

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 1206/2014

Date of Institution ... 22.09.2014

Date of Decision ... 28.11.2017

Noor Muhammad, Ex-ASI, District Mardan Son of Gul Karim R/O Pirano Banda
Tehsil and District Mardan. ... (Appellant)

VERSUS

1. The District Police Officer, Mardan and 2 others. ... (Respondents)

MR. NAVEED MAQSOOD, ... For appellant
Advocate

MR. KABIRULLAH KHATTAK, ... For respondents.
Addl. Advocate General

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. AHMAD HASSAN, ... MEMBER

JUDGMENT

NIAZ MUIHAMMAD KHAN, CHAIRMAN.- Arguments of the
learned counsel for the parties heard and record perused.

FACTS

2. The appellant was dismissed from service, against which he filed service appeal before this Tribunal on 07.01.2012 which was decided on 29.01.2014. This Tribunal reinstated the appellant in service and remanded the case back to the competent authority for denovo departmental proceedings in accordance with the prescribed provisions of law/rules. The department then again dismissed the appellant from service on 19.06.2014 against which he filed departmental appeal

on 07.07.2014. The departmental appellate authority converted the punishment of dismissal into compulsory retirement on 01.09.2014, against which the appellant filed the present service appeal on 22.09.2014.

ARGUMENTS.

3. The learned counsel for the appellant argued that the department after remand of the case by this Tribunal proceeded ex-parte against the appellant without any efforts of service of notice upon him. That a statement of his brother was recorded regarding presence of the appellant in Afghanistan. That the appellant never went to Afghanistan and was present in his village. That no charge sheet and statement of allegations was issued to the appellant. That the whole proceedings are illegal.

4. On the other hand, the learned Addl. Advocate General argued that the appellant in fact went to Afghanistan and there could be no other reliable source except his brother who better knew about presence of the appellant in Afghanistan at the relevant time. That there was no other option for the department but to proceed ex-parte against the appellant. That the appellate authority has already taken a lenient view by converting the dismissal order to compulsory retirement.

CONCLUSION.

5. Regardless of the factum of the appellant being in Afghanistan or in Pakistan, the very ex-parte enquiry report does not say anything about the charge for which the appellant was dismissed. The enquiry officer has only relied upon bad entries in service record of the appellant. In case of ex-parte proceedings it was incumbent upon the enquiry officer to have had recorded the statement of relevant witnesses or have had taken into consideration the relevant documents in proof of the charge mentioned in the concerned FIR (The basis of the proceedings).

6. As a nutshell of the above discussion, this Tribunal reaches the conclusion that the enquiry report is faulty and the penalty on the basis of such faulty report cannot be sustained in the eyes of law. This appeal is, therefore, accepted and the appellant is reinstated in service. The intervening period of the appellant should be treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record.



(AHMAD HASSAN)
MEMBER




(NIAZ MUHAMMAD KHAN)
CHAIRMAN

ANNOUNCED
28.11.2017

17.07.2017

Appellant in person present. Mr. Ziaullah, Deputy District Attorney for the respondents also present. Appellant submitted rejoinder. The Learned Executive Member Mr. Gul Zeb Khan is away for interviews in the office of Khyber Pakhtunkhwa Public Service commission therefore, due to incomplete bench the case is adjourned for arguments to 13.11.2017 before D.B.


(Muhammad Amin Khan Kundi)
Member

13.11.2017

Counsel for the appellant and Mr. Usman Ghani, District Attorney alongwith Attaur Rahman, SI (Legal) for the respondents present. The learned District Attorney seeks adjournment. To come up for arguments on 28.11.2017 before the D.B.


Member

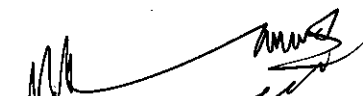

Chairman

28.11.2017

Counsel for the appellant and Addl. AG alongwith Attaur Rahman, S.I (Legal) for respondents present. Arguments heard and record perused.

This appeal is accepted as per our detailed judgment of today. Parties are left to bear their own costs. File be consigned to the record room.


MEMBER

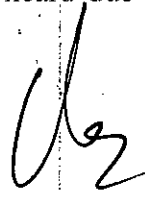

CHAIRMAN

ANNOUNCED
28.11.2017

19.5.2016

Appellant in person and Addl. AG for respondents present. Arguments could not be heard due to strike of the bar. To come up for arguments on 5.9.2016.

Member



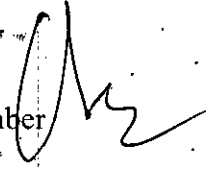
Member



05.09.2016

Appellant in person and Mr. Muhammad Ghani, S.I along with Mr. Usman Ghani, Sr.GP for respondents present. Due to strike of the Bar learned counsel for the appellant is not available today before the Court, therefore, case is adjourned for arguments to 13-12-16 before D.B.

Member



Member



13.12.2016

Counsel for the appellant and Mr. Muhammad Ghani, S.I along with Additional AG for the respondents present. At the very outset of the arguments it was revealed that rejoinder has not been filed. Hence, the learned counsel for the appellant is directed to file rejoinder. To come up for rejoinder and arguments on 27-3-17 before D.B.


(ASHFAQUETAJ)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER

27.03.2017

Appellant in person and Mr. Atta-ur-Rehman, S.I (legal) along with Assistant AG for respondents present. Rejoinder not submitted. Appellant requested for adjournment as his counsel is not in attendance today. Adjourned for rejoinder and final hearing to 17.07.2017 before D.B.

Member



Chairman



6

13.07.2015

Counsel for the appellant and Mr. Shafique Khan, Inspector (legal) alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 27.8.2015 before S.B.


Chairman

7

27.08.2015

Appellant in person and Mr. Muhammad Ghani, S.I (Legal) alongwith Assistant A.G for respondent present. Written statement submitted. The appeal is assigned to D.B for rejoinder and final hearing for 22.12.2015.


Chairman

22.12.2015

Counsel for the appellant and Mr. Ziaullah, GP for respondents present. Report of *de-novo* enquiry was not found on record. Learned counsel for the appellant stated at the Bar the the appellant does not want to file any rejoinder, hence enquiry report be produce on the next date. To come up for arguments on 19.5.2016.


Member


Member

Reader Note:


17.12.2014

No one is present on behalf of the appellant. Since the Tribunal is incomplete, therefore, case is adjourned to 24.02.2015 for the same.


Reader

24.02.2015

Counsel for the appellant present. Preliminary arguments partly heard. Since the matter required further clarification, therefore, pre-admission notice be issued to the GP/AAG to assist the Tribunal and to contact the respondents for submission of complete record of the appellant. To come up for preliminary hearing on 14.04.2015.


Member

14.04.2015

Counsel for the appellant and Asstt: AG for the respondents present. Learned counsel for the appellant argued that appellant was serving as ASI when subjected to departmental enquiry on the ground of involvement in a criminal case which was compromised and appellant acquitted by the Court of Sessions but dismissed from service by the authority regarding which he preferred service appeal which was accepted by this Tribunal vide judgment dated 29.01.2014 and the case of the appellant was remitted to the authority for *de novo* departmental enquiry where-after appellant was again removed from service vide impugned order dated 19.06.2014 regarding which he preferred departmental appeal on 07.07.2014 which was partially accepted vide impugned order dated 01.09.2014 and the punishment of removal from service was converted into compulsory retirement. That the appellant being not satisfied has preferred the instant service appeal on 22.09.2014.

That during *de novo* enquiry neither any evidence was recorded nor appellant was associated with the same.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 13.07.2015 before S.B.


Chairman

Appellant Deposited
Security & Process Fee



S



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Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1206 /2014


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	01/10/2014	<p>The appeal of Mr. Noor Muhammad resubmitted today by Mr. Naveed Maqsood 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	3-10-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>17-12-2014</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Noor Muhammad Ex-ASI Distt. Mardan received today i.e. on 22.09.2014 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Law under which appeal is filed is wrong.
- 2- Annexures of the appeal may be attested.
- 3- Copies of charge sheet, Statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.

No. 1412 /S.T,

Dt. 24/9 /2014.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Naveed Mqsood Adv. Pesh.

Resubmitted
29/9/14

after complying objection NO.1 + 2. While No charges sheet, No statement of allegation, No show cause notice No enquiry & reply thereto has been prepared or conducted by the departmental authority while delivering the impugned orders, therefore, the appellant is incapacitated to supply the same. By Naveed Mqsood ASC for appellant.

Before the Khyber Pakhtunkhwa Service Tribunal, Peshawar

Service Appeal NO. 1206 /2014

Noor Muhammad

V/S

DPO & Others


1193
22/9/2014

INDEX of documents attached with appeal

S#	DISCRIPTION OF DOCUMENTS	ANNEX	PAGES
1.	Appeal	-----	1 - 4
2.	Acquittal order of the appellant	A	5
3.	Judgment in S.A. No35/2012	B	6 - 10
4.	Impugned order dated 19/06/2014	C	11
5.	representation	D	12 - 14
6.	Impugned order dated 01/09/2014	E	15
7.	Advocate's power of attorney	-----	16


Appellant

Through


Naveed Maqsood. ASC.

13-B, Haroon Mansion,

Khyber Bazar, Peshawar.

091-2550496

0300-9593535.

Before the Khyber Pakhtunkhwa Service Tribunal, Peshawar

Service Appeal NO. 1206 /2014

9

Noor Muhammad

Ex-ASI, District Mardan

S/o Gul Karim R/o Pirano Banda

Tehsil & District Mardan.....Appellant

Versus

1. The District Police Officer, Mardan
2. The Deputy Inspector General of Police Mardan Region-I, Mardan
3. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.

.....Respondents

SERVICE APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
ACT, 1974 READ WITH OTHER ENABLING
PROVISIONS APPLICABLE FOR SERVICE
APPEAL.

PRAYER IN APPEAL

On acceptance of instant appeal, the impugned order dated 19/06/2014 and the appellate order dated 01/09/2014 may graciously be set aside and appellant be reinstated into service with all back benefits.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.

Respectfully Sheweth:

Facts giving rise to the present appeal are as under:-

22/9/14

re-submitted to
and filed.

01/10/14

1. That appellant was serving the Police Force as ASI who joined the service way back in the year 1988. Thus appellant has got about 23 years service at his credit.
2. That appellant was served with Charge sheet and statement of allegations on 16.06.2011 for allegedly committing grave misconduct being involved in illegal business of stolen cars vide FIR No.16 dated 19.04.2011 U/S 381A/ 109/34 PPC. Levi Thana Malakand Agency.
3. The appellant denied the allegations and submitted his detailed reply in response to the Charge and Statement of allegations wherein he explained his position.
4. That a summary and partial enquiry was conducted wherein the Enquiry Officer wrongly found that the charges against the appellant stood proved and accordingly he recommended major punishment to be imposed upon the appellant.
5. That appellant was issued Final Show Cause Notice by authority on 09.08.2011, which too was replied by the appellant and thereby he denied the allegations leveled against him, however, the order dated 27.09.2011 was passed whereby, major penalty of dismissal from service was imposed upon the appellant.
6. That appellant being aggrieved by the order ibid, preferred a departmental appeal before the appellate authority/ respondent No.2 but the same was rejected vide order dated 08.12.2011, where after the appellant approached this Hon'ble Tribunal in Service appeal No.35/2012, this Hon'ble Tribunal was gracious enough to accept the appeal vide order dated 29/01/2014 and remanded the case for denovo departmental proceedings, the respondents after the remand never intimated the appellant of any denovo departmental proceedings and when inquired it was shocking to discover that that the department has proceeded exparte and has dismissed the appellant vide impugned order dated 19/06/2014, the appellant filed representation which was also dismissed but the dismissal of the appellant has been converted into compulsory retirement hence, this appeal inter-alia on the following grounds:-

GROUND S :

3

- A. That both the impugned orders passed by Respondents No.1 & 2 are against the law, rules, policy and hence the same are not legally sustainable and hence liable to be set aside.
- B. That no enquiry was conducted into the allegations and the appellant has been proceeded exparte without serving the appellant of any charge sheet/statement of allegation, the inquiry officer has relied on the previous inquiry proceedings and also taken into account some entries in the service record at the back of the appellant, thus the inquiry officer violated Rule 5 & 6 of the KPK Govt Servants (E & D) Rules, 1973, the inquiry officer has looked over all the mandates enjoined upon him under the law and the same are also not taken into consideration by the appellate authority while disposing off the representation filed by the appellant, therefore, all the denovo proceedings conducted and impugned orders are nullity in the eys of law and liable to be set at naught by re-instating the appellant as prayed for.
- C. That the inquiry officer was not authorized under the law to proceed against the appellant because the appointing authority of the appellant is Deputy Inspector General while the inquiry was entrusted to DSP and the impugned dismissal order has been announced by the DPO, thus the entire procedure adopted is without any jurisdiction and without any lawful authority which culminated into the impugned orders, the appellant has never been intimated nor served nor made aware through any source and inquiry officer relied on the statement of the brother of the appellant who is not in terms with the appellant and might have provided wrong information with malafide intention and ulterior motives hence the appellant has been condemned unheard, therefore, both the impugned orders are against the principle of natural justice and hence not legally tenable.
- D. That the inquiry officer, despite being aware that the appellant has been acquitted of the charges in FIR No.16 dated 20/04/2011 by the competent Court of law, has not taken into consideration the same and went on discussing the absence of the appellant and adverse entries against the

appellant, tried to make an excuse which is not sustainable in the eyes of law because the appellant was not at all present to defend himself. The inquiry officer despite these illegalities and irregularities, which are not curable, recommended for the major penalty and agreed by the respondents are without any legal and lawful justification, without jurisdiction, against the fundamental and service rights of the appellant.

4

- E. That impugned orders, despite being without jurisdiction, does not set out any reason or base on which the impugned orders are passed, the proceedings are flimsy, aimed at dismissing the appellant from service at any cost, the impugned orders are passed in a slipshod manner, without caring for the rights of the appellant, the respondents have acted in utter disregard of law and Rules, by distorting and hiding the true facts because the appellant was not present to defend, the absence of the appellant has been maneuvered by the appellant, the entire proceedings, the impugned recommendations and the impugned orders are suffering from error of law, without jurisdiction, against the principles of natural justice, illegal, unlawful and without application of even prudent mind thus liable to be set aside.
- F. That the appellant served the Department for about 23 years honestly and efficiently and there is nothing adverse against him in his entire previous service, therefore, the impugned penalty is very excessive and harsh and does not commensurate with the guild of the accused.

It is, therefore, humbly requested that on acceptance of instant appeal, this Hon'ble Tribunal may graciously be pleased to set aside the impugned order dated 19/06/2014 and the appellate order dated 01/09/2014 and appellant may kindly be reinstated into service with all back benefits.

Any other relief as deemed appropriate in the circumstances of case, not specifically asked for, may also be granted to appellant.


Appellant

Through


Naveed Maqsood Sethi
ASC.

بعدالت مذیم نمبر سینئر سول جج راجی مایق قاضی مالا کنڈ بمقام بٹ خیلہ

فوجداری مقدمہ نمبر 98/II سال 2011 ع

سرکار بنال وسیع وغیرہ

حکم یا دوسری کارروائی امر، حکم یا اجازت یا کسی چیز کے لئے اور ان کے وکلاء جب اس کی ضرورت ہو۔

تاریخ حکم یا کارروائی

برٹاری حکم یا کارروائی

19/01/2012

0-11

دکیل سرکار بنال - مستغیث اساتذہ حاضر - ملزم خانسار بدستور روپوش ہے۔ دیگر ملزمان برضمانت حاضر۔ مستغیث بیانی نے ملزم ملزمان کے ساتھ خاکی راضی نامہ کیا ہے اور انہیں فی سبیل اللہ بخش دیا ہے اور مقدمہ ہذا میں اسے ملزمان کی بریت پر کوئی اعتراض نہ ہے۔ اس نسبت اس کا بیان بطور PW-1 قلمبند کیا گیا جس میں بیانی ہے کہ اس نے ملزمان کے خلاف مقدمہ علت نمبر 16 مورخہ 20/04/2011 زیر دفعات 381-A/512/109/411/34 تقزیرات پاکستان لیوی پوسٹ تھانہ میں ابتدائی اطلاعی رپورٹ درج کیا تھا۔ وہ مزید بیانی ہے کہ وہ ملزمان کے خلاف مزید مقدمہ چلانا نہیں چاہتا اور اسے ملزمان کی بریت پر کوئی اعتراض نہیں ہے۔ اس نے بخش شک کی بنیاد پر موجودہ ملزمان کے خلاف دعویداری کی تھی۔ اس کے بعد دکیل ملزمان نے درخواست زیر دفعہ 249-A ضابطہ نو جداری گزارگی بحت سماعت شد۔ مسل مقدمہ ملاحظہ شد۔

بعد از سماعت بٹ و مالا مالا نوادہ بر مسل عدالت اس نتیجے پر پہنچی ہے کہ اگر مقدمہ ہذا میں شہادت استغاثہ قلمبند کی بھی جائے تو تب بھی بوجہ راضی نامہ ملزمان کی سزایابی کا کوئی امکان موجود نہ ہے اور مقدمہ ہذا میں کارروائی جاری رکھنا عدالت خدانے تینی وقت کے ضیاع کے مترادف ہوگا۔ لہذا ان حالات میں ملزمان مذکورہ بالا کو زیر دفعہ 249-A ضابطہ نو جداری بری کیا جاتا ہے۔ ضامنان ملزمان ضمانت کی پابندیوں سے سبکدوش قرار دیئے جاتے ہیں۔ ملزم خانسار کے خلاف حسب ضابطہ وزارت دائمی جاری ہو۔ مسل بعد از ترتیب و تکمیل داخل دفتر ہوئے۔

(D)
D
(D)

سینئر سول جج راجی مایق قاضی
مالا کنڈ بمقام بٹ خیلہ

حکم سنایا گیا

19/01/2012

Attested

WU

Number One Judge of the Bench
at Benal.

Acquitted :- POB L 200.
13 PLCC (S) 1398
12 SR 1229/165

NO OF APPLICANTS	6360
DATE OF APPLICATION	12/3/2013
ADVANCE FEE	Nil
DATE OF COURT	12/3/2013
NO OF PAGES	One page
COURT FEE	Nil
URGENT FEE	Nil
NAME OF OFFICER	M. H. Hussain
DATE OF SIGNATURE	12/3/2013

"B" (6)

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

SERVICE APPEAL NO. 35/2012

Date of institution ... 07.01.2012

Date of judgment ... 29.01.2014



Noor Muhammad, Ex-ASI, District Mardan,
S/o Gul Karim, R/o Pirano Banda,
Tehsil & District Mardan.

(Appellant)

VERSUS

1. The District Police Officer, Mardan.
2. The Deputy Inspector General of Police,
Mardan Region-I, Mardan.
3. The Provincial Police Officer, KPK, Peshawar. (Respondents)

SERVICE APPEAL UNDER SECTION 10 OF THE
KHYBER PAKHTUNKHWA REMOVAL FROM
SERVICE (SPECIAL POWERS) ORDINANCE, 2000.

Mr. Naveed Maqsood Sethi,
Advocate:
Mr. Muhammad Adeel Butt,
Addl: Advocate General.

For appellant

For respondents

Mr. Qalandar Ali Khan
Mr. Muhammad Aamir Nazir,

Chairman

Member

JUDGMENT

QALANDAR ALI KHAN, CHAIRMAN:

The appellant, Noor-

Muhammad, having served the Police Department as ASI for around 23 years,
was served with charge sheet and statement of allegations on 16.6.2011
containing the following charge:

"That you ASI Noor Muhammad while posted at P.S Shergarh,
(now under suspension Police Lines) have been found involved
in illegal business of stolen Cars as evident from your charging
in a case vide FIR No.16 dated 19.4.11 u/s 381-A/109/34/411
PPC Levy Thana Malakand Agency."

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The appellant submitted written reply to the charge sheet and statement of
allegations wherein he denied the allegations; where-after, inquiry was
conducted by the Inquiry Committee, comprising Ihsanullah Khan, Addl SP
Mardan and Inspector Noor Jamal RI/Police Lines Mardan, which was

ATTESTED
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

7

constituted by the District Police Officer (DPO), Mardan (Respondent No.1), who had served the charge sheet and statement of allegations on the appellant. After inquiry, the Inquiry Committee found the appellant guilty of the charge and recommended imposition of major penalty/punishment upon the appellant. There-after, a final show cause notice was issued which too was replied to by the appellant; and, eventually, respondent No.1 passed the impugned order dated 28.9.2011, thereby, awarding the appellant major penalty of dismissal from service with immediate effect. The appellant, then, preferred departmental appeal to the Regional Police Officer, Mardan (Respondent No.2), which was filed by the latter vide order dated 8.12.2011; hence this appeal on 07.01.2012 on the grounds that the impugned orders of both the respondents No.1 & 2 were against law and rules and that the inquiry proceedings were conducted in a summary manner, during which no opportunity of defence and hearing was afforded to the appellant, "against whom, according to appeal, no incriminating evidence was forthcoming on record of the departmental proceedings. The appellant alleged that he was charged with the case at the instance of accused Luqman who was notorious dealer in such like cases.

2. The respondents contested the appeal and filed a joint written reply, wherein, besides raising other legal and factual objections, the respondents vehemently defended departmental/inquiry proceedings against the appellant, and alleged that as a result of properly conducted departmental/inquiry proceedings, the appellant was held guilty of the charge against him.

3. After filing of rejoinder by the appellant, arguments of the learned counsel for the appellant and learned AAG heard, and record perused.

4. Though the appellant, earlier, in his appeal, raised no objection with regard to competency of the DPO to initiate departmental/inquiry proceedings, who served charge sheet and statement of allegations on the appellant and passed the impugned order, the learned counsel for the appellant, at the outset of

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ATTACHED

his arguments, raised objection to the competency of DPO to embark on such an exercise, being not a competent authority for the purpose under the NWFP (KPK) Removal from Service (Special Powers) Ordinance, 2000 (hereinafter referred to as Ordinance 2000). While admitting the fact that appointing authority of ASI is Deputy Inspector General of Police/Regional Police Officer and, as such, competent authority for the purpose of Ordinance 2000, the learned AAG objected to raising the plea by the learned counsel for the appellant at such a belated stage when no such objection was raised at the time of filing of the appeal. Notwithstanding objection on behalf of the respondent-department to raising the issue by the appellant at such a belated stage, there are no two opinions that departmental/ inquiry proceedings, initiated by an authority not competent to do so will render the entire proceedings, including the final order, not sustainable in law.

5. The learned counsel for the appellant next argued that after acquittal of the appellant in the criminal case, referred to in the charge sheet and statement of allegations, the departmental proceedings against the appellant would be rendered invalid and could not be made basis for imposition of major penalty on the appellant. Apart from the objection of the learned AAG to the effect that acquittal of the appellant under section 249-A Cr.PC, before conclusion of trial and recording complete evidence, was result of compromise between parties to the case; the charge, reproduced above, would show that the appellant was 'found involved in illegal business of stolen cars as evident from his charging in a case vide FIR No.16 dated 19.4.2011.....'. In other words, involvement of the appellant in the criminal case was mentioned as a piece of evidence/proof in support of the charge of involvement of the appellant in the illegal business of stolen cars. Besides, the appeal was lodged on 07.01.2012, wherein the departmental/inquiry proceedings were challenged, while the appellant was acquitted in the criminal case after institution of the appeal on 19.01.2012. In

Attested

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any case, the departmental proceedings could proceed independent of the criminal proceedings if charge against the accused was not only his involvement in the criminal case and there was an allegation of mis-conduct against him and his involvement in a criminal case ~~was~~ mentioned just as an additional evidence/proof against him.

6. Adverting to the departmental/inquiry proceedings, it has been noted, after going through record of departmental proceedings, particularly statements recorded during inquiry proceedings, provided by the respondent-department during the course of arguments, that not only the appellant was not provided the opportunity of cross-examination on the statements of the witnesses recorded by the Inquiry Committee, namely, Luqman, Muhammad Tahir alias Babu, Akbar Ali and Aziz Khan, I.O; but there is also no proof that he was present at the time of recording statements of the said witnesses. Even the Inquiry Committee mentioned this fact in its report that they contacted the witnesses and discussed the case with them, without mentioning this fact that the appellant was present at the time of 'discussion' of the case with the witnesses and that the appellant was afforded opportunity to cross-examine the witnesses. Instead, the Inquiry Committee mentioned this fact that the appellant was summoned and cross-examined by the Committee.

7. Therefore, in view of the fact that departmental/inquiry proceedings were initiated and impugned order passed by an authority not competent to do so, together with the above discussed irregularities found in the conduct of departmental/inquiry proceedings; it would be a futile exercise to evaluate and scan through the evidence/proof against the appellant, as urged by the learned counsel for the appellant during the course of his arguments; as both the impugned orders dated 28.9.2011 of the District Police Officer, Mardan and 8.12.2011 of D.I.G of Police, Mardan Region-1, Mardan are found not maintainable under the law/rules in the light of the foregoing reasons.

ATTESTED
 BY
 MARDAN
 DISTRICT POLICE OFFICER
 MARDAN REGION-1

Attested
 LW

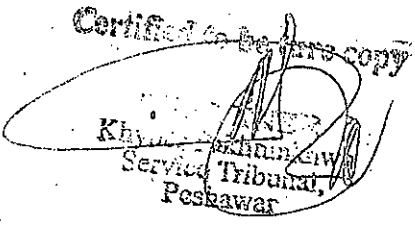
10

3. Consequently, on the partial acceptance of the appeal, both the impugned orders dated 28.9.2011 and 8.12.2011 are set aside and the appellant is reinstated in service to face denovo departmental proceedings, during which, the appellant shall remain suspended in view of gravity of the charge. The case is accordingly sent back/remanded to the 'competent authority' within the meaning of Ordinance, 2000, for denovo departmental/inquiry proceedings against the appellant strictly in accordance with the prescribed provisions of law/rules, explained in the judgment, by affording opportunity of defence and hearing to the appellant. There shall, however, be no order as to costs.

Edp. Balanda Ali
Chairman

Edp. Muhammad Aamir Hageel
Member

ANNOUNCED
29.01.2014 (M)

Certified to be true copy

 Service Tribunal,
 Pesawar

Attested

W. N.

ORDER

This order will dispose off denov Enquiry against ASI Noor Mohammad Khan as per direction of Service Tribunal, KPK appeal No. 35/2012 received through Letter No. 194/ST dated 07.02.2014.

In this regard the denov departmental inquiry against ASI Noor Mohammad Khan has been initiated through Mian Naseeb Jan DSP/HQrs: Mardan. In order to the completion of denov departmental inquiry against ASI Noor Mohammad Khan. The inquiry officer was summed the defaulter official but the defaulter ASI Noor Mohammad Khan was failed to appear before Inquiry officer in connection with his inquiry. Statement of his brother namely Mr: Dolat Khan s/o Kareem Khan has been recorded on dated 22.04.2014 in which he disclosed that his brother (ASI Noor Mohammad) has gone abroad (Afghanistan) and he did not known about his return back to country/home. The defaulter ASI did not report uptill now and found remain absent. Beside this 03 good entries and 09 bad entries on his credit during his service. The inquiry officer has recommended the defaulter ASI Noor Mohammad Khan for major punishment and export action may be taken against him.

The undersigned agreed with the findings of enquiry officer and the alleged ASI Noor Mohammad Khan, is dismissed from service and his absence period counted as without pay, in exercise of the power vested in me under the quoted rules 1975.

Order announced

O.B No. 1429

Dated 1/5/2014


(Gul Afzal Afridi)
District Police Officer,
Mardan.

No. 6836-43/R dated Mardan the 19.6/2014

Copy for information and necessary action to:-

1. The Deputy Inspector General of Police Mardan Region-1, Mardan.
2. The S.P Investigation, Mardan.
3. The S.P Operations, Mardan.
4. The DSP/HQrs Mardan.
5. The Pay Officer (DPO) Mardan.
6. The E.C (DPO) Mardan.
7. The OASI (DPO) Mardan.

Attested



" ① " " ② "

BEFORE THE HONOURABLE DEPUTY INSPECTOR GENERAL
OF POLICE MARDAN REGION-I, MARDAN.

SUBJECT: APPEAL AGAINST THE ORDER OF WORTHY DISTRICT
POLICE OFFICER, MARDAN DATED 19.06.2014 VIDE
WHICH THE PETITIONER WAS DISMISSED FROM HIS
SERVICE.

Respected Sir,

I have the honour to submit as under:-

F A C T S:-

It is alleged against the petitioner that while posted at Police Station Sher Garh has been found involved in illegal business of stolen Cars evident from charging in case FIR NO. 16 dated 19.04.2011 u/s 381-A/ 109/34/411PPC Police Station levy Malakand. On the basis of the said Charges a departmental enquiry was carried out and consequent upon the petitioner was dismissed from Service under NWFP removal from service special power Ord., 2000. After failure departmental appeal the petitioner moved to service tribunal and the de novo departmental enquiry was ordered by the Service tribunal vide the attached copy of judgment dated 29.01.2014. The de novo enquiry was carried out in absence of petitioner and the petitioner was dismissed

Attested

N/Page 2

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from service by O.E. NO. 6836-43/R dated 19.06.2014.

Hence, aggrieved this petition.

GROUNDS FOR PETITION.

1. That the order of the Distt: Police Officer, Mardan is in contrary of law and against the facts on record.
2. That neither the charge-Sheet has been served upon the petitioner nor any Show-Cause Notice has been served for appearance for departmental enquiry.
3. That the enquiry officer has never recorded the statement of petitioner brother but has only obtained his signature on blank paper.
4. That no process server has been examined during the enquiry proceeding to justify the exparte proceeding to against the petitioner.
5. That inspite of Service tribunal judgment no opportunity has been provided to the petitioner to defend the charges levelled against the petitioner.
6. That the petitioner has been acquitted by the Court of law in the case wherein the petitioner was charged for dealing in stolen Car vide the attached Judgment dated 10.01.2012
7. That even in my absence the enquiry Officer was legally bound to record evidence about the charges levelled against the petitioner.

Attested

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8. That there is neither oral nor other documentary evidence on the enquiry papers to establish the charges against the petitioner.

9. That the petitioner is a confirmed Asstt:Sub Inspector and legally Distt: Police Officer is not competent authority to make an order of dismissal about a confirmed Asstt:Sub Inspector.

In view of the above it is humbly requested that the order of the worthy District Police Officer, Mardan may kindly be set aside and the petitioner may be re-instated in service to meet the end of Justice.

Dated: 07.07.2014

(NOOR MUHAMMAD)

Ex. Asstt: Sub Inspector,
Police Lines, Mardan.

Attested

Wk
C

ORDER.

"E"
15

This order will dispose-off the appeal preferred by Ex-ASI Noor Muhammad No. 599 of Mardan District Police against the order of his dismissal from service issued by the District Police Officer, Mardan vide OB: No. 1422 dated 18.06.2014.

Brief facts of the case are that he while posted at Police Station Shergarh found involved in illegal business of stolen cars as evident from his involvement in case FIR No. 16 dated 19.04.2011 u/s 381-A/109/34/411PPC Levy Thana Malakand Agency. He was placed under suspension and closed to Police Lines, Mardan vide OB: No. 2196 dated 06.06.2011. He was proceeded against departmentally by Additional Superintendent of Police, Mardan and RI Police Lines, Mardan. After fulfillment of departmental enquiry he was issued Final Show Cause Notice reply to which received and found not satisfactory. Being part & parcel of discipline force, his involvement in illegal business of vehicles was very shameful act in the eyes of general masses, hence he was dismissed from Service under NWFP Removal from Service (Special Power Ordinance 2000). He submitted an appeal against the order passed on by the District Police Officer, Mardan to the then DIG/Mardan Region, appeared & heard in orderly room held in this office on 29.11.2011. His appeal was filed vide this office endorsement No. 4345/ES dated 08.12.2011. Later on he submitted an appeal to Hon'ble Service Tribunal Khyber Pukhtunkhwa, Peshawar. The Hon'ble Tribunal, on the partial acceptance of the appeal, both the impugned order dated 28.09.2011 and 08.12.2011 was set-aside and the appellant was re-instated in service to face denovo departmental proceedings, during which, the appellant was remain suspended. In this regard the denovo departmental enquiry against the appellant was initiated by the then Deputy Superintendent of Police Headquarter, Mardan. In order to complete denovo departmental inquiry against the appellant, the inquiry Officer summoned the defaulter Ex-ASI who failed to appear before inquiry Officer. Statement of his brother namely Mr. Dolat Khan s/o Kareem Khan was recorded on 22.04.2014, in which he disclosed that his brother defaulter Ex-ASI has gone abroad (Afghanistan) and he did not know about his return back to country/home. The defaulter Ex-ASI did not report up-till now and found remain absent. The inquiry Officer recommended the defaulter ASI for ex-parte action, therefore he was dismissed from service by District Police Officer, Mardan vide OB: No. 1422 dated 15.06.2014.

I have perused the record and also heard the appellant in person in orderly room held on 27.08.2014 in this office. Having examined the case carefully, the punishment is too harsh, keeping in view his prolong service, poor family circumstances, the order of District Police Officer, Mardan issued vide his office OB: No. 1422 dated 18.06.2014 is hereby converted into compulsory retirement from service with immediate effect.

ORDER ANNOUNCED.

9/2
(MUHAMMAD SAEED)PSP
Deputy Inspector General of Police,
Mardan Region-I, Mardan

Attested
W/P

No. 5829 /ES, Dated Mardan the 01/08 /2014.

Copy forwarded to the:-

District Police Officer, Mardan for information & necessary action w/r to his office Memo: No. 680/LB dated 18.07.2014. His Service record is returned herewith.

(*****)

بعدالت صواب سندس ٹریبیونل KPK لستہ

مقدمہ فوجداری ادیوانی

منجانب: منشی

علت نمبر: مورخہ: جرم: تھانہ:

باعث تحریر آنکہ

لور محمد بنام DPO و عنبرہ

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

لستہ عدلیہ نوید مقصود سیٹھی ایڈوکیٹ سپریم کورٹ آف پاکستان

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ

کرنے و تقرر ثالث و فیصلہ برحلف دیئے جواب دعویٰ اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و

روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری

یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیر دائر کرنے اپیل نگرانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ

مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب

مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور قبول ہوگا دوران مقدمہ میں جو

خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں

گے۔ کہ پیروی مذکورہ کریں۔

لہذا وکالت نامہ لکھ دیا تاکہ سند رہے۔

المرقوم:- 19/9/14 ماہ ستمبر 2014

العبد العبد العبد

بمقام منشی لستہ منظور

Attested & Accepted

نازہ

NAVEED MAQSOOD SETHI

Advocate, Supreme Court,
of Pakistan.

Office:- 091-2550496

Cell No:- 0300-9593535

C

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

Service Appeal No. 1206/2014

EX ASI Noor Mohammad, District Mardan.....Appellant.

VERSUS.

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar
2. Deputy Inspector General of Police, Mardan Region-I, Mardan
3. District Police Officer, Mardan.....Respondents.

Respectfully Sheweth:

Preliminary objections:

- a. That the appellant has not come to this Honourable Tribunal with clean hands.
- b. That the appellant has got no cause of action.
- c. That the appellant has concealed material facts from this Honourable Tribunal.
- d. That the appellant is estopped by his own conduct, by law to bring the instant appeal.
- e. That the present appeal is bad in its present form, hence, not maintainable and liable to be dismissed.
- f. That the appeal is bad due to non-joinder and mis-joinder of necessary parties.

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS

1. Pertains to record, hence, no comments.
2. Correct, hence, no comments.
3. Pertains to record, hence, no comments
4. Incorrect. Proper departmental enquiry has been conducted, wherein, the charges leveled against appellant has been proved and was, therefore, recommended for major punishment (Copy of enquiry report as Annx-A)
5. Pertains to record, hence, no comments.
6. Correct to the extent of departmental appeal and its rejection by respondent No. 02 vide order dated 08.12.2011 as well as service appeal in service tribunal followed by directives of denovo inquiry. However, it is incorrect to suggest that the appellant was not intimated by the inquiry officer to appear before the later during denovo proceedings. Infact, the appellant was summoned by the inquiry officer but found him departed abroad i.e Afghanistan. In corroboration statement of his brother namely Dolat Khan is attached herewith (as Annax-B&C).

REPLY TO GROUNDS.

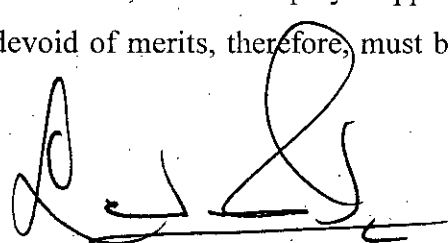
- a. Incorrect. Both the impugned orders are just and according to law, rules, policy and also maintainable.
- b. Incorrect. Proper denovo inquiry had been initiated with the compliance of all codal formalities but, unfortunately, the appellant was found missing i.e abroad and there was no fixed date of his returning homeland. As per rules/directions of the honorable Service Tribunal the inquiry was to be summoned up within stipulated time, so, ultimately exparte action was taken. However, his dismissal from service was

converted into compulsory retirement for reasons of his long service and poor family circumstances, by the departmental appellate authority. Besides, the Khyber Pakhtunkhwa Govt: servant (E&D) Rules, 1973 does not apply to the Police officials for reasons the Police is a disciplined force and run under special laws i.e Police Rules etc. so, there is no violation of any rules law etc (Copy of commented order by DIG Mardan Annex-D).

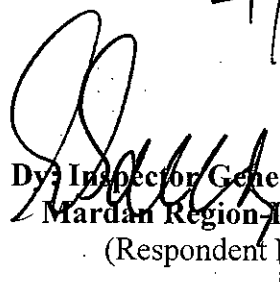
- c. Incorrect. The District Police Officer Mardan, being competent authority, has assigned the denovo inquiry against the appellant to the DSP/HQRs Mardan under rule 5 S/r 4 of Police Rules, 1975. The inquiry officer after due compliance and proper inquiry submitted his findings before the competent authority (Copy of rule 5 S/r 4, P.R 1975 as Annex-E).
- d. Incorrect. The inquiry officer has just recommended the appellant for major punishment, based on facts and cogent reasons, before the competent authority. Further, the departmental and judicial proceedings are two different legal tracks and can run parallel against an accused, but do not effect each other both in findings and punishment. Furthermore, proper inquiry has been conducted and there is no irregularities or illegalities on the part of inquiry officer (Copy of rule/law ESTA code as Annex-F).
- e. Incorrect. The impugned orders have been passed after proper inquiry bearing all codal formalities and there is no disregard of any rules/law.
- f. Incorrect. The appellant's service carrier, comprising 23 years, is filled with numerous red/bad entries and bears spoiled service record (Copy of red/bad entries as Annex-G).

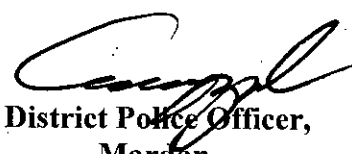
Prayer:

As per directions of this honorable tribunal the respondent department has properly conducted denovo inquiry resulted into commutation of punishment i.e converted dismissal into compulsory retirement for reasons detailed in, above. His prayer/appeal for re-instatement holds no grounds now and is devoid of merits, therefore, must be dismissed with costs.


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

21/8/15.


**Dy. Inspector General of Police,
Mardan Region-I, Mardan.**
(Respondent No. 2)


**District Police Officer,
Mardan.**
(Respondent No. 3)

فائل انکوائری رپورٹ ازان نور محمد خان ASI

جناب عالی!

نور محمد خان ASI ضلع مردان پولیس کو ایک فوجداری مقدمہ علت 16 مورخہ 19-04-2011 جرم

381-A/109/34/411 تھانہ لیویز ملاکنڈ ایجنسی میں ملوث ہونے پر مذکورہ کے خلاف محکمانہ کارروائی شروع کر کے محکمہ

ہذا سے بحوالہ OB نمبر 3494 مورخہ 27-09-14 کو درخواست کیا گیا۔ مذکورہ ASI نے اسی سلسلہ میں جناب

DIG صاحب مردان کو اپیل کی لیکن منظور نہ ہو کر سروس ٹریبونل خیبر پختونخواہ پشاور میں بحوالہ نمبر 135/2012 اپیل داخل

کی جس میں سماعت ہو کر مذکورہ ASI کو سروس ٹریبونل نے بحال کر کے Denovo انکوائری کرنے کا حکم صادر فرمایا جو

جناب DPO صاحب مردان نے مجھے حوالہ کی۔

نور محمد ASI کو طلب کرنے کے لئے پروانہ بغرض تعین متعلقہ تھانہ کا ٹلنگ کو ارسال کر کے جس پر مقامی پولیس نے

مذکورہ ASI کے گھر جا کر مذکورہ عدم موجود ہونے پر اس کے بھائی مسمی دولت خان ولد کریم خان سے پروانہ بغرض اطلاعیابی

تعین کی گئی اور انہیں تحریری ہدایت کی گئی کہ اپنے بھائی نور محمد کو مطلع کر دفتر زبردستی میں بسلسلہ انکوائری مورخہ

22/4/14 کو پیش ہو جائے اس کے بعد الزام علیہ ASI کے بھائی مسمی دولت خان کو اسکے موبائل فون کے ذریعے اسے

دفتر ہذا طلب کیا گیا جنہوں نے ایک تحریری بیان پیش کیا کہ میرا بھائی افغانستان چلا گیا ہے۔ اور اس کا کوئی پتہ نہیں چلتا کہ

کب گھر آئے گا۔ مزید یہ کہ مذکورہ ASI اپنے انکوائری اصفائی کے سلسلے میں تاحال حاضر نہیں آیا تا کہ رولز کے تحت انکوائری

فائل ہو سکے۔

دوران انکوائری مذکورہ ASI کا سروس ریکارڈ طلب کر کے چیک کرنے پر پایا گیا کہ مذکورہ کے سروس ریکارڈ پر 03

Good Entries جبکہ 9 Bad Entries موجود ہے جس سے مذکورہ ASI کا سروس ریکارڈ دغدار معلوم ہوتا

ہے پولیس رولز باب 16 فقرہ 9 میں واضح ہے کہ بار بار چھوٹی سزائیں دینے سے محکمہ کی شہرت پر برا اثر پڑتا ہے اسلئے بہتر

ہے۔ درج بالا حالات کو پیش نظر رکھتے ہوئے نور محمد خان ASI کو بوجہ انکوائری ہذا میں پیش نہ ہونا اور دغدار سروس

ریکارڈ کی بناء Denovo انکوائری میں بھی اسکو محکمہ پولیس رکھنے کے لئے کوئی گنجائش نہ پایا۔ بدیں وجہ اسکو ڈسمس

کرنے کی سفارش کی جاتی ہے۔

قطعاً (13)

اسلام آباد

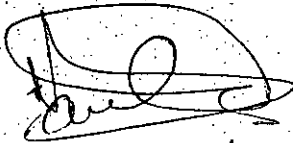
میاں نصیب جان

ڈپٹی سپرنٹنڈنٹ آف پولیس ہیڈ کوارٹر مردان

NO = 389/HCEX
- 1-11-11

ضمانت عالی

میں سے دولت خان ولد کریم خان سکنہ محلہ قتل بیار
 میرا نو ماڈرنہ کالینٹ اختیار کرنے کے لئے
 کھانہ کالینٹ نے کچھ انویاری پر صرف ASI نور محمد خان کے بارے
 میں مطلع کیا جو کہ میں نے کھانا حاضر کیا لیکن ASI نور محمد خان کسی
 کام کے مسئلہ میں افغانستان صید کیا ہے۔ چونکہ وہ راجس
 آئے گا میں اس کو خوری طور پر مطلع کرونگا۔ مقامی پولیس
 کو اپنا سواٹل ٹریکس فراہم کرنے کے لئے اس کو بروقت اطلاع
 دینے اور سواٹل آڈیو ادھو کے ایسا سواٹل ٹریکس دینا



صفحہ 22
 14

دولت خان ولد کریم خان سکنہ محلہ قتل بیار میرا نو ماڈرنہ کالینٹ
 محض وفیلہ و دانی

0334-9393999

میرا نو

16101-1122537-9

ضیاء - عالی

میں مسیحی دولت خان ولید کریم خان مسندہ جو کہ گل پناہ ایئر لائنز ماڈرن کا ڈسٹریکٹ انچارج
 کرنے کے بعد دہلی گئے۔ درمیان میں کئی تقاضا کا ڈسٹریکٹ انچارج میں سے مورس نمبر 0334 93 93 99 9
 اطلاع دینے کے بعد 1999 میں ان کو مسندہ ایئر لائنز میں سے مورس نمبر 0334 93 93 99 9
 آکر دہلی گئے۔ 1999 میں ان کو مورس نمبر 0334 93 93 99 9 کے ساتھ افغانستان میں
 اور اس کے ساتھ ہی جاتا رہا اور کچھ دن آئے ہیں۔ لہذا اگر مورس
 نمبر 0334 93 93 99 9 کے ساتھ آگاہ کر دینا۔

مورس نمبر 0334 93 93 99 9



دولت خان ولید کریم خان مسندہ عالم پور انٹرنیشنل ایئر لائنز کا ڈسٹریکٹ

مورس نمبر: 0334 93 93 99 9

سٹیشن نمبر: 16101 - 1122587 - 9

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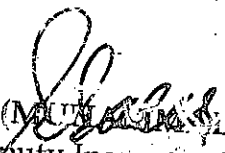
ORDER.

This order will dispose-off the appeal preferred by Ex-ASI Noor Muhammad No. 599 of Mardan District Police against the order of his dismissal from service issued by the District Police Officer, Mardan vide OB: No. 1422 dated 18.06.2014.

Brief facts of the case are that he while posted at Police Station Shergarh found involved in illegal business of stolen cars as evident from his involvement in case FIR No. 16 dated 19.04.2011 u/s 381-A/109/34/411PPC Levy Thana Malakand Agency. He was placed under suspension and closed to Police Lines, Mardan vide OB: No. 2196 dated 06.06.2011. He was proceeded against departmentally by Additional Superintendent of Police, Mardan and RI Police Lines, Mardan. After fulfillment of departmental enquiry he was issued Final Show Cause Notice reply to which received and found not satisfactory. Being part & parcel of discipline force, his involvement in illegal business of vehicles was very shameful act in the eyes of general masses, hence he was dismissed from Service under NWFP Removal from Service (Special Power Ordinance 2000). He submitted an appeal against the order passed on by the District Police Officer, Mardan to the then DIG/Mardan Region, appeared & heard in orderly room held in this office on 29.11.2011. His appeal was filed vide this office endorsement No. 4345/ES dated 08.12.2011. Later on he submitted an appeal to Hon'ble Service Tribunal Khyber Pukhtunkhwa, Peshawar. The Hon'ble Tribunal; on the partial acceptance of the appeal, both the impugned orders dated 28.09.2011 and 08.12.2011 was set-aside and the appellant was re-instated in service to face denovo departmental proceedings, during which, the appellant was remain suspended. In this regard the denovo departmental enquiry against the appellant was initiated by the then Deputy Superintendent of Police Headquarter, Mardan. In order to complete denovo departmental inquiry against the appellant, the inquiry Officer summed the defaulter Ex-ASI who failed to appear before inquiry Officer. Statement of his brother namely Mr. Dolat Khan s/o Kareem Khan was recorded on 22.04.2014, in which he disclosed that his brother defaulter Ex-ASI has gone abroad (Afghanistan) and he did not know about his return back to country/home. The defaulter Ex-ASI did not report up-till now and found remain absent. The inquiry Officer recommended the defaulter ASI for ex-parte action, therefore he was dismissed from service by District Police Officer, Mardan vide OB: No. 1422 dated 15.06.2014.

I have perused the record and also heard the appellant in person in orderly room held on 27.08.2014 in this office. Having examined the case carefully, the punishment is too harsh, keeping in view his prolong service, poor family circumstances, the order of District Police Officer, Mardan issued vide his office OB: No. 1422 dated 18.06.2014 is hereby converted into compulsory retirement from service with immediate effect.

ORDER ANNOUNCED.


(MUHAMMAD SAEED) PSP
Deputy Inspector General of Police,
Mardan Region-I, Mardan.

No. 5829 /ES, Dated Mardan the 01/09 /2014.

Copy forwarded to the:-

1. District Police Officer, Mardan for information & necessary action w/ to his office Memo: No. 680/LB dated 18.07.2014. His Service record is returned herewith.

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ment or any
promotions
authority as

- 3. In this rule, removal or dismissal from service does not include the discharge of a person.
- (a) Appointed on probation, during the period of probation, or in accordance with the probation or training rules applicable to him; or
- (b) Appointed, otherwise than under a contract, to hold a temporary appointment on the expiration of the period of appointment; or
- (c) Engaged under a contract, in accordance with the terms of the contract.

4-A.

In case a Police Officer is accused of subversion, corruption or misconduct the Competent Authority may require him to proceed on leave or suspend him.

5) Punishment proceedings.-

The punishment proceedings will be of two kinds. i.e. (a) Summary Police Proceedings and (b) General Police Proceedings and the following procedure shall be observed when a Police Officer is proceeded against under these rules:-

- (1) When information of misconduct or any act of omission or commission on the part of a Police Officer liable for punishment provided in these rules is received by the authority, the authority, shall examine the information and may conduct or cause to be conducted quick brief inquiry if necessary, for proper evaluation of the information and shall decide whether the misconduct or the act of omission or commission referred to above should be dealt with in a Police Summary Proceedings in the Orderly Room or General Police Proceedings.
- (2) In case the authority decides that the misconduct is to be dealt with in Police Summary Proceedings, he shall proceed as under-
 - (i) The accused officer liable to be dealt with in the Police Summary Proceedings shall be brought before the authority in an Orderly room.
 - (ii) He shall be apprised by the authority orally the nature of the alleged misconduct, etc. The substance of his explanation for the same shall be recorded and if the same is found unsatisfactory, he will be awarded one of the minor punishments mentioned in these rules.
 - (iii) The authority conducting the Police Summary Proceedings may, if deemed necessary, adjourn them for a maximum period of 7 days to procure additional information.
- (3) If the authority decides that the misconduct or act of omission or commission referred to above should be dealt with in General Police Proceedings he shall proceed as under-
 - a) The authority shall determine if in the light of facts of the case or in the interests of justice, a departmental inquiry, through an Inquiry Officer if necessary. If he decides that is not necessary; he shall-

- b) By order in writing inform the accused of the action proposed to be taken in respect to him and the grounds of the action; and
- c) Give him a reasonable opportunity of showing cause against that action. Provided that no such opportunity shall be given where the authority is satisfied that in the interest of security of Pakistan or any part thereof it is not expedient to give such opportunity.
- (4) If the authority decides that it is necessary to have departmental inquiry conducted, through an Inquiry Officer, he shall appoint for this purpose an Inquiry Officer, who is senior in rank to the accused:
- (5) On receipt of the findings of the Inquiry Officer or where no such officer is appointed, on receipt of the explanation of the accused, if any, the authority shall determine whether the charge has been proved or not. In case the charge is proved the authority shall award one or more of major or minor punishments as deemed necessary.

6. Procedure of Departmental Inquiry:-

- i. Where an Inquiry Officer is appointed the authority shall-
- Frame a charge and communicate it to the accused together with statement of the allegations explaining the charge and of any other relevant circumstances which are proposed to be taken into consideration;
 - Require the accused within 7 days from the day the charge has been communicated to him to put in a written defence and to state at the same time whether he desires to be heard in person;
- ii. The Inquiry Officer shall inquire into the charge and may examine such oral or documentary evidence in support of the charge or in defence of the accused as may be considered necessary and the witnesses against him.
- iii. The Inquiry Officer shall hear the case from day to day and no adjournment shall be given except for reasons to be recorded in writing and where any adjournment is given-
- It shall not be more than a week; and
 - The reasons therefor shall be reported forthwith to the authority.
- iv. Where the Inquiry Officer is satisfied that the accused is hampering, or attempting to hamper the progress of the inquiry he shall administer a warning and if thereafter he is satisfied that the accused is acting in disregard of the warning, he shall record a finding to that effect and proceed to complete the departmental inquiry ex parte.
- v. The Inquiry Officer shall within 10 days of the conclusion of the proceedings or such longer period as may be allowed by the authority, submit his findings and grounds thereof to the authority.

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(Authority: Circular letter No.SORII (S&GAD)3(4)/78, dated 3rd October, 1984.

Stoppage of increment under Government Servants (Efficiency & Discipline) Rules, 1973.

Sl.No.14

Instances have come to the notice of the Government where the penalty of stoppage of increment under the NWFP Government Servants (Efficiency & Discipline) Rules, 1973, has been imposed on Government Servants, who have reached the maximum of the pay scale, thus making the penalty ineffective. I am accordingly directed to request that the competent authorities may, in future, kindly keep in view the stage of the pay scale at which a Government servant is drawing pay before imposing the penalty of stoppage of increment on him under the above rule.

(Authority: Circular letter No.SORII(S&GAD)5(29)/86, dated 27th December, 1986.

Parallel running of Departmental /Judicial Proceedings.

Sl.No.15

The Law Department vide their U.O No.Op.2(2)82-11544, dated 3-5-1982, have advised as under:-

"Court & Departmental proceedings can run parallel to each other. They can take place simultaneously against an accused on the same set of facts and yet may end differently without affecting their validity. Even Departmental inquiry can be held subsequently on the same charges of which Government servant has been acquitted by a Court. The two proceedings are to be pursued independent of each other and it is not necessary to pend departmental proceedings till the finalization of judicial proceedings".

(Authority: Law Department's U.O No.Op.2(2)82-11544, dated 3.5.1982)

Departmental Proceedings vis-a-vis Judicial Proceedings.

Sl.No.16

The question as to whether or not a departmental inquiry and judicial proceedings can run parallel to each other against an accused officer/official has been examined in consultation with the Law Department.

2. It is hereby clarified that Court and Departmental proceedings may start from an identical charge(s) and can run parallel to each other. They can take place simultaneously against an accused on the same set of facts and yet may end differently without affecting their validity. Even departmental inquiry can be held subsequently on the same charges of which Government servants has been acquitted by a Court. The two proceedings are to be

pursued independent of each other and it is not necessary to pend departmental proceedings till the finalization of judicial proceedings.

3. It may also be clarified that Court Proceedings also include criminal proceedings pending against a civil servant.

4. The above instructions may please be brought to the notice of all concerned.

(Authority: Circular letter No.SOR.II(S&GAD)5(29)/86(KC), dated 8.1.1990)

Disciplinary action against Government Servants who violate Wildlife Law.

Sl.No.17

It has been reported that certain Government servants violate the Wildlife Law, thus setting not only a bad precedent for the general public but are also guilty of misconduct.

2. Under sub-rule (1) (e) of Rule 2 of the NWFP Government Servants (Efficiency and Discipline) Rules, 1973 'Misconduct' has been defined to mean inter alia conduct prejudicial to good order or service discipline or unbecoming of an officer and a gentleman.

3. I am, therefore, directed to request that in addition to institution of cases against those Government servants who violate Wildlife Law or any other law of the country, they may also simultaneously be proceeded against under the NWFP Government Servants (Efficiency and Discipline) Rules, 1973 by the department concerned.

3. The contents of this letter may be brought to the notice of all officers/officials working under your control for strict compliance.

(Authority: Circular letter No.SOR.III(S&GAD)/7-12/91, dated 27th April, 1991.

Unauthorised supply of copies of official correspondence.

Sl.No.18

It has come to notice that interested persons carry Photostat copies of official correspondence/notes taking place within Department or among various Departments and offices in violation of the Government Instructions. Sub Paras (a) & (b) of Para 67 of the Government of NWFP Manual of Secretariat Instructions, 1989 provides that:-

a) All papers received or dealt with in the Secretariat are of a confidential nature and their contents should not be disclosed to or discussed with any unauthorised person. This rule applies with greater force to documents specially classified as Confidential or Secret, and the strictest secrecy shall be observed with regard to their contents.

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Signature of the Head of the office or other attesting officer	Reference to any recorded punishment or censure, or reward or praise of the Government Servant

to be

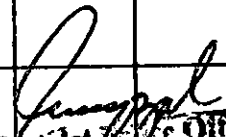
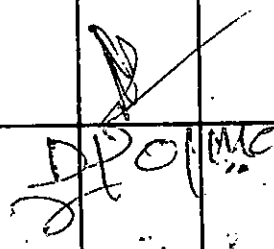
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1 Name of post	2 Whether substantive or officiating and whether permanent or temporary	3 If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art, 371 C.S.R.	4 Pay in substantive post	5 Additional Pay for officiating	6 Other emolument falling under the term "Pay"	7 Date of Appointment	8 Signature of Government	9 Date of termination or appointment
(3)		Awarded a Major punishment of dismissal from Service with immediate effect.						
		OB No: 3494 27-9-2011		DPO/MR				
	The Appeal is hereby	The Appeal is hereby						
	Ruled, vide. DIG, Madan endst: No. 4345/EE, dt: 8-12-11 (copy enclosed).	Ruled, vide. DIG, Madan endst: No. 4345/EE, dt: 8-12-11 (copy enclosed).						
2011 12420								
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Name of post	Whether substantive or officiating and whether permanent or temporary	If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art, 371 C.S.R.	Pay in substantive post	Additional Pay for officiating	Other emolument falling under the term "Pay"	Date of Appointment	Signature of Government	Designation of the office holding officer of 1 to 8	Date of termination of appointment
<u>ORDER</u>									
<p style="text-align: center;">In Compliance with the</p> <p style="text-align: center;">Judgement dated 29.1.2014 passed by the Honorable KPS Service Tribunal Deshwar in Service Appeal No. 35/2012 titled EX-Asi Noor Mohammad vs DPO Mardan & others. The said ASI NOOR Mohammad is hereby re-instated for the purpose of de novo departmental enquiry / proceedings, during which the appellant shall remain under suspension, and pay fixed Rs:- 13800/PM.</p> <p style="text-align: center;">OBNO-569 Dated:- 5.3.14.</p> <div style="text-align: right;">  District Officer Mardan </div>									
<u>ORDER</u>									
<p style="text-align: center;">On the result of de novo enquiry he is once again dismissed from service while his absence period counted as leave w/o pay.</p> <div style="display: flex; justify-content: space-between;"> <div data-bbox="414 1971 702 2105"> <p>283/14/22 18/6/2014</p> </div> <div data-bbox="925 1859 1356 2105">  DPO Mardan </div> </div>									

4G3

15-CENSURES AND PUNISHMENTS.

Charge: For his one day absence

Punishment - Awarded one day of
vice Principal PIS No. 911

~~2856-59~~ dated 6/6/31

The office diary No 3795 dt 8/6/31

SP/...

Charge For his absence

Punishment Fined Rs. 15/- ✓

C.B. No. 1750

6-X-94

(1)

SP

Charge For his absence

Punishment awarded one day of

C.B. No. 1082

DT. 30-5-95

SP/...

Charge: For his absence

Punishment Awarded one day of

C.B. 1291

DT. 16-7-96

SP/...

u G 3

15-CENSURES AND PUNISHMENTS--contd.

Serial No.

charge: For his absence from G. Parade on Police line mardan.

Punishment: Fined Rs. 50/-

OB: 1151
DT: 26.6.96

(2)

155P/Mardan

charge: for his absence from G. Parade.

Punishment Awarded Fined Rs. 100/-

OB No 2214
11/21/96

(3)

155P/Mardan

charge: on account of absence

present: Awarded a Censure to be careful in future.

OB No. 2336
16-12-96

(4)

155P/Mardan

Awarded three days E/drill for his absence.

OB No. 2367
12-12-96

155P/Mardan

Awarded one day E/drill for his absence.

OB No. 790
Dt. 0.4.2000

~~155P/Mardan~~

15-CENSURES AND PUNISHMENTS.-contd.

Charge: For his Two days absence. "G"
 Punishment: Awarded Two days E/drill.

OB No. 2196
 Dated. 16.9.2000

Superintendent of Police
 Madras.

Charge: For his absence.
 Punishment: Fined Rs 50/- absence period
 is to be treated as leave w/o pay.

OB No. 2647
 DT. 27.10.2000

(3)

SP/Mardan

Awarded E/drill for his absence from
 General Parade.

OB No. 2845
 DT. 20.11.2000

SP/Mar-

Charge: For not obeying the legal order.
 Punishment: Fined Rs. 20/-

OB No. 173
 DT. 18.1.2001

(6)

SP/Mardan

Charge: Absence from G. Parade.
 Punishment: Fined Rs. 100/-

OB No. 920
 DT 23.4.2001

(2)

SP/Mardan

Charge: Failed to make his arrival in the PS.

Punishment: Awarded Censure

OB No. 2364
 Dated. 27.11.2001

(8)

SP/Mardan

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CHARACTER ROLL OF

15. CENSURES AND PUNISHMENTS. - conold.

Serial No.

Charges: Absented himself i.e. negligence

Punishment Awarded Censure

CB/No. 1587

28/4/05

(9)

DPD/marda

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TWR - 19 = R.16

DV - GDR AS. 50000/-

TNO 2213 dt 20/2/06

G. No ~~2213~~ 210 - 784 dt 20/2/06

ADAO
2/2

Fined Rs 100/- for his absence from
SPL duty on 12/3/06.

PR/No. 448

DT 18/3/06

(10)

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

Service Appeal No. 1206/2014

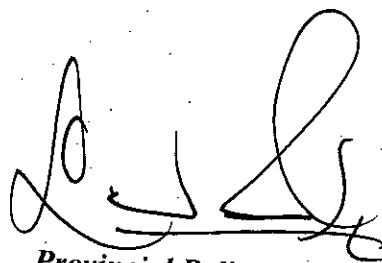
Ex- ASI Noor Mohammad, District Mardan.....Appellant.

VERSUS.

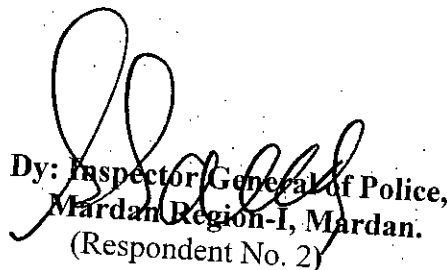
1. Provincial Police Officers, Khyber Pakhtunkhwa Peshawar.
2. Deputy Inspector General of Police, Mardan Region-I, Mardan
3. District Police Officer, Mardan.....Respondents

COUNTER AFFIDAVIT.

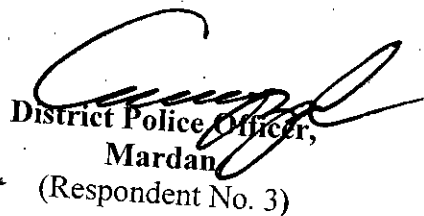
We, the respondents do hereby declare and solemnly affirm on oath that the contents of the Para-wise comments in the service appeal cited as subject are true and correct to the best of our knowledge and belief and nothing has been concealed from this Honourable Tribunal.



Provincial Police Officer,
Khyber Pakhtunkhwa
Peshawar. 21/8/15.
(Respondent No.1)



Dy: Inspector General of Police,
Mardan Region-I, Mardan.
(Respondent No. 2)



District Police Officer,
Mardan
(Respondent No. 3)

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.

Service Appeal No. 1206/2014

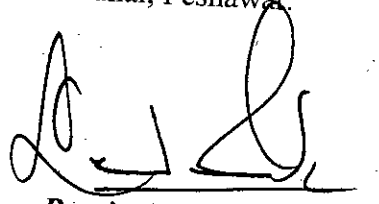
Ex-ASI Noor Mohammad, (District Mardan)Appellant.

VERSUS.

1. Provincial Police Officer Khyber Pakhtunkhwa Peshawar
2. Deputy Inspector General of Police, Mardan Region-I, Mardan
3. District Police Officer, Mardan.....Respondents

AUTHORITY LETTER.

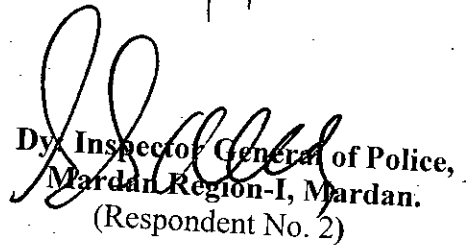
Mr. Muhammad Shafiq Inspector Legal, (Police) Mardan is hereby authorized to appear before the Honourable Service Tribunal, Khyber Pakhtunkhwa, Peshawar in the above captioned service appeal on behalf of the respondents. He is also authorized to submit all required documents and replies etc. as representative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



Provincial Police Officer,
Khyber Pakhtunkhwa
Peshawar.

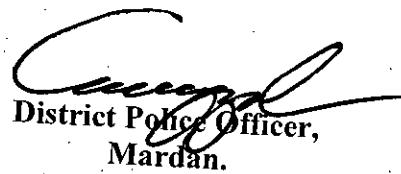
(Respondent No. 1)

21/8/15.



Dy. Inspector General of Police,
Mardan Region-I, Mardan.

(Respondent No. 2)



District Police Officer,
Mardan.

(Respondent No. 3)

(51)

BEFORE THE HON'BLE KPK SERVICES TRIBUNAL,
PESHAWAR.

In Re Service Appeal No.1206/2014

Noor MuhammadAppellant.

V E R S U S

DPO & OthersRespondents.

Rejoinder for and on behalf of the appellant

Respectfully Sheweth:

REPLY TO PRELIMINARY OBJECTION:

1. Incorrect, the respondents have not pointed out any instance through which the appellant has approached this Hon'ble Tribunal with sullied hands.
2. Incorrect, the appellant has a good cause of action.
3. Incorrect, the appellant has placed all the facts before this Hon'ble Tribunal and the respondents could not point out any fact which has been concealed.
4. Incorrect, the appellant is not stopped under the law either by his conduct nor by his actions.
5. Incorrect, the instant appeal is maintainable and this Hon'ble Tribunal has the exclusive jurisdiction to entertain the grievance of the appellant.
6. Incorrect, the respondents are the only proper and necessary parties and no other party is required to be impleaded.

REJOINDER TO THE FACTS;

1. Needs no rejoinder since admitted.
2. Needs no rejoinder since admitted.
3. Needs no rejoinder since admitted.
4. Incorrect, the contents of appeal are reiterated because it is evident from the record that no serious effort has been made to associate or inform the appellant regarding the denovo proceedings, the respondent is a police department and they are not required to make lame excuses of regarding the absence of the appellant or non-

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availability of the appellant at the particular address, the appellant was through out available but was not informed/summoned for denovo proceedings because the respondents at any cost wanted to get rid of the appellant by proceeding at his back, without affording him an opportunity of hearing because the respondents were having nothing adverse against the appellant, therefore, no regular inquiry has been conducted, the respondents have not brought on record any adverse material which could remotely suggest that a regular inquiry has been conducted or any incriminating material has been brought on the record against the appellant before recommendation of exparte major penalty.

5. Needs no rejoinder since admitted.

6. Incorrect, hence denied, the contents of appeal are re-iterated, the appellant was throughout available but no serious efforts were made to inform the appellant, the statement of the brother of the appellant is misconceived because the brother of the appellant was never in touch with the appellant and the appellant lives separately away from his brother moreover the appellant has no passport till today then how come the appellant can travel abroad.

REJOINDER TO THE GROUNDS;

A. Incorrect, the contents of appeal are re-iterated.

B. Incorrect, the contents of appeal are re-iterated, the respondents could not justify the impugned orders because the same is not the out come of regular inquiry or any incriminating material against the appellant, the imposition of the major penalty is illegal, unlawful and wrong.

C. Incorrect, the contents of appeal are re-iterated. The inquiry conducted and the manner in which the proceedings are conducted speaks volumes of partisan behavior of the respondents who were adamant on imposing major penalty at any cost.

D. Incorrect, the contents of appeal are re-iterated. There was no adverse material against the appellant, the inquiry officer has not recorded any statement, no new evidence has been collected but relied on the old record which has been discarded by this Hon'ble Tribunal in Service appeal No.35/2012 vide judgment dated 29/01/2014, the respondents have not conducted any denovo proceedings as directed by this Hon'ble Tribunal and just relied on the old record and proceeded exparte against the appellant.

E. Incorrect, the contents of appeal are re-iterated, the respondents have willfully concealed the facts from this Hon'ble Tribunal because the service record of the appellant is blotless except some minor fines, there is no allegation of being corrupt or dishonesty adversely effecting the career of the appellant.

F. Incorrect, the contents of appeal are re-iterated, the respondents have willfully concealed the facts from this Hon'ble Tribunal because the service record of the appellant is blotless except some minor fines, there is no allegation of being corrupt or dishonesty adversely effecting the career of the appellant, the respondents are searching for lame excuses for doing away with the career of a police officer.

It is, therefore, humbly requested that the appeal of the appellant may kindly be accepted as prayed for by re-instating the appellant with all the back benefits in favor of the appellant.

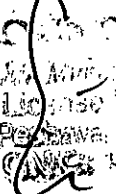

Appellant

Through


Naveed Maqsood.
ASC.

AFFIDAVIT:

I, Noor Muhammad (Ex-ASI) S/O Gul Karim R/O Pirano Banda, Tehsil & District Mardan, do hereby affirm and declare on oath that all the contents of this rejoinder are true and correct to the best of my knowledge, information and belief.


S/O Gul Karim R/O Pirano Banda
Tehsil & District Mardan
Licence No. 1114-4-21
Peshawa High Court
CNCR: 17301-146189115


Deponent.

17-7-2016

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No 2673 /ST

Dated 14 /12/2017

To

The District Police Officer,
Government of Khyber Pakhtunkhwa,
Mardan.

Subject: **JUDGEMENT/ ORDER IN APPEAL NO. 1206/14, MR: NOOR MUHAMMAD.**

I am directed to forward herewith a certified copy of Judgment/order dated 28/11/2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

olc
REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.