

1370/2014, Noor Muhammad

13.11.2015

Appellant with counsel (Mr. Rizwanullah, Advocate) and Sr. Government Pleader (Mr. Usman Ghani) with Falak Nawaz, DSP (Legal) for the respondents present. Arguments heard and record perused. Vide our detailed judgment of to-day in connected appeal No. 1340/2014, titled " Shakeel Ahmad Versus Provincial Police Officer, KPK Peshawar etc.", this appeal is also disposed off as per detailed judgment. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED

13.11.2015


MEMBER


MEMBER

07.09.2015

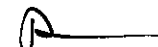
Counsel for the appellant and Mr. Falak Nawaz, DSP (legal) alongwith Mr. Usman Ghani, Sr.GP for respondents present. Arguments could not be heard due to paucity of time. To come up for arguments on 14-10-2015


Member


Member

14.10.2015

Appellant with counsel and Mr. Usman Ghani, Sr. GP alongwith Mr. Falak Nawaz, DSP (Legal)for the respondents present. Arguments could not be heard due to shortage of time. To come up for arguments 2-11-15. Office is directed to place the case at the top of cause list on the date fixed.



Member


Member

2105-93-51

02.11.2015

Appellant with counsel and Mr. Falak Nawaz, DSP (legal) alongwith Mr. Usman Ghani, Sr.GP for respondents present. Arguments heard. To come up for order on 13.11.15.


MEMBER

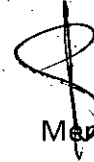

MEMBER

22.05.2015

Clerk of counsel for the appellant and Mr. Falak Nawaz, DSP (legal) alongwith Addl: A.G for respondents present. Due to general strike of the bar counsel for the appellant is not available. To come up for same on 5.6.2015.



Member



Member

05.06.2015

Appellant with counsel and Mr. Falak Nawaz, DSP (legal) alongwith Addl: A.G for respondents present. The learned Executive Member is on leave therefore, arguments could not be heard. To come up for same on 31.7.2015.



Member

31.07.2015

Counsel for the appellant, ~~Usman Ghani~~ SGP, with Falak Nawaz, DSP (Legal) for the respondents present. Learned Member (Executive) is feeling unwell, therefore, arguments could not be heard. To come up for arguments on 07-09-2015.



MEMBER

3 13.02.2015

Appellant with counsel, M/S Ihsanullah, ASI (legal) and Muhammad Yaseen, Inspector (legal) alongwith Addl. A.G for respondents present. Comments submitted. The case is assigned to D.B for rejoinder and final hearing for 24.08.2015. The record of the inquiry be also requested for the date fixed.

31.03.2015

Mr. Rizwanullah, Advocate present. Informed the Court that identical connected appeals Nos 1309 and 1340 of 2014 are already fixed for 22.4.2015. The instant appeal is also fixed before D.B for the same date. Notice be issued to the respondents regarding change of date.


Chairman

4 31.03.2015

Mr. Rizwanullah, Advocate present. Informed the Court that identical connected appeals including appeal No. 8/2015 are already fixed for 22.4.2015. The instant appeal is also fixed before D.B for the same date. Notice be issued to the respondents regarding change of date.


Chairman

22.4.2015

Appellant with counsel and Addl. A.G with Falak Nawaz, DSP (Legal) for the respondents present. During the course of arguments of the learned counsel for the appellant, the learned Addl.AG for the respondent-department informed the Tribunal that enquiry proceedings against co-accused namely Mr. Muhammad Younis Javed Mirza, Deputy Commandant FRP is under process of completion and that the said case closed bearing on fate of the instant case. He requested that a month time may be granted to the respondent-department so that it may be able to produce the relevant papers/decision. Hence, case to come up for such record and arguments on 22.05.2015.


MEMBER.


MEMBER

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1370/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	01.12.2014	<p>The appeal of Mr. Noor Muhammad presented today by Mr. Rizwanullah Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"><i>Leung</i> REGISTRAR</p> <p>This case is entrusted to Bench for preliminary</p>
2	19.1.2015	<p>hearing to be put on the record Appellant with counsel present. The learned counsel for the appellant submitted before the court that major penalty of compulsory retirement has been imposed upon the appellant but he has not been associated with the inquiry proceedings nor any statement has been recorded in his presence; that the appellant was a civil servant and was required to be dealt with in accordance with Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011, but action taken against the him under Police Rules, 1975 and that no chance of personal hearing afforded to the appellant. Points raised need consideration. The appeal is admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for submission of written reply/comments on 13.2.2015.</p> <p style="text-align: right;"><i>CHAIRMAN</i></p> <p style="text-align: right;"><i>MEMBER</i></p>

Appellant deposited
 Process fee & Security
 Rs. 300/- Bank Receipt
 attached with file.

BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1370 /2014

1. Noor Muhammad, Ex-Sub Inspector R/O Zeera Banda, Tehsil Takht-e-Nasrati, District Karak.

APPELLANT

VERSUS

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa & others.

RESPONDENTS

I N D E X

S.No	Particulars	Annexure	Pages #
1	Service Appeal	—	1-9
2	Affidavit	—	10
3	Copy of fact finding inquiry report	A	11-14
4	Copies of charge sheet alongwith statement of allegations.	B & C	15-16
5	Reply to charge sheet	D	17
6	Copy of inquiry report	E	18-25
7	Copy of impugned order dated 19-8-2014	F	26
8	Copy of departmental appeal	G	27-32
9	Wakalatnama	—	—

Noor Muhammad

Appellant

Through

Rizwanullah

Rizwanullah
M.A. LL.B

Advocate High Court, Peshawar

Dated: 1-12-2014

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 1370 /2014

1403
01-12-2014

Noor Muhammad, Ex-Sub Inspector
R/O Zeera Banda, Tehsil Takht-e-Nasrati,
District Karak.

APPELLANT

VERSUS

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Inspector General of Police, Headquarters Khyber Pakhtunkhwa, Peshawar.
3. The Commandant FRP, Kohat.

RESPONDENTS

**APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
IMPUGNED ORDER NO . 1559-94/SE-II
DATED 19-8-2014 PASSED BY THE DEPUTY
INSPECTOR GENERAL OF POLICE,
HEADQUARTERS KHYBER PAKHTUNKHWA
WHEREBY THE APPELLANT WAS AWARDED
MAJOR PENALTY OF COMPULSORY
RETIREMENT FROM SERVICE. THE
APPELLANT PREFERRED DEPARTMENTAL
APPEAL BUT THE SAME WAS NOT
RESPONDED WITHIN THE STATUTORY
PERIOD OF LAW.**

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PRAYER IN APPEAL

By accepting this appeal, the impugned order No.1559-94/SE-II dated 19-8-2014 passed by the Deputy Inspector General of Police, Headquarters Khyber Pakhtunkhwa Peshawar, may very graciously be set aside and the appellant may kindly be reinstated in service with full back wages and benefits.

RESPECTED SIR,

Short facts giving rise to the present appeal are as under:-

1. That the appellant joined the service of Police Department as Constable in the year 1989 and then rose up to the post of Sub-Inspector on account of his dedication, devotion and commitment to his job. He had 25 years unblemished service record to his credit.
2. That the appellant was performing his duty with great zeal, zest and devotion. But strangely, he was placed under suspension vide office order No.713-26 dated 2-5-2014 and "Fact Finding Inquiry" was ordered to be conducted into allegations in respect of illegal appointments of constables. The appellant neither associated with the said inquiry nor any witness was examined in his presence. He was also not provided any opportunity of cross-examination. But the Inquiry Committee, on the basis of bald and naked evidence, held the appellant guilty of charges and recommended departmental action (Copy of fact finding inquiry report is appended as Annex-A).
3. That thereafter, the appellant was served with a charge sheet alongwith statement of allegations wherein the following allegations were levelled against him:-
 - i) That you in connivance with your officer facilitated the illegal process of recruitment of 28 candidates in FRP recruitment 2013.
 - ii) That you deliberately and knowingly assisted the officer in above recruitment which was made after the committee recruitment and

- iii) **That with your connivance candidates having domicile of other districts were also recruited.**

(Copies of charge sheet and statement of allegations are appended as Annex-B & C).

4. That the appellant submitted reply, denied the allegations and also termed the same as fallacious, malicious and misconceived. He further added that he performed his duty justly, fairly and in accordance with law. He prayed that he may kindly be exonerated of the charges levelled against him in the charge sheet **(Copy of reply is appended as Annex-D).**
5. That the aforesaid reply was not found satisfactory and as such Inquiry Committee was constituted to probe into the allegations levelled against the appellant in the charge sheet. The appellant was summoned to appear before the Committee and explain his position regarding the said allegations. He participated in the inquiry, denied the allegations and reiterated the same facts and justification as enumerated earlier. The Inquiry Committee, after evaluating the record, held that the charges levelled against the appellant were not proved and thereafter the Committee was bound to have exonerated him of the charges but they failed to do so and instead found him guilty of new charge i.e **“ he enjoys the reputation of a corrupt officer who allegedly is living much beyond his ostensible means”**. This charge was neither included in the charge sheet nor the appellant was given any opportunity to explain his position in respect of new charge. Hence, the Inquiry Committee has travelled beyond the ambit of charge sheet and as such committed gross-illegality **(Copy of inquiry report is appended as Annex-E).**
6. That thereafter, the appellant was neither served with a show cause notice nor he was provided any opportunity of personal hearing being the requirements of law. But he was straightaway awarded major penalty of compulsory retirement from service illegally by an order dated 19-8-2014 passed by the Deputy Inspector General of Police, Headquarters Khyber Pakhtunkhwa Peshawar **(Copy of impugned order is appended as Annex-F).**

7. That the appellant felt aggrieved by the said order, filed a Departmental Appeal with the Provincial Police Officer, Khyber Pakhtunkhwa (respondent No.1) on 27-8-2014 within the statutory period of law, praying therein for re-instatement in service with full back wages and benefits (**Copy Annex-G**).
8. That the departmental appeal was neither decided within the statutory period of law with cogent reasons nor any information whatsoever was given to the appellant as required under **Article 19-A of the Constitution of Islamic Republic of Pakistan 1973**. Thus, the Appellate Authority has blatantly violated the provision of law as well as Constitution and the Principle laid down by **August Supreme Court of Pakistan** in case reported in **2011 SCMR 1 (Citation -B)**. The relevant citation is reproduced herein for facility of reference:-

(b) General Clauses Act (X of 1897)---

**---S. 24-A ---Speaking order-
Public functionaries are bound to
decide cases of their subordinates
after application of mind with
cogent reasons within reasonable
time.**

It is well settled law that the decision of August Supreme Court of Pakistan is binding on each and every organ of the State by virtue of **Article 189 and 190 of the Constitution of Islamic Republic of Pakistan, 1973**. Reliance can be placed on the judgment reported in **1996-SCMR-Page-284 (Citation-C)**. The relevant citation is as under:-

(c) Constitution of Pakistan (1973)

**Arts. 189 & 190--- Decision of
Supreme Court—Binding, effect
of--- Extent—Law declared by
Supreme Court would bind all
Courts, Tribunals and
bureaucratic set-up in Pakistan.**

8. That the appellant is jobless since his compulsory retirement from service
9. That the appellant now files this appeal before this Hon'ble Tribunal inter-alia on the following grounds:-

GROUND OF APPEAL

- A. That the appellant has not been treated in accordance with law, rules and policy on the subject and acted in violation of **Article 4 of the Constitution of Islamic Republic of Pakistan, 1973**. Therefore, impugned order is not sustainable in the eye of law.
- B. That when the Inquiry Committee arrived at the conclusion that the charges levelled against the appellant were not proved during the inquiry then the Committee was under statutory obligation to have absolved him of the said charges. But they failed to do so and instead held him guilty of new charge i.e “ **he enjoys the reputation of a corrupt officer who allegedly is living much beyond his ostensible means**”. This charge was neither levelled against the appellant in the charge sheet nor he was provided any opportunity to explain his position regarding the said charge. The Inquiry Committee was not competent under the law to travel beyond the ambit of charges levelled against the appellant in the charge sheet. Reliance can be placed on **1993-PLC(CS)1097**. Besides, there was no iota of evidence to connect the appellant with the commission of new charge. It is well settled law that no person can be declared as “**corrupt person**” unless proved by cogent and sufficient evidence. Reliance can be placed on **2005-PLC(CS)1015 (citation-j) & 2014 PLC(CS)590 (citation-a)**. But the Competent Authority while passing the impugned order, has overlooked this important aspect of the case and as such it has caused grave injustice to the appellant on this count
- C. That the Inquiry Committee examined all the fresh recruits/appointees in order to prove the allegations in respect of corruption against the appellant and co-accused. These witnesses have categorically admitted that they had not given any illegal gratification to any officer

of the department in respect of their appointments despite the fact that they were thoroughly cross-examined by the Inquiry Committee but nothing favourable could be elicited from their mouth in favour of the department against the appellant. It would be advantageous to reproduce herein the relevant portion of the said statement for facility of reference:-

This inquiry committee recorded statements of recruits and none of them mentioned about bribing any police officer in getting appointed through this recruitment process and remained tightlipped.

Thus, it is abundantly clear from the above statement that the stance of department in respect of corruption has been totally negated. But despite thereof, the Inquiry Committee has discarded this important piece of evidence without any cogent and valid reasons. Therefore, the impugned order passed on the basis of such findings is against the spirit of administration of justice.

- D.** That the Competent Authority was bound under the law to examine the record of inquiry in its true perspective and in accordance with law and then to apply his independent mind to the merit of the case but he failed to do so and awarded major penalty of compulsory retirement from service to the appellant despite the fact that the allegations as contained in the charge sheet had not been proved in the so-called inquiry. This fact has been categorically admitted by the Committee in its report. The relevant portion of the said admission is reproduced herein for facility of reference:-

Noor Muhammad SI/PC.

He was serving as OSI FRP, Kohat. The charges levelled against him could not be proved.

Thus, the impugned order has no sanctity under the law.

- E.** That the appellant was a civil servant and was required to be dealt with in accordance with **Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011**. But the

Competent Authority failed to do so and initiated disciplinary action against the appellant under **Police Rules 1975**. Thus, the entire process of initiating disciplinary action against the appellant from the top to bottom is “ **Coram Non Judice** ”. Therefore, the unilateral impugned order was malafide, incompetent, capricious, perverse having no sanction of law, was in excess of powers, in derogation of settled rules and principle of law, against the public policy and also against the interest of Public Authority and trust.

- F. That the appellant was not served with a show cause notice to explain his position in respect of allegations as well as inquiry findings and awarding of major penalty. Therefore, the Competent Authority has blatantly violated the law laid down by **August Supreme Court of Pakistan reported in 2009-SCMR-605 (citation-e)**. The relevant citation is reproduced as under:-

(C) CIVIL SERVICE---

---Misconduct, charge of---Employee's right to show-cause notice before passing of termination order against him by competent authority---

Therefore, the impugned order is liable to be set aside on this score alone.

- G. That the appellant was also not provided any opportunity of personal hearing before imposition of Major Penalty of compulsory retirement from service being the requirement of law as laid down by **August Supreme Court of Pakistan in case reported in 2006-SCMR-1641 (citation-c)**. The relevant citation is mentioned below:-

(c) Government Servants (Efficiency and Discipline) Rules, 1973---

----Rr. 4(b), 5 & 6---Inquiry proceedings---Major penalty, imposition of---Personal hearing to civil servant, opportunity of---Scope---Such opportunity must be afforded by the authority competent to impose major penalty or his delegatee.

Therefore, the impugned order is required to be reversed on this count.

- H. That the Competent Authority was under Statutory obligation to have provided a copy of inquiry report to the appellant but he failed to do so and as such blatantly violated the law laid down by **August Supreme Court of Pakistan reported in 1984-SCMR-451 (citation-a)**. The relevant citation is as follows:-

Constitution of Pakistan (1974)----

----- Art. 212(3)--N: W. F. P. Civil Servants (Efficiency and Discipline) Rules, 1973, r. 5-Civil services-Departmental enquiry-Order of dismissal of civil servant passed without supplying copy of enquiry report and issue of second show-cause notice-Held, violation of Rules and hence set aside.-[Civil service]

However, it is added that the attached copy of inquiry report was obtained by the appellant through personal source and that too after awarding of major penalty of compulsory retirement from service. Thus, the impugned order is bad in law.

- I. That the Competent Authority has passed the impugned order in mechanical manner and the same is perfunctory as well as non-speaking and also against the basic principle of administration of justice. Therefore, the impugned order is not tenable under the law.
- J. That the impugned order is based on conjectures and surmises. Hence, the same is against the legal norms of justice.
- K. That the impugned order is suffering from legal infirmities and as such the same is bad in law.
- L. That the appellant would like to seek the permission of this Hon'ble Tribunal to advance some more grounds at the time of arguments.

In view of the above narrated facts and grounds, it is, therefore, humbly prayed that the impugned order No. 1559-94/SE-II dated 19-8-2014 passed by the Deputy Inspector General of Police, Headquarters Khyber Pakhtunkhwa Peshawar, may very graciously be set aside and the appellant may kindly be reinstated in service with full back wages and benefits.

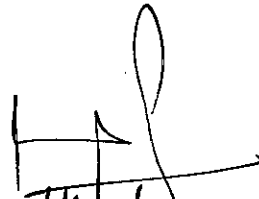
Any other relief deemed proper and just in the circumstances of the case, may also be granted.

Dated: 1-12-2014



Appellant

Through



Rizwanullah

M.A. LL.B

Advocate High Court, Peshawar

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. _____/2014

1. Noor Muhammad, Ex-Sub Inspector R/O Zeera Banda, Tehsil Takht-e-Nasrati, District Karak.

APPELLANT

VERSUS

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa & others.

RESPONDENTS

AFFIDAVIT

I, Noor Muhammad, Ex-Sub Inspector R/O Zeera Banda, Tehsil Takht-e-Nasrati, District Karak, do hereby solemnly affirm and declare that the contents of the accompanied service appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.




Deponent

Subject: **FACT FINDING ENQUIRY INTO ALLEGATIONS OF CORRUPTION IN FRP RECRUITMENT.**

Sir,

Under your kind directions vide your good office Memo: No.1357-61/PPO, dated 14.02.2014 the Enquiry Committee has conducted preliminary enquiry into the allegations of irregularities, corruption and extortion of money in FRP recruitment. The enquiry has been completed and fact finding report is as under: -

1. Advertisement for inviting applications.

- Initially advertisement for inviting applications for enrollment as constable in FRP was published by the AIG Establishment CPO in the daily Aaj dated 17.07.2013. **(Annex: A)**
- Subsequently in the daily Mashriq and Aaj another identical advertisement by the Deputy Commandant FRP-KPK was published on 20.07.2013 which cancelled the advertisement published on 17.07.2013. **(Annex B)**
- In these advertisements the total number of vacancies were not reflected.
- Similarly distribution of vacancies to each FRP Range has also not been shown.

2. Formation of recruitment committees.

- The CPO vide order No.8872-78/E-II, dated 05.08.2013 constituted recruitment committees for Peshawar, Mardan, Hazara, Malakand, Kohat, Bannu and DIKhan. **(Annex C)**

3. Schedule for recruitment.

- The advertisement for enrollment of FRP constables was detailed as follows:-
 - Submission of applications 23.07.2013 to 31.07.2013.
 - Physical test 15 and 16.08.2013.
 - Written test 17.08.2013
 - Interview 19 and 20.08.2013 **(Annex B)**

4. Process of recruitment.

Region	District	Total number of candidates appeared	Candidates Selected by Committee	Candidates directly recruited by FRP HQs without observing prescribed procedure and schedule	Candidates recruited by the un-notified committee
Kohat	Karak	1405	10	7	1
	Kohat	692	8	2	10
	Hangu	167	24	0	0
Total	3	2264	42	9	11
Bannu	{Bannu}		22	56	26
	{Lakki}		12	27	5
Total	2	2211	34	83	31
DIKhan	{DIKhan}		43	19	13
	{Tank}		38	0	0
Total	2	2208	81	19	13
Malakand	Malakand			15	5
	Swat	604	98	0	11
	Buner	197	49	2	1
	Shangla	500	29	22	5
	Dir Lower	390	96	2	2
	Dir Upper	271	107	0	0
Total	6	2326	440	52	65

ATTESTED

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	Hazara				5
Hazara	Maintanet				0
	Kohistan	Not available	Not available	Not available	0
	Haripur	Not available	Not available	16	0
	Torghar	Not available	Not available	Not available	0
Total	6	1899	92	18	6
Mardan	Mardan	1818	83	13	4
	Swabi	389	9	27	3
	Nowshera	Not available	73	111	1
	Charsadda	Not available	36	28	0
Total	4	2207	201	179	8
Peshawar	Peshawar	Not available	Not available	18	35
Grand Total	25	13859	962	378 (Annex-C-I)	169 (Annex-

It is worth mentioning here that from the perusal of nominal rolls of FRP Kohat it was ascertained that:-

- Twenty Eight candidates were recruited without committee directly by the SP (DSP) FRP Kohat Range.
- They were recruited on different dates after the committee recruitment.
- Some of them were having domiciles other than Kohat. (Annex-D)

Probe of record of other FRP Ranges is also suggested


- **Irregularities in recruitment of FRP HQrs, Peshawar.**
 - o No advertisement for recruitment was made through newspapers.
 - o Neither committee for recruitment in FRP HQrs Peshawar was constituted nor request for constitution of committee was made by the quarter concerned.
 - o Record reveals that candidates of Region Kohat, Banna, DIKhan, Malakand, Hazara, Mardan Peshawar and Malakand district were recruited by the FRP HQrs.
 - o The recruitment was made after the schedule dates. (Annex-B)

Answer papers of candidates when requisitioned, it was replied that those have been destroyed. (Annex-E)

- o The FRP HQrs has claimed that approval for recruitment was allowed by the then PPO/IGP however perusal of Memo: No:595/PA, dated 20/08.2013 transpires that the then PPO directed as follows :

"Continue transparency, merit must be observed through committee". (Annex-F)

- o The process for selection of candidates in FRP HQrs reflects that the directives have not been complied with.
- o 37 Constables without number were transferred to FRP Kohat where they were allotted constabulary numbers.

ATTESTED

 Adv

Probe of record of other FRP Ranges is also suggested.
(Annex-G)

- o The FRP HQrs Peshawar in order to justify recruitment in FRP HQrs has made reference to the CSO to honorable Chief Minister to enlist candidates. However in this regard no written direction is available on record. Reply received from FRP Annex - H.

Conclusion

1. The advertisement floated by the AIG Establishment CPO and its subsequently cancellation by the Deputy Commandant FRP and publishing another advertisement is irregular.
2. Advertisement does not reflect the number of vacancies.
3. Distribution of vacancies for each FRP range was not reflected in the advertisement.
4. 378 candidates were recruited by the FRP HQrs without adopting prescribed procedure and schedule.
5. 169 candidates were recruited by the un-notified committee for the FRP HQrs covering all regions.
6. 28 candidates were recruited by the SP FRP Kohat without adopting proper procedure and schedule.

Recommendation

In the light of above,

1. Prima facie gross misconduct on the part of following officials has been committed and they need to be charge sheeted for proper departmental enquiry.
 - i. Younas Javed the then Deputy Commandant FRP HQrs, Peshawar.
 - ii. Hashmat Ali Zaidi SP (DSP) FRP Kohat Range.
 - iii. Shakil Ahmad the then Reserve Inspector FRP HQrs, Peshawar.
 - iv. Zar Khan, ASI the then OSI FRP HQrs, Peshawar.
 - v. Amin Khan SI the then Reader to Deputy Commandant FRP HQrs, Peshawar.
 - vi. Noor Muhammad SI/PE. the then OSI FRP Kohat Range.
2. On the pattern of preliminary enquiry conducted regarding the FRP Kohat Range, enquiry of other FRP Ranges may also be carried out.
3. With regard to the enlistment of 378 and 169 candidates of different regions made by the FRP HQrs and 28 candidates of FRP Kohat Range made by SP (DSP) FRP Kohat Range in irregular fashion without adopting prescribed rules/criteria, a committee is suggested to be constituted to conduct probe with regard to their physical and academic eligibility.

(ISHTIAQ AHMAD MARWAT)
Regional Police Officer,
Kohat Region, Kohat.
Member Enquiry Committee

(SHAUKAT HAYAT) ESP
Addl. Inspector General of Police,
Investigation, Khyber Pakhtunkhwa,
Peshawar.
Chairman Enquiry Committee.

CHARGE SHEET

I, Mubarak Zeb, Deputy Inspector General of Police Headquarters as Competent Authority, hereby charge you SI/PC Noor Muhammad the then OSI FRP/Kohat as follows:-

1. That you in connivance with your officer facilitated the illegal process of recruitment of 28 candidates in FRP recruitment 2013.
2. That you deliberately and knowingly assisted the officer in above recruitment which was made after the committee recruitment and
3. That with your connivance candidate having domicile of other districts were also recruited.

By reason of the above, you appear to be guilty of misconduct under the Police Rules (amended vide NWFP gazette, 27th January 1976) and have rendered yourself liable to all or any of the penalties specified in the said rules.

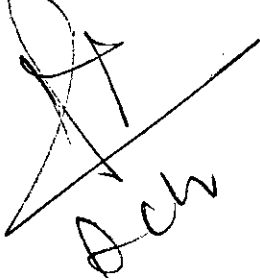
You are therefore, directed to submit your defense within seven days of the receipt of this Charge Sheet to the Enquiry Officer/Committee.


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

You are directed to intimate whether you desire to be heard in person.

A statement of allegation is enclosed.

ATTESTED


A. Ch


(MUBARAK ZEB) PSP
Deputy Inspector General of Police,
Headquarters Khyber Pakhtunkhwa,
Peshawar.

1104
2014

Annex - C

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DISCIPLINARY ACTION

I, Mubarak Zeb, Deputy Inspector General of Police, Headquarters Khyber Pakhtunkhwa Peshawar being Competent Authority, am of the opinion that SI/PC Noor Muhammad the then OSI FRP/Kohat, have rendered himself liable to be proceeded against, as he have committed the following acts of omissions/commissions within the meaning of the Police Rules (amended vide NWFP gazette, 27th January 1976).

STATEMENT OF ALLEGATIONS

1. That he in connivance with his officer facilitated the illegal process of recruitment of 28 candidates in FRP recruitment 2013.
2. That he deliberately and knowingly assisted the officer in above recruitment which was made after the committee recruitment and.
3. That with his connivance candidate having domicile of other districts were also recruited.

The said act of negligence depicts height of inefficiency, disobedience indiscipline attitude and lack of professionalism which amounts to grave misconduct on his part warranting stern disciplinary action against him.

For the purpose of scrutinizing the conduct of the said officer with reference to the above allegations, an Inquiry Officer/Committee consisting of the following officer (s) of the Police Rules (amended vide NWFP gazette, 27th January 1976).

1. DIg Saeed Waqar, RPO Mardan
2. SSP Mohammad Ali, DPO Abbottabad
3. SP Abdul Rahid, Dy. Commandant FRP.

The Inquiry Committee/Officer (s) shall, in accordance with the provision of the said Rules, provide reasonable opportunity of hearing to the accused officers, record and submit its finding within 25 days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

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(MUBARAK ZEB) PSP
Deputy Inspector General of Police,
Headquarters Khyber Pakhtunkhwa,
Peshawar.

REPLY TO THE CHARGE SHEET

Respected sir,

The para wise reply to the charge sheet and statement of allegation are produced below:

Reply to allegation No. 1

All the recruitments were made with the approval of the committee constituted by the Competent Authority. Initially, those candidates were declared successful who acquired 50% marks in the test and interview. 32 posts in District Hangu were left as those individuals failed to get 50% marks. The passing marks from 50% to 20% were made by the Provincial Police Officer in order to fill up the vacancies which remained unfilled due to the fact that the remaining 32 candidates failed to obtain 50% marks.

The 32 candidates were appointed after the reduction in the qualifying marks to 20%. All such candidates who secured 20% and above, and there cases were earliest examined by the committee were appointed in compliance with the orders of PPO as well the Chairman of the Committee as per his endorsement on the order (copy attached).

Reply to allegation No. 2

The documents/ applications of all the candidates were placed before the Committee. The remaining 32 candidates were not appointed by that time, because of 50% passing marks, after the order of the Provincial Police Officer the same was reduced to 20%, accordingly the leftover candidates were appointed out of which 28 reported for duty whereas, 4 didn't join. The appointments were made in accordance with Law only those candidates were appointed who earlier failed to get 50% marks but subsequently when passing marks were reduced to 20% those were appointed.

Reply to allegation No. 3

All recruitments were made as per prescribed procedure. No out District candidate was appointed this can be checked from their Service Rolls. All 28 working Constables were appointed after their cases and documents were thoroughly checked by the Committee. The appointments were made later only because the letter for reduction from 50% to 20% was issued after the appointment of the Candidates who got 50% marks.

It is therefore, requested that the inquiry may be filed and I may be exonerated from the same.

Noor Muhammad

Yours obediently

(NOOR MUHAMMAD)

Sub Inspector
Central Police Office
Peshawar

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1. Introduction

This Inquiry Committee is constituted by the Provincial Police Officer Khyber Pakhtunkhwa vide his Order No. 763-69/SE-I dated 09-04-2014 read with Order no. 1062-68 dated 16/4/2014 to investigate into allegations of corruption in FRP recruitment. Relevant documents in this regard were forwarded to this committee vide DIG HQs letter No. 1557/SE-1 dated 8 May 2014 for perusal and examination. This Report contains the Committee's observations on the whole case, a brief account of the proceedings of the Inquiry Committee, and a detailed assessment of the facts investigated, along with the findings on definite charges framed by relevant competent authorities.

2. Background

The Inspector General received numerous complaints about allegations of corruption and irregularity in the recruitment process of constables in Frontier Reserve Police. A fact finding inquiry committee was constituted comprising of Additional Inspector General (Investigations) and Regional Police Officer, Kohat that submitted its recommendations on 2nd April 2014 wherein it recommended action against the following officers:

1. Mr. Younas Javed (Former Deputy Commandant FRP)
2. Shakil Ahmad (Former R.I, FRP HQrs)
3. Zar Khan ASI (Former OS.I FRP)
4. Amin Khan S.I (Reader to Deputy Commandant FRP)
5. Hashmat Ali Zaidi (Former SP FRP Kohat)
6. Noor Muhammad SI/PC (Former OSI FRP Kohat)

The charge attributed to officers mentioned at Sr No.1 to 4 is that they share a role in irregular recruitment of 380 and 168 constables & transferred 37 constables without constabulary numbers to FRP Kohat. The charge attributed to officers mentioned at Serial Nos. 5 & 6 is that they played their role in recruitment of 28 constables in violation of the prescribed rules. Detailed charge for each officer in purview of this inquiry committee is reproduced in section 4 of this report.

The fact finding inquiry committee also observed in their report the following observations:

- The advertisement published by AIG(E) was cancelled and another advertisement was published by Deputy Commandant for no obvious reason except that applications from candidates were invited in SP/FRP range instead of respective DPO offices.

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- No committee was constituted for recruitment in FRP HQs Peshawar.
 - Answer papers for candidates when requisitioned by fact finding inquiry were responded to as destroyed.

3. Constitution of Formal Inquiry Committee

The Inspector General desired that formal enquiry is conducted into the charges and thus this inquiry committee was tasked to probe into the Charges attributed to the following officers during the recruitment process in FRP, KP.

- DSP Hashmat Ali Zaidi (Former SP FRP Kohat)
- SI/PC Noor Muhammad (Former OSI FRP Kohat)
- Inspector Shakil Ahmad (Former R.I, FRP HQrs)
- ASI Zar Khan (Former OS.I FRP)
- S.I Amin Khan S.I (Reader to Deputy Commandant FRP).

4. Charges

This Inquiry committee was tasked to probe into the charges as mentioned against each.

Hashmat Ali Zaidi (Former SP FRP Kohat)

"That while posted as Acting SP/FRP Kohat have recruited 28 candidates directly without committee and without adopting proper procedure and schedule; That the above recruitment was made fraudulently by you after the committee recruitment and That candidates were recruited having domicile of other districts."

SI/PC Noor Muhammad (Former OSI FRP Kohat)

"That you in connivance with your officer facilitated the illegal process of recruitment of 28 candidates in FRP recruitment 2013; That you deliberately and knowingly assisted the officer in above recruitment which was made after the committee recruitment and That with your connivance candidates having domicile of other districts were also recruited."

Inspector Shakil Ahmad (Former R.I, FRP HQrs)

"That you in connivance with your officer facilitated the illegal process of recruitment of 378 candidates; That you also assisted in recruitment of 169 candidates recruited by un-notified committee and That with your ulterior motive also transfer 37 constables to FRP/Kohat for allotment of Constabulary numbers"

ASI Zar Khan (Former OS.I FRP)

"That you in connivance with your officer facilitated the illegal process of recruitment of 378 candidates; That you also assisted in recruitment of 169 candidates recruited by un-notified committee and That with your ulterior motive also transfer 37 constables to FRP/Kohat for allotment of Constabulary numbers"

S.I Amin Khan S.I (Reader to Deputy Commandant FRP).

"That you in connivance with your officer facilitated the illegal process of recruitment of 378 candidates; That you also assisted in recruitment of 169 candidates recruited by un-notified

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committee and That with your ulterior motive also transfer 37 constables to FRP/Kohat for allotment of Constabulary numbers”.

5. Brief account of the proceedings.

- This committee with brief intervals received written replies of the accused officers in reply to Charge sheet and statement of allegations served upon them. These officers denied the allegations in totality and contended that they have acted in judicious and lawful manner in discharge of their duties. Their replies are placed as Annexure (A-E).
- On 25/05/2014, Twenty-four constables out of Thirty Two Constables which were recruited for Hangu after reduction in qualifying marks from 50% to 20% (Annexure-F) were summoned and their version / account on the selection process recorded. They are undergoing training at RTW Manshera. Initially SP FRP Kohat recruited 32 constables out of which 7 did not report for duty and 1 was later dismissed thus this committee could examine only twenty four candidates attributed in the charge sheet.
- On 26/5/2014 Service record was received by this Committee for the above 24 constables alongwith merit list, answer sheets etc which were examined and scrutinized to ascertain that they belonged to District Hangu.
- On 6 June 2014 this committee requested the incumbent Registrar, CPO Peshawar to verify the letters provided by Mr. Younas Javed to fact finding inquiry contending that the then I.G has granted approval for entertaining candidates of other districts at FRP HQs Peshawar and accorded approval for destroying the record including answer sheets. (letters annexed as G&H)
- On 11 June 2014 Registrar CPO Mr Farhad Ali vide his letter No. 3538/E-IV informed this committee that original file/ record of the I.G's approval is not available on record. (Annexure-I)
- Between the period 11 -13 /6/2014, thirty two candidates enlisted by Peshawar Recruitment Committee were randomly selected having domiciles of different districts. They were summoned and their version on selection process recorded. (Annexure-J).
- On 19 June 2014 this committee summoned Mr. Javed (Ex registrar) CPO who stated that all proposals except transfer cases are returned to respective units in original and no record is maintained in CPO. (Annexure-K)

6. Inquiry Committee's observations on the whole case:

The general observations of the Committee that go to the heart of the entire case are in respect of the following two matters:

- I. The Recruitment Committee of FRP HQs Peshawar was a **Coram non judice** as it carried out its proceedings without a Secretary and a single officer assumed the role of

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two Members which tantamount to defeat the very essence and cause for which recruitment committees were constituted i.e. ensuring transparency.

- II. The recruitment was carried out by FRP HQs Peshawar in contravention to the Provincial Police Officer's Instructions circulated vide Order No. 19702-9/E-II dated 13 August 2013 i.e. "Instructions for recruitment in Khyber Pakhtunkhwa Police" thus the enlistment stated as Charges by Recruitment Committee is carried out in complete defiance of the said Instructions cannot be considered as authorized and legitimate.

7. Facts of the Case

1. Applications were invited for enrollment in FRP as per schedule:
 - Submission of applications in SP/FRP Range office: 23-31 July 2013.
 - Physical test: 15-16 August 2013
 - Written Test: 17 August 2013
 - Interview: 19-20 August 2013
2. The Recruitment committee for Peshawar comprising of DIG/Investigations, HQrs: as Chairman and Mr. Younas Javeed Mirza represented as member -I in the capacity of Deputy Commandant FRP, Peshawar and as member-II in the capacity of SP, FRP Peshawar Range, and carried out the proceedings without a Secretary.
3. Member of the above recruitment committee (Mr. Younas Javed) inordinately exceeding his mandated task and sent a letter Number 595/PA dated 20 August 2013 to the then PPO for entertaining applications of candidates falling outside the mandate of Peshawar recruitment committee, stating that 'many candidates of other districts were present for physical and written tests but being candidates of other districts, the selection committee was unable to enlist them'.
4. The above quoted letter produced on record reflects the directives of the then PPO as: **"Continue transparency, merit must be observed through committee"**. It is pertinent to mention that instant letter was sent to PPO on 20 August 2013 (the last date for interviews).
5. On the basis of above, the Recruitment Committee prepared two lists with 380 candidates and 168 candidates as 'Waiting list Nominal roll of FRP Hqrs: Peshawar Candidates of Different Ranges'. (annexure - L)
6. Following orders for enlistment of constables were made at dates mentioned against each.

Order Number	Dated	Serial Number corresponding to above lists.
414-45/OSI	30/8/2013	01-90
422-24/OSI	02/09/2013	91-168
508-10/OSI	18/9/2013	340-380

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574-78 / OSI	27/9/2013	01 to 157
579-83/OSI	2/10/2013	158-257
613-17/OSI	28/10/2013	258-339

22

7. Detailed assessment of the facts inquired.

- This committee associated Mr. Younas Javed, Former Deputy Commandant FRP, who otherwise does not fall in the mandate of this inquiry committee above quoted reference in section 1 of this report and instant order of inquiry, however his association in the inquiry proceedings was deemed necessary for accounting his version on the enlistment process as mostly supportive documents produced by accused officers have his signatures. He verbally stated that he was acting on the verbal orders of the CSO to Chief Minister Khyber Pakhtunkhwa and he has already mentioned this fact in letter No. 1665/EC dated 4 March 2014 addressed to Additional I.G Investigations KP which were made part of fact finding inquiry. He further claims that he was asked by CSO to CM to fill vacant vacancies and he moved a case to entertain the candidates of other districts in Peshawar. Mr. Younas Javed also mentioned that Inspector Shakeel, R.I was very influential in the process of recruitment of constables and he used to place letters in front of him and he succumb to the pressure and sign those official letters. In this regard he relied on above quoted letters, which are placed as Annexure- M&N and his assertion is found to be wrong and holds no ground.
- It is beyond understanding of this committee, as to how candidates ineligible on the basis of Domicile and not entitled to be examined at Peshawar were measured physically and tested in written exam.
- This committee also fails to comprehend the need for destruction of record including written papers where clear order in the form of "Instructions for recruitment in Khyber Pakhtunkhwa Police" issued by Provincial Police Officer's vide Order No. 19702-9/E-II dated 13 August 2013 states in para 2(c) 'written papers are to be preserved for a period of one year'. These instructions were circulated well in advance of recruitment process and when these instructions were in place, a need for destruction of papers would make things doubtful and dubious. After having seen the state of affairs on the basis of which proceedings started, and subsequent unavailability of record, nothing is left to be discussed as the above conduct of the then recruitment committee speaks for itself and needs no further deliberation. Therefore, by no stretch of imagination, it can be held that the process was a transparent one
- In response to confirmation about availability of the then PPO's approval as relied upon by Mr. Younas Javed the incumbent Registrar CPO Mr Farhad Ali vide his letter No.

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3538/E-IV replied that original file/ record of the I.G's approval for appointment of constables of other districts and destruction of answer papers is not available on record.

- o The incumbent Registrar CPO has stated that no record found in respect of approval granted by the PPO, which renders this recruitment as unauthorized and reply of Deputy Commandant is unsatisfactory and evasive.

This inquiry committee recorded statements of recruits and none of them mentioned about bribing any police officer in getting appointed through this recruitment process and remained tightlipped. During their cross questioning, the candidates gave shaky and inaccurate responses about the place where they were tested, duration of written paper and the office where they submitted their documents. This hint at the fact that they did not go through standard recruitment process and were appointed through back door channels. In instant case, irregularity and corruption seems obvious.

8. Conclusion

This inquiry committee is of the view that Irregularity and deviation from established rules and principles during the recruitment process in question is established beyond shadow of doubt. In view of the findings on specific Charges against each officer, the committee observed as follows: DSP Hashmat Ali Zaidi has stated that in Hangu the number of vacant posts were 58, however the recruitment committee selected 24 candidates having acquired 50% score and in the meantime the PPO vide his Order No. 20463-9/E-II dated 26-8-2013 reduced the qualifying marks from 50% to 20 % for certain districts. Candidates hailing from Hangu also became beneficiaries of this relaxation and candidates who appeared in the written exam and formerly could not attain 50% marks. He enlisted those candidates, who turned out to be qualified after relaxation, but this order fell short of official requirement i.e endorsement by Chairman and Secretary. The service record / roll etc supports his stance and goes against the charge that candidates have domicile of other Districts. Mr. Hashmat Zaidi also relies on the fact that these candidates went through selection process but became eligible for selection after relaxation is verifiable from the from answer sheets duly verified by invigilator i.e. DSP Gul Jamal and produced on record of this report. (Annex-O).

The Committee has reached to following conclusions regarding the role and conduct of DSP Mr. Hashmat Ali Zaidi, acting SP, FRP, Kohat.

1. He is correct in his assertion that the vacant posts for Hangu District were filled through enlistment of 32 Constables after the directions of worthy Inspector General of Police wherein the criterion for recruitment was relaxed and passing marks reduced from 50% to 20% in case of a few districts including Hangu. However, Mr. Hashmat Shah failed to adopt the proper procedure of approving the same from the Committee constituted for the purpose. hence procedural flaw

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remained. The act of omission by Mr. Hasmat Ali Zaidi is not based on Mala fide and his ill intentions during the inquiry are not established.

2. Mr. Hashmat Shah, SP, FRP, Kohat did produce the answer sheets of the candidates recruited subsequently by him after the initial recruitment of 24 candidates by the Committee. The answer sheets were signed/initialed by the invigilator, DSP Gul Jamal.
3. Mr. Hashmat Shah SP, FRP, Kohat claimed in his statement that the charge alleged in Charge Sheet that he recruited candidates who had domiciles other than District Hangu is incorrect. In his defence, he has furnished the details of 32 candidates recruited by him subsequent to the initial recruitment, endorsed as Annex-P according to which the candidates are residents of District Hangu. The perusal of the Service Rolls of the candidates recruited also confirmed that they were Hangu domiciled. Hence this allegation could not be proved against Mr. Hashmat Shah.

Inspector Shakeel.

Inspector Shakeel was serving as Reserve Inspector during the period that the instant recruitment in FRP, Headquarters took place. He is charged in proceedings which are reproduced in Section-4 of this report. He has denied the allegations and charges leveled against him. A probe was made through different sources regarding his role in recruitment and his general reputation and conduct while serving in FRP. It has transpired that Inspector Shakeel in the capacity of RI, FRP, Headquarters was very influential and he was a central figure in the irregularities committed during the instant recruitment. Further reliance is made on the statement of Mr. Younas Javed as stated in part 7 of this report. He has a reputation of a corrupt officer who allegedly lives beyond his ostensible means. It has also been learnt through reliable sources that he has amassed wealth and assets. However, the same was not probed into as it was beyond the mandate of this Inquiry Committee. Moreover this entire scandal revolves around his name. On condition of anonymity the committee was told by many sources of his involvement in corrupt practices in the recruitment process. He is recommended for major punishment.

Noor Muhammad SI/PC.

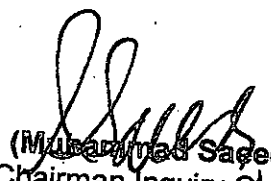
He was serving as OSI FRP, Kohat. The charges leveled against him could not be proved. However it is pertinent to mention that he enjoys the reputation of a corrupt officer who allegedly is living much beyond his ostensible means. During discreet probe it was revealed that he has made fortunes in former recruitments but since it is not in the mandate of this inquiry committee to investigate about the assets and property of these officers, hence the same was not probed into. He is recommended for major punishment.

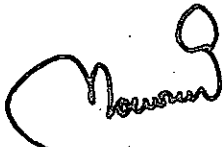
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Amin Khan S.I was serving as Reader to Deputy Commandant FRP. During discreet probe it was revealed that he has been the dealing hand and collected money from candidates. He is recommended for major punishment.


Zar Khan ASI of FRP was not OSI during the tenure when this recruitment was done while he was posted as OSI in December 2013; therefore he was erroneously charged and is recommended for exoneration of charges. The then OSI ASI Muhammad Ibrar could have been incorporated in the fact finding Inquiry and subsequently charge sheeted but since he was not charged and this inquiry committee did not have a mandate to inquire against him, hence he was not associated in these proceedings.

Certified that this Inquiry consists of eight (08) pages and each page bears initials of the undersigned members of Inquiry committee.


(Muhammad Saeed) PSP
Chairman Inquiry Committee
Regional Police officer
Mardan


(Muhammad Ali) PSP
Member
District Police officer
Abbotabad


(Abdul Rashid)
Member
District Police officer
Bannu

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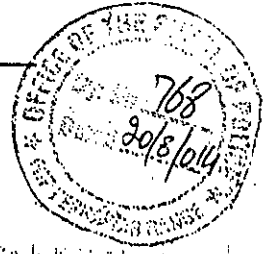


OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar

Annex - F 26

No. 1539-94/SE-II,
2014

Dated Peshawar 19 August



ORDER

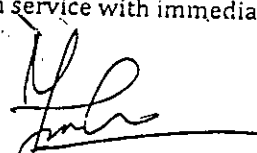
This order is issued to conclude the departmental enquiry proceedings against SI/PC Noor Muhammad who was charge sheeted on account of providing connivance and facilitating the officers in the illegal recruitment of 378 candidates in FRP Recruitment in 2013.

An Enquiry Committee vide Order No. 763-69/SE-I, dated 09.04.2014 was constituted to probe the allegations against the defaulting officer. As per the enquiry report, the defaulting officer enjoys the reputation of being a corrupt officer and he lives beyond ostensible means. It has also been proved against the defaulting officer in the enquiry report that he has made fortunes in the FRP recruitments. On the basis of this, the Enquiry Committee has recommended the imposition of major penalty on the defaulting officer.

In view of the findings/recommendations of the Enquiry Committee and after going through the relevant enquiry papers with regard to the recruitment in FRP, it transpires that the defaulter has involved himself in illegal practices whereby the Police Department has been brought into disrepute. Therefore, his retention in the department will definitely affect the moral of the Khyber Pakhtunkhwa Police.

In view of the above serious allegations, Mubarak Zeb, the DIG Headquarters Khyber Pakhtunkhwa (Competent Authority), in agreement with the findings of the Enquiry Committee held the officer guilty of misconduct as the charges have been proved against him, and under the KPK Police Rules 1975 vide Rule 5(5), I hereby impose major penalty of Compulsory Retirement on SI/PC Noor Muhammad (under suspension) from service with immediate effect.

Order announced.


(Mubarak Zeb) PSP
Deputy Inspector General of Police,
Headquarters Khyber Pakhtunkhwa,
Peshawar.

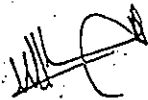
Endst. No. & date even.

Copy forwarded to the:-
All Addl: IGsP in Khyber Pakhtunkhwa.

- DIG/E & I CPO Peshawar
- Regional Police Officer Mardan.

Aectt/SRC/OASI

For MIA



SP/PRP/PR



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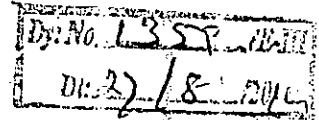
OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar

- AIG Establishment CPO Peshawar
- District Police Officer Abbottabad.
- Deputy Commandant FRP Khyber Pakhtunkhwa Peshawar.
- ✓ • All SsP FRP in Khyber Pakhtunkhwa.
- PSO to IGP Khyber Pakhtunkhwa Peshawar.
- PRO to IGP Khyber Pakhtunkhwa Peshawar.
- DSP/Operations Room CPO Peshawar to please fax the orders to all concerned.
- Registrar CPO Peshawar.
- Accountant CPO Peshawar.

10717/2014
Annex-67

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To
The Worthy Provincial Police Officer,
Government of Khyber Pakhtunkhwa,
Peshawar.



Subject:-

DEPARTMENTAL APPEAL AGAINST THE ORDER DATED 19-8-2014 PASSED BY THE LEARNED DEPUTY INSPECTOR GENERAL OF POLICE, HEADQUARTERS KHYBER PAKHTUNKHWA WHEREBY THE APPELLANT WAS AWARDED MAJOR PENALTY OF COMPULSORY RETIREMENT FROM SERVICE.

PRAYER IN APPEAL

By accepting this appeal, the impugned order No.1559-94/SE-II dated 19-8-2014 passed by the Learned Deputy Inspector General of Police, Headquarters Khyber Pakhtunkhwa Peshawar, may very graciously be set aside and the appellant may kindly be reinstated in service with full back wages and benefits.

RESPECTED SIR,

Short facts giving rise to the present appeal are as under:-

1. That the appellant joined the service of Police Department as Constable in the year 1989 and then rose up to the post of Sub-Inspector on account of his dedication, devotion and commitment to his job. He had 25 years unblemished service record to his credit.
2. That the appellant was performing his duty with great zeal, zest and devotion. But strangely, he was placed under suspension vide office order No.713-26 dated 2-5-2014 and "Preliminary Inquiry" was ordered to be conducted into allegations in respect of illegal appointments of constables. The appellant neither associated with the said inquiry nor any witness was examined in his presence. He was also not provided any opportunity of cross-examination. But the Inquiry Committee, on the basis of bald and naked evidence, held the appellant guilty of charges and recommended departmental action.

AFFIRMED

3. That thereafter, the appellant was served with a charge sheet wherein the following allegations were levelled against him:-
- i) That you in connivance with your officer facilitated the illegal process of recruitment of 28 candidates in FEP recruitment 2013.
 - ii) That you deliberately and knowingly assisted the officer in the above recruitment which was made after the committee's recruitment and.
 - iii) That with your connivance candidates having domicile of other districts were also recruited.

(Copy of charge sheet is appended as Annex-A).

4. That the appellant submitted reply, denied the allegations and also termed the same as fallacious, malicious and misconceived. He further added that he performed his duty justly, fairly and in accordance with law. He prayed that he may kindly be exonerated of the charges levelled against him in the charge sheet (Copy of reply is appended as B).
5. That the aforesaid reply was not found satisfactory and as such an Inquiry Committee was constituted to probe into the allegations levelled against the appellant in the charge sheet. The appellant was summoned to appear before the Committee and explain his position regarding the said allegations. He participated in the inquiry, denied the allegations and reiterated the same facts and justification as enumerated earlier. The Inquiry Committee, after evaluating the record, held that the charges levelled against the appellant were not proved and thereafter the Committee was bound to have exonerated him of the charges but they failed to do so and instead found him guilty of new charge i.e. " he enjoys the reputation of a corrupt officer who allegedly is living much beyond his ostensible means". This charge was neither included in the charge sheet nor the appellant was given any opportunity to explain his position in respect of new

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charge. Hence, the Inquiry Committee has travelled beyond the ambit of charge sheet and as such committed gross-illegality.

6. That thereafter, the appellant was neither served with a show cause notice nor he was provided any opportunity of personal hearing being the requirements of law. But he was straightaway awarded major penalty of compulsory retirement from service illegally by an order dated 19-8-2014 passed by the Deputy Inspector General of Police, Headquarters Khyber Pakhtunkhwa Peshawar.
7. That the appellant now assails the impugned order before the Hon'ble Appellate Authority inter-alia on the following grounds:-

GROUNDS OF APPEAL

- A. That the Competent Authority has not treated the appellant in accordance with law, Rules and Policy on the subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973. Therefore the impugned order is not sustainable in the eye of law.
- B. That when the Inquiry Committee arrived at the conclusion that the charges levelled against the appellant were not proved during the inquiry then the Committee was under statutory obligation to have absolved him of the said charges. But they failed to do so and instead held him guilty of new charge i.e " he enjoys the reputation of a corrupt officer who allegedly is living much beyond his ostensible means". This charge was neither levelled against the appellant in the charge sheet nor he was provided any opportunity to explain his position regarding the said charge. The Inquiry Committee was not competent under the law to travel beyond the ambit of charges levelled against the appellant in the charge sheet. Reliance can be placed on 1993-PLC(CS) 1097. Besides, there was no iota of evidence to connect the appellant with the commission of new charge. It is well settled law that no person can be declared as "corrupt person" unless

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proved by cogent and sufficient evidence. Reliance can be placed on 2005-PLC(CS)1015 (citation-j) & 2014 PLC(CS)591 (citation-a). But the Competent Authority while passing the impugned order, has overlooked this important aspect of the case and as such it has caused grave injustice to the appellant on this count

- C. That the Inquiry Committee examined all the fresh recruits/appointees in order to prove the allegations in respect of corruption against the appellant and co-accused. These witnesses have categorically admitted that they had not given any illegal gratification to any officer of the department in respect of their appointments despite the fact that they were thoroughly cross-examined by the Inquiry Committee but nothing favourable could be elicited from their mouth in favour of the department against the appellant. It would be advantageous to reproduce herein the relevant portion of the said statement for facility of reference:-

This inquiry committee recorded statements of recruits and none of them mentioned about bribing any police officer in getting appointed through this recruitment process and remained tightlipped.

Thus, it is abundantly clear from the above statement that the stance of department in respect of corruption has been totally negated. But despite thereof, the Inquiry Committee has discarded this important piece of evidence without any cogent and valid reasons. Therefore, the impugned order passed on the basis of such findings is against the spirit of administration of justice.

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- D. That the Competent Authority was bound under the law to examine the record of inquiry in its true perspective and in accordance with law and then to apply his independent mind to the merit of the case but he failed to do so and awarded major penalty of compulsory retirement from service to the appellant despite the fact that the allegations as contained in the charge sheet had not been proved in the so-called


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competent to impose major penalty or his delegatee.

Therefore, the impugned order is required to be reversed on this count.

G. That the Competent Authority was under Statutory obligation to have provided a copy of inquiry report to the appellant but he failed to do so and as such blatantly violated the law laid down by August Supreme Court of Pakistan reported in 1984 SCMR-451 (citation-a). The relevant citation is as follows:-

Constitution of Pakistan (1974)----

---- Art. 212(3)-N: W. F. P. Civil Servants (Efficiency and Discipline) Rules, 1973, r. 5-Civil services-Departmental enquiry-Order of dismissal of civil servant passed without supplying copy of enquiry report and issue of second show-cause notice-Held, violation of Rules and hence set aside.-[Civil service]

It is well settled law that the decision of August Supreme Court of Pakistan is binding on each and every organ of the state by virtue of Article 189 & 190 of the Constitution of Islamic Republic of Pakistan. Reliance can be placed on the judgment reported in 2010 P L C (C.S.) 80. (citation-b). The relevant citation is as under:-

(b) Constitution of Pakistan (1973)---

---Arts. 189 & 190 --Judgment of Supreme Court is binding on each and every organ of the State by virtue of Arts. 189 and 190 of the Constitution.

RESTED
A.C.W.

But despite thereof, the Competent Authority has failed to honour the said dictum of August Supreme Court of Pakistan.

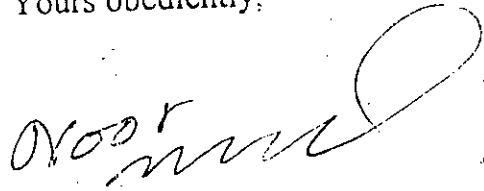
H. That the Competent Authority has passed the impugned order in mechanical manner and the same is perfunctory as well as

non-speaking and also against the basic principle of administration of justice. Therefore, the impugned order is not tenable under the law.

- I. That the impugned order is based on conjectures and surmises. Hence, the same is against the legal norms of justice.
- J. That the impugned order is suffering from legal infirmities and as such the same is bad in law.

In view of the above narrated facts and grounds, it is, therefore, humbly prayed that the impugned order No. 1559-94/SE-11 dated 19-8-2014 passed by the Learned Deputy Inspector General of Police, Headquarters Khyber Pakhtunkhwa Peshawar, may very graciously be set aside and the appellant may kindly be reinstated in service with full back wages and benefits.

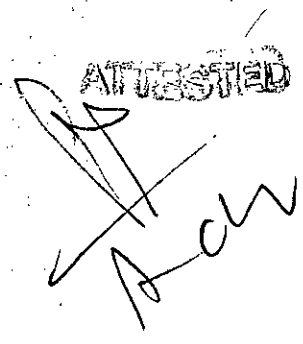
Yours obediently,



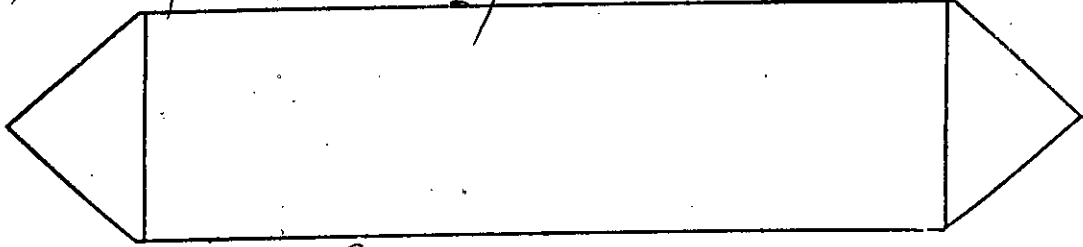
Noor Muhammad
Ex-Sub Inspector
R/O

Zeera Banda, Tehsil Takht-e-Nasrati,
District Karak.

Dated: 27-8-2014

ATTESTED


بعد الت جنر میں صبح کوس اور موٹل



2 مخائب
بنام

Service Appeal

Noor Mohammad

VS
Provincial Police Officer etc
باعث تحریر یافتہ

مورخہ

مقدمہ

دعویٰ

جرم

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام کے لئے سوان الہ اللہ کیلئے سوان الہ اللہ
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 ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو فرچہ دہر جانہ التوائے مقدمہ کے سبب سے وہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

المرقوم 20
ماہ کو 20
2014


واہ الع

بمقام

Noor
محمد کے لئے منظور ہے۔

Attested
Baw

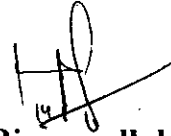
It is, therefore, humbly prayed that this Hon'ble Tribunal may very graciously be pleased to fix the said appeal alongwith the connected appeals No.1369 & 1340 of 2014, at the earliest convenience of this Hon'ble Tribunal.



Appellant/Applicant

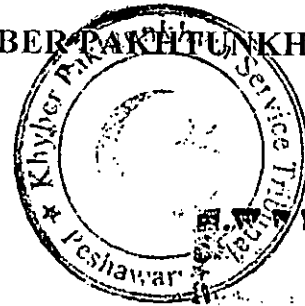
Dated: 31-3-2015

Through



Rizwanullah
M.A. LL.B
Advocate High Court, Peshawar

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA



Service Appeal NO. 08 / 2015

Mr. Banaras Khan DSP
R/O House No. 44, Street No. B/4
Momin Town
Dala Zak Road Peshawar

1474
26/12/2014

..... Appellant

VERSUS

- 1. Government of Khyber Pakhtunkhwa
Through the Chief Secretary Khyber Pakhtunkhwa at Peshawar
- 2. Secretary to the Government of Khyber Pakhtunkhwa
Home and Tribal Affairs Department at Peshawar
- 3. The Inspector General of Police (PPO)
Khyber Pakhtunkhwa at CPO Peshawar
- 4. Additional Inspector General of Police
Investigation, Khyber Pakhtunkhwa at CPO Peshawar
(Chairman Departmental Enquiry Committee)

..... Respondents

Certified true & correct copy
24.3.2015
Inspector General of Police
Khyber Pakhtunkhwa
Peshawar

Counsel for the appellant submitted an application for early hearing. Application is allowed and case is fixed for rejoinder and final hearing on 22.04.2015 instead of 26.08.2015. Notices be issued to the respondents. // //

Member Member

Date of Presentation of Application 27-3-2015
 No. of Pages 400
 No. of Exhibits 4
 No. of Witnesses 2
 No. of Documents 6
 Date 27-3-2015
 Date 27-3-2015

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.

Service Appeal No. 1370/2014.

Noor Muhammad.....(Appellant)

VERSUS

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

Subject:- COMMENTS ON BEHALF OF
RESPONDENTS.

Respectfully Sheweth!

Preliminary Objections:-

- a) The appeal has not been based on facts.
- b) The appeal is not maintainable in the present form.
- c) The appeal is bad for non-joining and mis-joining of necessary parties.
- d) The appellant is estopped by his own conduct to file the appeal.
- e) The appeal is barred by law and limitation.
- f) The appellant has not come to the Honorable Tribunal with clean hands.

FACTS:-

- 1) Correct to the extent that appellant was recruited as constable in FRP and he earned promotion on his own turn. He was found guilty of gross misconduct therefore he was compulsorily retired from service vide impugned order. Copy of order is already enclosed with original appeal as Annexure-F.
- 2) Correct to the extent that appellant was suspended because Provincial Police Officer (Respondent No. 1) received complaints with regard to commission of irregularities in the recruitment in FRP. First facts finding enquiry was conducted into the complaints. During facts finding truth was found in the complaints. The

0 3
13-02-15

enquiry committee also fixed responsibility. Therefore, charge sheet and statement of allegations were issued to appellant and others. Regular enquiry was ordered to scrutinize the conduct of appellant with reference to the charge leveled against him. Proper opportunity of defense was provided to appellant during regular enquiry.

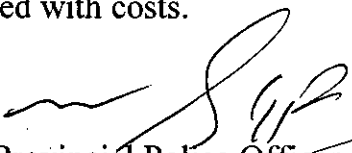
- 3) Correct to the extent that charge sheet in the light of finding report of facts finding enquiry was issued to appellant and others.
- 4) Incorrect, the reply submitted by appellant in response to the charge sheet was found unsatisfactory and eventually impugned order based on the finding report of regular enquiry was passed.
- 5) Incorrect, the enquiry committee constituted for scrutinizing the conduct of appellant with reference to the charges leveled against him conducted fair and transparent enquiry and submitted finding report based on facts.
- 6) Incorrect, charge sheet and statement of allegation were issued to appellant and opportunity of defense was provided to appellant but he failed to rebut the charges leveled against him.
- 7) Incorrect, the departmental appeal of appellant was rejected vide speaking order dated 03.02.2015. Appellant was also heard in person. Copy order enclosed as **Annexure-A**. The legal question/objection raised by appellant will be are explained during arguments.
- 8) Incorrect, the departmental appeal of appellant was rejected vide speaking order dated 03.02.2015. Appellant was also heard in person. Copy already enclosed as **Annexure-A**.

- 9) Incorrect, the appeal of appellant is not maintainable on the grounds advanced by appellant.

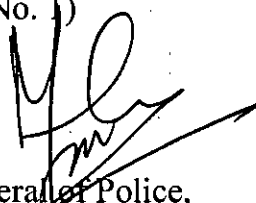
GROUNDS:-

- A) Incorrect, appellant was treated in accordance with law. Fair opportunity of defense was provided to appellant. Facts finding enquiry followed by regular enquiries were conducted before passing the impugned order.
- B) Incorrect, the enquiry committee constituted for scrutinizing the conduct of appellant with reference to the charges leveled against him conducted fair and transparent enquiry and submitted finding report based on facts. The finding report of the enquiry committee prove the impartiality and transparency exhibited by the enquiry committee.
- C) Incorrect, the alleged witnesses were beneficiaries of irregular recruitment therefore, they avoided charging the appellant.
- D) Incorrect, enquiry committee submitted finding report commensurate with the facts and material brought on record during course of enquiry which prove the impartiality of the enquiry committee.
- E) Incorrect, the disciplinary action against Police officers is regulated by Police Rules 1975 that is special law. The said rules are still intact therefore the action under Police Rules 1975 against appellant was lawful.
- F) Incorrect, facts finding enquiry followed by regular enquiry were conducted before passing the impugned order. Charge Sheet and statement of allegation were issued to appellant and opportunity of defense was provided to appellant but he failed to rebut the charges.


- G) Incorrect, appellant was heard by the enquiry committee and he was also heard by departmental authority before disposal of his departmental appeal.
- H) Incorrect, appellant has annexed the enquiry report with the appeal meaning there by that he had received the copy of enquiry report.
- I) Incorrect, detailed speaking order was passed on the basis of finding of enquiry committee and in the same vein speaking order was passed on the departmental appeal of appellant.
- J) Incorrect, the impugned order is just, legal and has been passed in accordance with law and rules.
- K) Incorrect, the impugned orders are well speaking. Furthermore, appellant has not explained the legal infirmities contained in the impugned orders.
- L) The respondents may also be allowed to raise other point during hearing of the case.
It is therefore, prayed the appeal of appellant may be dismissed with costs.


Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.

(Respondent No. 1)


Deputy Inspector General of Police,
Headquarter, Khyber Pakhtunkhwa,
Peshawar.

(Respondent No. 2)


Commandant,
FRP, Khyber Pakhtunkhwa,
Peshawar.

(Respondent No. 3)

Insp: Legal

FRP
HQs Pesh: 09/15

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

1. Noor Muhammad, Ex-Sub Inspector R/O Zeera Banda, Tehsil Takht-e-Nasrati, District Karrak.

APPELLANT/APPLICANT

VERSUS

1. Provincial Police Officer, Government of Khyber Pakhtunkhwa and others.

RESPONDENTS

*Put up to The Court
with relevant appeal for
orders.*

*Reader
concerned.*

**APPLICATION FOR EARLY HEARING OF
ABOVE CAPTIONED SERVICE APPEAL
ALONG WITH CONNECTED APPEALS.**

3/3/15

Respectfully Sheweth:-

The appellant submits with profound respect as under:-

1. **That**, the appellant has filed the above captioned appeal in this Hon'ble Tribunal, which came up for hearing on 13-2-2015 wherein the respondent furnished their comments and the case was fixed for rejoinder and arguments on 24-8-2015.
2. **That**, a short point is involved therein for determination by this Hon'ble Tribunal as the appellant was awarded major penalty of "compulsory retirement" in utter violation of law laid down by august Supreme Court of Pakistan in various judgments.
3. **That**, the service in question was the sole source of income of appellant to enable him to support his large family.
4. **That**, this Hon'ble Tribunal would provide speedy and inexpensive justice to the litigants as per law laid down by August Peshawar High Court in case reported in **PLJ-2013(Peshawar)-277(DB)**. The relevant citation is reproduced herein for facility of reference:-

CONSTITUTION OF PAKISTAN, 1973.

--Art.212--Administrative Courts and tribunals--Scope of--Purpose of Tribunals or special Courts is to dispense justice in a speedy and specialized manner.