEAL U/S 410 Cr.P.C AGAINST JUDGMENT
DATED 21-05-2014 PASSED BY MR. NISAR AHMAD,
DISTRICT AND SESSIONS JUDGE/SPECIAL JUDGE CNS

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LAHORE WHEREBY THE LEARNED JUDGE SENTENCED THE APPELLANT AS SENTENCED TO (DEATH, AND ALSO BURDENED WITH RS. 10,00,000/- (ONE MILLION RUPEES) AS FINE OR IN DEFAULT WHEREOF THE APPELLANT SHALL FURTHER UNDERGO SIMPLE IMPRISONMENT FOR THREE YEARS.

Respectfully Showeth.

1-That the alleged recovery of narcotic substance was not affected from the direct and physical conscious possession of appellant.

2-That the recovery of narcotics from the appellant in the instant case was highly doubtful.

3-That the impugned judgment of the learned trial court is illegal and contrary to law and facts. No offence u/s 9-C CNSA is made out.


4-That the complainant of the case was himself I.O. of the case.

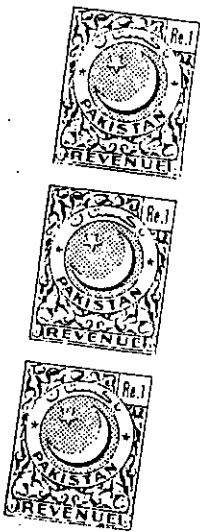
5- That the prosecution evidence is totally false and unreliable.

6-That the judgment suffers from mis-reading /non-reading of evidence.

7-That the prosecution evidence is discrepant untrustworthy and martial contradiction exists in prosecution evidence.

8-That the impugned judgment is based upon surmises and conjecture and unsustainable under law and is self nugatory.

Attest




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Lahore High Court

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE

Capital Sentence Reference No.25-N-2014
(The State Vs. Nusratullah Khan),

Criminal Appeal No.1430 of 2014
(Nusratullah Khan Vs. The State)

Criminal Appeal No. 1431 of 2014
(Pervaiz Ahmad Vs. The State)

&

Criminal Appeal No. 1113 of 2014,
(Sajjad Ahmed Vs. The State)

Date of hearing: 12.9.2019

Appellant(s) by: Malika Saba Imran, Advocate for the
appellant in Crl. Appeals No. 1430 &
1431 of 2014.

Major (R) Aftab Ahmed Khan Advocate
for the appellant in Crl. Appeal No. 1113
of 2014.

Respondent (State) by: Mr. Zafar Iqbal Chohan, Special
Prosecutor for ANF.

.....
Sardar Muhammad Sarfraz Dogar, J.:- Having faced trial in case FIR No. 10/2011, dated 10.2.2011, offence under section 9(c) read with section 15 of the Control of Narcotic Substances Act, 1997, registered with the Police Station ANF, Lahore, the appellants Pervaiz Ahmad, Sajjad Ahmad and Nusratullah Khan were convicted by the learned Sessions Judge/Judge Special Court CNS, Lahore *vide* judgment dated 21.5.2014, under section 9(c) of the Control of Narcotic Substances Act, 1997 and sentenced them as under:-

Pervaiz Ahmed appellant was sentenced to imprisonment for life with a fine of Rs.10,00,000/- (one million or in default thereof to undergo three years S.I.

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Auctes

Sajjad Ahmed appellant was sentenced to R.I. for five years and six months with a fine of Rs.25,000/- (twenty five thousand) or in default thereof to undergo five months and fifteen days S.I.

Nusratullah Khan appellant was sentenced to death. He was also burdened with fine of Rs.10,00,000/- (one million) or in default thereof undergo 03 years S.I.

The benefit of Section 382-B Cr.P.C. was extended to the appellants Pervaiz Ahmed and Sajjad Ahmed.

2. The appellants have challenged their convictions and sentences before this Court by way of filing above noted Criminal Appeals No. 1430, 1431 & 1113 of 2014 under section 48(1) of the Control of Narcotic Substances, Act, 1997, whereas, a Capital Sentence Reference No.25-N of 2014 sent by the learned trial Court under Section 374, Act V of 1898 is also under consideration, for confirmation or otherwise of the sentence of death awarded to the appellant Nusratullah Khan. We propose to decide all these matters together through this consolidated judgment.

3. Brief facts of the case, as can be culled from the FIR (Exh.PA) are that on 10.2.2011, Noman Ghous S.I./ANF complainant (PW-3) transmitted a complaint to the Police Station, wherein it has been purported that the high-ups of ANF received information that huge quantity of narcotics would be transported through car bearing registration No.AGP-813/Sindh Toyota corolla white colour by Nusratullah Khan, Sajjad Ahmad and Pervaiz residents of K.P.K. who are members of a smuggling-gang. In response to said information, a raiding party including Noman Ghous S.I. (PW-3), Khadim Hussain Subedar, Mazhar Havl., Abdul Majeed Tahir/HC, Zaheer ul Hassan, Bashir, Tariq, Quraish, Asif, Ismail, Shafqat Sepoys Hameed driver and Munawar driver under the supervision of Sahib Khan Assistant Director (PW-4) was constituted and at

TESTED
F. J. Jaffer
C. J. Jaffer
Sindh High Court, Lahore

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about 11.40 p.m. the raiding party while boarding in official vehicles reached Motorway Ravi Toll Plaza Lahore and made a Naka Bandi there. At about 12.15 a.m. (night), the said car arrived at Motorway Ravi Toll Plaza and on the pointation of informer, the raiding party overpowered three persons sitting in the car. The driver of the car disclosed his name Pervaiz and the person who was sitting on the front seat disclosed his name Sajjad/Ahmad whereas the person available on the rear seat disclosed his name Nusratullah. On inquiry about narcotics, Pervaiz accused brought out five packets of charas from underneath the driving seat and five packets of charas from the secret cavities of right front door of the car, each weighing 1200 grams and the total recovered charas became 12 kilograms. Ten grams charas was extracted from each packet as sample for chemical analysis. The samples and recovered narcotics was taken into possession vide recovery memo (Exh.PB). Accused Sajjad Ahmed handed over two packets of charas lying underneath his feet, each weighing 1200 grams total weighing 2400 grams. The complainant separated 10 grams charas from each packet for chemical analysis and sealed the same, which were taken into possession vide recovery memo (Exh.PC). Simultaneously, accused Nusratullah Khan got recovered 75 packets of charas and 20 packets of opium from the secret cavities installed in the back seat of the car. On weighing each packet of charas was of 1200 grams, as such, the total recovered charas become 90 kilograms. Each packet of opium was of 1200 grams, thus, the total recovered opium became 24 kilograms. 10 grams from each packet of charas and opium was separated for chemical analysis and taken into possession vide recovery memo (Exh.PD).

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4. After the investigation report under section 173, Cr.P.C. was submitted in the court. After codal formalities, under the relevant provisions of the Criminal Procedure Code, learned trial court framed the charge against the appellants to which they pleaded not guilty and claimed a trial. Thereafter, the prosecution in order to prove the guilt of the appellants ventured to produce as many as four witnesses besides tendering reports of Chemical Examiner Exh.PJ, Exh.PK, Exh.PL and Exh.PM in support of its case. In their statements recorded under section 342, Cr.P.C., the appellants had denied and controverted all the allegations levelled against them by the prosecution and they also professed their innocence. The appellants had not opted to make statements on oath under section 340(2), Cr.P.C. However, appellants Pervaiz and Sajjad Ahmad produced Ijaz ahmad (DW-1) and Mohsin Ali (DW-2) in their defence. Dr. Zaman Mehdi (R) Assistant Chemical Examiner as examined as (CW-1).

5. Upon culmination of the trial, learned trial court after finding the prosecution's case against the appellants to have been proved beyond reasonable doubt convicted and sentenced the appellants as mentioned and detailed above. Hence, all these matters before this Court.

6. Arguments heard and record has been scanned meticulously with the assistance of the learned counsel for the appellants and learned Special Prosecutor for ANF.

7. Allegedly the occurrence took place near Motorway Ravi Tool Plaza, Lahore. Noman Ghous S.I. (PW-3) while appearing before the learned trial Court stated that the chit of Tool Plaza has been recovered from Pervaiz Ahmed appellant. Whereas, Sahib Khan Assistant Director (PW-4) deposed that the chit of

Tool Plaza has been recovered from Sajjad Ahmed appellant. Be that as it may, the said chit has not been taken into possession by the prosecution. The prosecution has also failed to associate any person relating to Tool Plaza in the investigation as recovery witness. The prosecution has also failed to make any inquiry with regard to the owner of the vehicle. Noman Ghous S.I. (PW-3) during his cross-examination has admitted it correct that no secret cavity has been found in the rear seat of said car when the same has been produced before the learned trial Court in the trial proceedings.

8. Besides, Sahib Khan Assistant Director (PW-4) in his cross-examination deposed that each packet of charas contains two slabs. Even when the case property was opened before the learned trial Court the same consisted upon certain pieces. The procedure of sampling adopted by the prosecution is in violation to the settled law on the subject.

9. As regards safe custody of sample parcels is concerned, it is noticed that Muhammad Shafique ASI-Moharrar (PW-2) deposed that on 10.2.2011 the Investigating Officer handed over to him 87 sample parcels said contain charas and 20 sample parcels of opium and on 12.2.2011 he handed over the same to Muhammad Saleem HC for their delivery in the office of Chemical Examiner alongwith relevant documents. Bare perusal of reports of Chemical Examiner speaks otherwise that the same were dispatched to the Office of Chemical Examiner on 11.2.2011. The testimony of Moharrar (PW-2) is silent with regard to the dispatch of samples, as such, the instant case on the dimension of safe transmission as well as custody of sample parcels from Police Station to the Laboratory cannot be proved. Needless to mention here that the chain of custody begins with the recovery of the seized drug by the Police and includes the

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CSR No.25-N of 2014,
Crl. Appeal No. 1430 of 2014,
Crl. Appeal No. 1431 of 2014 &
Crl. Appeal No. 1113 of 2014.

separation of the representative sample(s) of the seized drug and their dispatch to the Narcotics Testing Laboratory. The prosecution must establish that the chain of custody was unbroken, unsuspecting, indubitable, safe and secure. Any break in the chain of custody or lapse in the control of possession of the sample, will cast doubts on the safe custody and safe transmission of the sample(s) and will impair and vitiate the conclusiveness and reliability of the Report of the Government Analyst, thus, rendering it incapable of sustaining conviction. In this regard, guidance can be sought from the case of The State through Regional Director ANF versus Imam Bakhsh (2018 SCMR 2039).

10. The minute perusal of Chemical Examiner Reports (Exh.PJ, Exh.PK, Exh.PL & Exh.PM) established the fact that the above said reports are in composite and are not on prescribed Form-II provided in Rules, 2001. The law has provided scope for person throwing challenge to the expert's report to rebut the same and in this regard reference has been made to subsection (2) of section 36 of the Act. It is seriously observed by us in numerous cases the expert report being made in sheer violation of prescribed law without observing proper codal formalities, which either reflect gross negligence at the part of prosecuting agency, resulted acquittal of the accused persons or deliberately and intentionally violating the rules being in league with the culprits. Section 36 of the Act requires a Government Analyst to whom a sample of the recovered substance is sent for examination to deliver the person submitting the sample a signed report in quadruplicate in the prescribed form II as provided under Rule 6 of the Rules and if the report prepared by him has not been prepared in the prescribed manner, then it may not qualify to be a report in the

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context of section 36 of the Act so as to be treated a "conclusive proof of recovered narcotic substance from an accused person. Reliance in this regard is placed on the case of Ikramullah v. State (2015 SCMR 1002). Relevant portion is reproduced herein below:-

"... We have particularly noticed that the report submitted by the Chemical Examiner (Exhibit-RW2/5) completely failed to mention the basis upon which the Chemical Examiner had come to a conclusion that the samples sent to him for examination contained charas. According to Rules 5 and 6 of the Control of Narcotic Substances (Government Analysts) Rules, 2001 a complete mechanism is to be adopted by the Chemical Examiner upon receipt of samples and a report is then to be submitted by him referring to the necessary protocols and mentioning the tests applied and their results but in the case in hand we note that no protocol whatsoever was mentioned in the report submitted by the Chemical Examiner and no test was referred to on the basis of which the Chemical Examiner had concluded that the samples sent to him for examination contained charas. In the context of the present case Rule 6 is of paramount importance and the same is reproduced below:

6. Report of result of test or analysis. After test or analysis the result thereof together with full protocols of the test applied, shall be signed in quadruplicate and supplied forthwith to the sender as specified in Form-II"

11. Apart from above, it is noticed that while facing cross-examination Dr. Zaman Mehdi (R) Assistant Chemical Examiner (CW-1) stated as under:-

"-----The reports stated above have not been signed by Chief Chemical Examiner or Chemical Examiner. Dairy numbers of receipt of parcels are not mentioned on the reports of Chemical Examiner. I received the sample parcels on 12.2.2011. I cannot tell the exact date of examining the said parcels. I don't remember the date on which I completed examination of parcels. It is correct that I have not mentioned the date behind the signatures on the back side of above mentioned reports. It is correct that entire detail of test is not mentioned on the front page, while it is narrated on the backside of said reports without date."

According to settled principles of law the burden on prosecution to prove its case cannot be shifted to the accused in

artificial manner when the law contemplates and provides a procedure for doing any act. When such procedure is not complied with, it amounts to violate the law. The signatures of two authorized officers on the chemical analyst report are mandatory under the Rules 2001. The report which is suffering from legal flaws cannot be considered as conclusive proof and would not be termed or considered as admissible in evidence. Thus, the non-conclusive and non-speaking laboratory report, which was not compiled according to mandate of law and rules framed thereunder, cannot be relied for sustaining the conviction. This view is further reiterated in the case of The STATE through Regional Director ANF v. Imam Bakhsh and others (2018 S C M R 2039) and Umar Shahzad and others v. State and another (PLJ 2019 Cr.C. 326 DB).

12. The Court has to examine the evidence from the starting point in order to reach to an inescapable conclusion on the basis of reasoning keeping in mind the legal principles and after satisfying the following constituents:-

- (i) *Recovery of narcotics from the accused;*
- (ii) *Safe custody of recovered substance;*
- (iii) *Safe transmission of recovered substance to Government Analyst/Chemical Examiner and*
- (iv) *The proof that the recovered substance is narcotics/contraband substance within the purview at CNSA, 1997.*

All these facts must be in line but the facts of the present case create doubt on the case of the prosecution and benefit of reasonable doubt always goes to the accused and not to the prosecution. It is also a well settled principle of criminal jurisprudence that more serious the offence, the stricter is the degree of proof and for that a higher degree of assurance is necessary to convict the accused. In view of object of the Control of Narcotic Substances Act, 1997 the fundamental duty

CSR No.25-N of 2014,
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Crl. Appeal No. 1431 of 2014 &
Crl. Appeal No. 1113 of 2014.

of the prosecution is to prove beyond a shadow of reasonable doubt that the investigation conducted in the case is absolutely flawless especially with regard to the link evidence which is most significant aspect. The prosecution has failed to prove its case beyond reasonable doubt. As per dictate's of law benefit of every doubt is to be extended in favour of the accused. Reliance is placed on "Muhammad Zaman versus The State" (2014 SCMR 749), and "Muhammad Akram versus The State" (2009 SCMR 230).

13. For what has been discussed above a conclusion is inescapable that the prosecution had failed to prove its case against the appellants beyond reasonable doubt. These appeals are, therefore, allowed, the conviction and sentence of the appellants recorded by the learned trial court are set aside and they are acquitted of the charge by extending the benefit of doubt to them. They shall be released from the jail forthwith if not required to be detained in connection with any other case.

14. Resultantly, death sentence awarded to Nusratullah Khan appellant is not confirmed and Capital Sentence Reference No.25-N of 2014 is answered in the negative.

(Aalia Neelum) (Sardar Muhammad Sarfraz Dogar)
JUDGE JUDGE

TRUE COPY
In Case No.....
Examiner, J.C.B (Copy Branch)
Lahore High Court, Lahore

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21-11-19

To

The Capital City Police
Officer, Peshawar.

Appeal against OB No.1591 dated 21.04.2012
received from the office on 20.11.2019 of
Superintendent Police Head quarters Peshawar,
whereby appellant was dismissed from service and
period of absence from 12.02.2011 to 21.04.2012 was
treated as leave without pay.

Respected Sir!

1. That appellant was appointed as constable in the year, 1994 and served the department without any complaint where ever he was posted.
2. That on 10.02.2011, FIR No.10 was registered U/S 9 (C) read with section 15 of the Control of Narcotics Substantive Act (CNSA), 1997 in police station ANF Lahore, whereby three (03) persons were charged including appellant.
3. That after completion of investigation, challan was put in the court of Special Judge CNS, Lahore and after recording of the evidence in pro and contra, appellant was sentenced to death and with fine of Rs. one million vide judgment dated 21.05.2014.

Atty. G

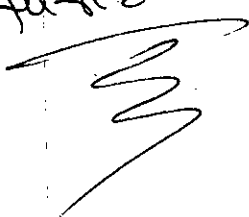

4. That thereafter, appeal was filed against the said judgment in the Lahore High Court, Lahore and then on 12.09.2019, appellant was acquitted of the aforesaid charges.
5. That after release of the appellant from jail, he reported for duty, whereby he was informed that he has been dismissed from service on 21.04.12 by SP HQr: Peshawar which order was then received from the office on 20.11.2019. hence, this departmental appeal interlia, on the following grounds:-

GROUND:-

- A. That on 08.02.2011, appellant was afforded shabashi leave for 03 days and then one Sajjad Ahmad who was also serving as constable alongwith appellant used to leave Lahore as brother of Sajjad Ahmad was an Armyian and to see there appellant also accompanied for tour to visit Lahore.
- B. That the appellant has no concern with the commission of offence as the vehicle was managed by Sajjad Ahmad which was brought by Pervez Ahmad Driver for the purpose of tour.
- C. That appellant was not in conscious possession of the items, i.e. that of the contra band items and was going to Lahore with Sajjad Ahmad constable for visiting his Armian brother.

Attest


- D. That as and when appellant was released from jail, he reported for duty but was informed that he has been dismissed from service by SP Hqr: Peshawar on 21.04.12, which order was then received from the office on 20.11.2019 at personal level.
- E. That infact the vehicle was intercepted by the ANF staff on 09.02.2011 and the search of the contra band items was never made in presence of the appellant etc, yet on 10.02.2011, the said FIR was registered in police station, ANF Lahore.
- F. That appellant informed the Incharge of the Police Station on telephone on 12.02.2011 by implicating them in the said case.
- G. That the department was well aware with the subject matter as appellant etc, was arrested by the ANF staff Lahore on 09.02.2011 but no charge sheet, statement of allegations or show cause notice was served upon him to submit replies to the same, what to speak of holding of enquiry as per the mandate of law, being mandatory.
- H. That even the impugned order dated 21.04.12 was not served upon appellant.
- I. That in the impugned order, double punishments were imposed upon appellant i.e. dismissal from service and treating absence period without pay which is against the law.

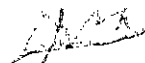
Attest


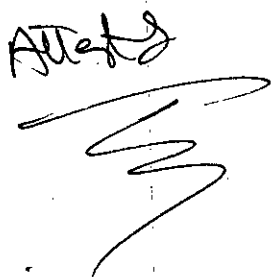
- J. That when absence period was treated as leave without pay then services of appellant were regularized and in such a situation, order of dismissal from service becomes of no legal effect.
- K. That appellant was acquitted from baseless charges, so he is legally entitled for re instatement in service.
- L. That before issuing of the impugned order, mandatory provision of law was not complied with, so the impugned order dated :21.04.2012 becomes null and void and is also based on malafide.

It is therefore, most humbly requested that order dated 21.04.12 of SP Hqr: Peshawar be set aside and appellant be reinstated in service with all consequential benefits.

Date 21.11.19

Appellant


Nusratullah S/o Dilawar Khan
R/o Shaho Khel District Hangu
Ex- Constable No.4356
Police Line Peshawar.
Cell No. 0334-9048149





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OFFICE OF THE
CAPITAL CITY POLICE OFFICER
PESHAWAR
Phone No. 091-9210989
Fax No. 091-9212597

ORDER.

This order will dispose of the departmental appeal preferred by Ex-Constable N: Ullah No.4356 who was awarded the major punishment of "Dismissal from service" under P Rules-1975 by SP/HQrs Peshawar vide OB No.1591, dated 21-04-2012.

- 2- The allegations leveled against him were that he while posted at Police L Peshawar absented himself from his lawful duty w.e f 12-02-2011 till the date of dismissal i.e 21 2012 without any leave or prior permission from the competent authority for a total period of 01 02 months and 09 days.
- 3- He was served charge sheet and summary of allegations by SP/HQrs Peshawar SDPO Faqir Abad was appointed as enquiry officer. The enquiry officer after conducting enquiry submitted his findings that the accused official was called time and again through summon/parva to attend the enquiry proceedings but he failed to appear before the enquiry officer. On receipt finding of the enquiry officer final show cause notice was served upon him at his home address through local Police but he failed to submit any reply to the final show cause notice or attend office of the competent authority. Hence the competent authority i.e SP/HQrs Peshawar awarded him the major penalty of dismissal from service.
- 4- He was heard in person in O.R. The relevant record perused along with his explanation. During personal hearing the appellant failed to produce any plausible explanation in his defense and stated that he was sentenced to Jail in a narcotics case vide FIR No.10, dated 10-02-2011 u/s 9 CNSA PS ANF Lahore and remain imprisoned in Punjab. Moreover, his service record also shows 41 bad entries and 08 minor punishments. Therefore, keeping in view the above circumstances his appeal for reinstatement in service is hereby rejected being badly time barred for 07 years and 07 months.

(MUHAMMAD ALI KHAN)PSP
CAPITAL CITY POLICE OFFICER,
PESHAWAR

No. 1795-1800 /PA dated Peshawar the 19-12- 2019

Copies for information and n/a to the:-

Atty
[Signature]

Acquitted
For Appellant

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 1025/2017

Date of Institution ... 28.08.2017

Date of Decision ... 03.07.2018



Farman Ali, Ex-Sub-Inspector,
S/O Muhammad Shah, R/o Village Mazar
District Charsadda.

(Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and 2 others:
(Respondents)

Mr. Syed Noman Ali Bukhari,
Advocate

--- For appellant.

Mr. Muhammad Jan,
Deputy District Attorney

--- For respondents.

MR. AHMAD HASSAN,
MR. MUHAMMAD AMIN KHAN KUNDI

--- MEMBER (Executive)
--- MEMBER (Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER.- Arguments of the learned counsel for the parties heard and record perused.

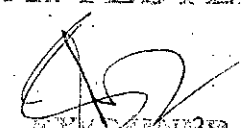
FACTS

2. The brief facts are that the appellant has been dismissed from service vide impugned order dated 23.12.2015 against which he preferred departmental appeal which was rejected on 02.08.2017, hence the instant service appeal on 28.08.2017.

ATTESTED

ARGUMENTS

Learned counsel for the appellant argued that he was charged in FIR No. 607



EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

under Section 365-A-155C-347/147-149 PPC dated 24.08.2015 and was placed

under suspension vide order dated 25.8.2015. Disciplinary proceedings were initiated under sub-rule-3 of Rule-5 of the Police Rules 1975, whereby direct show cause notice was served on the appellant to which he replied. After cancellation of BBA on 12.09.2015 the appellant was arrested by the police. Upon culmination of enquiry proceedings major penalty of dismissal from service was imposed on him vide impugned order dated 23.12.2015. Learned counsel for the appellant further contended that his case was not dealt with according to CSR-194. That the appellant was sentenced to life imprisonment by the Anti Terrorist Court. Thereafter he filed appeal in Peshawar High Court and upon acceptance he was acquitted of the charges vide judgment dated 01.06.2017. Subsequently, he was released from jail. Upon release from jail departmental appeal on 16.06.2017 which was rejected on 02.08.2017 followed by present service appeal. There are the numerous judgments of the superior courts, that in case major penalty is to be awarded to a government servant proper enquiry must be conducted. No chance of personal hearing was afforded to the appellant and as such condemned unheard. Reliance was placed on case law reported as PLD 2010 Supreme Court 695. The circumstances of both the cases are quite similar.

4. On the other hand learned Deputy District Attorney argued that sub-rule-3 of Rule-5 of Police Rules 1975 has given powers to the competent authority to dispense with enquiry proceedings and served show cause notice on the accused official/officer. The court proceedings and departmental proceedings are quite different and can run side by side. Punishment awarded to the appellant strictly in accordance with law and rules.

ATTESTED

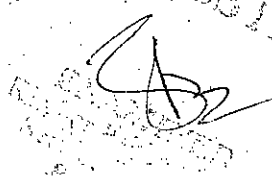

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

CONCLUSION

5. Perusal of relevant record revealed that after registration of FIR against the appellant was placed under suspension and departmental proceedings were initiated against him vide order dated 25.08.2015. After cancellation of his BBA he was arrested by the Police on 12.09.2015. It is pertinent to mention here that the appellant had surrendered to law and the respondents were required to follow the procedure laid down in CSR 194. The prudent way and the principle of natural justice demanded that the respondents should have waited for culmination of criminal proceedings against the appellant and thereafter initiation of departmental proceedings would have been justified, fair and transparent. In many cases of similar nature recourse to the aforementioned procedure was made by the respondents in the past. ✓

6. No doubt sub-rule-3 of Rule-5 of Police Rules 1975 has given powers to the respondents to dispense with regular enquiry but in the presence of so many judgments of the superior courts that in case major penalty is to be awarded, regular enquiry should be conducted. In these circumstances action taken by the respondents lacks the backing of law. It is pertinent to mention here that the appellant was behind the bars and released in the light of judgment of Peshawar High Court dated 01.06.2017. On the other hand impugned order was passed on 23.12.2015 and respondents failed to submit any documentary evidence that the same was ever served on the appellant. As the impugned order was not served on the appellant so he had no other remedy but to prefer departmental appeal on 16.06.2017 after acquittal/release from jail. In these circumstances his departmental appeal is not hit by limitation, as circumstances were beyond his control and valid

ATTESTED



justification has been given in the above stated paras. Moreover, after acquittal from the criminal case, the charge on the basis of which he was punished and awarded major penalty is no more in the field. Judgment of the Supreme Court of Pakistan relied upon by the learned counsel for the appellant is quite relevant to the appeal in hand. Circumstances of both the case are similar.)

7. As a sequel to the above, the appeal is accepted and the impugned order dated 23.12.2015 is set aside and the appellant is reinstated in service. The intervening period may be treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.

Sd/- Ahmad Hassan
Member

(MU) *Sd/- M. Anis Khan Kundi*
Member

ANNOUNCED
03.07.2018

Certified to be true copy
[Signature]
Secretary
Peshawar

Date of Presentation of Petition 17-10-18
Name 1680
Case No. 10-
Page No. 2-
Page No. 12-
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Date of Delivery of Copy 17-10-18
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.889/2020.

Ex- Constable Nusart Ullah No.4356 of CCP, Peshawar.....Appellant.

VERSUS.

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. Respondents.

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

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.889/2020.

Ex- Constable Nusart Ullah No.4356 of CCP, Peshawar.....Appellant.

VERSUS.

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.889/2020.

Ex- Constable Nusart Ullah No.4356 of CCP, Peshawar.....**Appellant.**

VERSUS.

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. **Respondents.**

REPLY BY RESPONDENTS NO. 1, 2, &3.

Respectfully Sheweth:-

PRELIMINARY OBJECTIONS.

1. That the appeal is badly barred by law & limitation.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has not come to Hon'able Tribunal with clean hands.
4. That the appellant has no cause of action and locus standi.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from Honorable Tribunal.
7. That the appeal is not maintainable being devoid of any merit.

FACTS:-

- (1) Correct to the extent that the appellant was appointed as constable in the year 1994 in the respondent department. It is worth to mention here that the appellant is a habitual absentee and not interested in his official duty. He has not a clean service record and contains 41 bad entries and 08 Minor and major punishment on the charges of absence on different occasions in his service. (copy of list as annexure A)
- (2) Incorrect. The appellant while posted at Police Lines Peshawar absented himself from official and lawful duty w. e. from 12.02.2011 till the date of dismissal from service i.e 24.04.2012 (total 01 year 02 months and 09 Days) without prior permission or leave from the competent authority. In this regard he was issued charge sheet with statement of allegations. SDPO Faqirabad Peshawar was appointed as enquiry officer. During the course of enquiry he was called time and again, but he did not turn up. The enquiry officer finalized the enquiry and submitted findings report wherein allegations were proved against the appellant. After receipt of the finding report, Final Show Cause Notice was issued to him and sent him on home address through local police station, but the appellant failed to submit his reply. After observing all codal formalities, he was awarded major punishment of dismissal from service.(copy of charge sheet, statement of allegations, enquiry report, FSCN are annexure as B,,C,D,E)

- (3) Para not related to answering respondents record. The appellant willfully absented from his lawful duty without leave/permission.
- (4) Para not related to answering respondents record. The appellant was habitual absentee and not interested in his lawful duty. Infact the appellant have a blemish service record.
- (5) Correct to the extent that the appellant deliberately absented from his lawful duty for long period. After fulfilling all the codal formalities, he was awarded the major punishment of dismissal from service.
- (6) Not related to the respondents record. As per record appellant willfully absented himself from lawful duty without any prior permission or leave. He was dismissed on the ground of long absence from duty. The appellant is a habitual absentee and not interested in official duty. He was penalized on the charges of willful absence from duty on many occasions.
- (7) Correct to the extent that the appellant preferred time barred departmental appeal on 21.11.2019 after inordinate delay of about 07 years and 07 months, meaning thereby that he was not interested and his departmental appeal was filed/ rejected on the grounds of facts and limitation.

That appeal of the appellant being devoid of merits and limitation may be dismissed on the following grounds.

GROUND:-

- a. Incorrect. The appellant wilfully absented from lawful duty for a long period without any leave/permission. He was habitual absentee and not interested in his lawful duty.
- b. Incorrect. The appellant was habitual absentee and absented from his lawful duty. He remained absent for about 01 years, 02 months and 09 days without taking permission / leave from the competent authority.
- c. Para not related to record of respondent department. As per record, he deliberately absented from lawful duty without leave.
- d. Incorrect. The competent authority before imposing the major punishment had completed all codal formalities and an ample opportunity of self defense was provided, but appellant being not interested in his official duty remained continuously absented from lawful duty for long period without any leave.
- e. Para not related to record of respondent department. In fact appellant wilfully absented from lawful duty without leave.
- f. Incorrect and misleading. In fact the appellant did not informed his high ups regarding the situation and absented from place of lawful duty without leave.
- g. Incorrect. The appellant was charge sheeted for wilful absence lawful duty and subsequently he was awarded punishment after observing all codal formalities. The


appellant did not inform his high ups regarding the situation and absented from place of lawful duty.


- h. Para already explained in detail in the above para.
- i. Incorrect. The appellant being a member of a disciplined force committed gross misconduct. The appellant was dismissed from service under law and Rules.
- j. Incorrect. The punishment order passed by the competent authority is in accordance with law/rules. In fact the appellant was habitual absentee and wilfully absented from the place of lawful duty without any leave.
- k. Incorrect. The appellant was awarded punishment for wilful absence from place of lawful duty not for the involvement in criminal case. The appellant under legal obligation to have informed the department about his involvement in criminal case. So under the rule, wilful long absence and acquittal from criminal case cannot entitle him for reinstatement into service.
- l. Incorrect. The appellant was treated as par law/rules. A proper departmental enquiry was conducted and the enquiry officer reported that charges leveled against the appellant were proved. Therefore, the punishment order was passed by competent authority in pursuance of his long absence period which is not tolerable in the disciplined force.

Prayers:-

Keeping in view the above stated facts & reasons it is, most humbly prayed that the appeal of the appellant being devoid of merits and limitation, may kindly be dismissed with costs please.


Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.


Capital City Police Officer,
Peshawar.


Superintendent of Police,
HQrs: Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.889/2020.

Ex- Constable Nusart Ullah No.4356 of CCP, Peshawar.....Appellant.


VERSUS.


1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. **Respondents.**

AFFIDAVIT.

We respondents 1, 2 and 3 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal.


Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.


Capital City Police Officer,
Peshawar.


Superintendent of Police,
HQrs: Peshawar.

Name of Official NASRAT ULLAH NO.4356 S/O DILAWAR KHAN
R/O: Village Shahu Khel PS Hangu District Kohat.
Date of Birth 14.05.1964
Date of enlistment 20.07.1994
Education Nil
Courses Passed Nil
Total qualifying service 17 years and 18 days
Good Entries Nil
Punishment (previous)

Bad Entries (L.W.O Pay, E/Drill & Warning)

1. 01 day leave without pay vide OB No.946 dt: 03.07.1998
2. 05 days leave without pay vide OB No.1530 dt: 19.08.1999
3. Fine Rs.50/- vide OB No.1711 dt: 22.09.1999
4. Fine Rs.50/- vide OB No.1934 dt: 27.10.1999
5. Fine Rs.50/- vide OB No.2290 dt: 30.12.1999
6. Fine Rs.50/- vide OB No.2097 dt: 23.11.1999
7. Fine Rs.50/- vide OB No.142 dt: 27.01.2000
8. Fine Rs.30/- vide OB No.2053 dt: 02.02.2000
9. Fine Rs.50/- vide OB No.66 dt: 17.01.200
10. 05 moths & 21 days leave without pay vide OB No.275 dt: 11.02.2000
11. 01 day leave without pay & Rs.50/- vide OB 875 dt: 17.05.2000
12. Fine Rs.20/-vide OB No.902 dt: 20.05.2000
13. Fine 30/- vide OB No.973 dt: 01.06.2000
14. 01 day leave with pay & Rs.30/- Fine vide OB No.1569 dt: 05.09.2000
15. Fine Rs.30/- vide OB No.1420 dt: 16.08.2000
16. Fine Rs.50/- vide OB No.1393 dt: 07.08.2000
17. Fine Rs.30/- vide OB No.1377 dt: 07.08.2000
18. Fine Rs.50/- vide OB No. 888 dt: 12.07.2001
19. 01 day leave without pay vide OB No.137 dt: 20.01.2001
20. Fine Rs.30/- vide OB No. 818 dt: 04.07.2001
21. 03 days leave without pay & Fine Rs.15/- vide OB No.900 dt: 16.07.2001
22. 02 days leave without pay & Fine Rs.20/- vide OB No.915 dt: 16.07.2001
23. 05 days leave without pay & Fine Rs.30/- vide OB No.915 dt: 16.07.2001
24. Warning be care full in future vide OB No.62 dt: 1.03.2002
25. 01 day leave without pay vide OB No.36 dt: 06.02.2002
26. 01 days leave without pay vide OB No.235 dt: 30.07.2002
27. Fine Rs.200/- vide OB No.389 dt: 03.11.2003
28. 04 days leave without pay vide OB No.451 dt: 30.12.2003
29. 01 days leave without pay vide OB No.30.12.2003
30. Warning vide OB No.24 dt: 15.01.2004
31. 01 day leave without pay vide OB No.30 dt: 19.01.2004
32. 02 days E/drill vide OB No.133 dt: 15.04.2004
33. 02 days E/drill vide OB No.124 dt: 06.04.2004
34. Warning be care full future OB No.323 dt: 07.09.2004
35. 08 days E/drill vide OB No.388 dt: 08.11.2004
36. 02 days leave without pay vide OB No.3160 dt: 02.10.2009
37. 02 days leave without pay vide OB No.1658 dt: 10.05.2010
38. 01 day leave without pay vid OB No.1599 dt: 04.05.2010
39. 12 days leave without pay & Fine Rs.1000/- vide OB No.17 dt: 03.01.2011
40. 13 days leave without pay vide OB No.409 dt: 01.02.2011
41. 12 days leave without pay & warning vide OB No.329 dt: 24.01.2011

Minor Punishment

1. 03 days Q/Guard vide OB No.593 dt: 0312.1996
2. 01 day censured vide OB No.1382 dt: 29.07.1999
3. 01 day censured & Rs.50/- Fine vide OB No.1173 dt: 17.06.1999
4. Censured & Rs.50/- Fine vide OB No.1905 dt: 21.10.1999
5. Censured & Rs.30/- Fine vide OB No.2039 dt: 10.11.1999
6. Censured & Rs.50/- Fine vide OB No.1880 dt: 18.10.1999
7. 01 day leave without pay & Censured vide OB No.2292 dt: 30.12.1999
8. Stoppage of two increments without accumulative effect & 31 days leave without pay vide OB No.205 dt: 25.05.2004.

Major Punishment

Nil

09. Punishment (Current)

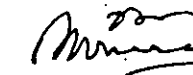
- Awarded major punishment dismissed from service on the charge of absence w.e.f 12.02.2011 to till date vide OB No.1591 dated 21.04.2012 by SP/HQrs Peshawar.

10. Leave Account

<u>Total leave at his credit</u>	<u>Availed leaves</u>	<u>Balance</u>
816 days	20	796 Days



W/CCPO


CRC 6-1:

CHARGE SHEET

(B)

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge that Constable Nasrat Ali No.4356 of Capital City Police Peshawar with the following irregularities.

“That you Constable Nasrat Ali No.4356 while posted at Police Line, Peshawar was absent from duty w.e.f. 12.02.2011 till date without taking permission or leave. This amounts to gross misconduct on you part and against the discipline of the force.”

You are, therefore, required to submit your written defence within seven days of the receipt of this charge sheet to the Enquiry Officer committee, as the case may be.

Your written defence, if any, should reach the Enquiry Officer/Committee within the specified period, failing which it shall be presumed that have no defence to put in and in that case exparte action shall follow against you.

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

n/o. 11 SJF C
11-04-011 (12)

DISCIPLINARY ACTION

I, Superintendent of Police, Headquarters, Capital City Police Peshawar as competent authority, am of the opinion that Constable Nasrat Ali No.4356 has rendered himself liable to be proceeded against under Section-3 of NWFP, Removal from Service (Special Power) Ordinance 2000.

STATEMENT OF ALLEGATION

"That Constable Nasrat Ali No.4356 while posted at Police Line, Peshawar was absent from duty w.e.f. 12.02.2011 till date without taking permission or leave. This amounts to gross misconduct on his part and against the discipline of the force."

For the purpose of scrutinizing the conduct of said accused with reference to the above allegations an enquiry is ordered and SDPO Razaq Ahmad is appointed as Enquiry Officer.

2. The Enquiry Officer shall, in accordance with the provisions of the Ordinance, provide reasonable opportunity of hearing to the accused officer, record his finding within 30 days of the receipt of this order, make recommendations as to punishment or other appropriate action against the accused.
3. The accused shall join the proceeding on the date time and place fixed by the Enquiry Officer.

SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 91 /E/PA, dated Peshawar the 04/4 /2011

1. SDPO Razaq Ahmad is directed to finalize the aforementioned departmental proceeding within stipulated period under the Rule.
2. Official concerned

Steno
Call Constable
[Signature]

Enquiry Report

D (C) 1

Kindly refer to the office endorsement no. 91 PA 5 on the subject noted above.

This is departmental enquiry against Constable NABRAT Ali No. 43 while posted at Police line absented himself from lawful duty w.e. from 12-02-2011 to till date without taking permission or This amounts to gross misconduct on his part and against the discipline of force. His act is highly objectionable. He was put departmental enquiry by the worthy SP HQ Peshawar. The undersigned was appointed as enquiry officer to initiate disciplinary proceedings against delinquent official with reference to the above mentioned all

in order to scrutinize the conduct of the alleged official, he was summoned through Parwana, but he could not appear before undersigned. He presenting his solid proof. Therefore one sided decision may be taken.

Hence keeping in view the above mentioned circumstances the undersigned suggested that alleged official may be awarded a major punishment for continuous absence. Submitted please

W/SP HQ

no 11 151R

DATED 30-6-2011

Issue final show
Cause notice

AS.P. Faqir Abad
Circle, Peshawar.

Superintendent of Police HQrs
Capital City, Peshawar

1-7-2011

E
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FINAL SHOW CAUSE NOTICE

I Superintendent of Police, Headquarters, Capital City Police, Peshawar as competent authority, under the North West Frontier Provincial Removal From Service (Special Power) Ordinance, 2000 do hereby serve you Constable Nasrat Ali No.4356 of Capital City Police, Peshawar as follows.

1 (i) That consequent upon the completion of enquiry conducted against you by the enquiry officer for which you were given opportunity of hearing.

(ii) On going through the findings and recommendation of the enquiry Officer, the material on record and other connected papers produced before the E.O.

I am satisfied that you have committed the following acts/omissions specified in section 3 of the said Ordinance.

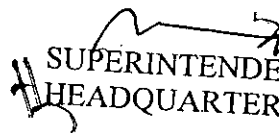
“That You Constable Nasrat Ali No.4356 while posted at Police Lines, Peshawar was absent from duty w.e.f. 12.02.2011 till date without taking permission or leave. This act amounts to gross misconduct on your part and against the discipline of the force”

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of major punishment under section 3 of the said Ordinance of sub section 4 of section 5 for absence willfully performing duty away from place of posting.

3. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

4. If no reply to this notice is received within 7 days of its delivery, in normal course of circumstances, it shall, be presumed that you have no defence to put in and in that case as separate action be taken against you.

5. The copy of the finding of the enquiry officer is enclosed.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 91 /PA, SP/HQrs: dated Peshawar the _____ /2009.

Copy to official concerned

Name of Official**NASRAT ULLAH NO.4356 S/O DILAWAR KHAN****R/O:** Village Shahu Khel PS Hangu District Kohat.**Date of Birth**14.05.1964**Date of enlistment**20.07.1994**Education**Nil**Courses Passed**Nil**Total qualifying service**17 years and 18 days**Good Entries**Nil**Punishment (previous)****Bad Entries (L.W.O Pay, E/Drill & Warning)**

1. 01 day leave without pay vide OB No.946 dt: 03.07.1998
2. 05 days leave without pay vide OB No.1530 dt: 19.08.1999
3. Fine Rs.50/- vide OB No.1711 dt: 22.09.1999
4. Fine Rs.50/- vide OB No.1934 dt: 27.10.1999
5. Fine Rs.50/- vide OB No.2290 dt: 30.12.1999
6. Fine Rs.50/- vide OB No.2097 dt: 23.11.1999
7. Fine Rs.50/- vide OB No.142 dt: 27.01.2000
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11. 01 day leave without pay & Rs.50/- vide OB 875 dt: 17.05.2000
12. Fine Rs.20/-vide OB No.902 dt: 20.05.2000
13. Fine 30/- vide OB No.973 dt: 01.06.2000
14. 01 day leave with pay & Rs.30/- Fine vide OB No.1569 dt: 05.09.2000
15. Fine Rs.30/- vide OB No.1420 dt: 16.08.2000
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4. Censured & Rs.50/- Fine vide OB No.1905 dt: 21.10.1999
5. Censured & Rs.30/- Fine vide OB No.2039 dt: 10.11.1999
6. Censured & Rs.50/- Fine vide OB No.1880 dt: 18.10.1999
7. 01 day leave without pay & Censured vide OB No.2292 dt: 30.12.199
8. Stoppage of two increments without accumulative effect & 31 days leave without pay vide OB No.205 dt: 25.05.2004.

Major Punishment

Nil

09. Punishment (Current)

- Awarded major punishment dismissed from service on the charge of absence w.e.f 12.02.2011 to till date vide OB No.1591 dated 21.04.2012 by SP/HQrs Peshawar.

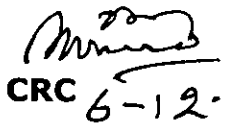
10. Leave Account

<u>Total leave at his credit</u>	<u>Availed leaves</u>	<u>Balance</u>
816 days	20	796 Days



PA

W/CCPO



CRC 6-12.

CHARGE SHEET

(B)

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge that Constable Nasrat Ali No.4356 of Capital City Police Peshawar with the following irregularities.

“That you Constable Nasrat Ali No.4356 while posted at Police Line, Peshawar was absent from duty w.e.f. 12.02.2011 till date without taking permission or leave. This amounts to gross misconduct on you part and against the discipline of the force.”

You are, therefore, required to submit your written defence within seven days of the receipt of this charge sheet to the Enquiry Officer committee, as the case may be.

Your written defence, if any, should reach the Enquiry Officer/Committee within the specified period, failing which it shall be presumed that have no defence to put in and in that case exparte action shall follow against you.

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

r/o. 11 SIF
11-04-011

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DISCIPLINARY ACTION

I, Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that Constable Nasrat Ali No.4356 has rendered himself liable to be proceeded against under Section-3 of NWFP, Removal from Service (Special Power) Ordinance 2000.

STATEMENT OF ALLEGATION

"That Constable Nasrat Ali No.4356 while posted at Police Line, Peshawar was absent from duty w.e.f. 12.02.2011 till date without taking permission or leave. This amounts to gross misconduct on his part and against the discipline of the force."


For the purpose of scrutinizing the conduct of said accused with reference to the above allegations an enquiry is ordered and SDPO Rogirahud is appointed as Enquiry Officer.

2. The Enquiry Officer shall, in accordance with the provisions of the Ordinance, provide reasonable opportunity of hearing to the accused officer, record his finding within 30 days of the receipt of this order, make recommendations as to punishment or other appropriate action against the accused.
3. The accused shall join the proceeding on the date time and place fixed by the Enquiry Officer.

SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 91 /E/PA, dated Peshawar the 04/4 /2011

1. SDPO Rogirahud is directed to finalize the aforementioned departmental proceeding within stipulated period under the Rule.
2. Official concerned

Steno
Call Constable


Enquiry Report

D (C)

Kindly refer to the office endorsement no. 91 PA 5 on the subject noted above.

This is departmental enquiry against Constable NABRAT Ali No. 43 while posted at police line absented himself from lawful duty w.e. from 12-02-2011 to till date. without taking permission or This amounts to gross misconduct on his part and against the discipline of force. His act is highly objectionable. He was put departmental enquiry by the worthy SP HQ Peshawar. The undersigned was appointed as enquiry officer to initiate disciplinary proceedings against delinquent official with reference to the above mentioned all.

In order to scrutinize the conduct of the alleged official, he was summoned through parwana, but he could not appear before undersigned, for presenting his solid proof. Therefore one sided decision may be taken.

Hence keeping in view the above mentioned circumstances the undersigned suggested that alleged official may be awarded a major punishment for continuous absence. submitted please

W/SP HQ

no 11/151R

DATED 30-6-2011

issue final show
cause notice

AS.P. Faqir Abad
Circle, Peshawar.

Superintendent of Police HQrs
Capital Circle, Peshawar

1-7-2011

FINAL SHOW CAUSE NOTICE

E
10

I Superintendent of Police, Headquarters, Capital City Police, Peshawar as competent authority, under the North West Frontier Provincial Removal From Service (Special Power) Ordinance, 2000 do hereby serve you Constable Nasrat Ali No.4356 of Capital City Police, Peshawar as follows.

- 1 (i) That consequent upon the completion of enquiry conducted against you by the enquiry officer for which you were given opportunity of hearing.
- (ii) On going through the findings and recommendation of the enquiry Officer, the material on record and other connected papers produced before the E.O.

I am satisfied that you have committed the following acts/omissions specified in section 3 of the said Ordinance.

“That You Constable Nasrat Ali No.4356 while posted at Police Lines, Peshawar was absent from duty w.e.f. 12.02.2011 till date without taking permission or leave. This act amounts to gross misconduct on your part and against the discipline of the force”

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of major punishment under section 3 of the said Ordinance of sub section 4 of section 5 for absence willfully performing duty away from place of posting.
3. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.
4. If no reply to this notice is received within 7 days of its delivery, in normal course of circumstances, it shall be presumed that you have no defence to put in and in that case as separate action be taken against you.
5. The copy of the finding of the enquiry officer is enclosed.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 91 /PA, SP/HQrs: dated Peshawar the _____ /2009.

Copy to official concerned