

200/2014

31.07.2015

Appellant with counsel present and requested for requisition of file for to-day. File has been requisitioned.

Counsel for the appellant stated that the respondent-department assured redressal of grievance of the appellant and submitted an application for withdrawal of the appeal. Application placed on file. Signature of the appellant also obtained in the margin of order sheet. As such the appeal is dismissed as withdrawn. File be consigned to the record room.

ANNOUNCED

31.07.2015


MEMBER


MEMBER

15402-1408344-7

~~31-7-15~~

1.1.2015

Junior to for the appellant and Mr. Muhammad Adeel Butt, AAG with Attaullah, Inspector for the respondents present. The Tribunal is incomplete. To come up for the same on 25.2.2015.



READER

25.2.2015

Appellant with counsel and Addl. A.G with Rashid Ahmad, Inspector (Legal) for the respondents present. The learned Judicial Member is on official tour to D.I.Khan, therefore, case is adjourned to 7.4.2015 for arguments.



MEMBER

07.4.2015

Counsel for the appellant, and Mr. Muhammad Jan, GP with Rasheed Ahmad, Inspector (Legal) for the respondents present. Due to rush of work, arguments could not be heard. To come up for arguments on 13.5.2015.



MEMBER



MEMBER

Appellant with counsel (Mr. Noor Muhammad Khattak, Advocate) and Mr. Abdul Jalil, ASI with Mr. Muhammad Jan, GP for the respondents present. Arguments partly heard. During the course of arguments it transpired that no enquiry report is available on record, the presence of which is necessary for right disposal of the case. Same be requisitioned from the respondents-department. To come up for further arguments on 10.08.2015.



MEMBER



MEMBER

10.6.2014.

File received from the learned Bench-I and order sheet dated 29.5.2014 perused.

Counsel for the appellant and Mr. Muhammad GP present. Fresh notices be issued to the respondents and case to come up for written reply on 16.7.2014.

MEMBER

MEMBER

16.7.2014

Appellant in person and AAG with Mr. Muhammad Siar, ASI for the respondents present and reply filed. Copy handed over to counsel for the appellant. To come up for rejoinder on 03.09.2014.

MEMBER

MEMBER

03.09.2014

Appellant with counsel and Mr. Muhammad Adeel Butt, AAG with Muzafar Khan, SI (Legal) for the respondents present. Rejoinder received. Copy handed over to the learned AAG. To come up for arguments on 26.11.2014.

MEMBER

27.11.2014

Counsel for the appellant and Mr. Muhammad Jan, GP with Ijaz, PSI for the respondents present. The Tribunal is incomplete. To come up for the same on 01.1.2015.

READER

11.03.2014

Counsel for the appellant present and submitted an application for early hearing of the instant appeal instead of 09.04.2014. Case file requisitioned. Application accepted. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. Against the order dated 11.12.2013, he filed departmental appeal which has been rejected on 07.02.2014, hence the instant appeal on 17.02.2014. He further contended that the appellant has been treated under a wrong law and the impugned final order dated 07.02.2014 has been issued in violation of Rule-5 of the Civil Servant (Appeal) Rules-1986. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notices be issued to the respondents for submission of written reply/comments on 29.05.2014.

Appellant Deposited
Security & Process Fee
Rs. 2000/- Bank
Receipt is Attached with File.

11.03.2014

This case be put before the Final Bench  for further proceedings.

Member

Chairman

29.5.2014

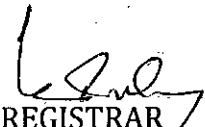
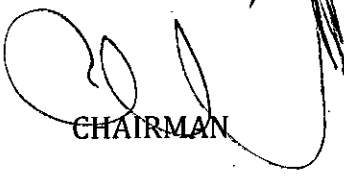
Appellant with counsel present. Respondents are not present despite their service through the concerned official/registered post. However, the learned counsel for the appellant stated that similar nature cases, involving identical issues for determination, are pending before learned Bench-II, and fixed for further proceedings on 10.6.2014. In order to avoid a conflicting decision, and for convenience of both the parties, this appeal alongwith connected appeals are also entrusted to learned Bench-II ^{where} ~~where~~ the parties are directed to appear for further proceedings alongwith connected appeals pending there on 10.6.2014.

Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 200/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	17/02/2014	<p>The appeal of Mr. Badshah Jan presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	19-2-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>9-4-2014</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 250 /2014

BADSHAH JAN

VS

POLICE DEPTT:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of appeal	1- 3.
2.	Complaint	A	4.
3.	Show cause notice	B	5.
4.	Reply to show cause notice	C	6- 7.
5.	Impugned order	D	8.
6.	Departmental appeal	E	9.
7.	Rejection order	F	10.
8.	Vakalat nama	11.

APPELLANT

THROUGH:


NOOR MOAHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 200 /2014

[Stamp]
No. 210
dated 17-2-14

Mr. Bad shah Jan, ASI/CDI No. 424,
O/O District Police Officer, District Dir Upper **Appellant**

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 3- The Deputy Inspector General of Police, Malakand Region at Saidu Sharif, Swat.
- 4- The District Police Officer, District Dir Upper.
..... **Respondents**

APPEAL UNDER SECTION-4 OF THE SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED APPELLATE ORDER DATED 07-02-2014 WHEREBY THE DEPARTMENTAL APPEAL OF APPELLANT FOR RE-INSTATEMENT WITH ALL BACK BENEFITS HAS BEEN REJECTED ON NO GOOD GROUNDS AND AGAINST THE ORIGINAL IMPUGNED ORDER DATED 11-12-2013 WHEREBY MAJOR PUNISHMENT OF COMPULSORY RETIREMENT WAS IMPOSED ON THE APPELLANT UNDER A WRONG LAW

PRAYER:

That on acceptance of this appeal the impugned orders dated 11-12-2013 and 07-02-2014 may very kindly be set aside and the respondents may be directed to re-instate the appellant with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

- 1- That the appellant is the employee of the respondent Department for more than thirty (30) years of service at his credit. That right from appointment till impugned order dated 11-12-2013 the appellant has served the respondent Department quit efficiently and up to the entire satisfaction of his superiors.
- 2- That appellant while serving as ASI/CDI in the respondent Department at District Police, District Dir Upper the appellant served with show cause notice dated 22-10-2013 on the

allegation that the appellant caused damage to the car of one complainant namely Muhammad Ibrahim and refused to pay for his damages and used your position as CDI. That in response to the said show cause notice the appellant submitted his reply and denied the allegation with proof. Copies of the complaint by Muhammad Ibrahim, show cause notice, and reply are attached as annexure **A, B & C.**

- 3- That vide order dated 11-12-2013 the appellant was awarded major punishment of compulsory retirement from service by the respondent No.4 without conducting regular inquiry in the matter and under a wrong law i.e. Police Rules 1975. That feeling aggrieved and having no other remedy the appellant filed Departmental appeal against the impugned order dated 11/12/2013 but the same was rejected on no good grounds vide order dated 07-02-2014. Copies of order dated 11-12-2013, Departmental appeal and rejection order are attached as annexure **D, E & F.**
- 4- That appellant feeling aggrieved from the impugned orders dated 11-12-2013 and 07-02-2014 and having no other remedy filed this appeal on the following grounds amongst the others.

GROUND:

- A- That the impugned orders dated 11/12/2013 and 07/02/2014 are against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B- That appellant has not been treated by the respondents in accordance with law and rules on the subject noted above and as such the respondents violated article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That no charge sheet and statement of allegations has been served on the appellant by the respondent Department before issuing the impugned order dated 11/12/2013.
- D- That no chance of personal hearing/ defense has been given to the appellant before issuing the impugned order dated 11/12/2013.
- E- That no regular inquiry has been conducting against the appellant before issuing the impugned order dated 11.12.2013 which as per Supreme Court judgments is necessary in punitive actions against the civil servants.

- F- That the action against the appellant has been taken by the respondent Department under a wrong law i.e. under Police Rules 1975, therefore the impugned order dated 11-12-2013 is void ab initio under the law.
- G- That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

APPELLANT



BADSHAH JAN

THROUGH:



**NOOR MUHAMMAD KHATTAK
ADVOCATE**

Account

(01)

جناب عالی!

SP صاحبہ کو تیار کرنے کے لیے درخواست کی ہے۔
CDI بادشاہ جان صاحبہ نے اس کے لیے سیرے ڈاؤن

تعداد میں یہ ہے کہ

اپنے گھوڑے جا کر راستے میں ایکسٹنڈنگ کر کے انجین اور ٹائر کو فرسٹ

گاڑی واپس کر کے CDI صاحبہ نے کہ اس پر چھتا خریدنے آئیگا میں دونگا میں

گاڑی کو تیار کر کے جس پر مبلغ 36000 ہزار روپے لگانے آتے CDI

منکر ہے کہ پیسے نہیں مانتے ہیں جسکی خلاف میں نے آپ آفسران بلا کر

مجھوڑا درخواست دیں۔ آپ CDI صاحبہ روزانہ مجھے دھمکی دیتا ہے کہ

میں آپ کیساتھ دیکھ لوںگا اور آپ کو تل تھانہ تبدیل کروونگا

SP صاحبہ اور دیگر لوگ چند دن میں تبدیل ہو گئے اور میں پھر

آپ کو بہ فرخواست کروونگا اور SP صاحبہ کو درخواست کروا رہی ہے

آپنے پیسے لے کر وہ تبدیل ہونے والا ہے۔ پھر میں بہت غصہ کرتا ہوں

میں اور مجھ پر قرض زیادہ ہو گیا ہے

درخواست کرتا ہوں اور آپ صاحبان سے انتہائی کا افسوس کہتا ہوں

کہ CDI صاحبہ کے تنخواہ سے یہ مبلغ 36000 روپے کٹ کر

مجھے واپس دلوائیں جائے جو کہ اپنے ٹھکانے کا غلط استعمال کرتا ہے

اور مجھے بار بار دھمکیاں دیتا ہے

12/9/2013

مورفہ

العارضی

کنستبل محمد ابراہیم 864 ڈسٹرکٹ پولیس اسٹیشن ڈیرہ بالا

یا جی یا بادشاہ جان CDI کو تہران دیکھئے

ATTESTED

Handwritten signature

درخواستیں درج ذیل ہیں
DPO صاحبہ اور ASP صاحبہ چند دن میں

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FINAL SHOW CAUSE NOTICE.

1. WHERE AS, Head Constable Bacha Jan Khan No. 424, while posted as CDI Police Lines Upper Dir, on complaint of Muhammad Ibrahim No. 864 / FC that you caused damage to his car & used your position as CDI to threaten him to silence. When the FC asked you damages, you refused to pay for which has been pointed out in the Departmental Inquiry conducted by Mr. Noor Jamal Khan DSP, Upper Dir. This shows gross misconduct & *prima facie mala fide* intent on your part.

2. WHERE AS, The Enquiry Officer finalized the enquiry proceeding given you full opportunities of defence. The Enquiry Officer held you guilty of the charges leveled against you as per Charge Sheet.

3. AND WHERE AS, Ongoing through the finding and recommendation of Enquiry Officer, The material placed on record including your defence before the said Enquiry Officer, I am satisfied you have committed the misconduct and are guilty of the charge leveled against you which stand proved and render you liable to be awarded punishment under Police Rules 1975.

4. NOW THEREFORE, I MUHAMMAD JAVAJD DISTRICT POLICE OFFICER DIR UPPER, as competent authority have tentatively decided to impose upon you, any one or More penalties under the said Police Rules 1975.

You are therefore, required to show cause within seven days of the receipt of this notice, as to why penalty / punishment should not be imposed upon you, failing which it shall be presumed that you have no defence to offer and ex-parte action shall be taken against you. Meanwhile also intimate whether you desire to be heard in person or otherwise.

HC Bacha Jan No.424

[Signature]
District Police Officer,
Dir Upper.

No. 3937 /EB, Dated 22/10/2013.

ATTESTED

[Signature]
5/12/13

تعداد مشمولہ فائل شوکار ٹوٹس جن 3937 مورخ
۴/۱۳

۲۲ مورخ جون ۱۹۸۳ء سے پولیس
میں اتصال کے لئے فراڈس نہایت اہمیت والی ہیں
فائل شوکار ٹوٹس میں لکھے گئے الزامات بالکل غلط ہیں جن
سائل نے نہ تو اپنی ڈیوٹی میں کوئی کوتاہی کی ہے اور نہ اپنے عہدہ
کا غلط استعمال کیا ہے۔ مگر ایسے کئی گارڈ میں
ایک شادی کے سلسلے میں جاکر جو رقم نقصان اس کے ہو کر
مستری کے ذریعہ ہٹا کر لے گیا۔ گارڈی کا سہ ماہی 3000 روپے
خرچہ آکر جو میں ادا کر چکا ہوں۔ تحریری راز میں کف کے
گٹھڑی نقصان اس کے ہونے سے پہلے کہ وہ کوئی آؤٹ سٹینڈ
بلکہ ایک ڈائریکٹ معاہدہ ہے جس میں راز میں کوئی سرکھ ہے
میں بڑا بڑا ہے۔ اس کے شوکار ٹوٹس یا چار 90 ٹھیک ہیں
موجود نہیں ہوا اور نہ ہی ان کو اس کے ایورٹ اگر کوئی نہ نقل
کے ہو گئے ہیں

من سائل نے نہ تو اپنی ڈیوٹی میں کوئی کوتاہی کی ہے اور
کثر کو دھوکہ دیا ہے بلکہ ایک ٹھیک کے ساتھ سے انفاقیہ معاہدہ
بہا ہونے والی ہے۔ اس کے ساتھ میں
اس کے ساتھ میں فائل شوکار ٹوٹس
میں بڑا بڑا ہے۔ اس کے شوکار ٹوٹس یا چار 90 ٹھیک ہیں

Pran

بدرشاہ علی خان

ATTESTED

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whereof disciplinary proceedings were initiated and appellants were served with charge-sheets. The replies of the appellants, having been found unsatisfactory, they were awarded penalty of reduction in their ranks from the post of Naib Tehsildar to Stenographer and from the post of Junior Clerk to Naib Qasid, respectively. Appellants filed departmental appeals which did not succeed. Appeals of the appellants before the Tribunal also met the same fate necessitating the filing of instant appeals.

3. Leave was granted in both the cases by order, dated 14-11-2006 to consider the contentions, inter alia, that in the disciplinary proceedings carried out by the respondents the appellants were not given any opportunity to cross-examine the witnesses produced by the department and that adequate opportunity was also not afforded to the appellants to produce their evidence; that the statement of allegation was also not provided to them and that various contentions raised by the appellants were not attended to by the Tribunal.

4. Sheikh Masood Akhtar, Advocate representing the appellants, bitterly criticized the impugned judgment and attempted to argue that same has been recorded in a mechanical manner without application of independent judicious mind and in total disregard to the law on the point and that evidence recorded prior to the regular inquiry, in absence of the appellants, could not be treated as evidence of any worth, as a result whereof right of cross-examination has been denied to the appellants.

5. Raja M. Saeed Akram, learned Additional Advocate-General, Punjab representing the respondents, on the other hand, refuted the arguments of learned counsel for the appellants and supported the impugned judgment on the grounds more or less the same incorporated in the judgment itself.

6. Having heard the arguments from both sides in the light of the material on file, we find that submissions made by learned counsel for the appellants carry weight and must prevail. Learned Tribunal has erred in law and facts in dismissing the appeals of the appellants as in the absence of service of statements of allegations, required under section 5(1)(a) of the Punjab Removal from Service (Special Powers) Ordinance, 2000, the proceedings were void and nullity in the eyes of law as appellants were not confronted with the same. Again the evidence recorded prior to the regular inquiry in the absence of appellants could not be treated as evidence of any value as right of cross-examining the witnesses has been denied to the appellants, resulting in manifest injustice. We also find that inquiry was not conducted according to the mandatory provisions of law so much so statements of allegations were not supplied to the appellants to meet the charges.

7. In view of the above, appeals are allowed, impugned judgment is set aside and appellants are directed to be reinstated to their positions with all back-benefits. However, the department shall be at liberty to initiate fresh inquiry in the matter in accordance with law, if so advised. No order as to costs.

S.A.K./M-135/SC

Appeals accepted.

FOX Appellant

Badshah Jehan

2008 S C M R 609

[Supreme Court of Pakistan]

Present: Abdul Hameed Dogar, C. J. Ijaz-ul-Hassan Khan and Ch. Ejaz Yousaf, JJ

MUHAMMAD ISMAIL SHAHID---Appellant

Versus

EXECUTIVE DISTRICT OFFICER (REVENUE), LAHORE and another----Respondents

Civil Appeals Nos.2140 and 2141 of 2006, decided on 12th February, 2008.

(On appeal from the judgment, dated 16-3-2006 passed by Punjab Service Tribunal, Lahore, in Appeal Nos.2612 and 2656 of 2005):

Punjab Removal from Service (Special Powers) Ordinance (IV of 2000)---

---Ss. 3(1)(c), 5(1)(a) & 6---Punjab Service Tribunals Act (IX of 1974), S.4---Reduction in ranks--- Charge of corruption---Dismissal of civil servant's appeal by Service Tribunal---Validity---Inquiry proceedings conducted in absence of service of statement of allegations on civil servant would be void and nullity in eyes of law as civil servant was not confronted with them---Evidence recorded prior to regular inquiry, in absence of civil servant, would not be of any value as right of cross-examining witnesses had been denied to civil servant resulting in manifest injustice---Inquiry had not been conducted according to mandatory provisions of law so much so that even statement of allegation was not supplied to civil servant to meet charges---Supreme Court set aside impugned judgment and directed reinstatement of civil servant with all back-benefits while giving liberty to department to initiate fresh inquiry in accordance with law, if so advised.

Sheikh Masood Akhtar, Advocate-on-Record for Appellant.

Raja Muhammad Saeed Akram, Astt. A.-G., Punjab for Respondents.

Date of hearing: 12th February, 2008.

JUDGMENT

IJAZ-UL-HASSAN KHAN, J.---The above captioned appeals, with the leave of this Court, filed by Muhammad Ismail Shahid and Muhammad Sharif, appellants, arise out of a common judgment, dated 16-3-2006 passed by Punjab Service Tribunal, Lahore, dismissing Service Appeals Nos.2612 and 2656 of 2005 preferred by the appellants.

2. Relevant facts of the case are, that while posted as Naib Tehsildar Settlement, Cantt. Lahore, appellant Muhammad Ismail Shahid demanded illegal gratification through his Reader appellant Muhammad Sharif, from one Muhammad Hussain, complainant, for attestation of mutations of complainant's land. A complainant was made to District Co-Ordination Officer, Lahore, in pursuance

7

ادارہ اعلیٰ

مذکورہ بالا کثیر تعداد میں 869 سٹیٹس کارڈس کے بارے میں 10/13/10
 کی طرف سے 10/13/10 کے ذریعہ دریافت کیا گیا ہے کہ ان سٹیٹس کارڈس کے بارے میں
 کارڈس کی صورت میں موجود اور سٹیٹس کارڈس کی صورت میں موجود
 ماسٹر کارڈس کے بارے میں 1863 کا کارڈ گورنمنٹ
 کا کارڈ گورنمنٹ اور سٹیٹس کارڈس کی صورت میں موجود PS-D
 کے بارے میں 23000 کے بارے میں
 کے ذریعہ دریافت کیا گیا ہے کہ ان سٹیٹس کارڈس کے بارے میں
 کی طرف سے 10/13/10 کے ذریعہ دریافت کیا گیا ہے کہ ان سٹیٹس کارڈس کے بارے میں
 کی طرف سے 10/13/10 کے ذریعہ دریافت کیا گیا ہے کہ ان سٹیٹس کارڈس کے بارے میں

(B) 10/13/10

ادارہ اعلیٰ
869

سٹیٹس کارڈس کی صورت میں موجود
 کارڈس کے بارے میں 10/13/10 کے ذریعہ
 کی طرف سے 10/13/10 کے ذریعہ

10/13/10
 کارڈس کے بارے میں 10/13/10 کے ذریعہ
 کی طرف سے 10/13/10 کے ذریعہ

Attest

کارڈس کے بارے میں 10/13/10 کے ذریعہ

298
 10/13/10
 970

ATTESTED

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D-8

ORDER.

This order is passed on the Departmental enquiry against ASI Bacha Jan while posted CDI Police Lines Upper Dir.

Allegations against the above named defaulter ASI is that while Posted as CDI Police Lines, He caused damage to the car of Constable Ibrahim No. 864/FC & used his position as CDI to threaten him to silence. When the FC asked for damages he refused to pay for.

In order to initiate proper Departmental enquiry, Charge Sheet and Statement of allegations was served upon him. Mr. Noor Jamal Khan DSP was appointed as an Enquiry Officer. The enquiry Officer in its finding report stated that the defaulter ASI/ CDI is on wrong foot and recommended him for Compulsory Retired due to his long service.

On the receipt of the finding report and other connected papers the same was perused. The above named defaulter Official was called and heard in person in OR, but could not defend himself. The enquiry papers were perused. His guilty has been proved beyond any shadow of doubt.

Keeping in view his long service the defaulter ASI Bacha Jan (CDI) of this District Police is hereby *awarded punishment Compulsory retired* with immediate effect. The Kit/other uniform articles shall immediately be deposited from him in the District Godown.

Order announced.

OB No. 768
Dt: 11/12 2013.

Attested
[Signature]
DSP/HQ
16/12

[Signature]
District Police Officer
Dir Upper.

ATTESTED

[Signature]

**D.S.P.
HEAD QUARTERS
DIR UPPER**

بخدمت جناب ریجنل پولیس آفسر صاحب ملاکنڈ ریجن

اپیل بناراضگی فیصلہ حکم مصدرہ

جناب DPO صاحب دیر بالا جس کی رو سے من اپیلانٹ کو خلاف قانون جبری ریٹائرمنٹ کی سزا سنائی گئی ہے جناب عالی!

گزارش حسب ذیل ہے

(1) یہ کہ من سائیل بادشاہ جان بہ مورخہ 13.6.1983 بطور کنسٹیبل محکمہ پولیس میں بھرتی ہوا اور سال 1989 میں ڈرل کورس کر کے سال 2010 میں CDI ترقی یاب ہوا تا حال اپنی فرائض منصبی نہایت ایمانداری سے سرانجام دی ہے۔

(2) یہ کہ سائل بطور CDI تعینات تھا اور سائل نے ایک نائب CDI کے بیٹے کی شادی میں شرکت کیلئے ایک موٹر کار غواگی لے جا کر جو یوہا ایکسیڈنٹ نقصان رسیدہ ہو کر بعدہ سائل نے مالک گاڑی کے ساتھ راضی نامہ کر کے اس کے نقصان کی طمانی بھی کی مگر سائل کو محکمانہ کارروائی شروع کر کے خلاف قانون و ضابطہ جبری ریٹائرمنٹ کی سزا سنائی گئی (نقل حکم لف ہے)۔

(3) یہ کہ حکم جناب DPO صاحب بوجہات ذیل قابل منسوخی ہیں۔

ا:- یہ کہ سائل نے نہ تو اپنی ڈیوٹی میں کوئی کوتاہی کی ہے اور نہ سائل کے خلاف ایسا کوئی الزام لگایا گیا ہے۔

ب:- یہ سائل کا معاملہ پرائیویٹ نوعیت کا تھا اور فریقین کے مابین راضی نامہ بھی ہو چکا ہے مگر فاضل DPO صاحب نے جملہ امور نظر انداز کئے ہیں۔

ج:- یہ کہ انکو انگری آفسر نے بھی سائل کو سزا دینے کی سفارش نہیں کی بلکہ صرف متاثرہ فریق کو نقصان کے ازالہ کی ہدایت کی ہیں جو کہ من سائل پہلے سے کر چکا ہے اسی طرح حکم خلاف قانون و ضابطہ ہے۔

د:- یہ کہ جناب DPO صاحب کے حکم و انکو انگری آفسر کے پائینڈنگ کے مابین واضح تضاد موجود ہیں۔

ه:- یہ کہ گاڑی کا ایکسیڈنٹ ہونا یا نقصان رسیدہ ہونا ایک اتفاقی اور قدرتی امر ہے اور اس سے کسی ڈیوٹی کا کوئی تعلق نہیں ہے جبکہ فریقین کے مابین راضی نامہ بھی ہو چکا ہے۔

و:- یہ کہ سائل عرصہ 30 سال سے محکمہ پولیس میں ملازمت کرتا آیا ہے مگر اس طویل عرصہ کے دوران کبھی بھی آفسران بالا یا عوام کو من سائل کے خلاف کوئی شکایت نہیں ہوئی اور نہ بدوران انکو انگری من سائل کے خلاف کوئی شہادت پیش ہوئی ہے۔

ز:- یہ کہ حکم فاضل DPO صاحب میں تحریر ہے کہ انکو انگری آفسر نے جبری ریٹائرمنٹ کی سفارش کی ہے حالانکہ انکو انگری میں ایسا کوئی ذکر نہ ہے۔

ح:- یہ کہ سائل کے خلاف بد نتیجے سے جلدی میں کارروائی کی گئی ہے اور کوئی شوکاژ نوٹس یا چارج شیٹ دیئے بغیر فائنل شوکاژ نوٹس دیا گیا ہے جو خلاف قانون و ضابطہ ہے۔

ط:- یہ کہ سائل اپنے بچوں کا واحد کفیل ہے۔ اور بلاوجہ سائل کا معاشی قتل کیا گیا ہے۔

لہذا استدعا ہے کہ بمظوری اپیل حد حکم DPO صاحب بحوالہ OB نمبر 768 مورخہ 11.12.2013 منسوخ و کالعدم قرار دیا جا کر سائل کو Back Benefits کے ساتھ بحال کرنے کا حکم صادر فرمایا جائے۔

اپکا تابع حکم سائل بادشاہ جان ASI/CDI ولد محمد شیر سنگھ جو گلگرام ملاکنڈ ایجنسی

ATTESTED

NIC:15401-1408344-7



F-10

OFFICE OF THE REGIONAL POLICE OFFICER, MALAKAND REGION, AT SAIDU SHARIF SWAT

ORDER:

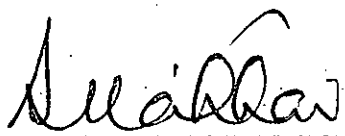
This order will dispose off the appeal preferred by Ex-ASI Bacha Jan of Dir Upper District for reinstatement in service.

Brief facts are that, the above named ASI while posted as CDI Police Lines Dir Upper. He damaged the car of Constable Ibrahim No. 864. He threatened him to be remained silent. When the Constable asked for damages the said ASI refused to pay for.

In light of allegations leveled against the defaulter ASI Bacha Jan was proceeded against departmentally, Charge sheet and statement of allegation was served upon him. Mr. Noor Jamal Khan DSP was appointed as Enquiry Officer. The Enquiry Officer in its finding report stated that the said ASI is on wrong foot and held him responsible. On the receipt of the finding report and other connected papers the same was perused by District Police Officer, Dir Upper and he was served with Final Show Cause Notice vide DPO, Dir Upper office Endst: No. 393/EB, dated 22/10/2013, on the receipt of reply, the above named defaulter officer was called and heard in person in orderly room by DPO Dir Upper, but he could not defend himself. The DPO Dir Upper vide his office OB No. 768, dated 11/12/2013 awarded him major punishment of compulsory retirement from service under Police Rules 1975.

The appellant was called in Orderly Room on 07/02/2014 and heard in person, but he did not produce any substantive materials in his defense. Therefore I uphold the order of District Police Officer, Dir Upper, whereby the appellant has been awarded major punishment for compulsory retirement from service.

Order announced.


(ABDULLAH KHAN) PSP
Regional Police Officer,
Malakand, at Saidu Sharif Swat
Naqi

No. 1188-89 /E,

Dated 7-2 /2014.

Copy for information and necessary action to the:-

1. District Police Officer, Dir Upper with reference to his office Memo: No. 31/EB, dated 02/01/2014.

ATTESTED Ex-ASI Bacha Jan of Dir Upper District.



VAKALATNAMA

IN THE COURT OF KPK Service Tribunal Peshawar
_____ OF 2014

Badshah Jan (APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Police Department (RESPONDENT)
(DEFENDANT)

I/We Badshah Jan

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2014



CLIENT



ACCEPTED
NOOR MOHAMMAD KHATTAK
(ADVOCATE)

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.
Phone: 091-2211391
Mobile No.0345-9383141

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWER

SERVICE APPEAL NO.200/2014

Mr.Badshah Jan ASI CDI NO:424 _____ Appellant.

VERSUS

The Govt: Of K.P.K through chief secretary &
others.....Respondents.

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2	Charge Sheet	A	4
3	Statement of allegation	B	5
4	Power of Attorney		6
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**Sub Inspector Legal,
Upper Dir.**

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

SERVICE APPEAL NO.200/2014.

Mr. Badshah Jan ASI CDI No.424.....Appellant.

VERSUS

The Govt: of K.P. through chief secretary & others.....Respondents.
K

PARA-WISE COMMENTS ON BEHALF OF RESPONDENTS.

Respectfully sheweth:

PRELIMANRY OBJECTIONS:-

1. That the present service appeal is not maintainable in its form.
2. That the instant service appeal is time barred.
3. That the appellant has not come to this August Tribunal with clean hands.
4. That the appellant has concealed the material facts from this Honorable Tribunal.

ON FACTS.

1. Correct to the extent of service, the rest of the para pertains to record.
2. Correct to the extent show cause Notice, allegation contained therein and reply submitted by the appellant. However the reply to show cause notice was found unsatisfactory and without cogent proof.
3. Correct to the extent of punishment, the rest of para is incorrect. The punishment is in accordance with law & rules. The respondents have completed all the codal formalities. The departmental appeal was rejected as his guilt was proved beyond any shadow of doubt.
4. Needs no comments.

ON GROUNDS.

- A. In-correct, both the orders are in accordance with law and rules.
- B. In-correct, no article of constitution has been violated by the respondents and the appellant has been treated according to the law and rules.
- C. Incorrect the appellant was served with the formalities of law and Mr. Noor Jamal Khan DSP HQrs was appointed as enquiry officer.(charge sheet and statement of allegation annexed) as "A" & "B"
- D. Incorrect, proper opportunity of personal hearing/defence was provided to the appellant.
- E. In-correct, proper departmental enquiry was conducted against the appellant.
- F. In-correct, the action against the appellant has been taken in accordance with the law. The Police rules 1975 is still implemented as Police order 2002 given protection to it.
- G. The respondent also seeks permission to advance other grounds and proofs at the time of hearing.

PRAYER.

It is therefore humbly prayed that on acceptance of this para-wise comments the instant service appeal may graciously be dismissed with costs.

Ali

Respondents No. 1
Chief Secretary Khyber
Pakhtunkhwa Peshawar.

**Chief Secretary
Govt. of Khyber Pakhtunkhwa**

[Signature]
Respondents No.2

Inspector General of Police,
Khyber Pakhtunkhwa Peshawar.

[Signature]

Respondents No. 3

Deputy Inspector General of Police,
Malakand swat.

[Signature]
Respondent No. 4

District Police Officer,

Dir Upper.

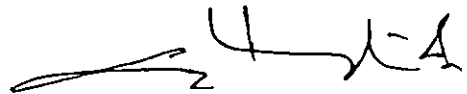
**DISTRICT POLICE OFFICER
DIR UPPER.**

CHARGE SHEET

I, Dr. Muhammad Khurram Rashid PSP, DISTRICT POLICE OFFICER. As competent authority, hereby charged You Head Constable Bach Jan Khan No. 424 while posted as CDI Upper Dir as follows:-

You HC Bacha Jan Khan No. 424 while posted as CDI Upper Dir were allegedly involved in misconduct & cause damage to car of Ibrahim No. 864/FC & used your position as CDI to threaten him to silence. When the FC asked you for damages, you refused to pay which has been pointed out in the Departmental Enquiry conducted by Mr. Noor Jamal Khan DSP, Upper Dir. This shows gross misconduct & *prima facie mala fide* intent on your part.

2. By reason of the above you appear to be guilty of misconduct and have rendered yourself liable to all or any of the penalties specified in Rule-4 of the Disciplinary Rules 1975.
3. You are therefore required to submit your written reply within (07) days of the receipt of this Charge Sheet to the Enquiry Committee.
4. Your written reply, if any should reach to the Enquiry Officer within the specified period, failing which it shall be presumed that you have no defence to put in and in that case the ex-parte action shall follow against you.
5. Intimate as to whether you desire to be heard in person or not?
6. Statement of allegation is enclosed.



(Dr. Khurram Rashid) PSP
District Police Officer,
Upper Dir.

No. 3584 /EB, Dated Upper Dir the 28/9 /2013.

Copy to HC Bacha Jan No. 424 to submit your reply to the charge sheet with stipulated period.

DISCIPLINARY ACTION.

I, Khurram Rashid (PSP) District Police Officer, Upper Dir. As competent authority, is of the opinion that you Head Constable Bacha Jan Khan No. 424 while posted as CDI Upper Dir rendered yourself liable to be proceeded against Departmentally as you have committed the following acts / omission as defined in Rule -2 of Police Rules 1975.

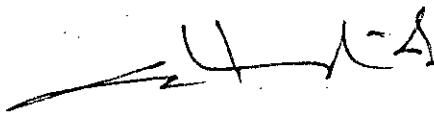
STATEMENT OF ALLEGATION

Where as, Head Constable Bacha Jan Khan No. 424, while posted as CDI Police Lines Upper Dir, on complaint of Muhammad Ibrahim No. 864 / FC that you caused damage to his car, used your position as CDI to threaten him to Silence. When the FC asked you for damages, you refused to pay. This shows gross misconduct & *prima facie mala fide* intent on your part.

2. For the purpose scrutinizing of the said accused with reference to the above allegations, DSP Noor Jamal Khan is appointed as the Enquiry Officer under the said Rules.

3. The Enquiry Officer shall conduct proceeding in accordance with provision of Police Rules 1975 and shall provide reasonable opportunity of defence and hearing to the accused official, record its findings and make within seven (07) days of the receipt of this order recommendation as to punishment or other appropriate action against the accused official.

4. The accused official shall join the proceeding on the date, time and place fixed to the Enquiry Officer.


(KHURRAM RASHID) PSP
District Police Officer,
Upper Dir.

No. 3585/3585A/EB, Dated Upper Dir the 20/9/2013.
Copy of above is forwarded to:-

1. The Enquiry Officer for initiating proceeding against the accused official under Police Rules 1075.
2. Concerned defaulter official

9/10/13

ment 8

11/12/13

11/12/13
Relevant
be given to
as per rules
Police

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

SERVICE APPEAL NO.200/2014.

Mr. Badshah Jan ASI CDI No.424.....Appellant.

VERSUS

The Govt: of K.P. through chief secretary & others.....Respondents

K

POWER OF ATTORNEY.

We the following respondents do hereby authorized, Mr. Rashid Ahmad Inspector Legal District Dir Upper to appear, on our behalf before the Honorable Service Tribunal Peshawar in connection with the cited appeal.

He is also authorized to submit all documents required by the Service Tribunal in connection with cited appeal.

Ali

Respondents No. 1
Chief Secretary Khyber
Pakhtunkhwa Peshawar.
Chief Secretary
Govt: of Khyber Pakhtunkhwa

[Signature]

Respondents No.2
Inspector General of Police,
Khyber Pakhtunkhwa Peshawar.

[Signature]

[Signature]

Respondents No. 3
Deputy Inspector General of Police,
Malakand swat.
Regional Police Officer,
Malakand, at Saidu Sharif Swat.

[Signature]

[Signature]

Respondent No. 4.
District Police Officer,
Dir Upper POLICE OFFICER
DIR UPPER.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

SERVICE APPEAL NO.200/2014.

Mr. Badshah Jan ASI CDI No.424.....Appellant.

VERSUS

The Govt: of K.P. through chief secretary & others.....Respondents

K

AFFIDAVIT.

We the under signed to hereby solemnly affirmed and declared on oath that the contents of the para-wise reply are true and correct to the best of our knowledge and belief and nothing has suppressed or canceled from this Honorable Tribunal.

DEPONENTS.



Respondents No. 1
Chief Secretary Khyber
Pakhtunkhwa Peshawar.
Chief Secretary
Govt: of Khyber Pakhtunkhwa



Respondents No.2
Inspector General of Police,
Khyber Pakhtunkhwa Peshawar.

Handwritten initials/signature



Respondents No. 3
Deputy Inspector General of Police,
Malakand swat.
Regional Police Officer,
Malakand, at Saidu Sharif Swat

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Respondent No. 4
District Police Officer,
District Police Officer
DIR UPPER.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 200/2014

BADSHAH JAN

VS

POLICE DEPARTMENT

REJOINDER ON BEHALF OF APPELLANT IN
RESPONSE TO THE REPLY SUBMITTED BY THE
RESPONDENTS

R/SHEWETH:

PRELIMINARY OBJECTIONS:

(1 to 5):

All the preliminary objections raised by the respondents are incorrect and baseless and not in accordance with law and rules rather the respondents are estopped due to their own conduct to raise any objection at this stage of the appeal.

ON FACTS:

- 1- Admitted correct by the respondents hence need no comments.
- 2- Incorrect and not replied accordingly. That in response the appellant submitted his detailed reply to the show cause notice and denied all the allegations which were leveled against the appellant. That respondent No.4 with out conducting regular inquiry and with out mentioning any law under which the respondents took action against the appellant imposed major penalty of Compulsory retirement on the appellant vide the impugned order dated 11-12-2013.
- 3- Incorrect and not replied accordingly. That vide impugned order dated 11-12-2013 the appellant was awarded major punishment of compulsory retirement from service by the respondent No.4 under a wrong law. Moreover no reason has been mentioned by the appellate authority while deciding the Departmental appeal of the appellant, therefore the same is in violation of clause 24-A of the General clauses Act 1856.
- 4- Incorrect and not replied accordingly hence denied.

GROUND:
(A to G):

All the grounds of main appeal are correct and in accordance with law and prevailing rules and that of the respondents are incorrect and baseless hence denied. That the impugned orders dated 11-12-2013 and 07-02-2014 are against the law, facts, norms of natural justice and material on the record hence not tenable and liable to be set aside. That no charge sheet, statement of allegation have been served on the appellant before issuing the impugned order dated 23.12.2013. That no chance of personal hearing has been given to the appellant while issuing the impugned order dated 23-12-2013. Moreover respondent No.4 with out mentioning any law under which the respondents took action against the appellant imposed major penalty of Compulsory retirement on the appellant vide the impugned order dated 11-12-2013.

It is therefore most humbly prayed that on acceptance of this rejoinder the appeal of the appellant may be accepted as prayed for.



APPELLANT

THROUGH:

BADSHAH JAN



NOOR MUHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 200/2014

BADSHAH JAN

VS

POLICE DEPARTMENT

REJOINDER ON BEHALF OF APPELLANT IN
RESPONSE TO THE REPLY SUBMITTED BY THE
RESPONDENTS

R/SHEWETH:

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- 4- Incorrect and not replied accordingly hence denied.



GROUND:
(A to G):

All the grounds of main appeal are correct and in accordance with law and prevailing rules and that of the respondents are incorrect and baseless hence denied. That the impugned orders dated 11-12-2013 and 07-02-2014 are against the law, facts, norms of natural justice and material on the record hence not tenable and liable to be set aside. That no charge sheet, statement of allegation have been served on the appellant before issuing the impugned order dated 23.12.2013. That no chance of personal hearing has been given to the appellant while issuing the impugned order dated 23-12-2013. Moreover respondent No.4 with out mentioning any law under which the respondents took action against the appellant imposed major penalty of Compulsory retirement on the appellant vide the impugned order dated 11-12-2013.

It is therefore most humbly prayed that on acceptance of this rejoinder the appeal of the appellant may be accepted as prayed for.



APPELLANT

THROUGH:

BADSHAH JAN



NOOR MUHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO.200/2014

31/7/2015

BADSHAH JAN

VS

POLICE DEPARTMENT

APPLICATION FOR WITHDRAWAL OF THE ABOVE
MENTIONED SERVICE APPEAL

R.SHEWETH:

- 1- That the above mentioned service appeal is pending adjudication before this august service Tribunal in which 31.7.2015 date is fixed for hearing.
- 2- That the appellant filed the above mentioned service appeal before this august Service Tribunal against the impugned order dated 11.12.2013 whereby major penalty of compulsory retirement was imposed on the appellant by the respondents and against the appellate order dated 7.2.2014 whereby the Departmental appeal of the appellant has been rejected.
- 3- That the respondent has assured that if the appellant withdrew the above mentioned service appeal which is pending before this august Tribunal, then the appellant would be re-instated in to service with all back benefits.
- 4- That on assurance of the respondents the appellant seeks the permission of this august Tribunal to withdraw the instant appeal.

It is therefore most humbly prayed that on acceptance of this application the above mentioned appeal may kindly be dismissed as withdrawn.

Dated: 31.7.2015

APPELLANT

[Signature]

BADSHAH JAN

THROUGH:

[Signature]
NOOR MOHAMMAD KHATTAK
ADVOCATE