

12.6.2014

Appellant in person and Mr. Bahroz Pirzada, SI (Legal) for the respondents present. Arguments already heard. Record perused. Vide our detailed judgment of to-day in connected Service Appeal No. 35/2014, Inayat-ur-Rahman Versus The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar etc., this appeal is also partially accepted as per detailed judgment. Parties are left to bear their own costs. File be consigned to the record.

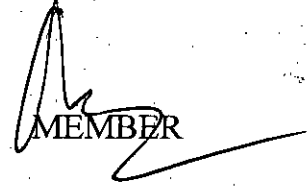
ANNOUNCED
12.06.2014.

MEMBER

MEMBER

26.2.2014

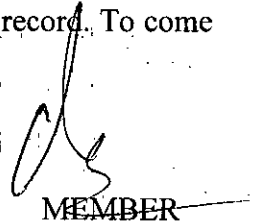
Counsel for the appellant and Mr. Muhammad Jan, GP with Hidayat Shah, Inspector (Legal) for the respondents present and reply filed. Copy handed over to counsel for the appellant. He does not want to file rejoinder. To come up for arguments on 10.6.2014.


MEMBER

2.4.2014.

Counsel for the appellant and Mr. Hidayat Shah, Inspector (Legal) with Mr. Muhammad Jan, GP for the respondents present. The learned GP requested for time to go through the record. To come up for arguments on 4.6.2014.

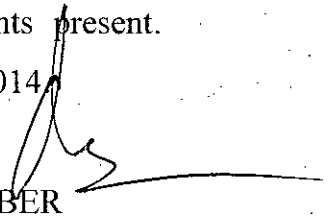

MEMBER


MEMBER

4.6.2014

Appellant with counsel and Mr. Muhammad Jan, GP with Bahroz Pirzada S.I for the respondents present. Arguments heard. To come up for order on 12.6.2014.


MEMBER

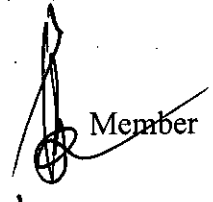

MEMBER

Counsel for the Appellant *Appeal No. 40/2014*
Mr. Jamshed Khan

3.

17.01.2014

Appellant ~~present~~ present and submitted an application for early hearing. To come up for arguments on early hearing application on 23.01.2014.


Member

4.

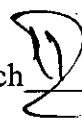
23.01.2014

Appellant with counsel present. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. Against the order dated 09.12.2013, the appellant filed departmental appeal on 13.12.2013, which has been rejected on 02.01.2014, hence the present appeal on 08.01.2014. Counsel for the appellant contended that the original order has issued by incompetent person further more that Syed Muhammad Bilal, DPO, Newshehra was one of the member of enquiry committee, hence the original order is illegal. He further contended that the impugned order is not a speaking order and has been issued in violation of Rule-5 of the Civil Servant (Appeal) Rules-1986. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply on 26.02.2014.


Member

5.

23.01.2014

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




Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 40/2014

| S.No. | Date of order Proceedings | Order or other proceedings with signature of judge or Magistrate |
|-------|---------------------------|---|
| 1 | 2 | 3 |
| 1 | 08/01/2014 | <p>The appeal of Mr. Jamshed Khan presented today by Mr. Rizwanullah 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 | 15-1-2014 | <p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>11-2-2014</u></p> <p style="text-align: right;"> CHAIRMAN</p> |

BEFORE THE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

In the matter
Service Appeal No. 40 /2014

Jamshed Khan
Ex-ASI

VERSUS


The Provincial Police Officer,
Government of Khyber
Pakhtunkhwa, Peshawar etc.

I N D E X

| S.No | Particulars | Annexure | Pages # |
|------|--|-----------|---------|
| 1 | <i>Service Appeal</i> | — | 1-6 |
| 2 | <i>Affidavit</i> | — | 7 |
| 3 | <i>Copy of Charge Sheet alongwith a statement of allegations</i> | "A and B" | 8-9 |
| 4 | <i>Copy of reply to the Charge Sheet</i> | "C" | 10-11 |
| 5 | <i>Copy of Enquiry Report</i> | "D" | 12-13 |
| 6 | <i>Final Show Cause Notice Dated 7-11-2013</i> | "E" | 14 |
| 7 | <i>Reply to Final Show Cause Notice</i> | "F" | 15-16 |
| 8 | <i>Impugned Order</i> | "G" | 17 |
| 9 | <i>Departmental Appeal Dated 13-12-2013</i> | "H" | 18-19 |
| | <i>Rejection of Appeal Dated 2-1-2014</i> | "I" | 20 |
| 10 | <i>Wakalatnama</i> | — | — |


Appellant

Through


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

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

Service Appeal No. 40 /2014

Jamshed Khan S/O ^{Sa Bah} Maher Din,
Ex-ASI,
R/O Mohallah Shamasabad Nizam Pur,
District Nowshera.

RECEIVED
NO. 28
08/01/14

APPELLANT

VERSUS

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Inspector General of Police Mardan Ranger, Mardan Khyber Pakhtunkhwa.
3. The District Police Officer, Nowshera.

RESPONDENTS

**APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
IMPUGNED ORDER NO. 2043 DATED
9-12-2013 PASSED BY THE DISTRICT
POLICE OFFICER, NOWSHERA
(RESPONDENT NO.3), AGAINST WHICH
A DEPARTMENTAL APPEAL WAS
FILED BUT THE SAME WAS DISMISSED
ON 2-1-2014.**

RECEIVED
8/1/14

Prayer in Appeal

By accepting this appeal, the impugned orders No. 2043 dated 9-12-2013 and No. 67/ES, dated 2-1-2014 passed by the respondents No.2 and 3 may very graciously be set aside and the appellant may kindly be re-instated in service with full back wages and benefits.

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

Respectfully Sheweth,

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

1. *That the appellant joined the service of Police Department as Constable on 20-6-1991 and rose to the post of Assistant Sub-Inspector on account of his dedication, devotion and commitment to his job. He had 22 years unblemished service record to his credit.*
2. *That the appellant was performing his duty with great zeal and zeast. He was served with a charge sheet alongwith statement of allegations on 24-10-2013 for misconduct due to his alleged involvement in crime and corruption and that he was also found in-efficient (Copy of charge sheet and statement of allegations are appended as Annex-A & B).*
3. *That the appellant submitted reply to the charge sheet and denied the allegations leveled against him and also termed the same as false and baseless (Copy Annex-C).*
4. *That the aforesaid reply was not found satisfactory and as such Enquiry Committee was constituted against him to probe into the allegations leveled against the appellant in the charge sheet. The Enquiry Committee consisted of two officers namely*

*Syed Muhammad Bilal ASP Cantt : Nowshera and Nazir Khan
DSP Headquarters: Nowshera.*

5. *That the Enquiry Committee conducted the so-called inquiry at the back of the appellant in which the appellant had neither participated nor any witness was examined in his presence (Copy Annex-D).*
6. *That the appellant was not provided any opportunity to cross-examine the prosecution witnesses. The statements of the appellant as well as his witnesses were also not recorded during the enquiry. Thus, he was denied opportunity of defence.*
7. *That the appellant was served with a Final Show Cause Notice on 7-11-2013 (Copy Annex-E). He furnished reply and denied the allegations and also termed the inquiry as farce and mockery in the eyes of law (Copy Annex-F).*
8. *That the appellant was awarded Major Penalty of dismissal from service by an order dated 9-12-2013 passed by the respondent No.3 (Copy Annex-G).*
9. *That the appellant felt aggrieved by the said order No.2043 dated 9-12-2013, filed a Departmental Appeal with the respondent No.2 on 13-12-2013 within the statutory period of law (Copy Annex-H). But the above appeal was dismissed on 2-1-2014 (Copy Annex-I).*
10. *That the appellant is jobless since his dismissal from service.*
11. *That the appellant now files this appeal before this Hon'ble Tribunal inter-alia on the following grounds.*

● GROUNDS OF APPEAL

- A. *That no fair and impartial enquiry was constituted against the appellant. The prosecution witnesses were not examined in the presence of the appellant. He was also not provided any opportunity to cross-examine the witnesses. The statements of appellant and his witnesses were also not recorded by the enquiry committee. Thus, the appellant has been condemned/penalized without being heard, contrary to the basic principle of natural justice known as "Audi Alteram Partem". Therefore, the impugned order is against the spirit of law.*
- B. *That the Enquiry Committee was under statutory obligation to highlight such evidence in the enquiry report on the basis of which they found the appellant guilty of the so-called allegations leveled against him in the charge sheet. But they failed to do so. Moreover, there was no iota of evidence to connect the accused with the commission of offence. Hence, the impugned orders passed by the respondent No.2 and 3 on the basis of such enquiry report are against the spirit of Administration of Justice .*
- C. *That Syed Muhammad Bilal (ASP) Cantt Nowshera was one of the Member of the Enquiry Committee who alongwith another Member unanimously held the appellant guilty of the charges and recommended Major Penalty to him . This officer was later-on elevated as District Police Officer Nowshera and the enquiry file of the appellant was placed before him for necessary action. The said officer maintained the above findings of the Enquiry Committee and awarded Major Penalty of dismissal from service of the appellant despite the fact that he was not competent to pass any order on it in capacity as "Authority" . But he has over looked this important aspect of the case and as such grave injustice has been caused to the*

appellant on this count. Moreover, the above officer has also blatantly violated the *First Principle of Natural Justice* known as "*NEMO INDEX IN CAUSA SUA*" which says that *no person should be a judge in his own cause*. Thus, the impugned orders of the respondent No.2 and 3 are not tenable under the law.

- D.** That the appellant was not provided any opportunity of personal hearing before imposition of Major Penalty of dismissal from service. Mere verbal assertion without any cogent evidence and documentary proof is not sufficient to justify the stance of the respondent No.2. Therefore, the impugned orders of the respondent No.2 and 3 are liable to be set aside on this score alone .
- E.** That respondent No. 2 and 3 have passed the impugned orders in mechanical manner and the same are perfunctory as well as non-speaking and also against the basic principle of administration of justice. Therefore, the impugned orders are not warranted by law.
- F.** That the impugned orders of respondent No. 2 and 3 are suffering from legal infirmities and as such causing grave miscarriage of justice to the appellant.
- G.** That the impugned orders of respondent No. 2 and 3 are the result of misreading and non-reading of relevant documents. Hence, the same are liable to be set aside.
- H.** That the impugned orders of respondent No. 2 and 3 are against law, facts of the case and norms of natural justice. Therefore, these are untenable in the eyes of law.

I. *That the impugned orders are based on surmises and conjectures. Hence, the same are not sustainable under the law.*

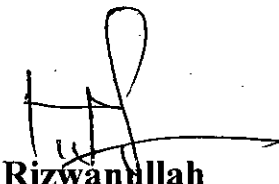
J. *That the respondent No. 3 was biased and prejudiced against the appellant and therefore, he has awarded him Major penalty of dismissal from Service for no fault on his part.*

In view of the above narrated facts and grounds, It is, therefore, humbly prayed that the impugned orders No.2043 dated 9-12-2013 and No. 67/ES, dated 2-1-2014 passed by the respondents No.2 and 3 may very graciously be set aside and the appellant may kindly be re-instated 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.


Appellant

Through



Rizwanullah

M.A. LL.B

Advocate High Court, Peshawar

BEFORE THE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

In the matter
 Service Appeal No. _____/2014

Jamshed Khan
 Ex-ASI

VERSUS

The Provincial Police Officer,
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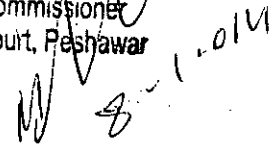
AFFIDAVIT

I, Jamshed Khan S/O ^{Saber} Maher Din, Ex-ASI, R/O Mohallah
 Shamasabad Nizam Pur, District Nowshera, 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

ATTESTED

Mukhtar Ahmed Ghaznavi
 Oath Commissioner
 District Court, Peshawar




 8-1-2014

CHARGE SHEET

I, WAQAR AHMED, PSP, District Police Officer, Nowshera, as competent authority, hereby charge ASI Jamshed Khan as per Statement of Allegations enclosed.

1. By reasons of the above, you appear to be guilty of misconduct under the N.W.F.P. Police Rules, 1975 and have rendered yourself liable to all or any of the penalties specified in the N.W.F.P. Police Rules, 1975.
2. You are, therefore, required to submit your written defense within 07 days of the receipt of this Charge Sheet to the Enquiry Officers, as the case may be.
3. Your written defense, if any should reach the Enquiry 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 follow against you.
4. Intimate whether you desire to be heard in persons.

Attest
AA
Adv


District Police Officer,
Nowshera. 

DISCIPLINARY ACTION

Annex B

9

I, WAQAR AHMED, PSP, District Police Officer, Nowshera as competent authority of the opinion that ASI Jamshed Khan has rendered himself liable to be proceeded against as he committed the following acts/omissions within the NWFP, Police Rules, 1975.

STATEMENT OF ALLEGATIONS

Whereas ASI Jamshed Khan while posted at Police Station Pabbi was found in-efficient, involved in crime and corruption which amounts to a grave misconduct and liable him for Minor/Major punishment under the NWFP, Police Rules, 1975.

For the purpose to scrutinize the conduct of the said accused with reference to the above allegations, Enquiry Committee of the following officers is constituted:-

1. Syed Muhammad Bilal ASP Cantt: NSR
2. Mr. Nazir Khan DSP Hqrs: Nowshera.

The Enquiry Committee shall in accordance with the provisions of the NWFP, Police Rules, 1975 provide reasonable opportunity of hearing to the defaulter official, record its findings and make immediate recommendations as to punish or other appropriate action against the defaulter official.

ASI Jamshed Khan is directed to appear before the Enquiry Committee on the date, time and place fixed by the Enquiry Committee.

AKI
Adv

No. 568/PA,
Dated 24.112013.

District Police Officer,
Nowshera. 74

Received on 26/10/13
Waqar
ASD
26/10/13

جنگ عظیم

حوالہ چارج شیٹ، ڈیپٹی ایس ایس آئی 568-PA چارج شیٹ
24.X.13
DPO کا ہارڈ ڈسک و سرور پر عملوں کا

نمبر 1. حرمہ بیگم کو دیکھ کر پائلٹ عورتی جو کہ اللہ تعالیٰ کے فضل و کرم سے
اور افسان باللہ وہاں ہاکم مانتے چلتے اور ایمان داری سے ڈیوٹی کرتے ہوئے
آج فیکہ ڈیویس ایس ایس آئی ڈیوٹی دے رہے ہوں۔

عورتی دور ٹریننگ کے لیے دفت کو آگیا تھا۔ جہاں ایسا ملنے پر ایمان داری سے
کھولے اور کبھی اپنے فیکہ سے دھوکہ نہیں کھونے لگا۔ اسی دن سے ہی ان کے
کا مقابلہ دیا ہوں۔

کئی سیاسی یا درآمدی پیشہ افراد کے دھکیوں اور ہر قسم کے دلوں کا ڈٹ
کے مقابلہ کیا ہوں۔

افسان باللہ وہاں کے حکم کے مطابق ایسا ڈیوٹی ایمان داری سے کرتے ہوئے
افسان باللہ وہاں نے حیرت انگیز کام وغیرہ کیا اچھے ڈیویس ایس ایس آئی تحریر زندہ
تھوکتے ہیں اور اس لئے حیرت انگیز دہشت گردانہ، دہشت گردانہ حیرت گردانہ
جیل اور ان سے حصہ رپورٹ بھی حاصل کی جا سکتی ہے۔

غیر 2 جہاں تمام جرائم جیل موٹ ہو گیا ہے۔ تو غیر جیل میں رہ کر ملوث
بات کی دلیل ہے کہ سارا ڈیوٹی ڈائری پیشہ افراد کے خلاف کیے
ماتر خواصہ افزائی کی ہے۔

Alleged
At
Adw

کیونکہ سارا ملوث ملوثوں کے خلاف تھا سچا، چوکیا وغیرہ
جیل ڈیوٹی میں رہ کر، قسری، امتحان چوکی کی ہے۔ سابقہ دہشت گردانہ وہاں
DPO وہاں کے سمارٹوں پر قبضے اکثر افسان باللہ وہاں نے
تعمیرت کی ہے۔

اگر جیل ایک ایمان داری ڈیویس ایس ایس آئی اور وہ بھی لیتے زیر نظر رہیں و
زیر نگرانی و نگرانی نہ کرتا

عزیز دہ کے آگے خیر افراد مناسب سمجھا تو میرے بارے میں نظر ثانی کرنا چھوڑ
تھی وہ گمراہ، اسلم و منشیات پر آملا قلب
کبھی بھی جرائم پیشہ افراد کو قانون سے بالترتیب سنبھالے اور یہی ان کے ساتھ
تعاون کروں گا۔

عزیز دہم کا گمراہ ریان، اسلم، ایون لائیو برآمدگی وغیرہ اسلایا جاتی تھوکتے
کہ اپنے کبھی بھی آپ کو نہیں آتی ہے۔

آگے پل آپ لگا کر تا۔ تو اسلم، منشیات کے طرح برآمد کرنا۔
آگے پل آپ لگا کر تا تو خوار بازان وغیرہ کو کدراہ گرفتار کرنا۔
جیل لائی ملز سانا سزایا پر کیکے ہیں۔ اور ایک سٹوڈنٹ تھا وہ کسے دیکھ کر
گمراہ چھوڑا۔

اس کے علاوہ بھی میرے وہ 11 ک، سکرل افراد وہاں آ رہا تھا، ایماندار
لو بسلا افراد ملنے کو انہی کے سفارشوں پر میں مختلف قانون شکن
وغیرہ رہے ہوں۔

اور میرے متعلقہ افراد ان تدرہ بالترتیب کو ایسی دینے۔ اور کبھی بھی میرے
افراد کو اس قسم کا کوئی شہادت طلب نہ کرے۔

بلکہ دوران ملز نہ وہ گمراہی اور منشیات وغیرہ کا برآمدگی
کی خاطر اپنا ذاتی جواب اس لئے کہ جو جوان، ان مار مار کر لیا تو اس لئے
کہ اسے کبھی کبھی کبھی پڑتی ہے۔

عزیز ملز نہ اور اس طرح انھی کے بارے میں کو مد نظر رکھتے ہوئے جاننا
شہادت لگنے کا کوئی سے فائبر لگایا ہے۔

Allah

Adw

جس کا ASIA لو بسلا
بھائی

Enquiry Report of ASI Jamshed Khan

The undersigned along with DSP headquarters Mr. Nazir Khan were deputed to conduct the Enquiry of SI Badan Khan through letter No. 568/PA dated 24/10/2013 by the worthy Dist Police Officer Noshehra.

Brief Facts

ASI Jamshed Khan was suspended on the complaints and reports of inefficiency and corruption while he was posted at PS Azakhel. While posted at PS Azakhel, being an upper subordinate he was in-charge of Aman Gar and Khat Kalay area.

Proceedings

The proceedings of the enquiry have been conducted strictly in accordance with the NWFP Police Rules 1975.

Statement of ASI Jamshed Khan

The accused police official appeared before the enquiry committee on 26/10/2013 and submitted his written statement. He was given opportunity to be heard in person. He states that the entire allegations against him are not based upon facts and he has been doing his duty effectively and honestly.

Findings

In the light of the statement of the accused, collection of information from the general public, and keeping in view the previous performance of the police official, the Enquiry Committee found

- That the accused police official does not enjoy good repute in general public.
- That his area of responsibility was always remained infested with the criminals and criminal activities.
- That he could not furnish any proof of his effective policing beyond lip-service.
- That his statement is not satisfactory.
- That he has been involved in abetting and harboring crime and criminals in his area of responsibility.
- That his area of responsibility, especially Aman Gar, is notorious for narcotics and other criminal activities however, he never dealt the criminals with stern hands.
- That he omitted discharge of his official duties.


Attested
By
Aan

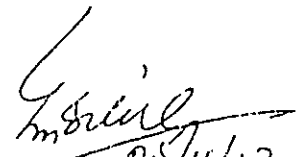
Recommendations

The Enquiry committee found the accused official as guilty of the charges and recommends that ASI Jamshed Khan may please be awarded with punishment for negligence of his duties, inefficiency and having a stained-repute in general public.

Submitted Please:

Alshu
A
Aow


Nazir Khan
DSP Headquarters Noshetra


05/11/13
(Syed Muhammad Bilal) PSP
ASP Cantt Noshetra

No. 223/ST ASP Cantt Noshetra

Encl: _____

Dated: 05/11/2013

FINAL SHOW CAUSE NOTICE

I, WAQAR AHMED, District Police Officer, Nowshera as competent authority under the NWFP Police Rules, 1975 do hereby serve you ASI Jamshed Khan while posted at Police Station Pabbi:-

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

I am satisfied that you have committed the following acts/omissions specified in Police Rules 1975 of the NWFP.

"That you ASI Jamshed Khan while posted at PS Pabbi was found in-efficient, involved in corruption and with criminals. This act amounts to a gross misconduct on your part and against the discipline of the force.

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of Major punishment under the NWFP Police Rules, 1975.
3. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

If no reply to this notice is received within 07 days, it will be presumed that you have no defence to put and in that case ex-parte action shall be taken against you.


District Police Officer,
Nowshera. 2

No. 583 /PA,

Dated 7.11 /2013.

Alleged
D
Dew

جناب عالی!

صفحہ

خواجہ فاضل شوپانز ٹرٹینڈری PA-583 بجاریہ DPO
7-11-13
نوٹیزرں حلقہ عرض فرماتا ہوں۔

1) یہ کہ عدوق اختیار میں شریف لوگوں میں اچھا نامہ برقرار رکھا ہے
جبکہ ثبوت عدوق 2 معززین سے معلوم کیا گیا ہے۔

2) یہ کہ باورن اعیانہ جہانم نے روک تمام آئے لے لیا خدمت کر رہا
ہوں جو کہ اسباب ثبوت تعلقہ دوسری تھانہ اور سڑک P دس
کے ہیں۔

3) یہ کہ نوکری کیلئے چھتہ پولیس روکنے قاعدے کے مطابق اپنا نوکری
سراجام دے رہا ہوں۔

4) یہ کہ انگریزی افسران کو حقیقت اور کیا ہے پھر میں جواب دے رہا ہوں
جس کے لئے تحقیقات یا برنیت ہیں۔

Allah

5) عدوق اختیار میں چھتہ جہانم پینڈہ لوگوں کے اندر ان کے چھتہ
میں آئے ثبوت کے لئے تھانہ راجا گواہ ہیں۔ کبھی کبھی جہانم
پینڈہ لوگوں سے کوئی تعلق نہیں دیا۔
حاری

6) پراکٹر کمانڈر افضل سے ایک سے 7/8 ماہ قبل صرف فوری طور پر
 ذرا ہی وقت راہ تعیناتوں تکلیف امان کر رہے ہیں سب سے
 سب سے کم درجہ کے الزام کو سزا سزا سے کم فوری طور پر (1)

7) یہ کہ جیسے سزا کی ڈیول کر لیا جائے اور خود سے سزا سے
 ادا کر رہے ہوں اور اسکو عوام سے اجازت سمجھ کر اپنے
 اپنے کو فارم سمجھا ہوں

سزا دلا نہیں جوں کہ اس سے انکو سزا نہیں
 سزا دلا نہیں ہے تعیناتوں سے انصاف کے لئے انکو سزا دلا جائے
 انکو سزا دلا نہیں کو فعال درفا حوالہ

Alh
 Adv

Asi. Police. Unit
 13.11.13

Amner-G

(17)

ORDER

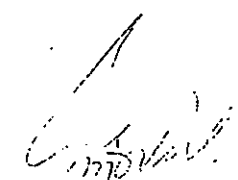
ASI Jamshid, was suspended on the Complaints and reports of inefficiency and corruption, while posted to Police Station Azakhel. On account of such misconduct, he was issued charge sheet and statement of allegations and an enquiry committee consisting of Syed Mohammad Bilal ASP Nowshera Cantt: and Mr. Nazeer Khan DSP Hqrs: Nowshera was constituted. The enquiry committee, after fulfillment of legal formalities submitted finding report wherein the allegations were established against ASI Jamshid. The enquiry committee recommended the accused Police Officer for major punishment.

The defaulter ASI was called and heard in person but he did not defend himself. Therefore, he was issued final show cause notice which was served upon him. He submitted written reply to the final show cause notice, but the same was found not satisfactory.

Therefore, in exercise of powers vested in me under Police rules, 1975, found him guilty of misconduct. Therefore, he is hereby awarded Major punishment of Dismissal from service with immediate effect.

OB No. 2043

Dated 09. 12 /2013.


District Police Officer,
Nowshera N

No. 9088-82 /PA, dated Nowshera the 09. 12 /2013

Copy for information and necessary action to the: -

1. Deputy Inspector General of Police, Mardan Region-I, Mardan.
2. Pay officer, Nowshera.
3. EC
4. FMC

Attested

Adw

To,

The Deputy Inspector General of Police
Mardan Range Mardan Khyber Pukhtunkhwa

Subject:- DEPARTMENTAL APPEAL / PRESENTATION

Dear Sir,

The appellant submits as under:-

- 1) That the appellant served the police department as Asstt. Sub-Inspector and remained posted at various stations and performed his duty with commitment.
- 2) That the appellant was proceeded with allegations of in-efficient, involved in corruption and with criminals.
- 3) That at conclusion of enquiry, the appellant was recommended for major punishment i.e. dismissal from the service.
- 4) That appellant was served with final show cause notice and resulting in dismissal of the appellant from service vide order dated 09-12-2013 with immediate effect. Copy of order etc attached.
- 5) That the appellant therefore, prefers this departmental appeal requesting for re-instatement to his post / duty on the following reasons amongst others.

GROUNDS:-

- A. Because the impugned action taken and order of dismissal is against the law, rules and constitution, therefore, untenable.
- B. Because the allegation, so prevailed upon the enquiry officer, has never been proved nor does enjoying any support much less corroborations.
- C. Because appellant remained at Police Station Pabbi while allegation against him has been referred as that of police station Aza Khel Amangarh.
- D. Because one of enquiry officer, who conducted proceeding and recommended the punishment, has also passed impugned order, thus action taken and order passed are against the natural justice, law, rules and constitution, hence impugned order of dismissal is untenable.

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- E. Because there is no evidence to prove the alleged charge against the appellant and similarly it has not been proved according to law.
- F. Because the appellant has not been treated in accordance with law and the Constitution; hence dismissal from service is illegal and unwarranted by law, as proceedings against similarly placed employee have been dropped, without any prejudice to enquiry and has been reinstated to his post.
- G. Because the order of dismissal from service of appellant is not based on sound reasons, hence, needs to be recalled.
- H. Because the impugned order regarding punishment and dismissal from service of the appellant has been passed in mechanical way without looking the record.
- I. Because the natural justice also demands that in the given circumstances the impugned orders be recalled and appellant be reinstated to his post / service.
- J. Because the appellant has a spotless career and action taken, order passed is in vacuum, thus have no footing to stand on in eyes of law.

It is, therefore, requested that by accepting of this departmental appeal / presentation the impugned order of dismissal may kindly be set aside and the appellant may kindly be re-instated to his duty / post.

Yours faithfully,

Jamshed Khan
 Jamshed Khan, EX-ASI.

13/12/13

13. December 13/2013.

*Attested
 At
 Adw*

Annex-1 20

ORDER.

This order will dispose-off the appeal preferred by ASI Jamshid Khan of Nowshera District Police against the order of District Police Officer, Nowshera wherein he was dismissed from service vide District Police Officer, Nowshera OB: No. 2043 dated 09.12.2013.

Brief facts of the case are that he was suspended on the complaints and reports of inefficiency and corruption, while posted to Police Station Azakhel. On account of such misconduct, he was issued charge sheet and statement of allegations and an enquiry committee consisting of Syed Muhammad Bilal ASP Nowshera Cantt: and Mr. Nazeer Khan DSP Hqrs: Nowshera was constituted. The enquiry committee after fulfillment of legal formalities submitted finding report wherein the allegations were established against the defaulter ASI. The enquiry committee recommended the accused Police Officer for major punishment.

I have perused the record and also heard the appellant in Orderly Room held in this office on 01.01.2014. He failed to justify his innocence and could not advance any cogent reason in his defence. Therefore, I MUHAMMAD SAEED Deputy Inspector General of Police, Mardan Region-1, Mardan in exercise of the powers conferred upon me reject the appeal, not interfere in the order passed by the competent authority, thus the appeal is filed.

ORDER ANNOUNCED.

(MUHAMMAD SAEED) PSP
Deputy Inspector General of Police,
Mardan Region-1, Mardan.

No. 67 /ES, Dated Mardan the 2-1- /2014.

Copy to District Police Officer, Nowshera for information and necessary action w/r to his office Memo: No. 9261/PA dated 20.12.2013.

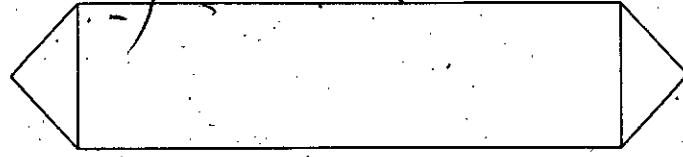
His Service record is returned herewith.

(*****)

Att. Shw
A
Aew

120 312400,
dt: 16/12/13.

بعدالت جناب جسٹس صاحب اسٹریٹس ٹریبونل
ملتان



Service Tribunal

2 منجانب
بنام

Jamshed Khan
VERSUS

مورخہ
مقدمہ
دعویٰ

Provincial Police Officers etc

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ
آن مقام ^{جزم} کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زر میں 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 مختار ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کارروائی 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 پرداختہ منظور قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے
سبب سے ہوگا۔ کوئی تاخر پیشی مقام دورہ پر ہو یا جد سے باہر ہو تو وکیل صاحب پابند ہوں
گے کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

المرقوم 8 ماہ حوری 2014ء

العبد گواہ

مقام

کے لئے منظور ہے۔

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

Service Appeal No. 40/2014

Jamsheed Khan s/o Sabar Din
Ex-ASI
R/O Mohallah Shamasabad, Nizampur,
District Nowshera

.....Appellant

Versus

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

.....Respondents

PARAWISE REPLY ON BEHALF OF RESPONDENTS

Respectfully Sheweth: -

PRELIMINARY OBJECTIONS

1. That the appellant has got no cause of action.
2. That the appeal is badly time-barred.
3. That the appeal is bad in law.
4. That the appellant is estopped from moving the instant appeal due to his own conduct.
5. That the appeal is not maintainable in its present form.
6. That the appellant has not come to the Honourable Tribunal with clean hands.

On Facts

1. Correct to the extent of joining Police Department and promotion to the rank of Assistant Sub Inspector. However, he was promoted on the basis of seniority and fitness. Rest of the para is denied as there are some bad entries in his service record. (Copy Annexure "A").
2. Correct to the extent of Charge Sheet and statement of allegations while rest of the para is denied as there are some bad entries in the service record of the appellant.
3. Correct to the extent of reply to the Charge Sheet and statement of allegations.

4. This para is against the facts as the enquiry committee was constituted prior to the reply of the appellant to the Charge Sheet.
5. Incorrect and denied. As is evident from the enquiry report, the appellant appeared before the enquiry committee on 26-10-2013 and had submitted his written statement. Moreover, he was given full opportunity of hearing, but he failed to defend himself. (Copy of enquiry report is Annexure "B").
6. Incorrect. As explained in para 5 above.
7. Correct to the extent of Final Show Cause Notice and reply to the same.
8. Correct.
9. Correct and needs no comments.
10. Not related to the answering respondents.
11. Needs no comments.

On Grounds


- A. Incorrect. A fair and impartial enquiry was conducted against the appellant and during enquiry proceeding all legal formalities were fulfilled.
- B. Incorrect and denied. The appellant was found guilty of the charges of negligence of his duties, inefficiency/corruption and having a stained reputation in general public by the enquiry committee and thus was recommended for award of punishment.
- C. Correct to the extent of Syed Mohammad Bilal Assistant Superintendent of Police, Nowshera Cantt: as a member of the enquiry committee. Moreover, as he (Syed Mohammad Bilal Assistant Superintendent of Police, Nowshera Cantt:) was given additional charge of District Police Officer, Nowshera as a result of the transfer of District Police Officer, Nowshera, hence, he was competent to issue the order. It is added, that all the orders were issued in official capacity, keeping in mind the general principles of justice.
- D. Incorrect. The appellant was provided full opportunity of personal hearing but he failed to defend himself as is evident from the order passed by the competent authority.
- E. Incorrect and denied. The orders passed by the competent authority as well as appellate authority are based on application of legal mind and principles of natural justice and law/rules.

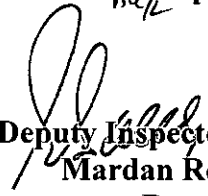
F,G,H Incorrect and denied. As explained in paras above.


& I

J. Incorrect and denied. The respondents have no malafide towards the appellant. The enquiry was conducted in public interest to maintain discipline in the Police force.

It is, therefore, humbly prayed that the appeal may kindly be dismissed with cost.


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


**Deputy Inspector General of Police,
Mardan Region-I, Mardan.
Respondent No. 2**


**District Police Officer,
Nowshera.
Respondent No. 3**

**BEFORE THE HONOURABLE SERVICE TRIBUNAL, KHYBER
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Service Appeal No. 40/2014

Jamsheed Khan s/o Sabar Din
Ex-ASI
R/O Mohallah Shamasabad, Nizampur,
District Nowshera

.....Appellant


V e r s u s


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


.....Respondents

AFFIDAVIT

We the respondent No. 1,2 & 3 do hereby solemnly affirm and declare on Oath that the contents of parawise comments are true and correct to the best of our knowledge and belief and nothing has been concealed from the honourable tribunal.


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


Deputy Inspector General of Police,
Mardan Region-I, Mardan.
Respondent No. 2


District Police Officer,
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**BEFORE THE HONOURABLE SERVICE TRIBUNAL, KHYBER
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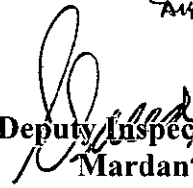
1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police, Mardan Region-1, Mardan.
3. District Police Officer, Nowshera.


.....Respondents

POWER OF ATTORNEY

We, the respondents No. 1,2&3 do hereby authorize Mr. Ijaz Hussain Sub Inspector Legal, Nowshera to appear on our behalf in the Honourable Service Tribunal, Khyber Pakhtunkhwa, Peshawar. He is also authorized to submit any document etc required by the Tribunal.


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


Deputy Inspector General of Police,
Mardan Region-I, Mardan.
Respondent No. 2


District Police Officer,
Nowshera.
Respondent No. 3

(A)

**DETAILS OF BAD ENTRIES MADE IN THE SERVICE RECORD OF EX-
ASSISTANT SUB INSPECTOR JAMSHEED KHAN.**

- i. Awarded punishment of 03 days extra drill and warned to be careful in future on account of absence vide Order Book No. 1071 dated 22-08-1998.
- ii. Awarded punishment of warning vide Order Book No. 962 dated 22-07-2013 for leakage of secrecy.

6 " B ①

Enquiry Report of ASI Jamshed Khan

The undersigned along with DSP headquarters Mr. Nazir Khan were deputed to conduct the Enquiry of SI Badan Khan through letter No. 568/PA dated 24/10/2013 by the worthy Dist Police Officer Noshehra.

Brief Facts

ASI Jamshed Khan was suspended on the complaints and reports of inefficiency and corruption while he was posted at PS Azakhel. While posted at PS Azakhel, being an upper subordinate he was in-charge of Aman Gar and Khat Kalay area.

Proceedings

The proceedings of the enquiry have been conducted strictly in accordance with the NWFP Police Rules 1975.

Statement of ASI Jamshed Khan

The accused police official appeared before the enquiry committee on 26/10/2013 and submitted his written statement. He was given opportunity to be heard in person. He states that the entire allegations against him are not based upon facts and he has been doing his duty effectively and honestly.

Findings

In the light of the statement of the accused, collection of information from the general public, and keeping in view the previous performance of the police official, the Enquiry Committee found

- That the accused police official does not enjoy good repute in general public.
- That his area of responsibility was always remained infested with the criminals and criminal activities.
- That he could not furnish any proof of his effective policing beyond lip-service.
- That his statement is not satisfactory
- That he has been involved in abetting and harboring crime and criminals in his area of responsibility
- That his area of responsibility, especially Aman Gar, is notorious for narcotics and other criminal activities however, he never dealt the criminals with stern hands.
- That he omitted discharge of his official duties.

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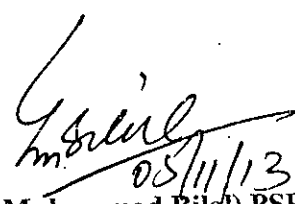
Recommendations

The Enquiry committee found the accused official as guilty of the charges and recommends that ASI Jamshed Khan may please be awarded with punishment for negligence of his duties, inefficiency and having a stained-repute in general public.

Submitted Please:



Nazir Khan
DSP Headquarters Noshehra



05/11/13

(Syed Muhammad Bilal) PSP
ASP Cantt Noshehra

No. 223/ST ASP Cantt Noshehra

Dated: 05/11/2013

Encl: 15 Page's

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

Service Appeal No. 40/2014

Jamsheed Khan s/o Sabar Din
Ex-ASI
R/O Mohallah Shamasabad, Nizampur,
District Nowshera

.....Appellant


Versus


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2. Deputy Inspector General of Police, Mardan Region-1, Mardan.
3. District Police Officer, Nowshera.


.....Respondents

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


Deputy Inspector General of Police,
Mardan Region-I, Mardan.
Respondent No. 2


District Police Officer,
Nowshera.
Respondent No. 3

**BEFORE THE HONOURABLE SERVICE TRIBUNAL, KHYBER
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Service Appeal No. 40/2014

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District Nowshera

.....Appellant

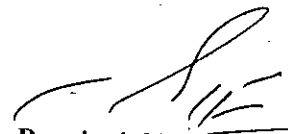
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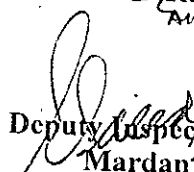
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Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.
Respondent No. 1
AM/C


Deputy Inspector General of Police,
Mardan Region-1, Mardan.
Respondent No. 2


District Police Officer,
Nowshera.
Respondent No. 3