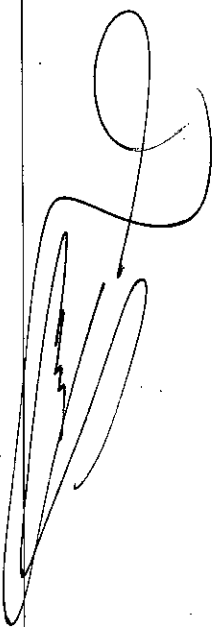


| Sr. No. | Date of order/ proceedings | Order or other proceedings with signature of Judge/ Magistrate |
|---------|----------------------------|--|
| 1 | 2 | 3 |
| 1. | 24.06.2015 | <p data-bbox="609 456 1380 531" style="text-align: center;">KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.</p> <p data-bbox="609 574 1380 690" style="text-align: center;">Service Appeal No. 470/2014 Arif Khan Versus the Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar etc.</p> <p data-bbox="755 776 941 808" style="text-align: center;"><u>JUDGMENT</u></p> <p data-bbox="755 851 1494 892" style="text-align: center;"><u>PIR BAKHSH SHAH, MEMBER.-</u> Appellant with</p> <p data-bbox="609 934 1494 1128">counsel (Mr. Muhammad Amin Khattak, Advocate) and Assistant Advocate General (Mr. Kabeerullah Khan Khattak) for the respondents present.</p> <p data-bbox="609 1217 1494 2300">2. The appellant was inducted in police department as constable in the year, 2007. He while posted at P.S Band Kurai, D.I.Khan had been charged/arrested on recovery of 700 grams chars vide Case FIR No 56, dated 14.3.2012 u/s 9 CNSA P.S Yarik D.I.Khan. Charge sheet alongwith statement of allegation dated 26.03.2012 was issued to the appellant. DSP Kulachi conducted departmental enquiry against the appellant and submitted the report dated 03.09.2013 wherein minor penalty of stoppage of two increments was recommended against the appellant. The competent authority however, vide his impugned order dated 21.01.2014 dismissed him from service and his departmental appeal was also rejected on 13.3.2014, hence this service appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.</p> |

3. The learned counsel for the appellant submitted that the appellant joined police service in the year 2007 and without giving him any opportunity of final show cause notice and that of personal hearing, was harshly punished in contravention of the recommendations of the enquiry officer. It was further submitted that this step of the respondent-department is against the rules and spirit of natural justice. Reliance was placed on 2008-SCMR-1174. The learned counsel for the appellant also argued that the appellant was acquitted by learned court of competent jurisdiction in the said criminal case vide order dated 28.03.2013. In this regard he submitted that every acquittal is honorable acquittal and further that when there was no case against the appellant, he should not have been punished. Reliance was placed on 2001-SCMR-269, 2007-SCMR-537, 2007-SCMR-1008, 2007-SCMR-1860. He requested that the appeal may be accepted.



4. The learned Assistant Advocate General resisted this appeal on the ground that departmental proceedings can be independently initiated and completed irrespective of the fate of criminal proceedings. Reliance was placed on 2007-SCMR-562. It was further submitted that offence was of heinous nature particularly when committed by official of the police force. He also submitted that all codal formalities of charge sheet and enquiry have been complied with and full opportunity of defence was given to the appellant. He requested that the appeal may be dismissed.

5. We have heard arguments of the learned counsel for the parties and have perused the record.

6. This is astonishing that the criminal case happened on 14.3.2012, the appellant was not suspended and the charge sheet was issued to him on 26.3.2012. After a lapse of about six months the enquiry officer submitted his report where-after the concerned police authorities did not decide the matter there and then and when finally the impugned order after a lapse of about one year of the enquiry report was passed on 21.1.2014, the appellant was dismissed from service without giving him any final show cause notice or showing the reason as to why recommendations of the enquiry officer were not taken into consideration? The said aspect of the case in view, it was further observed that the enquiry officer has not bothered or taken pain to have recorded statement of the complainant or witnesses, all the police officials and easily accessible. The Tribunal is of the considered opinion that in the circumstances of the case the penalty is also harsh, on the basis of a criminal case, in which the appellant had been acquitted. For the above stated reasons, the impugned orders cannot be maintained.

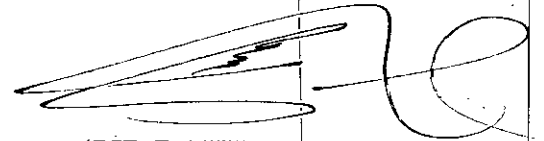
7. In view of the above discussion, the impugned orders are set aside, and the case is remitted to the competent authority for denovo departmental enquiry strictly in accordance with law and rules, which should be completed

within thirty days after receipt of this judgment. Appellant is reinstated into service for the purpose of fresh proceedings. Back benefits etc. will be subject to the outcome of fresh enquiry. The appeal is disposed of in the above terms. Parties are left to bear their own costs. File be consigned to the Record Room.

ANNOUNCED
24.6.2015



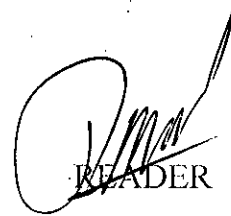
(ABDUL LATIF)
MEMBER



(PIR BAKHSH SHAH)
MEMBER

18.12.2014

Appellant in person and Mr. Muhammad Jan, GP for the respondents present. The Tribunal is incomplete. To come up for the same on 6.2.2015.


READER

6.2.2015

Clerk of counsel for the appellant and Mr. Muhammad Jan, GP with Muhammad Bilal, H.C for the respondents and reply filed. Copy whereof is handed over to clerk of counsel for the appellant. To come up for rejoinder on 06.3.2016.


MEMBER

06.3.2015

Appellant in person and Mr. Muhammad Jan, GP with Nazir Ahmad, H.C for the respondents present. Rejoinder received. To come up for arguments on 24.6.2015.


MEMBER

24.6.2015

Counsel for the appellant and Mr. Kabeerullah Khan Khattak, Asstt. A.G for the respondents present. Arguments heard and record perused. Vide our detailed judgment of to-day and placed on file, this appeal is disposed off as per detailed judgment. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
24.06.2015


MEMBER


MEMBER

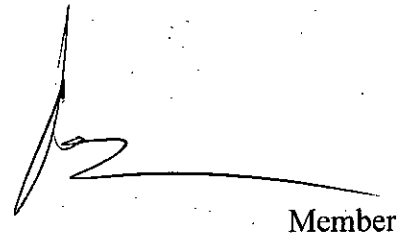
Appeal No. 470/2014
Mr. Arif Khan

3.

30.05.2014

Appellant in person present and requested for adjournment.

Request accepted. To come up for preliminary hearing on 10.07.2014.

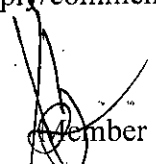


Member

10.07.2014

Appellant with counsel present. 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 original order dated 21.01.2014, he filed departmental appeal, which has been rejected on 13.03.2014, hence the present appeal on 01.04.2014. He further contended that the impugned order dated 13.03.2014 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. To come up for written reply/comments on 14.10.2014.

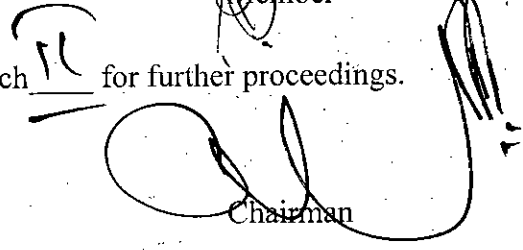
Appellant deposited
Process fee & Security
Rs. 1800/- Bench heard
attached with file



Member

10.07.2014

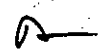
This case be put before the Final Bench FC for further proceedings.



Chairman

14.10.2014

Appellant with counsel and Mr. Muhammad Jan, GP with Khalid Khan, SI (Legal) for respondents present and reply requested for adjournment. To come up for written reply on 18.12.2014.


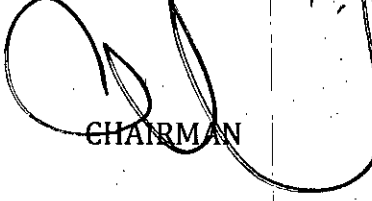


MEMBER

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 470/2014

| S.No. | Date of order Proceedings | Order or other proceedings with signature of judge or Magistrate |
|-------|---------------------------|--|
| 1 | 2 | 3 |
| 1 | 01/04/2014 | <p>The appeal of Mr. Arif Khan presented today by Mr. Muhammad Amin Khattak Lachi 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 | 3-4-2014 | <p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>30-5-2014</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> |

BEFORE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No. 470 /2014.

Arif Khan, Ex.PC No.1424.

Appellant.

Versus

Provl: Police Officer, Khyber Pakhtunkhwa, and others.

Respondents.

Service Appeal

I N D E X

| <u>S.No.</u> | <u>Description of Documents</u> | <u>Annexure</u> | <u>Page(s)</u> |
|--------------|--|-----------------|----------------|
| 1. | Petition with Grounds of Appeal & affidavit. | -- | 1-4 |
| 2. | Copies of Charge Sheet & Order of DPO. | A & B | 5-7 |
| 3. | Copies of Deptl: appeal / Order thereon. | C & D. | 8-9 |
| 4. | Copy of Jdgmt: dtd 28.3.13. | E | 10-17 |
| 5. | Vakalat-Nama | -- | 18 |

Dated: 2014

Arif Khan
(Arif Khan) Appellant
Through Counsel

Muhammad Amin Wazir
Supreme Court of
Pakistani
Lahore

1

BEFORE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR.

Service Appeal No:.....470...../2014.

Arif Khan,
Ex. Constable No.1424 / DIKhan.
S/o Nawab Khan, R/o Indus Colony, Diyal Road,
Dera Ismail Khan.

486
01-4-2014

(Appellant)

Versus

1. The Provincial Police Officer (JGP), KPK,
Central Police Office, Peshawar.
2. Deputy Inspector General of Police, , D.I.Khan Range, D.I.Khan.
3. Superintendent of Police / DPO/ D.I.Khan.

(Respondents)

Note: The addresses given above are sufficient for the purpose of service.

u/s of service Tribunal Act 1974.

SERVICE APPEAL AGAINST ORDER DTD 21.01.2014 WHEREBY THE APPELLANT WAS DISMISSED FROM SERVICE BY RESPDT: NO. 3, AND FINALL ORDER No: 931/ES DATED 13.03.2014 OF RESPDT: NO.2 WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT WAS REJECTED.

Respectfully Sheweth:-

The appellant very humbly submits as under: -

BRIEF FACTS:

1. That the petitioner was inducted in Police Department under the respondents as Constable during the year 2007 at D.I.Khan. Prior to the implementation of the impugned orders the petitioner had been serving under Respondent No.3 while Respondent No.2 is the appellate authority and Respondent No.1 commands overall authority in respect of the parties, thus all are necessary party to the lis.

1/4/14

2. That the appellant always striven hard to discharge and fulfill the duties and tasks assigned with due diligence and dedication. Service record of the appellant is otherwise unblemished, clean and devoid of any adverse marking since nothing of the sort has ever been conveyed to the appellant in this respect.
3. That during March 2012 the appellant fell victim to a conspiracy and was saddled with a criminal case in consequence whereof the appellant was subjected to departmental proceedings in terms of Police Rules 1975.
4. That while ignoring the physical and mental agony of the appellant he was subjected to departmental action by the authority on the same allegations as aforesaid. The matter was assigned for inquiry to DSP/ Kulachi Circle, who while pushing the proceedings in a slipshod manner, conveyed complicity on part of the appellant in his inquiry report yet without any basis, foundation and sustainable material or evidence brought on records in any manner and recommended award of punishment to the appellant.
5. That the matter having put-up for consideration to the authority i.e respondent No.3 culminated in award of punishment to the appellant in terms of Dismissal from service again after a cursory proceedings yet without service of any Show Cause Notice. Copies of Charge-sheet, & Order dated 21.1.2014 of SP/DPO, D.I.Khan i.e. respondent No.3 are attached herewith at Annexes A & B respectively. The respondents have refused to furnish any certified copy of records, including reply to the Charge-Sheet, Inquiry Report etc, hence indulgence of this Hon'ble Tribunal is sought for requisition of the said records through respondents.
6. That on learning about the passage of an order dated 21.1.2014 and aggrieved from it, the appellant moved an appeal with respondent No.2 seeking reinstatement in service on the grounds mentioned therein. The petition of appeal however, could not find favour with respondent No.2 and was dismissed / rejected vide order dated 13.3.2014. Copies of appeal filed by the appellant and the order of respondent No.2 are placed herewith at Annexes C & D, respectively.
7. That left with no other remedy, the appellant approaches this Hon'ble tribunal seeking reinstatement in service with all back benefits in consequence of setting aside of the impugned orders on gracious acceptance of the instant petition on grounds hereinafter preferred.

Grounds:

1. That the orders passed by departmental authorities i.e respdts. No.2 & 3, impugned hereby, are discriminatory, arbitrary in nature, legally and factually incorrect, ultra-vires, void ab-initio and militate against the principles of natural justice thus are liable to be set-aside and nullified.

2. That the appellant earned his acquittal in the criminal case even prior to the culmination of departmental proceedings which matter / fact was brought in the notice of DPO/ DIKhan yet respondent No.3 was adamant on handing over guilty verdict to the appellant as against the reckoning of a court of competent jurisdiction of the status of no less than that of a District & Sessions Judge. Copy of Judgment dated 28.3.2013 is placed herewith at Annex-E. The departmental authority thus traveled much beyond its sphere of competence and apparently punished the appellant with ulterior motives.
3. That the appellant is innocent and has been subjected to the penalty for no fault on his part. Respondent No.3, also failed to regulate the departmental inquiry / proceedings in accordance with the law & procedures prescribed for the purpose and as such erred at the very outset of the proceedings thus causing grave miscarriage of justice as well as prejudice to the appellant in making his defence.
4. That it is a matter of record that the appellant has been vexed in clear defiance of the law and principle laid by the superior courts as well as the tribunals as could be gathered from the facts and circumstances of the case.
5. That the respondents while adjudicating in the matter of departmental proceedings and the appeal of the appellant disposed off the entire matter in a slipshod manner through the non-speaking orders impugned hereby thus the award of impugned punishment is patently unwarranted, illegal, ultra-vires, nullity in law and apparently motivated for extraneous reasons and is not maintainable in law.
6. That the appellant had sufficient length of service rendered for the department. While adjudicating in the matter the departmental authorities utterly ignored not only the provisions of law on the point but the rights, too, of the appellant including fringe benefits and by imposing the harshest of the penalties in defiance of law as aforesaid, deprived the family of the appellant of its only means of earning livelihood.
7. That the orders passed by the respondents on holding of departmental proceedings including the order on award of punishment as well as the one in respect of the departmental appeal as impugned hereby, have infringed the rights and have caused grave miscarriage of justice to the appellant without any lawful excuse.
8. That while ignoring the rights of the appellant guaranteed by the constitution, the departmental authorities / respondents utterly failed to adopt a proper course & to follow due procedure hence erred in disposal of the matter in accordance with the law and rules. The impugned orders passed by SP/DPO, D.I.Khan (Respondt: No.3) and DIG/DIKhan i.e. (Respondent No.2) thus lack in legal sanction and therefore, are liable to be set aside in the interest of justice.

- 9. That the petition of appeal / appellant is duly supported by law and rules formulated thereunder, besides the affirmation / affidavit annexed hereto.
- 10. That this Hon`ble Tribunal is competent and has ample powers to adjudge the matter under reference/appeal.
- 11. That the counsel for the appellant may very graciously be allowed to add to the grounds during the course of arguments, if need be.

Prayer:

In view of the fore mentioned submissions, it is very humbly requested that the impugned order dated 21.01.2014 passed by SP/DPO, D.I.Khan and the appellate order of respondent No.2 dated 13.3.2014 may, on being declared as illegal, arbitrary, discriminatory, void ab-initio, ineffective and inoperable against the appellant, be very graciously set aside and the petitioner may in consequence thereof be very kindly reinstated in service with allowance of all back benefits. Grant of any other relief deemed appropriate by the Hon`ble Tribunal is solicited, too.

Dated:

Humble Appellant,

Arif Khan
(Arif Khan) Appellant,

Through Counsel.

Muhammed Amin Khattak
Lechi

Advocate High Court.

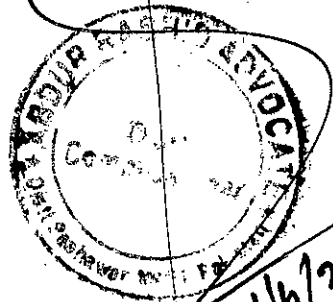
AFFIDAVIT:

Dated:

I, Arif Khan, the appellant, hereby solemnly affirm and declare on oath that contents of the petition are true and correct to the best of my knowledge, belief and per the official records. Also, that nothing is willfully kept or concealed from this Hon`ble Tribunal.

ATTESTED

Arif Khan
Deponent.



1/3/2014

5

Annexure A

7398
6.3.12

DISCIPLINARY ACTION

I, SOHAIL KAHLID, District Police Officer, Dera Ismail Khan as a competent authority am of the opinion that you Constable Arif Khar, No. 1424 have rendered yourself liable to be proceeded against and committed the following acts/omissions within the meaning of the Khyber Pakhtunkhwa Police Rules 1975.

STATEMENT OF ALLEGATION

You while posted at PS/Band Kurai DIKhan being charged/arrested in case FIR No. 56 dated 14.03.2012 u/s 9-CNSA PS/Yarik DIKhan. This act on your part amounts to gross misconduct which is punishable under the rules.

Hence the statement of allegation.


2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegation DSP Kulachi Dera Ismail Khan is appointed as enquiry officer to conduct proper departmental enquiry under Police Rules 1975.
3. The enquiry officer shall in accordance with the provision of the ordinance provide reasonable opportunity of the hearing to the accused, record its findings and make, within ten days of the receipt of this order recommendations as to punishment or other appropriate action against the accused.
4. The accused and a well conversant representative of the department shall join the proceedings on the date time and place fixed by the enquiry officers.

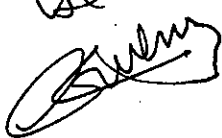

District Police Officer,
Dera Ismail Khan

No. 6363-64 /Dated DIKhan the 26-03 /2012

Copy to:

1. DSP Kulachi Dera Ismail Khan. The enquiry officer for initiating proceeding against the defaulter under the provision of Khyber Pakhtunkhwa Police Rules 1975. Enquiry papers containing _____ pages are enclosed.
2. Constable Arif Khan No. 1424 with the direction to appear before the E.O on the date, time and place fixed by the E.O, for the purpose of enquiry proceeding.


District Police Officer,
Dera Ismail Khan
16/3

Alleged to be true


6

Where as, I am satisfied that a formal enquiry as completed by Khyber Pakhtunkhwa Police Rules 1975 is necessary and expedient.

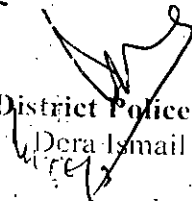
AND WHEREAS, I am of the view that the allegation if established would call for a major penalty as defined in rules-4(i)(B) of the aforesaid rules.

AND THEREFORE, as required by Police Rules 6(i) of the aforesaid rules, **I SOHAIL KHALID** District Police Officer Dera Ismail Khan hereby charge you **Constable Arif Khan No. 1424** with the misconduct on the basis of the statement attached to this Charge Sheet.

AND, I hereby direct you further under rules 6(i)(B) of the said rules, to put in written defence with in 7-days of receipt of this Charge Sheet as to why the proposed action should not be taken against you and also state at the same time whether you desire to be heard in person or otherwise.

AND, in case, your reply is not received within the prescribed period, without sufficient case, it would be presumed that you have no defence to offer and that expert proceeding will be initiated against you.

Attested
to be true
Bunji


District Police Officer,
Dera Ismail Khan

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7

Anneau-B

ORDER

This order is aimed to dispose off the department proceeding against Constable Arif Khan No.1424 of this District Police was served with charge sheet and statement of allegation on the charges that he while posted at PS/Band Kurai District DIKhan, being charged/arrested in case FIR No.56 dated: 14.03.2012 u/s 9-CNSA PS/Cantt: DIKhan.

The defaulter Constable was served with charge sheet/statement of allegations. An enquiry was conducted into the matter through Mr. Saich-ud-Din Khan, DSP/Kulachi DIKhan. The Enquiry Officer submitted his finding report in which he stated the defaulter constable has found guilty of the charges levelled against him and recommended for minor punishment of stoppage of 02-increments.

The defaulter constable caught red handed while smuggling the narcotics. He was challaned to court. No doubt he was acquitted by the court because of contradiction & extended benefit of doubt. The involvement of the defaulter is established and in this respect Police Rule 16-3 is very much clear because he was not acquitted honourably. His act gave a bad name to whole Police force, therefore, I, MUHAMMAD NISAR ALL (PSP), District Police Officer DIKhan in exercise of powers confirmed upon me under the Police Rules 1975, awarded him major punishment of "Dismissal from Service" with immediate effect:

ORDER ANNOUNCED

Rauf
District Police Officer,
Dera Ismail Khan

311
Application received on 27-01-14
Copying fee deposited on 27-01-14
Judgment total for copying on
No. of words copies
En-Const. Arif Khan
No. 1424
Date of copy 27-01-14
Copy delivered to Fax Address
Date of copy

106
21-1-14

Attended to
be true
[Signature]

8

To:

The Worthy, Deputy Inspector General of Police,
DIKhan Range, Dera Ismail Khan.

Subject:

APPEAL AGAINST ORDER DATED NIL PASSED OVER OB NO: 106
DATED 21.1.2014 OF DPO / D.I.KHAN.

Sir,

Respectfully, the petitioner states as under,

1. That the petitioner, enrolled as constable in the police department during the year 2007, has been serving the department with due diligence, dedication and to the utter satisfaction of his superiors.
2. During the entire stretch of service the conduct of petitioner remained unblemished. Service record of the petitioner is second to none. The petitioner had diligently, dedicatedly kept on discharging his official obligations to the utter satisfaction of his superiors. During the entire tenure of his service no adverse inference was ever drawn by the superiors since nothing of the sort was ever conveyed to the petitioner.
3. That to the dismay of the petitioner, he has, through order dated 21.1.2014 passed by DPO/DIKhan, been awarded Major Punishment of Dismissal from service, albeit in sheer derogation of the law, rules and norms of natural justice, besides against the true facts. Copy of impugned order is placed herewith at Annex-A.
4. That having no other recourse available to him, the appellant presents instant appeal against the order of DPO / DIKhan, requesting setting aside the said order on following grounds,
 - a. That the order of DPO / DIKhan is not only against law & rules but militates against the principles of justice, equity and good order of public service, too.
 - b. That the appellant has been virtually condemned unheard and subjected to most harsh amongst punishments yet without being provided with an opportunity to defend his cause beyond any encumbrance, thus calling for an interference by your good office to undo the injustice.
 - c. That the petitioner has sufficient length of service to his credit and a family to feed but DPO / DIKhan while awarding most amongst the harsh punishments ignored these aspects blatantly and that too, without sustenance of any allegation.
 - d. That the impugned order is apparently based on misconception and misconstruing of facts besides the law, rules and principle of natural justice thus is liable to be set-aside.
 - e. That your good office has ample powers to review / revise and thereby set-aside the impugned order of DPO / DIKhan in terms of law, rules and precedents.

In view of the above made submissions, it is very earnestly requested that on gracious acceptance of the instant appeal, the impugned order dated Nil passed by DPO / DIKhan over OB No.106 may kindly be set-aside and the appellant reinstated in service with grant of all back benefits in the interest of justice.

Dated:

*Attested to
be true.
[Signature]*

Beg to remain,

Arif Khan
Your most obedient servant,

(Arif Khan) Ex-PC No.1424 / D.I.Khan.

ORDER:

9

no. 66/11
11/3-2111

This order is meant to dispose off the appeal preferred by Ex-Constable Arif Khan No.1424 of DIKhan District against the order of major punishment i.e. dismissal from service, awarded to him by DPO DIKhan vide OB No.106 dated 21.01.2014. He was proceeded against on the allegations that he while posted at Police Station Band Kurai DIKhan being charged/ arrested in case FIR No.56 dated 14.03.2012 u/s 9-CNSA PS Cantt: DIKhan. A proper departmental enquiry was initiated and Mr. Salah-ud-Din DSP Kulachi was appointed as Enquiry Officer to conduct proper departmental enquiry against him. On the recommendation of Enquiry Officer, DPO DIKhan awarded him major punishment of dismissal from service.

The appellant/ Ex-Constable preferred the instant appeal against the order of DPO DIKhan. I have gone through the enquiry file as well as service record of the appeal and also heard him in person on 12.03.2014.

Therefore in exercise of power conferred upon me I **Abdul Ghafoor Afridi** Dy: Inspector General of Police DIKhan, being a competent authority finds no substance in appeal and hold that DPO has correctly passed the order, therefore, this appeal is dismissed and filed.

(Signature)
(ABDUL GHAFUOR AFRIDI)
PSP, PPM

Deputy, Inspector General of Police,
Dera Ismail Khan Region

No. 931 IES dt: 13-3-14

9-5-9-CNSA PS

Copy to the District Police Officer, DIKhan for information with reference to his office memo: No.586/EC dated 21.02.2014. His Service Record is returned herewith.

Encls: S. Rabb
F. Misal

(Signature)
(ABDUL GHAFUOR AFRIDI)
PSP, PPM

Deputy Inspector General of Police,
Dera Ismail Khan Region

OB/EC/OAS

For compliance

5 DPO/DIC
14/3/14
Attested
to be true
(Signature)

331
17.03.14
18.03.14
Ex-Const. Arif Khan
1424
18.03.014
For appeal

514

14.3.14

(10)

IN THE COURT OF HAYAT GUL MOHMAND
JUDGE SPECIAL COURT/ASJ-V, D.I. KHAN

CASE NO:03/CNSA of Year 2012

Date of Institution 05.06.2012
Date of Decision 28.03.2013
State through Said Marjan Khan SHO Complainant

VERSUS

Arif Khan s/o Nawab Khan Aged about 26/27
years Caste Khattak R/o Indus Colony Diyai
Road District D.I.Khan Accused

CHARGE

Vide case FIR No.56 dated 14.03.2012
U/Section 9 (b) C.N.S.A registered at P.S Yarik:

Present:- Mr. Jamshaid Mahsud Dy.PP for State
Mr. Ismail Alizai Advocate for accused

JUDGMENT
28.03.2013

1. Accused Arif Khan s/o Nawab Khan aged about 26/27 years Caste Khattak R/o Indus Colony Diyai Road District D.I.Khan involved in case FIR No.56 dated 14.03.2012 U/Section 9-(b) CNSA registered in Police Station Yarik, D.I.Khan:
2. According to the prosecution story, on 14.03.2013 at 1315 hours complainant Said Marjan Khan SHO alongwith Adam Khan No.839 IHC and other police officials were present at Chunda check-post for checking of smugglers, when in the meanwhile one Flying Coach came from Pezu side which was stopped and a suspicious person was deboarded, who disclosed his name as AMF Khan s/o Nawab Khan Caste Khattak R/O Indus Colony Diyai Road District D.I.Khan. On personal search of the accused under

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Handwritten signature and date '03/4/13' at the bottom right.

Shalwar a plastic envelope having 700 grams charas was recovered. The case property was taken into possession. The accused was arrested. Murasija was drafted and sent to the Police Station for registration of the case through Constable Amir Jan No.324. Hence, the subject case was registered against the accused.

3. After completion of investigation complete challan was put in Court on 05.06.2012. Accused was summoned, who appeared and provisions of Section 265(c) Cr.P.C were complied with on 21.06.2012.

4. Formal charge was framed against the accused on 03.07.2012, to which the accused pleaded not guilty and claimed trial.

5. Prosecution witnesses were summoned. Prosecution in order to prove its case against the accused examined five PWs, while remaining PWs were abandoned by Dy.PP for State and closed the prosecution evidence.

6. Gist of prosecution evidence is as follows:-

PW1 is Jan Mohammad A.S.I, who has stated that in his presence, the S.H.O P.S Yarik Said Marjan handed over the recovered charas wrapped in a plastic shopper to the I.O of the instant case, which he took into his possession through recovery memo Ex.PW1/1 after separating a sample for chemical analysis. PW-1 has further stated that he packed both the samples and remaining contraband charas in separate parcels. The SHO drafted the recovery memo Ex.PW1/1, to which he is marginal witness. The case property contained in parcel No.2 is Ex.P1.

PW2 is Said Marjan SHO/complainant, who has stated that on the eventful day he, Adam Khan alongwith other police officials had made

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Examined

Nakabandi on Chunda Check Post. During Nakabandi duty a Flying Coach was intercepted, which was coming from Pezu side and during the search, one Arif Khan boarding the said Flying Coach was physically searched, resulting in recovery of 700 grams of charas from his Budh Shalwar. Consequently said Arif Khan was arrested and Murasila Ex.PA was transmitted to Police Station for registration of case through Constable Amir Jan. PW has further stated that card of arrest of accused is Ex:PW2/1. PW-2 has handed over the seized material and the accused to the I.O, who took the same into possession vide recovery memo. PW-2 has further stated that on completion of investigation, he submitted complete challan in the instant case on presentation of record by the I.O.

PW3 is Muhammad Aslam ASI, who has stated that on receipt of Murasila from SHO Police Station Yarik through Constable Amir Jan he registered the instant case vide FIR Ex.PA/1, which is correct and bears his signature. The contents of Murasila were correctly and completely incorporated into FIR. Copy of FIR was transmitted to investigation staff for further action.

PW-4 is Amir Jan Constable, who has stated that on the relevant day he was present with SHO while making Nakabandi at Pezu Check Post. On the interception of a Flying Coach came from Pezu side, a suspected person was found in the said vehicle. He was deboarded from it by the SHO, who disclosed his name Arif Khan. PW-4 has further stated that on physical search of the accused SHO recovered 700 grams charas from him. PW-4 has further stated that the SHO drafted a Murasila in this respect which was handed over to him and he brought it to Police Station for registration of case.

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PW-5 is Ghazi Marjan Circle Officer, who has stated that the copy of FIR was marked to him for investigation. He alongwith other police officials proceeded to the spot, where PW-5 prepared site plan Ex.PB on the pointation of the complainant/SHO Said Marjan. PW5 has further stated that he took into possession vide recovery memo Ex.PW1/1 the contraband charas weighing 700 grams, which was recovered from the accused and handed over to him by the complainant/SHO. IO again weighed the recovered contraband and it came to be 700 grams. Out of the total amalgamated he separated four grams for chemical analysis, packed and sealed the same into parcel No.1, he packed & sealed the remaining quantity i.e. 696 grams Ex.P-1 alongwith plastic envelope into parcel No.2. PW5 has further stated that the complainant/SHO also handed over him the accused alongwith card of arrest. As the accused was serving in police department as Constable he, therefore, issued information report Ex.PW5/1. PW5 has further stated that he applied to the FSL through his application Ex.PW5/2 for chemical analysis of the sample taken from recovered contraband and packed & sealed in parcel No.1, result whereof is Ex.PZ. PW5 has further stated that on his return to the Police Station he handed over the case property alongwith application to the FSL to the Moharrir of the Police Station. PW5 has further stated he produced the accused before the Ilaqa Magistrate for obtaining physical custody and two days physical custody was granted by learned Ilaqa Magistrate. IO also interrogated the accused and recorded his statement. PW5 has further stated that he again applied for obtaining physical custody of the accused vide his application dated 17.03.2012 but the learned Ilaqa Magistrate sent the accused to judicial lock-up. PW5 has further stated that he recorded statements of the PWs. PW5 has further stated that after completion of

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investigation he handed over the case file to the SHO for submission of complete challan.

7. After closure of prosecution evidence, statement of accused U/Section 342 Cr.P.C recorded. Accused denied the recovery of charas from his personal possession or on his pointation. Accused has further stated that he is innocent and falsely charged. Accused refused to be examined on Oath within the meaning of Section 340 (2) Cr.PC. Accused also not opted to produce defense.

8. Arguments of Dy.PP for State and counsel for accused heard and file perused.

9. The story of prosecution is that the local police were on Nakabandi and a flying coach came from Pezu side which was stopped and a person in suspicious condition was deboarded and from the budh of his Shalwar 700 grams charas were recovered. The number of flying coach has not been mentioned in the Murasila. The names of the driver and cleaner of the flying coach have also not been mentioned. It has also not been mentioned that how much passengers were in the flying coach and what was the destination of the flying coach. The driver, cleaner and passengers have not been made witnesses in the present case. PW2 complainant has admitted that he has not mentioned the registration number, model & color of Flying Coach, in which accused was travelling. PW2 complainant has further stated that he does not remember the names of the driver and cleaner of the vehicle nor he had given its departure and termination destination.

10. The case property was taken into possession on 14.3.2012. The same was sent to FSL on 16.3.2012. It has not been proved that in whose custody

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the same remained. Moreover, the case property in the FSL report is mentioned to have been sent to FSL through FC No:959, but the name of the said police official has not been mentioned in the challan form. There is no police official in the challan form with FC No:959. Thus the sending of samples to FSL for report has not been proved. The said FC No.959 has neither been produced nor examined. PW3 has stated that he was never delivered the case property of the instant case by the I.O or SHO at any stage of investigation.

11. No doubt Section 25 of Control of Narcotics Substances Act expressly excludes the provision of Section 103 Cr.PC, but the police equally bound to associate private witness with the recovery proceedings when they are available or to give reason as to why they have not associated private (PW. In the present case citing of private witness was necessary as the accused was also a police official and in order to exclude the element of malafide non association of private witness was necessary. Driver, cleaner and passengers were private witnesses but their non-association with the recovery proceedings doubts the prosecution case and recovery. Complainant PW2 has admitted that the Flying Coach was packed with passengers. PW2 has further admitted that he did not ask either the driver, the conductor or any of the passengers to witness the seizure and become witness for the same. PW4 has also stated that the Flying Coach was packed with passengers. The SHO only deboarded the accused facing trial from the Flying Coach for search and did not search any other passenger of the Flying coach.

12. Copy of daily diary showing the departure of police for Nakabandi to the spot, has neither been placed on file/produced nor exhibited during

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trial. Complainant PW2 has stated that they left Police Station for patrolling duty at about 09:00 AM. This statement of departure from Police Station is contradicted by Amir Jan Constable (PW4), who has stated that they left Police Station Yarik at 12:00 midday for Nakabandi.

13. Search of the accused is doubtful. The police official i.e. complainant PW2 and marginal witness/eyewitnesses are at variance regarding search of the accused. Complainant PW2 has stated that it is correct that there is no mention in Ex.PA as to whether he himself conducted search of the accused or the same was done through Constable. Complainant PW2 has himself stated that accused was deboarded from Flying Coach and was searched through Constable Amir Jan. Thus complainant PW2 has not personally searched the accused. PW4 Amir Jan has stated that he is not aware whether SHO knew the accused priorly or otherwise, however, search was conducted by SHO himself. The statement of complainant PW2 and eyewitness (PW4) are contradictory regarding search of the accused.

14. Moharrir to whom, case property has been handed over for sending the sample to FSL has not been examined. The I.O has stated that on his return to Police Station, he handed over the case property alongwith application for FSL to Moharrir of Police Station. PW3 who has chalked out the FIR has stated that he was never delivered case property of the instant case by the SHO (complainant) or I.O at any stage of investigation. Thus in whose custody the case property remains and who sent the same to the FSL, doubts the prosecution case. In support of his arguments, learned counsel for accused has relied upon 2012 MLD 1764 (Sindh) and 2009 P.Cr.LJ 523 (Peshawar).

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15. In the light of above discussion, prosecution has failed to prove its case, against the accused beyond reasonable doubts, rather the prosecution case is full of doubts and contradictions, the benefit of which goes to the accused. Therefore, by extending the benefit of doubt, accused is acquitted of the charge. Accused is on bail. His sureties stand discharged from the liabilities of bail bonds. Case property i.e. contraband charas be destroyed after the expiry of period of appeal/revision. File be consigned to Sessions Record Room after its necessary compilation and completion.

D.I.Khan
Dt: 28.03.2013

[Signature]
Hayat Gul Mohmand
Judge Special Court/ASJ-V,
Dera Ismail Khan

CERTIFICATE

Certified that this Judgment of mine consists of eight pages, each page has been read over, signed and corrected by me wherever necessary.

D.I.Khan
Dt. 28.03.2013

[Signature]
Hayat Gul Mohmand
Judge Special Court/ASJ-V,
Dera Ismail Khan

Attested to be true.
[Signature]

ATTENDED TO BY THESE COURT

District and Sessions Judge

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3/4/13

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

Service Appeal No. 470/2014

Arif Khan,
Ex-Constable No. 1424/DIKhan
s/o Nawab Khan, r/o Indus Colony, Diyal Road,
Dera Ismail Khan.....(Appellant)

Versus

1. The Provincial Police Officer (IGP), Khyber Pakhtunkhwa Peshawar.
2. The Regional Police Officer (DIG), Dera Ismail Khan
3. The District Police Officer (SP), Dera Ismail Khan.
.....(Respondents-1to3)

WRITTEN REPLY ON BEHALF OF RESPONDENTS.

Respectfully Sheweth,

PRELIMINARY OBJECTIONS

1. That the appellant has got no cause of action & locus standi.
2. That the appeal is bad for misjoinder/non-joinder of necessary parties.
3. That the appeal is time barred.
4. That the appellant has not come to the Hon'ble Tribunal with clean hands.
5. That the appellant is estopped by his own conduct to file the appeal.
6. That the appellant has concealed the material facts from this Honourable Tribunal.
7. That appeal is not maintainable & incompetent in its present form.
8. The honourable Tribunal has no jurisdiction to entertain the appeal.

BRIEF FACTS

1. Incorrect. The appellant was enlisted as recruited constable w.e.from 31.5.2007.
2. Subject to proof, but record is not upto the mark and bears adverse entries.
3. Incorrect. The appellant was arrested in Case FIR No. 56 dated 14.3.2012 u/s 9CNS(B) PS/Yarik DIKhan for recovery of 700-Grams Charas from his possession and proper departmental proceedings initiated against him.
4. That there is no bar on departmental proceedings besides judicial proceedings. Therefore proper departmental proceedings were conducted in which allegation

of recovery of 700-grams Charas were established against appellant and being a member of disciplined force and involved in offence of moral turpitude, he was recommended for punishment. Moreover, appellant was acquitted in criminal case on technical grounds and not honorary, which does not bar departmental action. **(Charge Sheet & Statement of Allegation are Annexed "A & B")**.

5. That during enquiry allegations levelled in the charge sheet were established against the appellant who being a member of discipline force and involved in offence of moral turpitude & social evil, he was rightly awarded major punishment of dismissal from service. That enquiry has been conducted in accordance with Police Rules 1975 and all the codal formalities were fulfilled according to the rules. **(Enquiry Report Annexed "C")**.
6. That the appellant was heard in person and his appeal was rejected being involved in offence of social evil and moral turpitude.
7. That the appellant was arrested red-handed by recovery of 700-Grams Charas from his possession. His acquittal in criminal case was due to contradiction i.e. technical grounds and not honorary acquittal. The appellant, being a member of disciplined force and involved in offence of moral turpitude, which is menace to society, deserved harsh punishment of dismissal from service.

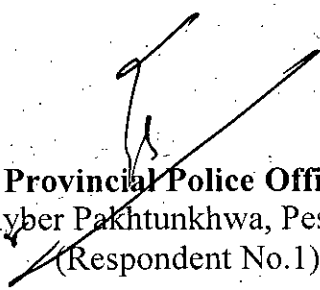
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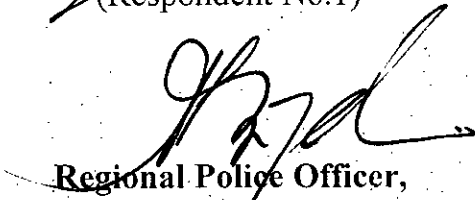
1. Incorrect. All the proceedings were held in accordance with law & rules and after establishment of allegations, the impugned order of dismissal rightly passed according to law.
2. The appellant was acquitted by the Court due to benefit of doubt and contradiction. His acquittal was not honorary but on technical grounds, which places no bar on departmental action as laid down in Police Rules 16-3. Further departmental proceedings and judicial proceedings are different from each other and can run side by side.
3. Incorrect. The allegations of recovery of Charas from the possession of appellant were established during proper enquiry. The appellant being member of disciplined force involved himself in offence of moral turpitude, which also menace against the society. Thus the order of dismissal from service is in accordance with law.
4. Incorrect. As per Para mentioned above.

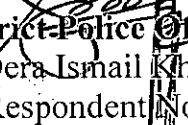
5. Incorrect. Proper departmental proceedings were conducted and the appellant also provided opportunity of personal hearing.
6. Incorrect. That the appellant being a member of disciplined force indulged in offence of narcotics which is offence of moral turpitude and a menace against the society, bringing a bad name to police department, thus deserved punishment of dismissal from service.
7. Incorrect. All the proceedings were conducted in accordance with law & rules. Keeping in view the gravity of offence, appellant deserved the impugned punishment.
8. Incorrect. Proper departmental proceedings were held in accordance with law/ rules and on establishment of allegations of recovery of Charas, the impugned punishment was awarded by the competent authorities.
9. Incorrect.
10. Pertains to law.
11. That the Respondents seek permission of this Hon'ble Tribunal to advance further grounds during course of Arguments.

PRAYER

It is, therefore, most humbly prayed that on acceptance of instant parawise comments, the Appeal of the Appellant being devoid of legal footings and merits may graciously be dismissed.


Provincial Police Officer
Khyber Pakhtunkhwa, Peshawar
(Respondent No.1)


Regional Police Officer,
Dera Ismail Khan
(Respondent No.2)


District Police Officer,
Dera Ismail Khan
(Respondent No.3)

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

Service Appeal No. 470/2014

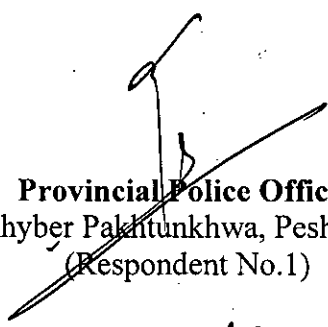
Arif Khan,
Ex-Constable No. 1424/DIKhan
s/o Nawab Khan, r/o Indus Colony, Diyal Road,
Dera Ismail Khan.....(Appellant)

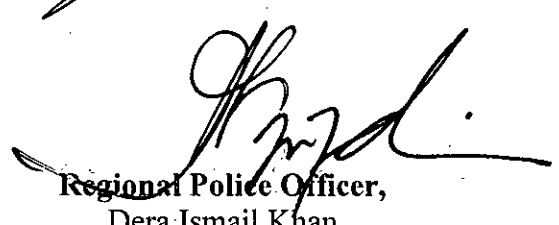
Versus

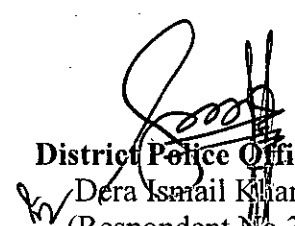
1. The Provincial Police Officer (IGP), Khyber Pakhtunkhwa Peshawar.
 2. The Regional Police Officer (DIG), Dera Ismail Khan
 3. The District Police Officer (SP), Dera Ismail Khan.
-(Respondents-1to3)

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENTS

We, the respondents do hereby solemnly affirm and declare on oath that the contents, of Comments/Written reply to Appeal are true & correct to the best of our knowledge and nothing has been concealed from this Honourable Tribunal.


Provincial Police Officer
Khyber Pakhtunkhwa, Peshawar
(Respondent No.1)


Regional Police Officer,
Dera Ismail Khan
(Respondent No.2)


District Police Officer,
Dera Ismail Khan
(Respondent No.3)

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

Service Appeal No. 470/2014

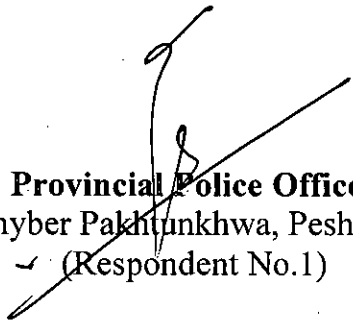
Arif Khan,
Ex-Constable No. 1424/DIKhan
s/o Nawab Khan, r/o Indus Colony, Diyal Road,
Dera Ismail Khan.....(Appellant)


Versus

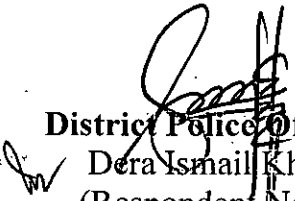
1. The Provincial Police Officer (IGP), Khyber Pakhtunkhwa Peshawar.
 2. The Regional Police Officer (DIG), Dera Ismail Khan
 3. The District Police Officer (SP), Dera Ismail Khan.
-(Respondents-1to3)

A U T H O R I T Y

We, the respondents do hereby authorised DSP/Legal, DIKhan to appear before the Service Tribunal Khyber Pakhtunkhwa, Peshawar, on our behalf, He is also authorised to produce/ withdraw any application or documents in the interest of Respondents and the Police Department.


Provincial Police Officer
Khyber Pakhtunkhwa, Peshawar
✓ (Respondent No.1)


Regional Police Officer,
Dera Ismail Khan
(Respondent No.2)


District Police Officer,
Dera Ismail Khan
(Respondent No.3)

16

1424

C

ORDER

This order is aimed to dispose off the department proceeding against Constable Arif Khan No.1424 of this District Police was served with charge sheet and statement of allegation on the charges, that he while posted at PS/Band Kurai District DIKhan, being charged/arrested in case FIR No.56 dated: 14.03.2012 u/s 9-CNSA PS/Cantt: DIKhan..

The defaulter Constable was served with charge sheet/statement of allegations. An enquiry was conducted into the matter through Mr. Salah-ud-Din Khan, DSP/Kulachi DIKhan. The Enquiry Officer submitted his finding report in which he stated the defaulter constable has found guilty of the charges levelled against him and recommended for minor punishment of stoppage of 02-increments.

The defaulter constable caught red handed while smuggling the narcotics. He was challaned to court. No doubt he was acquitted by the court because of contradiction & extended benefit of doubt. The involvement of the defaulter is established and in this respect Police Rule 16-3 is very much clear because he was not acquitted honourably. His act gave a bad name to whole Police force, therefore, I, MUHAMMAD NISAR ALI (PSP), District Police Officer DIKhan in exercise of powers confirmed upon me under the Police Rules, 1975, awarded him major punishment of "Dismissal from Service" with immediate effect.

ORDER ANNOUNCED

Sauh
District Police Officer,
Dera Ismail Khan

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21-1-14

فائنل رپورٹ

جناب عالی:

بجوالہ چارج شیٹ 64-6363 مور 26.3.2012 مجاریہ جناب DPO صاحب ڈیرہ کنسٹیبل عارف خان نمبر 1424 پر الزام ہے کہ وہ جب تھانہ بند کورائی میں تعینات تھا، بجوالہ مقدمہ نمبر 56 مورخہ 14.3.2012 جرم 9CNSA تھانہ یارک میں ملوث ہو کر گرفتار ہوا۔ جس پر کنسٹیبل مذکور کو چارج شیٹ کیا جا کر انکوائری بغرض کارروائی زیر دستخطی کو مارک ہوئی۔

کارروائی:

کنسٹیبل عارف خان نے اپنے چارج شیٹ کے جواب میں بیان دیا کہ اس نے یہ جرم نہیں کیا ہے۔ بلکہ شخص غلط فہمی کی بنا پر کسی دیگر شخص کا ملکیتی لفافے کو بندہ سے منسوب کیا گیا ہے۔ یہی وجہ ہے کہ عدالت نے اسے ضمانت پر رہا کر دیا ہے۔ اور یہ کہ عدالت کے فیصلہ تک محکمانہ انکوائری کا کوئی جواز نہیں بنتا۔ برطابق FIR عارف خان کو مشکوک جان کر سید مرجان SHO یارک نے اسے فلائنگ کوچ سے اتارا، شک کی بنا پر اسکی جامہ تلاشی لینے پر اسکے بڑھا شلوار سے پیک شدہ لفافہ برآمد ہوا جس میں چرس تھی جو وزن کرنے پر 700 گرام اتری جو بر موقع بروئے فرد قبضہ پولیس ہوئی۔ آدم خان نمبر 839/IHC، کنسٹیبل امیر جان نمبر 324 سے لئے گئے بیانات بھی FIR کی تائید کرتے ہیں۔ جو موقع کے چشم دید گواہ ہیں۔

عالی جاہ:

حالات، واقعات اور بیانات سے ثابت ہوا ہے کہ کنسٹیبل عارف خان نمبر 1424 بیڑو کی طرف سے آنے والی فلائنگ کوچ میں سوار ہو کر چرس لارہا تھا۔ بدوران چیکنگ سید مرجان SHO تھانہ یارک نے اسے کوچ سے شک کی بنا پر اتارا اور اسکے بڑھا شلوار سے پلاسٹک لفافہ میں سیل شدہ چرس برآمد کی ہے۔ اسکا یہ بیان کہ چرس کا لفافہ کسی دیگر شخص کی ملکیت تھا، من گھڑت اور جھوٹ پر مبنی ہے۔ جہاں تک عدالت کے فیصلہ کی بات ہے، برطابق روز عدالت سے بری ہونے پر بھی اسکو محکمانہ انکوائری میں سزا دی جاسکتی ہے۔ کی گئی انکوائری سے کنسٹیبل عارف خان نمبر 1424 گناہ گار پایا گیا ہے۔ کنسٹیبل مذکورہ کے دوائنکر یمنٹ سٹاپ کرنے کی سفارش کی جاتی ہے۔ رپورٹ گزارش ہے۔

(صلاح الدین خان)

سب ڈویژنل پولیس آفیسر کلاچی
Sub. Divisi Police
Sector Kulachi DID
3 - 4 - 2012

NO: 1897-K dated 4/9/12

رہا دیئے سے ضمانت پر
سب ڈویژنل پولیس آفیسر کلاچی

7398
6.11.12

DISCIPLINARY ACTION

I, **SOHAIL KAHLID**, District Police Officer, Dera Ismail Khan as a competent authority am of the opinion that you **Constable Arif Khan No. 1424** have rendered yourself liable to be proceeded against and committed the following acts/omissions within the meaning of the Khyber Pakhtunkhwa Police Rules 1975.

STATEMENT OF ALLEGATION

You while posted at PS/Band Kurai DIKhan being charged/arrested in case FIR No. 56 dated 14.03.2012 u/s 9-CNSA PS/Yarik DIKhan. This act on your part amounts to gross misconduct which is punishable under the rules.

Hence the statement of allegation.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegation DSP Kulachi Dera Ismail Khan is appointed as enquiry officer to conduct proper departmental enquiry under Police Rules 1975.

3. The enquiry officer shall in accordance with the provision of the ordinance provide reasonable opportunity of the hearing to the accused, record its findings and make, within ten days of the receipt of this order recommendations as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date time and place fixed by the enquiry officers.


(21)


District Police Officer,
Dera Ismail Khan

No. 6363-64 /Dated DIKhan the 26-03 /2012

Copy to: -

1. DSP Kulachi Dera Ismail Khan. The enquiry officer for initiating proceeding against the defaulter under the provision of Khyber Pakhtunkhwa Police Rules 1975. Enquiry papers containing _____ pages are enclosed.
2. **Constable Arif Khan No. 1424** with the direction to appear before the E.O on the date, time and place fixed by the E.O, for the purpose of enquiry proceeding.


District Police Officer,
Dera Ismail Khan
16/3

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A

CHARGE SHEET


Where as, I am satisfied that a formal enquiry as completed by Khyber Pakhtunkhwa Police Rules 1975 is necessary and expedient.

AND WHEREAS, I am of the view that the allegation if established would call for a major penalty as defined in rules-4(i)(B) of the aforesaid rules.

AND THEREFORE, as required by Police Rules 6(1) of the aforesaid rules, I SOHAIL KHALID District Police Officer Dera Ismail Khan hereby charge you Constable Arif Khan No. 1424 with the misconduct on the basis of the statement attached to this Charge Sheet.

AND, I hereby direct you further under rules 6(i)(B) of the said rules to put in written defence with in 7-days of receipt of this Charge Sheet as to why the proposed action should not be taken against you and also state at the same time whether you desire to be heard in person or otherwise.

AND, in case, your reply is not received within the prescribed period, without sufficient case, it would be presumed that you have no defence to offer and that expert proceeding will be initiated against you.


District Police Officer,
Dera Ismail Khan
(61)

میں نے اس چارج شیٹ کو پڑھا اور اس میں لکھی ہوئی باتوں سے اتفاق کرتا ہوں۔
میں نے اس چارج شیٹ کو پڑھا اور اس میں لکھی ہوئی باتوں سے اتفاق کرتا ہوں۔

SHOW CAUSE NOTICE

WHEREAS, you Constable Arif No. 1424 are reported to be involved in the commission of following misconduct as defined in Khyber Pakhtunkhwa Police Rules, 1975:-

46

You while posted at Police Line DIKhan, absented your self from lawful duty w.e. from 12.7.2013 to 24.7.2013 i.e. 12-days without any leave permission from higher authority. This act on your part amounts to gross misconduct punishable under Khyber Pakhtunkhwa Police Rules 1975.

AND WHEREAS, the material placed before me is sufficient to establish the commission of above serious misconduct and unbecoming of good Police Officer against you.

NOW THEREFORE, I Mohammad Nasir Ali (PSP) District Police Officer Dera Ismail Khan, call upon you Constable Arif No. 1424 to Show Cause Notice in 7-days of the receipt of this notice as to why you should not be awarded major punishment, including Dismissal from Service, as provided under rule 4(1) (b) of the above said rules. Also state whether you wish to hear in person.

In case your reply is not received within stipulated period, without any reasonable/sufficient case, it will be presumed that you have no defence to offer and the matter shall be dealt with Ex-parte.

(Signature)

District Police Officer,
Dera Ismail Khan

سید محمد نسیر علی ڈی پی او ڈی اے ایف ڈی
ڈی اے ایف ڈی ڈی اے ایف ڈی ڈی اے ایف ڈی

18/7/2013
11/7/2013
10/7/2013
10/7/2013

(B)

(۷۶)

خدمت جنا - ۵۔۴۔۵ صاب ڈیرہ اسٹائل خان

۱۔ شو کاڈ نوٹس

جنا - عیسیٰ سائل کے والد الزام ہے جسے سائل پولیس ڈیرہ اسٹائل
 میں پمپٹ کنسل تھیٹ تھا تو مورخ $\frac{7}{13}$ کا تا $\frac{7}{13}$ 24 کل -
 2 دن غیر حاضر رہا جس کے جوہر - میں دو مضمون یوں کہہ رہا
 من سائل کی بائیں ٹانگ گھٹنے کے اوپر شدید درد پیدا ہوا جو کہ
 کچھ دنوں سائل چلنے پھرنے کے قابل نہ تھا۔ میں وہ سول ہسپتال
 ڈیرہ اسٹائل خان میں جا کر مستحقہ ڈاکٹر صاحب سے علاج
 حاصل کر رہا جس نے تفصیلی طور پر معائنہ کر کے باقاعدہ رپورٹ
 ڈاکٹر کے تحریر کر کے دیا اور باقی رپورٹ ڈاکٹر
 صاحب سے حاصل کر رہا۔ تفصیلی رپورٹ ڈاکٹر صاحب سے

۲۔ یہ کہ سائل 2007ء میں بلوچ کنسل پولیس بھرتی ہوا۔ ریکورڈ
 کورس میں لیا ہوا ہے دوران ڈیوٹی میں احسن کارکردگی
 کے ساتھ ڈیوٹی سر انجام دیتا رہا یوں جس غیر حاضری
 میں ہی خوف بہ بنائے بیماری ایسا ہوا ہے بلکہ کئی بار اخراجات
 بلا میں سائل کی ڈیوٹی سے خوش رہے اور شامیں بھی دی
 3۔ یہ کہ من سائل کے پورے والدین زینہ میں اور

۱۱/۱۱/۲۰۱۸
 ۱۳/۱۱/۲۰۱۸
 ۱۸/۱۱/۲۰۱۸

۱۱/۱۱/۲۰۱۸
 ۱۳/۱۱/۲۰۱۸
 ۱۸/۱۱/۲۰۱۸

میں کھانچے ہیں اور کے نتیجہ میں سائل سے لکھنے کے
 دیگر کوئی ذریعہ نکالنے کے لیے سائل کی سرکس رائٹ
 اور گا سال سے یہ میں فلم سائل کے لئے اور کم چھوٹا
 رخصت ہلاک کا میں حق دار ہے جبکہ بوجہ عمارتی سرکاری
 ہوئی ہے لکھنے کے لئے یہ کہ میں حق دار ہوں

یہ اس لئے کہ میں سرکاری کو لکھنے کے لئے
 رخصت ہلاک کے لئے فوراً فرمایا جائے اور بند شدہ تھوڑی
 میں یہ طے کی جائیں

12 - 11 - 13

کنسٹیبل عارف علی 1424 تھانہ پٹانہ، پورہ پٹانہ، پٹانہ
 Arif

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Case No.470/2014

Arif Khan Appellant

Versus

Province Police Officer & others Respondents

= = = = =

REJOINDER ON BEHALF OF THE APPELLANT

= = = = =

Respectfully Sheweth:

Preliminary Objection:

1. All the preliminary objections are baseless and without any legal footing.
2. That appeal is within time and appellant has got prima facia case and dismissal of the appellant is totally illegal.

REPLY ON FACTS:

1. Para No.1 of the comments is admitted correct.
2. Para NO.2 of the comments is incorrect, appellant has got clear and unblemished record in the entire service.
3. Para No.3 of the comments is incorrect, with some conspiracy the appellant was indulged in fake and concocted case of Hasish weighing (700) Gram and appellant was proceeded departmentally.
4. Para No.4 of the comments is incorrect, departmental proceedings were conducted on malafide basis and no chance of hearing was given to the appellant and the inquiry officer without collecting

any sought of evidence recommended for punishment of appellant.

5. Para No.5 is incorrect, no proper proceedings were conducted by the department and no final show cause notice was given to the appellant which is mandatory under the law and the DPO dismissed the appellant from service exceeding the finding of the inquiry officer "which were stoppage of 2 increments in service record".
6. Para No.6 of comments is incorrect appellant filed departmental appeal but no chance of hearing was given to the appellant and the appellant was dragged into fake and concocted case.
7. Para No.7 of comments is incorrect, the alleged recovery of narcotics are concocted and appellant is acquitted in a criminal case and all acquittal are Hon,able acquittal.

GROUND:

- A. Ground A of comments is illegal against the law. In criminal case appellant is acquitted so the departmental proceedings are illegal without lawful authority and no show cause and final show cause notice was given, which is mandatory.
- B. Para No.2 of grounds is incorrect, all acquittal are Hon,able acquittal the departmental proceeding are not properly conducted which is require under the law. The finding of DPO i.e dismissal of appellant is totally illegal, void and against the settled law the DPO awarded major penalty dismissal from service while the inquiry officer proposed stoppage of 2 increments and further more appellant was acquitted in a criminal case before the departmental proceeding and appellant brought into the notice of competent

body the acquittal of appellant but the competent body travel beyond his jurisdiction.

- C. Para No.3 of ground is incorrect, nothing was recovered from the appellant basis of which departmental proceeding were carried out were totally washed by the competent courts so the departmental proceedings are illegal and anfractuious.
- D. Para No.4 of the grounds needs no reply.
- E. Para No.5 of grounds is incorrect, departmental proceeding were not carried out according to law and no final show cause notice was given to the appellant and the competent authority can not exceed the conviction as proposed by the inquiry officer.
- F. Para No.6 of grounds is incorrect, nothing was recovered from the possession of the appellant and appellant was acquitted in the alleged contraband case and the conviction of dismissal from service is illegal.
- G. Para No.7 of grounds is incorrect, the proceedings were not conducted in accordance with law and gravity of offence is no ground for conviction.
- H. Para No.8 of ground is incorrect, all the proceeding are void ab-initio and nothing was recovered from the possession of the appellant and appellant is acquitted in the criminal case the punishment given to the appellant is illegal.

- I. Para No.9 of grounds is incorrect, appellant has got good prima facia case and dismissal of the appellant is illegal.
- J. Para No.10 of grounds is legal.
- K. Para No.11 of the grounds needs no reply.

It is, therefore, prayed that on acceptance of this rejoinder the appeal of appellant may be accepted.

Appellant

Through

Date:

Muhammad Amin Khattak Lachi
Advocate,
Supreme Court of Pakistan

Ibrahim Shah
Advocate, High Court,
Peshawar

Ibrahim Shah

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Case No.470/2014

Arif Khan Appellant

Versus

Province Police Officer & others Respondents

A F F I D A V I T

I, Arif Khan Ex-Constable No.1424/DI Khan S/o Nawab Khan R/o Indus Colony, Diyal Road, Dera Ismail Khan, do hereby solemnly affirm and declare that the contents of the accompanying **rejoinder** are true and correct to the best of my knowledge and belief and nothing has been concealed from this learned court.



[Handwritten Signature]
Deponent

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 10/4 /ST

Dated 29/ 6 / 2015


To

The Superintendent of Police
District Police Officer,
D.I. Khan.

Subject: - Judgement

I am directed to forward herewith certified copy of Judgement dated 24.6.2015 passed by this Tribunal on subject Judgement for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.