

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 700 /2018

Shahenshah Khan, Ex-Inspector,
In-charge Traffic Unit Charsadda.

Per *AM*
N/O
Khyber Pakhtunkhwa
Service Tribunal
Peshawar
Dated 24-4-2018

(Appellant)

VERSUS

1. The Provincial Police Officer, KPK, Peshawar.
2. The Regional Police Officer, Region Mardan.
3. The District Police Officer, Charsadda.

(Respondents)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 28.03.2018, WHEREBY THE REVISION OF THE APPELLANT UNDER POLICE RULES 1975 AMENDED IN 2014 AGAINST THE ORDER DATED 22.12.2017 OF THE REGIONAL POLICE OFFICER MARDAN HAS BEEN REJECTED FOR NO GROUNDS, WHEREIN THE REGIONAL POLICE OFFICER MARDAN UPHELD THE ORDER DATED 28.11.2017 OF THE DISTRICT POLICE OFFICER CHARSADDA.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 28.03.2018, 22.12.2017 AND 28.11.2017 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED INTO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

Filed on day
24/4/18
Registrar

ATTESTED

[Signature]
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 700/2018

Date of Institution: 25.04.2018

Date of Decision: 03.02.2021

Mr. Shahenshah Khan, Ex-Inspector, In-charge Traffic Unit Charsadda.

(Appellant)

**VERSUS**

The Provincial Police Officer, Khyber Pakhtunkhwa Peshawar and two others.

... (Respondents)

Mr. Taimur Ali Khan.

Advocate

... For Appellant

Mr. Asif Masood Ali Shah,

Deputy District Attorney

... For Respondents

Mr. MUHAMMAD JAMAL KHAN

Mr. ATIQ UR REHMAN WAZIR

... MEMBER (J)

... MEMBER (E)

JUDGEMENT: -

Mr. ATIQ UR REHMAN WAZIR: - Brief facts of the case are that the appellant while serving as in-charge traffic unit Charsadda was charged U/S 186/279/156(89) Custom Act in an FIR registered against him on 28-10-2017. Simultaneously, departmental proceedings were also initiated against him under the same charges with an inquiry conducted against him and in light thereof, final show cause notice was served upon the appellant on 14-11-2017, to which he responded and as a result thereof, major penalty of dismissal from service was imposed upon the appellant on 28-11-2017, against which the appellant filed departmental appeal, which was rejected on 22-12-2017. Feeling aggrieved, the appellant filed revision petition, which was also rejected on 28-03-2018, hence, the instant service appeal instituted on 24-04-2018. During the course, the trial court however, acquitted the appellant of the same charges vide order

ATTESTED

ATTESTED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

dated 29-01-2019. The learned counsel prayed that since the appellant was acquitted of the same charges by the competent court of law, so no more grounds remained to punish the appellant, hence prayed that the appellant may be re-instated into service with all back benefits.

02. Written reply/comments were submitted by respondents.
03. Arguments heard and record perused.
04. Learned counsel for the appellant contended that no proper inquiry was conducted against the appellant, as the appellant was not afforded opportunity to cross-examine witnesses resulting in manifest injustice. Reliance was placed on 2008 SCMR 609, 2002 SCMR 433 and 2009 SCMR 663. That after registration of FIR against the appellant, respondents were required to keep the appellant under suspension until decision in the criminal case, but the appellant was subjected to a departmental inquiry and dismissed from service without waiting for the decision in the criminal case, thus violated section 194-A of Civil Service Regulations. The learned counsel added that the respondents also violated section 16.3 of Police Rules 1934, which states that when a police officer has been tried and acquitted by a criminal court, he shall not be punished departmentally on the same charges. The learned counsel added that the apex court in plethora of judgments have held that if the appellant is dismissed on account of his involvement in criminal case, then he would have been well within his rights to claim re-instatement in service after acquittal from that case. Reliance was placed on 2017 PLC (CS) 1076, 2003 SCMR 207, 2002 SCMR 57, 2007 SCMR 192 and Service Appeal No 1065/2019. The learned counsel further added that charges against the appellant have not been proved, but were based on presumptions and conjectures. That facts had to be proved and not presumed particularly for awarding major punishment of dismissal from service. Reliance was placed on 2002 PLC (CS) 503. The learned counsel prayed that since the appellant has been acquitted of the same charges by the competent


ATTESTED

EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

court of law, hence, he may be re-instated into service with all back benefits by setting aside the impugned order dated 28-11-2017.

05. Learned Deputy District Attorney appeared on behalf of official respondents contended that the appellant was actively involved in the illegal business of non custom paid vehicles and was caught red handed by the customs staff, thereby registered FIR against him as well as proceeded him departmentally. That proper inquiry to this effect was conducted against the appellant and the charges proved against him, based on which he was issued charge sheet/statement of allegations as well as show cause notice, to which he accordingly, responded but he utterly failed to prove his innocence. The learned Deputy District Attorney added that after his dismissal from service, the appellant was again found involved in criminal practice of non-custom paid vehicle and FIR was registered against him, who however, was acquitted of the charges giving him benefits of doubts. The learned Deputy District Attorney opposed the contention of the learned counsel of the appellant to the effect that departmental and criminal proceedings can be conducted simultaneously and acquittal of appellant from criminal charges would have no bearing on merit of case. Reliance was placed on 2007 SCMR 562 and 2006 SCMR 554. The learned Deputy District Attorney prayed that the instant appeal being devoid of merit may be dismissed.

06. After hearing the learned counsel for the parties and going through the record with their assistance and after perusing the case laws cited before us, we have observed that the appellant was removed from service on account of being involved in smuggling of non-custom paid vehicles. His departmental appeal as well as revision petition also met the same fate, but he was acquitted of the same charges by the competent court of law. Assertion of the learned attorney to the effect that the appellant was acquitted giving him benefit of doubt find no support as it has been held by superior forums that all acquittals are certainly honorable and shall be accepted as such. Reliance is place on 2011 PLC (CS) 1034. Conviction of the appellant in the case

ATTESTED

ENAMUR
 Member Pakharkhwa
 Service Tribunal
 Peshawar

of his involvement in smuggling, was the only ground on which he was removed from service and the said ground had subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue with his service. In this respect, we have sought guidance from 2017 PLC (CS) 1076, 2003 SCMR 207, 2002 SCMR 57 and 2007 SCMR 192.

07. For what has been discussed above, this appeal is accepted and the impugned orders dated 28-11-2017 is set aside along with other orders on the appeal/review petition of the appellant and the appellant is re-instated in service with all back benefits. No orders as to costs. File be consigned to record room.

ANNOUNCED
03.02.2021

(MUHAMMAD JAMAL KHAN)
MEMBER (J)

(ATIQ UR REHMAN WAZIR)
MEMBER (E)

Certified to be true copy

EXCISE OFFICER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 05/01/22
Number of Words 2000
Copying Fee 22/-
Urgent 4/-
Total 26/-
Name of Copyist _____
Date of Completion of Copy 05/01/22
Date of Delivery of Copy 05/01/22

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 700/2018

Date of Institution: 25.04.2018

Date of Decision: 03.02.2021

Mr. Shahenshah Khan, Ex-Inspector, In-charge Traffic Unit Charsadda.

... (Appellant)

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa Peshawar and two others.

... (Respondents)

Mr. Taimur Ali Khan.

Advocate

... For Appellant

Mr. Asif Masood Ali Shah,

Deputy District Attorney

... For Respondents

Mr. MUHAMMAD JAMAL KHAN

...

MEMBER (J)

Mr. ATIQ UR REHMAN WAZIR

...

MEMBER (E)



JUDGEMENT: -

Mr. ATIQ UR REHMAN WAZIR: - Brief facts of the case are that the appellant while serving as in-charge traffic unit Charsadda was charged U/S 186/279/156(89) Custom Act in an FIR registered against him on 28-10-2017. Simultaneously, departmental proceedings were also initiated against him under the same charges with an inquiry conducted against him and in light thereof, final show cause notice was served upon the appellant on 14-11-2017, to which he responded and as a result thereof, major penalty of dismissal from service was imposed upon the appellant on 28-11-2017, against which the appellant filed departmental appeal, which was rejected on 22-12-2017. Feeling aggrieved, the appellant filed revision petition, which was also rejected on 28-03-2018, hence, the instant service appeal instituted on 24-04-2018. During the course, the trial court however, acquitted the appellant of the same charges vide order

dated 29-01-2019. The learned counsel prayed that since the appellant was acquitted of the same charges by the competent court of law, so no more grounds remained to punish the appellant, hence prayed that the appellant may be re-instated into service with all back benefits.

02. Written reply/comments were submitted by respondents.

03. Arguments heard and record perused.

04. Learned counsel for the appellant contended that no proper inquiry was conducted against the appellant, as the appellant was not afforded opportunity to cross-examine witnesses resulting in manifest injustice. Reliance was placed on 2008 SCMR 609, 2002 SCMR 433 and 2009 SCMR 663. That after registration of FIR against the appellant, respondents were required to keep the appellant under suspension until decision in the criminal case, but the appellant was subjected to a departmental inquiry and dismissed from service without waiting for the decision in the criminal case, thus violated section 194-A of Civil Service Regulations. The learned counsel added that the respondents also violated section 16.3 of Police Rules 1934, which states that when a police officer has been tried and acquitted by a criminal court, he shall not be punished departmentally on the same charges. The learned counsel added that the apex court in plethora of judgments have held that if the appellant is dismissed on account of his involvement in criminal case, then he would have been well within his rights to claim reinstatement in service after acquittal from that case. Reliance was placed on 2017 PLC (CS) 1076, 2003 SCMR 207, 2002 SCMR 57, 2007 SCMR 192 and Service Appeal No 1065/2019. The learned counsel further added that charges against the appellant have not been proved, but were based on presumptions and conjectures. That facts had to be proved and not presumed particularly for awarding major punishment of dismissal from service. Reliance was placed on 2002 PLC (CS) 503. The learned counsel prayed that since the appellant has been acquitted of the same charges by the competent

court of law, hence, he may be re-instated into service with all back benefits by setting aside the impugned order dated 28-11-2017.

05. Learned Deputy District Attorney appeared on behalf of official respondents contended that the appellant was actively involved in the illegal business of non custom paid vehicles and was caught red handed by the customs staff, thereby registered FIR against him as well as proceeded him departmentally. That proper inquiry to this effect was conducted against the appellant and the charges proved against him, based on which he was issued charge sheet/statement of allegations as well as show cause notice, to which he accordingly, responded but he utterly failed to prove his innocence. The learned Deputy District Attorney added that after his dismissal from service, the appellant was again found involved in criminal practice of non-custom paid vehicle and FIR was registered against him, who however, was acquitted of the charges giving him benefits of doubts. The learned Deputy District Attorney opposed the contention of the learned counsel of the appellant to the effect that departmental and criminal proceedings can be conducted simultaneously and acquittal of appellant from criminal charges would have no bearing on merit of case. Reliance was placed on 2007 SCMR 562 and 2006 SCMR 554. The learned Deputy District Attorney prayed that the instant appeal being devoid of merit may be dismissed.

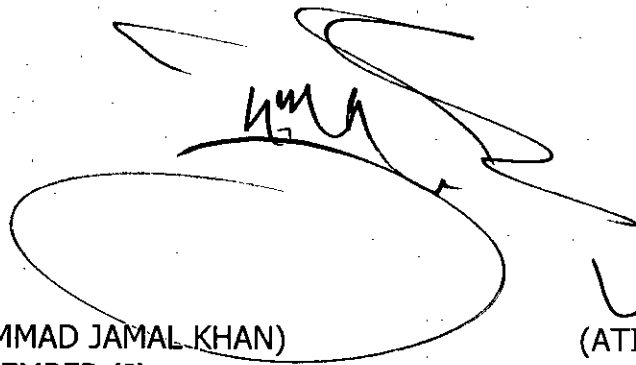
06. After hearing the learned counsel for the parties and going through the record with their assistance and after perusing the case laws cited before us, we have observed that the appellant was removed from service on account of being involved in smuggling of non-custom paid vehicles. His departmental appeal as well as revision petition also met the same fate, but he was acquitted of the same charges by the competent court of law. Assertion of the learned attorney to the effect that the appellant was acquitted giving him benefit of doubt find no support as it has been held by superior forums that all acquittals are certainly honorable and shall be accepted as such. Reliance is place on 2011 PLC (CS) 1034. Conviction of the appellant in the case

of his involvement in smuggling was the only ground on which he was removed from service and the said ground had subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue with his service. In this respect, we have sought guidance from 2017 PLC (CS) 1076, 2003 SCMR 207, 2002 SCMR 57 and 2007 SCMR 192.

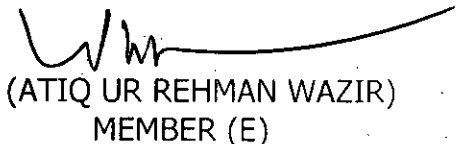
07. For what has been discussed above, this appeal is accepted and the impugned orders dated 28-11-2017 is set aside along with other orders on the appeal/review petition of the appellant and the appellant is re-instated in service with all back benefits. No orders as to costs. File be consigned to record room.

ANNOUNCED

03.02.2021



(MUHAMMAD JAMAL KHAN)
MEMBER (J)



(ATIQ UR REHMAN WAZIR)
MEMBER (E)

03.02.2021

Learned counsel for the appellant and Mr. Asif Masood Ali Shah, learned Deputy District Attorney alongwith Mr. Shah Jehan, SI for respondents present.

Vide our detailed judgment of today of this Tribunal placed on file, the present service appeal is accepted and the impugned orders dated 28-11-2017 is set aside along with other orders on the appeal/review petition of the appellant and the appellant is re-instated in service with all back benefits. No orders as to costs. File be consigned to record room.

ANNOUNCED
03.02.2021

A large, stylized handwritten signature in black ink, appearing to be 'AMK'.

(MUHAMMAD JAMAL KHAN)
MEMBER (J)

A smaller, more fluid handwritten signature in black ink.

(ATIQ UR REHMAN WAZIR)
MEMBER (E)

23.11.2020


Due to non-availability of D.B, the case is adjourned to
03.02.2021 for the same as before.


Reader

12.5.2020

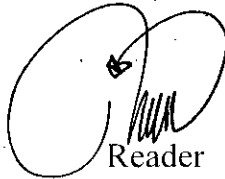
Due to COVID19, the case is adjourned to

4/8/2020 for the same as before.


Reader

04.08.2020

Due to summer vacation case is adjourned to 05.10.2020
before D.B for the same.


Reader

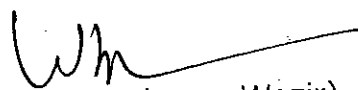
05.10.2020

Appellant in person present.

Mr. Kabir Ullah Khattak learned Additional Advocate
General alongwith Shah Jehan, ASI for respondents
present.

Former requests for adjournment as his counsel is
not available due to ailment.

Adjourned to 23.11.2020 for arguments before D.B.


(Atiq ur Rehman Wazir)
Member (E)

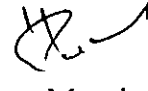

(Rozina Rehman)
Member (J)

29.11.2019

Appellant in person present. Addl: AG alongwith Mr. Shah Jehan, ASI for respondents present. Appellant seeks adjournment as his counsel is not available today. Adjourn. To come up for arguments on 16.01.2020 before D.B.



Member



Member

16.01.2020

Due to general strike on the call of Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Ziaullah, Deputy District Attorney for the respondents present. Adjourned to 14.02.2020 for arguments before D.B.



(Ahmad Hassan)
Member



(M. Amin Khan Kundi)
Member

14.02.2020

Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 12.03.2020 for arguments before D.B.



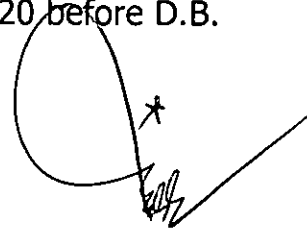
(Hussain Shah)
Member



(M. Amin Khan Kundi)
Member

12.03.2020

Appellant in person present. Mr. Ziaullah, DDA alongwith Mr. Shah Jehan, SI for respondents present. Appellant seeks adjournment as his counsel was indisposed. Adjourned. To come up for arguments on 12.05.2020 before D.B.



Member



Member

11.06.2019

Counsel for the appellant and Mr. Muhammad Jan, DDA alongwith Shah Jehan, SI(Legal) for the respondents present.

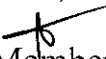
Rejoinder has been submitted on behalf of the appellant which is placed on record. To come up for arguments before the D.B on 01.08.2019.


Member


Chairman

01.08.2019


Junior to counsel for the appellant and Asst: AG alongwith Mr. Shah Jehan, ASI for respondents present. Junior to counsel for the appellant seeks adjournment. Adjourned. Case to come up for arguments on 24.10.2019 before D.B.


Member


Member

24.10.2019

Appellant in person and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Shah Jehan, S.I (Legal) for the respondents present. Appellant requested for adjournment on the ground that his counsel has gone to august Supreme Court of Pakistan at Islamabad and cannot attend the Tribunal today. Adjourned to 29.11.2019 for arguments before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

Service Appeal No. 700/2018

10.12.2018

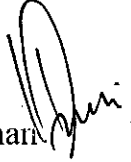
Counsel for the appellant present. Mr. Shah Jehan, S.I (Legal) alongwith Mr. Kabirullah Khattak, Additional AG on behalf of the respondents present. Written reply on behalf of respondents not submitted. Learned Additional AG requested for further adjournment. Adjourned. To come up for written reply/comments on 17.01.2019 before S.B.


Muhammad Amin Khan Kundi
Member

17.1.2019

Counsel for the appellant and Addl. AG alongwith Shah ^{Jehan} SI(Legal) for the respondents present.


Reply/parawise comments have been submitted on behalf of the respondents. To come up for arguments before D.B on 28.03.2019. The appellant may submit rejoinder, if so desires, within a fortnight.

Chairman 

28.03.2019

Due to general strike of the bar, the case is adjourn. To come up for further proceeding on 11.06.2019 before D.B.


Member


Member

09.07.2018

Appellant Shahinshah alongwith his counsel Mr. Taimur Ali Khan Advocate present and heard.

Contends that major punishment has been awarded to the appellant but without adopting proper procedure.


Points raised need consideration. The appeal is admitted to full hearing subject to all legal objection, if raised by the respondents. Appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 27.08.2018 before S.B.


Chairman

27.08.2018

Counsel for the appellant present. Security and process fee not deposited. Learned counsel for the appellant seeks further time. He is directed to deposit the same fee within 7 days, thereafter notice be issued to the respondents for written reply/comments for 24.10.2018 before S.B.

Appellant's Deposited
Security & Process Fee


(Ahmad Hassan)
Member

23-10-18




Due to Retirement of Honorable
Chairman the Tribunal is non
functional therefore the case is
adjourned to come up for the
same on 10-12-2018


Reader

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 700/2018

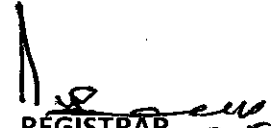
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	22/05/2018	<p>The appeal of Mr. Shahen Shah Khan resubmitted today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	28/05/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>07/06/18.</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>07.06.2018 Appellant absent. Learned counsel also absent. Adjourned. To come up for preliminary hearing on 09.07.2018 before S.B.</p> <p style="text-align: right;"> Member</p>

The appeal of Mr. Shahenshah khan Ex-Inspector In Charge Traffic Unit Charsadda received today i.e. on 24.04.2018 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- Copy of departmental appeal is not attached with the appeal which may be placed on it.
- 2- Copy of revision petition and its rejection order mentioned in the memo of appeal are not attached with the appeal which may be placed on it.
- 3- Memorandum of appeal may be got signed by the appellatant.
- 4- Annexures of the appeal may be attested.
- 5- Annexures of the appeal may be flagged.
- 6- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 884 /S.T,

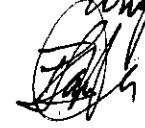
Dt. 25/04 /2018.


REGISTRAR 25/4/18
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Muhammad Asif Yousafzai Adv. Pesh.

Respected

- 1- Copy of departmental appeal is not present ^{with the appellatant} therefore he is unable to attached that while rejection order is at Ann-I
2. Copy of revision petition is ^{not} present with the appellatant while its rejection order is attached as Annexure II.
- 3- Removed
- 4- Removed
- 5- Removed
- 6- Removed

Resubmitted after
compliance.


BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 700 /2018

Shahenshah

V/S


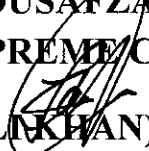
Police Department etc.

INDEX

S.NO.	Documents	Annexure	Page No.
1.	Memo of appeal	-----	01-03
2.	Copy of FIR	---A---	04
3.	Copy of Charge sheet	---B---	05
4.	Copy of statement of allegation	---C---	06
5.	Copy of reply to charge sheet	---D---	07-16
6.	Copy of inquiry	---E---	17-22
7.	Copy of Final Show Cause	---F---	23
8.	Copy of reply to Final Show Cause	---G---	24-27
9.	Copy of dismissal order	---H---	28
10.	Copy of rejection order	---I---	29
11.	Copy of rejection of revision	---J---	30
12.	Copy of bailout order	---K---	31- 32
15.	Vakalat Nama	-----	33

APPELLANT

THROUGH:


(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT,

(TAIMUR ALIKHAN)
ADVOCATE HIGH COURT,


(S. NOMAN ALI BUKHARI)
ADVOCATE PESHAWAR

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 700 /2018

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 616

Dated 24-4-2018

Shahenshah Khan, Ex-Inspector,
In-charge Traffic Unit Charsadda.

(Appellant)

VERSUS

1. The Provincial Police Officer, KPK, Peshawar.
2. The Regional Police Officer, Region Mardan.
3. The District Police Officer, Charsadda.

(Respondents)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 28.03.2018, WHEREBY THE REVISION OF THE APPELLANT UNDER POLICE RULES 1975 AMENDED IN 2014 AGAINST THE ORDER DATED 22.12.2017 OF THE REGIONAL POLICE OFFICER MARDAN HAS BEEN REJECTED FOR NO GROUNDS, WHEREIN THE REGIONAL POLICE OFFICER MARDAN UPHELD THE ORDER DATED 28.11.2017 OF THE DISTRICT POLICE OFFICER CHARSADEA.

PRAYER:

Filed to-day
Registrar
24/4/18

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 28.03.2018, 22.12.2017 AND 28.11.2017 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED INTO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH:

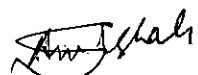
FACTS:

1. That the appellant was appointed as ASI in (BPS-09) in the year 2006 and with the passage of time promoted to the post of Inspector and performed his duty with great devotion and honesty.
2. That the appellant was posted as In-charge Traffic Unit Charsadda, while serving the said post capacity, FIR No. 436 u/s 186/279/156(89) Custom Act PS Mandni was filed against the appellant and due to the said reason charge sheet along with statement of allegations were issued to the appellant which was duly replied by the appellant and which he denied all the allegations and give the real facts about the situation. **(Copy of FIR, Charge Sheet, Statement of allegation & reply to charge sheet are attached as Annexure-A, B & C).**
3. That the inquiry was conducted against the appellant in which no proper chance of defence was provided to the appellant as neither statement was recorded in the presence of appellant nor give him opportunity of cross examination but despite that the appellant was held responsible by the inquiry committee. **Copy of inquiry report is attached as Annexure-D.**
4. That show cause notice was issued to the appellant which was duly replied by the appellant in which he once again denied the allegation. **(Copy of Show Cause Notice & reply to show cause notice are attached as Annexure-E & F)**
- ✓ 5. That on the basis of irregular enquiry, the appellant was dismissed from service vide order dated 28.11.2017 against which he preferred department appeal which was rejected on 22.12.2017 however he did not keep the copy of departmental appeal with himself which may be requisite from the department. The appellant then filed revision under 11-A of the Police Rule 1975 amended in 2014 which was also rejected on 28.03.2018 for no good ground, however he did not keep the copy of revision with himself which may be requisite from the department. **(Copy of order dated 28.11.2017, rejection order dated 22.12.2017 and rejection of revision dated 28.03.2018 are attached as Annexure-G,H&I)**
6. That now the appellant come to this august tribunal on the following grounds amongst others.

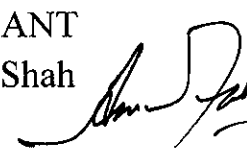

GROUNDS:


- A) That the impugned order dated 28.03.2018, 22.12.2017 & 28.11.2017 which is against the law fact, norms of justice and material on record and therefore not tenable and liable to be set aside.
- B) That the inquiry was not conducted according to prescribed procedure as no proper chance of defence was provided to the appellant which is violation of law and rules.
- C) That no statement was not recorded in the presence of appellant nor give him opportunity of cross examination but despite that the inquiry officer held him responsible which is against the norms of justice nad fair play.
- D) That the appellant has bailout in the criminal case which shows that the appellant was innocent and was punished for no fault on his part.
Copy of bailout is attached as Annexure-J.
- E) That the respondents should suspended the appellant till the conclusion of criminal case pending against him but the respondent department dismissed the appellant from service before the decision of criminal case pending against him which is clear violation of CSR-194-A.
- F) That the appellant has been condemned unheard and was not treated according to law and rules.
- G) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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


APPELLANT
Shaheen Shah

THROUGH:


(M.ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT,
&

(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT,


S. Noman Ali Bulthaw
Advocate High Court.

3/2/2021 DB. Journal Subj.

28/11/2017
22/12/2017
28/3/2018
24/4/2018

Shahin Shah

Depth appraisal -
11A/Revision -
S.A -

Charge sheet - P15 - Reply P17 -
Depth enquiry P17 - cross exam (No chance)
(No preparation)

CSA 194A =
to keep his suspension till decision in
current case. Fundamental Rule 53.

2017 P16 (CS) 1076
9023 SCMR 2907
9007 SCMR 192

5A 1065/2019
9002 SCMR 57

(Presumption 902 P16 (CS 503))

DDA/- P14 - Appeal (F12) 28/10/2017 custom Act:
Part 9 of the inquiry report: which shows
that applicant deny illegal business

of recop vehicles.
Part 9 of comments: (Another F12. Much at 11/2017
Depth/verbal proceeds for sale by side
Jury in effect on depth proceeds of equal
All verbal finalities fulfilled.
Account 907 SCMR 2562
906 SCMR 554

①
Habitually involved in MEP business
which is evident from F12 P19 (CE) 9
Amounts

CHARGE SHEET UNDER KPK POLICE RULES 1975

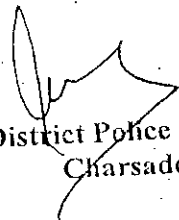
B
5

I Sohail Khalid, District Police Officer Charsadda, as competent authority hereby charge you **Inspector Shehenshah Khan** as follows.

That you **Inspector Shehenshah Khan**, while posted as I/C Traffic Unit Charsadda, On 28.10.2017 you were charged in Case FIR No. 436 u/s 186/279/156 (89) Custom Act PS Mandani. Being a member of discipline force your act is highly objectionable and against the rules and regulations of the discipline force and also earns bad name for the force.

This amounts to grave misconduct on your part, warranting Departmental action against you as defined in section-6(I) (a) of the KPK Police Rules 1975.

1. By reason of the above, you appear to be guilty of misconduct under section 02(III) of the KPK Police Rules 1975 and has render your self liable to all or any of the penalties as specified in section 04 (I) a & b of the said rules.
2. You are therefore, directed to submit your written defense within seven days of the receipt of this Charge Sheet to the Enquiry Officer.
3. Your written defense, if any should reach to the enquiry officer within the specified period, in case of failure, it shall be presumed that you have no defense to put-in and in that case an ex-parte action shall follow against you.
4. Intimate, whether you desired to be heard in person.


District Police Officer,
Charsadda


ATTESTED

Government of Khyber Pakhtunkhwa
Office of the District Police Officer
Charsadda

DISCIPLINARY ACTION UNDER KPK POLICE RULES -1975


I, Sohail Khalid, District Police Officer Charsadda, as competent authority am of the opinion that Inspector Shehenshah Khan, has rendered himself liable to be proceeded against as he has committed the following acts/omissions within the meaning of section -02 (iii) of KPK Police Rules-1975.

STATEMENT OF ALLEGATIONS

That he **Inspector Shehenshah Khan**, while posted as I/C Traffic Unit Charsadda, On 28.10.2017 he was charged in Case FIR No. 436 u/s 186/279/156 (89) Custom Act PS Mandani. Being a member of discipline force his act is highly objectionable and against the rules and regulations of the discipline force and also earns bad name for the force.

This amounts to grave misconduct on his part, warranting Departmental action against him.

For the purpose scrutinizing the conduct of the said official Mr. Nazir Khan SP Investigation Charsadda is hereby deputed to conduct proper departmental enquiry against the aforesaid official, as contained in section -6 (I) (a) of the afore mentioned rules. The enquiry officer after completing all proceedings shall submit his verdict to this office within stipulated period of (10) days. Inspector Shehenshah Khan, is directed to appear before the enquiry officer on the date, time and place fixed by the later (enquiry officer) a statement of charge sheet is attached herewith.



District Police Officer,
Charsadda

No. BS21-22 /HC, dated Charsadda the 30/10 /2017.

Copies for Information to the:

1. Mr. Nazir Khan SP Investigation Charsadda

2. Inspector Shehenshah Khan


ATTESTED

D

7

The worthy DPO,
Charsadda.

Subject: Reply to the charge sheet with the
Statement of allegations No. 6521-22/HC
dated Charsadda the. 30-10-2017.

Dear Sir,

I am in receipt of a charge sheet and statement
of allegations dated 30-10-2017 in response
there to, I wish to submit the following

① that for reason more particularly below
the statement of allegations and charge sheet is
ex-facie misconceived and the proceedings
required to be closed and giving a Zariet to at
this stage itself.

[Signature]

ATTESTED

⑧

② The Statement of allegations and charge sheet are actually based upon an incident which took place on Saturday on 28th of October in Mobein Gifa in b/w Dalki and Amerabad when I was on my way for duty in my white Corolla car without number plates when a private car without signaling me open fire at me as a result I injured on my left side very deeply.

③ Due to fear and prevailing situation of terrorism I did not stop but after 500/600 m I could not bear the stress of deep wound and stopped 100 m or less before the said place.

There a white car stopped near me and the persons shifted me to the back seat of my car and took me to Charsadda hospital where I was refer to LRH.

At the time of report I did not know that who fired at me but I thought that I will nominate them u/s 164 CrPc.

A
ATTESTED

9

④ The next day in the hospital I came to know that excise have lodged an FIR no. 436 U/S 186-279-156(89) Customs act ps Mandani, then I realized that the helpers were the Shooters. Till that time I thought that they were on their and stopped for my help. They were aware of their mistake therefore took me to the hospital.

⑤ Till today I did not know that why excise opened fire at me. Do they have the right to do so?

If I would have recognised at the time of fire or they have signalled me then I would have directly charged them in my report. I reported against unknown for the purpose that when I know I will nominate them in my 164 Crpc. Statement. But no one supported me and my report was written in daily diary for which I feel very alone and very grief.

A
ATTESTED

6) My car have no Scratch on any side which show that I have driven over them or there is any one of excise official have a minor injury on their body or vehicle which that I have driven over them.

7) If I was in such a high speed and they fired and hit me then why my car did not struck to some thing or went into nearby fields. It means that I was in my normal speed by they fired me without signaling and I myself stopped about 500/600 m away as a result of stress of the wound & fear of terrorism.

A
ATTESTED

- (7) That as it is yet to be determined that whether the alleged offence has been committed or not but in the present case the reply accused employee has been punished before conviction.
- (8) That in the case of charge of inefficiency and misconduct suspension could not be ordered in the light of reported Judgments as PLD 1979 Lahore 56 and PLD 1965 SC 10 but here the matter is totally on opposite side more particularly the replying accused has already been suspended on 30-10-2017.

A
ATTESTED

(12)

(9)

My right hand is half conscious as a result of an accident when a steel rod enter in my right hand above the elbow and brook my elbow joint bone and cut radial nerve as well which result into half consciousness of my right hand till to day. How can I be liable to 136 and 279 that the excise stopped me with bullets. copy of conducted nerve test on 29-5-17 is attached.

(10)

that in the ground, I pained instead of standing up for me and advising the excise to desist for making report patently irresponsible, unfounded and motivated allegation against me you have chosen to issue the statement of allegations and charge sheet by not considering my bad injury and life and death situation and contribution with stigma/complaint in your esteemed department.

A
ATTESTED

ATTESTED

f

12) That in the aforesaid circumstances, I submit before your good self that there is no merit what so ever in the statement of allegations coupled with the charge sheet brought be raised against me and may very graciously be withdrawn for the best interest of law, fairness, and justice. Keeping in view my future service career.

11) That the statement of allegations makes various assumptions and presumptions which are totally mis conceived and baseless. Moreover it should be responsibly exercised for sound and good reasons of considerations and it also not be used to settle score. But here the matter is totally different because there is no act on the part of replying accused or commission or omission which could be termed as mis conduct, inefficiency or lack of interest in duty or service.

13

13) That before response to the allegations in the Statement, I have already adverted to the facts which are manifest the malice, ill will and animus but even then I was suspended on 30-10-17 which is also on the basis of the said case after the unfortunate day of incident i.e. 28-10-17 and falls within the scope and ambit the following articles of constitution of mother land.

- (a) Article - 13: Protection against double punishment and self incrimination - No person... shall be prosecuted or punished for the same offence more than once or shall when accused of an offence be compelled to be a witness against himself.
- (b) Article 20(2) of Indian act is about dual proceed of identical charges.
- (c) 26 General clauses act
- (d) 403 Crpc.

under the above a, b, c, d dual proceeding in identical charges cannot proceed. Because the alleged offence is the same but I have been chosen to be punish twice.

In view of the above I humbly request to keep my inquiry pending till the decision of the court.

[Signature]
ATTESTED

14

- ① Do the excise have informed the concerned police station about their arrival and nakabar or about the incidence at the time of occurrence. Definitely not because they have reported at 11.
- ② If they fired near Kochian then why did they not turn to RHE Harichand. For first aid was in their way in about a minute. First aid is a key role in emergency.
- ③ Similarly after hospital comes Jamalabad check post who were also kept unaware if the incident have taken place at Kochian it means the incident have not taken place at Kochian.
- ④ Next comes ps mandani which is corner police station. It was their responsibility to take me first to the ps mandani but they did not do so. which also point out about the place of incident is some where else.
- ⑤ They report time of incident at 06:20. but my depart for duty is about 06:15 then how can I reach there in 5 minutes.

A
ATTESTED

14

Moreover it is most humbly prayed that I have been given an option of personal hearing in the charge sheet which I am going to accept to defend myself and my case from the charges levelled against me, which are totally groundless, animus, malicious, baseless and based on malice which surging on the whole record. So I humbly request to keep my inquiry pending in the light of para (13) a, b, c, d till the decision of the court.

A

Date:

Replying accused
 Insp Shahens Shah
 97/MR
 in charge traffic c
 (under suspension)

A
ATTESTED



OFFICE OF THE SUPERINTENDENT OF POLICE
INVESTIGATION CHARSADDA
PHONE No. 091-9220063

E
(17)

To: - The **District Police Officer,**
Charsadda.

No. 3639 Invest: dated Charsadda, the 13 November, 2017.

Subject: - **DEPARTMENTAL ENQUIRY AGAINST INSPECTOR SHAHEN SHAH**

Memo:-

Kindly refer to your office Endst: No. 6521-22/HC dated 30-10-2017.

ALLEGATIONS:-

It is submitted that Inspector Shahen Shah while posted as in-charge Traffic unit Charsadda, he was charged in case FIR No. 436 u/s 186/279/156(89) Custom Act PS Mandani. Being a member of disciplined force his act is highly objectionable and against the rules & regulations of the disciplined force and earns very bad name for the force.

He was charge sheeted and statement of allegations and the undersigned was nominated as enquiry officer.

BRIEF OF FIR:-

Sohail Muhammad Inspector Excise Charsadda reported that he along with SI Nadeem Rafiq, constables Abdul Basit, Gul Nawaz, Sajjad Ali, Farooq and Gul Zeb were present at Kochyan Road in connection with checking of suspect/NCP vehicles in a motor car bearing Reg: No. A-1088 and other mobile P(6). In the meanwhile at about 06:20 hrs a white color motor car corolla G bearing Reg: No.LA-037 Islamabad, seen coming from Shahalam Jowr side. The car was signaled to stop, but driver of the car increased speed of his car instead to stop.

The car was chased by the squad and the 2nd squad P(6) present on nakabandi near Safi Tent House Harichand Road was also informed to stop the car. When the car reached near the 2nd squad, they signaled to stop. But the driver instead to stop tried to run the car over the squad officials. In order to stop the car, the squad official fired at the tires of motor car. A few yards onward, the car was stopped. Driver who was hit and got injured, de-boarded and disclosed his name as Shahen Shah r/o Dakki. However, no documents regarding the said motor car were produced. The car was taken into possession and driver Shahen Shah was dispatched in injured condition to DHQ hospital Charsadda for treatment. On receipt of written application from Inspector Sohail Muhammad of Excise department the instant case was registered vide FIR No. 436 u/s 186/279/156(89) Custom Act PS Mandani.

After registration of the case ASI Gul Nabi Khan was entrusted with the investigation of the case.

His statement was recorded. Who disclosed that the incident has taken place in the instant place and from the conducted investigation so far Inspector Shahen Shah was found guilty. He further stated that report made by Inspector Shahen Shah, which has been entered into DD No. 12 dated 28-10-2017 is false and fabricated.

BRIEF OF THE DD:-

Inspector Shahen Shah made a report to in-charge casualty LRH Peshawar in injured/conscious condition along with Khadim Shah s/o Noor Rehman r/o Dakki that he is Incharge Traffic Police Charsadda. Today at morning as usual he was on his way to Charsadda for performing his duty by motor car without Reg: No. model 2005 white color. When reached to the place of occurrence, a private motor car parked at the opposite side of the road, from where

ATTESTED

An unknown accused fired on him with the intension of murdering him. As a result he was hit near armpit and got injured. Later on he was referred / rushed by the passers-by to LRH Peshawar for treatment. No motive behind the occurrence was disclosed. He charged unknown accused for the offence and stated that after confirmation of the actual accused he will charge them.

On this report a murasila was drafted and sent to the police station which was entered in DD No. 12 dated 28.10.2017 PS Mandani.

SI Shakir Ullah of PS Tangi of investigation staff is enquiring the case.

PROCEEDINGS:-

During the course of enquiry, the following concerned individuals including the default officer were called. They were heard in person and their statements were recorded:-

1. Inspector Sohail Muhammad Excise Department Charsadda.
2. ASI Nadeem Excise Department Charsadda.
3. SI Shakir Ullah CIO PS Tangi.
4. ASI Gul Nabi Khan PS Mandani.

Inspector Sohail Muhammad Excise Department Charsadda:-

He stated that on 28-10-2017 he got information that at early in the morning some suspect/NCP vehicles will pass through Harichand road. Hence a plan was prepared for nakabandi at 6:00 hrs. The squad was divided into two groups.

In 1st squad he along with constables Farooq, Sajjad and Gul Nawaz arranged nakabandi at Bagh Killi Road while the 2nd squad comprising of ASI Nadeem constable Shah Zeb, Abdul Basit took position at Kochyan Road Harichand.

At about 6:20 hrs. a motor car bearing Reg: No.LA-037 Islamabad having White color model 2004 Chassis No.NZE-121-3271292 & Engine No.268052 was seen coming from Shahalam Jowar. The car was signaled to stop by the 2nd squad present at Kochyan Road Harichand but the driver of motor car increased the speed instead to stop. The car was chased by the squad, further more constable Abdul Basit informed the 1st squad telephonically that they are chasing the car and further inform them to decamp from Bagh Killi Road and arrange nakabandi at Harichand Road and try to stop the car.

On this information (6) mobile immediately rushed from there and arranged nakabandi at Harichand Road near Safi Tent House. In the meanwhile when the vehicle reached near squad P (6) mobile, was signaled to stop. The driver of the motor car instead to stop increased speed rashly and tried to run the car over the squad. Then the squad fired on the tyers of the car for self defense. But the driver again instead to stop turned the car to right side towards Bagh Killi. By taking the vehicle onward in very rash and negligence driving, after some distance the driver stopped the car and de-boarded, removed the mask from his face and disclosed his name as Shahan Shah, who was identified by the squad member namely Gul Zeb and Abdul Basit. Driver Shahan Shah told that he has been injured while failed to produce registration of the car. Due to his injured condition he was brought to DHQ Charsadda by the squad and later on referred to LRH Peshawar.

His car bearing Reg: No. LA-037 Islamabad was taken into possession and as per direction of DG Excise the car was sent to ware-house Peshawar for further proceedings under Seizer & Disposal Rules 2015.

Inspector Shahan Shah crossed examined him. Detail statement is attached.

ASI Muhammad Nadeem Rafiq Excise Department Charsadda:-

He was heard in person. He repeated his stance in support of the statement of Inspector Sohail Muhammad of Excise Department.

Inspector Shahan Shah crossed examined him. Detail statement is attached.

A
ATTESTED

S/Shakir Ullah CIO PS Tangi:-

He stated that on 02-11-2017 an enquiry having DD. No. 12 dated 28-10-2017 u/s 156(3)-Cr.PC was received from DSP Tangi which is being investigated by him. During enquiry statement of Shahren Shah was recorded u/s 161-Cr.PC. He stated that the NCP motor car with out Reg: No. was with him at the time of occurrence. That car was under the use of him (Inspector Shahren Shah) for 05 months. He was injured in the said car.

ASI Gul Nabi Khan PS Mandani :-

He stated that on 28.10.2017 he was present at police station. In the meanwhile a written application was received from Excise Department Charsadda. Upon which a case vide FIR No. 436 dated 28-10-2017 u/s 186/279/156(89) Costume Act PS Mandani was registered. After registration, investigation was handed over to him. The case was discussed with the DPP. Who issued a written order to delete the section 156(89) of Custom Act as it was not in the domain of Police to investigate. Site plan was prepared on the pointation of Insp: Sohail Muhammad. An empty shell of 7.62 bore fresh fired was recovered from the spot and taken into possession. Statement of the officials of Excise Department and witnesses of recovery memo were recorded. During investigation it has come to know that the accused Shahren Shah also made a report in injured condition at Casualty DHQ Hospital Charsadda. In which he shows the place of occurrence as Harichand Road near Mobin Qilla while in fact the incident had taken place near Safi Tent House Harichand Road. Accused involved in the case has been arrested and challaned to court from where he was released on bail.

During cross examination he disclosed that from the investigation conducted so far the defaulter official is found guilty. And he further told that his report which was entered in DD no 12 dated 28/10/17 was fake and fabricated.

Inspector Shahren Shah the then Incharge Traffic (under suspension):-

The alleged official was also called to the office of the undersigned. He presented a written statement which is reproducing below.

1. That for reason more particularly below the statement of allegation s and charge sheet is ex-facie misconceived and the proceedings required to be closed and giving a quit to at this stage itself.
2. The proceedings are actually based upon on an incident which took place on 28-10-2017 at Mobin Qilla in between Dakki and Amirabad. When he was on his way for duty and his white corolla car w/o No. plates where a private car without signaling him open fire at him as a result he injured on left side very deeply.
3. Due to fear and prevailing situation of terrorism he didn't stop but after 500/600 meters he could bear the stress of deep wounds and stopped 100 meters or less before the said Pull. There a white car stopped with him and the persons shifted him to the back seat of his car and took him to Charsadda hospital. Where he was referred to LRH. At the time of report he didn't know that who fired at him but he thought that he will nominate them u/s 164-Cr.PC.
4. That next day in the hospital he came to know that Excise have lodged an FIR No. 436 u/s 186/279/156(89) custom act PS Mandani, then he realized that the helpers were the shooter too. Till that time he thought that they were on their way and stopped for my help. They were aware of their mistake therefore took me to the hospital.
5. Till today he did not known that why Excise opened fire at him. Do they have the right to do so? If he would have recognized at the time of fire ore they have signaled him then he would have directly charged them in my report. He reported against unknown for the purpose that when he knows will nominate

A
ATTESTED

- them in his 164-Cr.PC statement. But no one supported him and his report was written in DD for which he feel very alone and very grief.
6. That as it is yet to be determined that whether the alleged offence has been committed or not but in the present case the replying accused employee has been punished before conviction. ✓
 7. That in the case of charge of inefficiency and misconduct suspension couldn't be ordered in the light of reported judgment as PLD 1979 Lahore 56 and PLD 1965 SC 106 but here the matter is totally on opposite direction more particular the replying accused has already been suspended on 30-10-2017. ✓
 8. His right hand is half conscious as a result of an accident when a steel rod enters in his right hand above the elbow and brooks his elbow joint bone and cut radial nerve as well. Which result into half consciousness of his right hand till today. How can he be liable to 186 and 279 that the Excise stopped him with bullet. Copy of conducted test on 29-05-2017 is attached.
 9. That in this ground he pained instead of standing up for him and advising the Excise to desist for making report patently irresponsible, unfounded and motivated allegations against him and have chosen to issue the statement of allegation and charge sheet by not considering him bad injury and life and death situation and contribution with bad stigma/complainant in your esteemed department.
 - ✓ 10. That the statement of allegation makes various assumptions and presumptions which are totally misconceived and baseless. Moreover it should be responsibly exercised for sound and good reasons of considerations and it also not be used to settle score. But here the matter is totally different because there commission or omission which could be termed as misconduct, inefficiency or lack of interest in duty or service.
 11. That in the aforesaid circumstances, he submit before your good self that there is no what so ever in the statement of allegation coupled with the charge sheet. be raised against him and may very graciously be with drawn for the best in law, fairness and justice. Keeping in view his future service carrier.
 12. That before response to the allegations in the statement he has already adverted to the facts which are manifest the malice, ill will and animus but even then he was suspended on 30-10-2017 which is also on the basis of the said case after the unfortunate day of incident i.e. 28-10-2017 and falls within the scope and ambit the following articles of constitution of mother land.
 - a. **Article-13:-** protection against double punishment and self incrimination no person shall be prosecuted or punished for the same offence more than once or shall when accused of an offence be compelled to be a witness against himself.
 - b. **Article-20(2)** of Indian act is about dual proceeding of identical charges.
 - c. **26 General Clause Act**
 - d. **403-Cr.PC.**

Under the above a,b,c,d dual proceeding in identical charges cannot proceed. Because the alleged offence is the same but he has been choose n to be punish twice. In view of the above he humbly requested to keep his inquiry pending till the decision of the Court.
 - 13.

A

ATTESTED

- i. Do the Excise have informed the concerned Police Station about their arrival and nakabandi or about the incidence at the time of occurrence? Definitely not because they have reported at 1300 hrs.
- ii. If they fired near Kochyan then why did they not turn to RHC Harichand for first Aid which was in their way in about a minute. First aid has a key role in emergency.
- iii. Similarly after hospital comes Jamalabad check post who were also kept unaware if the incident have taken place at Kochyan it means the incident have not taken place at Kochyan.
- iv. Next comes PS Mandani which is concerned Police Station. It was their responsibility to take him first to the PS Mandani but they didn't do so. Which also point out about the place of incident is some where else.
- v. They report time of incident at 06:20 but his depart for duty is about 06:15 hrs then how can he reach there in 05 minutes.
- vi. His car have no scratch on any side which show that he has driven over them or there is any one of Excise official have a minor injury on their body or vehicle which that he have driven over them.
- vii. If he was in such a high speed and they fired and hit him then why his car didn't struck to some thing or went into nearby fields. It means that he was in normal speed by they fired at him without signaling and he himself stopped about 500/600 meters away as a result of stress of the wound & fear of terrorism.

14. He further requested to keep his enquiry pending in the light of above discussion till the decision of the Court.

When he was cross questioned, he confessed that the said motor car Corolla-G model 2004 was his own. He also stated that the said motor car was NCP which he has bought for his use.

Inspector Shahenshah and witnesses were confronted to each others. Opportunity of cross examination was provided to the defaulter official.

FACT FINDINGS:-

After perusal of statements and available record the following points came to surface:-

- ✓ 1. On the day of occurrence the default official was driving NCP car having Reg: No. LA-037 from Charsadda towards Harichand.
- ✓ 2. When he was stopped twice by the Excise Squad duly in proper uniform in two different places (1st squad at Bagh Killi Road while the 2nd squad at Kochyan Road) but he didn't stop his car for the reason best known to him.
- ✓ 3. It is worth to mention here that although the delinquent official knew that he was fired by the Excise Staff who took him to the hospital. But he wrote another fabricated report of the incident and charged unknown accused for the offence, this fabricated report shows his mala fide intention and shows that he wants to conceal the real/actual facts.
- ✓ 4. When he stopped his car he did not produce any documents regarding his car to the excise officials.

At
ATTESTED

- 5. His statements are full of contradictions. Although he cross examined the witnesses including the Excise Officials but he didn't charge any one for the offence so far.
- 6. By fabricating report he tried to deceive his senior officers
- 7. During cross examination he admitted that on the day of occurrence he had the motor car which was NCP and he further stated that he had bought the said car for his own use.
- 8. His reply to the question was not satisfactory, that whether selling and buying of NCP vehicles are illegal or otherwise.
- 9. MRA report received which shows that the car in question having Reg no LA-037 Islamabad Chassis No NZE 121-3271292 Engine no B 268052 which was recovered from the possession of the default official Inspector Shahen Shah, particulars of the vehicle registered on the said Reg No are as under.

Registration No	LA-037
Registration No.	27-Feb-07
Chassis No.	NZE121-3117617
Engine No.	A396200
Class of vehicle	TOYOTA/COROLLA
Color	WHITE
Model	2002
Registration Status	REGISTERED
Book Status	Original
Name of owner	Ijaz Ahmad Khan

✓ Which shows that bogus no plate was affixed by the default official on the car.

CONCLUSION:-

After the conducted enquiry and the recorded statements it transpired that Inspector Shahen Shah remained involved in the illegal business of Non Custom Paid vehicles. He miss-used his powers.

Being a member of disciplined force his this act is highly objectionable and against the norms of the disciplined force and earned very bad name for the KPK Police in general and the Charsadda district Police in particular.

Therefore, he is recommended for major punishment

[Signature]
Head of Investigation,
Charsadda.

R/Sis, Submitted for H/o Perusal
and further orders please

[Signature]
Head Clerk
14.11.07

Issue F.S.C.N

ATTESTED

w/ DPO/chel.

[Signature]
14.11.07



F
23

FINAL SHOW CAUSE NOTICE

Whereas, the charge of absence was referred to enquiry officer for General Police Proceedings, contained u/s 5(3) Police Rules 1975.

AND

Whereas, the enquiry officer has submitted his findings, recommending you for major penalty.

AND

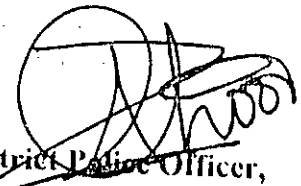
Whereas, I am satisfied with the recommendation of the enquiry officer that you **actor Shehenshah Khan**, while posted as I/C Traffic Unit Charsadda, On 28.10.2017 you were in Case FIR No. 436 u/s 186/279/156 (89) Custom Act PS Mandani. Being a member of line force your act is highly objectionable and against the rules and regulations of the discipline and also earns bad name for the force. Thus the act amounts to gross misconduct and renders you for punishment, under Police Rules 1975.


Therefore, I, Zahoor Babar Afridi, District Police Officer, Charsadda in exercise of the powers vested in me under rules 5(3) (a) (b) of Police Rules 1975, call upon you to explain as to why the proposed punishment may not be awarded to you.

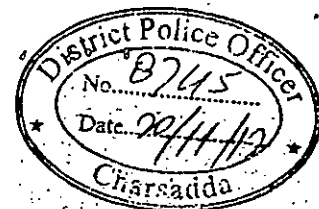
Your reply should reach the undersigned within 07-days of receipt of this notice, failing which ex-parte action will be taken against you.

You are at liberty to appear in person before the undersigned for personal hearing.

14/11/2017


District Police Officer,
Charsadda


ATTESTED



24

DSP/Kijal

② SCRS

To
[Signature]
20-11-17

The worthy DPO
Charsadda.

Subject: Reply to the Final Show cause
notice.

Respected Sir,

I am in receipt of final show cause notice in response there to I wish to submit the following.

① My inquiry is actually based upon an incident which took place on 28-10-17 near Mobeen Gila where the excise officials in a private car opened fire at me without signaling, I was on my way for duty in my white Corolla car without number plates. As a result of fire I deeply injured on my left side. Due to fear and prevailing situation of terror I did not stop and about 500/600 m I stopped because stress of deep wound and bleeding.

[Signature]

I was taken to DHB Charsadda and refer to LRH for further treatment.

In the hospital I came to know that the attack was from the excise as they have lodged an FIR against me in ps mandani.

I did not nominated in report because at that time I did not realized who were attacker I thought that later on I shall nominate them under 164 Crpc in the court but no one helped me in this connection for which I feel very grief and alone.

③ That as it is yet to be determined that whether the offence has been committed or not but in the present case the accused is being punished before the conviction.

④ According to the reported judgements of PLD 1979 Lahore 56 and PLD 1985 SC 106 Suspension could not be ordered in the case of charge of in efficiency and misconduct but here I have already been suspended on 30-10-17.

ATTESTED

5) under the following articles

(A) Article 13 - Protection against double punishment and self incrimination. No person...

shall be prosecuted or punished for the same offence more than once or shall be when accused of an offence be compelled to be a witness against himself.

In view of the above I humbly request not to punish me twice as the case in the court and the inquiry is also in progress.

6) If the excise officials are asked some questions then it will leads to reality which I humbly request.

1) Have the excise informed concern ps about nakbandi and the place of incidence and incidence?

2) If I was fired near Kochian then why I was not taken to RHC for first aid.

3) Jamal abad check post also unaware.

4) Ps mandani also unaware about the incident and about 7 hours later report was submitted in ps mandani.

5) No scratch on my car or on the excise car and no person of excise have minor injury then how I was in high speed that I driven over them.

ATTESTED

6) According to excise I was in very high speed and they fined then why my car did not struck to something or went to fields. If it was according to their statement then I would have struck to a tree or went to nearby fields.

I was in normal speed and they did not even signal me to stop because they were waiting for something else in mobeen Qila.

7) So I humbly request that charges levelled against me are totally baseless and keeping in view the earlier mentioned article and facts do not award me major punishment and double punishment as my case is in the court. There fore for the sake of my family and children not award me major punishment as I am innocent in this case.

My family and my children will pray you for the rest of our lives for this act of kindness:

Date. 18-11-17.

Rep by my accused
imp Shaleen Shah
MR-97

ATTESTED

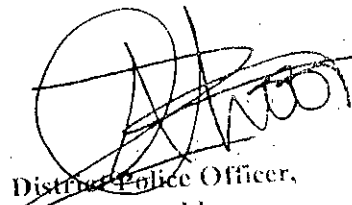
ORDER

This order will disposed off the departmental enquiry against Inspector Shehenshah Khan, while posted as I/C Traffic Unit Charsadda. On 28.10.2017 he was charged in Case FIR No. 436 u/s 186/279/156 (89) Custom Act PS Mandani.

In the above allegation he was issued Charge Sheet together with statement of allegation under Section 6(I) (a) of KPK Police Rules 1975. Enquiry Officer Mr. Nazir Khan Head of Investigation Charsadda was nominated for conducting departmental enquiry against him. The E.O after conducting proper departmental enquiry submitted his findings and recommends him for major punishment.

Subsequently, Inspector Shehenshah Khan, was issued Final Show Cause Notice U/S 5(3) Police Rules 1975 reply to which was received but found un-satisfactory. He has also given a chance to explain his position in orderly room on 27.11.2017, but he cannot satisfy the undersigned with his reply.

After going through the enquiry papers & recommendation of the enquiry officer and hearing him personally in orderly room, he is hereby awarded "Major Punishment of Dismissal from service" with immediate effect.


District Police Officer,
Charsadda

O.B No. 810

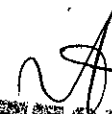
Date 27/11/2017

No. 6710-14 /HC, dated Charsadda the 28/11/2017

Copy for information and necessary action to the:-

1. Deputy Inspector General of Police Mardan region I Mardan
2. District Accounts Officer Charsadda
3. Pay Officer
4. EC/FMC

Enclose 65 Pages


ATTESTED

29

ORDER.


This order will dispose-off the appeal preferred by Ex-Inspector Shehenshah Khan of Charsadda District Police against the order of District Police Officer, Charsadda, whereby he was awarded Major punishment of dismissal from service vide District Police Officer, Charsadda OB No. 810 dated 27.11.2017.

Brief facts of the case are that the appellant while posted as Incharge Traffic Unit Charsadda, on 28.10.2017 he was charged in case vide FIR No. 436 u/s 186/279/156(89) Custom Act Police Station Mandani". The facts which led to the registration of aforementioned case are as under:

Sohail Muhammad Inspector Excise Charsadda reported that he along with SI Nadeem Khatib, Constables Abdul Basit, Gul Nawaz, Sajjad Ali, Farooq and Gul Zeb were present at Kochyan road in connection with checking of suspects/NCP vehicles in a motor car bearing Registration No. A-1088 and other mobile P(6). In the meanwhile at about 0620 hours a white color motor car corolla GLI bearing Registration No. LA-037 Islamabad, seen coming from Shahalam Jowr side. The car was signaled to stop but driver of the car increased speed of his car instead to stop. The car was chased by the squad and the 2nd squad P(6) present on Nakabandi near Safi Tent House Harichand road was also informed to stop the car. When the car reached near the 2nd squad they also signaled to stop but the driver instead to stop tried to run the car over the squad officials. In order to stop the car, the squad official fired at the tires of motorcar. A few yards onward, the car was stopped. Driver who was hit and got injured, de-boarded and disclosed his name as Shahenshah r/o Dhakki. However, no documents regarding the said motorcar were produced. The car was taken into possession and driver Shahenshah was dispatched in injured condition to DHQ Hospital Charsadda for treatment. On receipt of written application from Inspector Sohail Muhammad of Excise department the instant case was registered. In this regard charge sheet & summary of allegations was issued to the accused officer and Mr. Nazir Khan, Head of Investigation Charsadda was nominated as enquiry officer, with the direction to conduct proper departmental proceeding and submit his finding. After conducting proper departmental proceedings, he submitted his finding and recommended him for Major Punishment of Dismissal from service. Subsequently he was issued Final Show Cause Notice. Reply to the final show cause was received and found unsatisfactory. He was called for Orderly Room on 27.11.2017 by the District Police Officer, Charsadda but he cannot satisfy the District Police Officer, Charsadda. Therefore he was dismissed from Service.

He was called in orderly room held in this office on 20.12.2017 and heard him in person. The appellant did not produce any cogent reason for his innocence. Therefore, I find no grounds to intervene the order passed by District Police Officer, Charsadda. Appeal is rejected.

ORDER ANNOUNCED.


ATTESTED

o/c (Muhammad Alam Shiwari)PSP
Regional Police Officer,
Mardan

No. 9275 /ES. Dated Mardan the 22/12 /2017.

Copy to District Police Officer, Charsadda for information and necessary action w/r to his office



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

No. S/ 1176 /18, Dated Peshawar the 28/03/2018. ✓ J (30)

ORDER

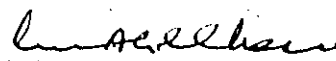
This order is hereby passed to dispose of departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 submitted by Ex-Inspector Shaheen Shah Khan. The appellatant was dismissed from service by DPO/Charsadda vide OB No. 810, dated 23.11.2017 on the charge that he while posted as Incharge Traffic Unit Charsadda, on 28.10.2017 he was charged in case vide FIR No. 436 u/s 186/279/156(89) Custom Act Police Station Mandani. His appeal was rejected by Regional Police Officer, Mardan vide order Endst: No. 9275/ES, dated 22.12.2017.

A meeting of the Appellate Board was held on 01.02.2018 in CPO. Shehan Shah Khan Ex-Inspector (hereinafter referred to as petitioner) present and heard in detail. Short yet relevant facts are that on 28.10.2017, the petitioner while posted as In-Charge Traffic Unit Charsadda was driving Non-Custom-Paid Vehicle. The Excise Squad present on checking duty gave signal of stopping to the petitioner but he did not stop. The Squad started chase of the motor car and also informed the 2nd squad present on checking duty at another point ahead of the fleeing motorcar. The driver of the motorcar also did not oblige the signal of the 2nd squad rather made attempt of running over on the officials of the squad. The Excise Officer made firing on the motorcar which hit the petitioner and accordingly he stopped the motorcar. The petitioner was shifted in injured condition to the DHQ Hospital Charsadda and the motorcar was seized. A criminal case vide FIR No. 436 Under Section 186, 279 PPC read with 156 (89) Custom Act, Police Station Mandani was also registered against the petitioner.

Petitioner was proceeded against departmentally and he was dismissed from service vide order dated 23.11.2017 of District Police Officer, Charsadda and his departmental appeal was also rejected by Regional Police Officer, Mardan.

Perusal of the record revealed that petitioner being a Police Officer was involved in smuggling of Non-Custom-Paid vehicle and he also did not surrender himself for checking resultantly he sustained injury. He tarnished the image of Police before the public and Excise Department. No irregularity and illegality was found in the impugned orders of District Police Officer, Charsadda and Regional Police Officer, Mardan. Therefore, the Board decided that the petition is hereby rejected.

This order is issued with the approval by the Competent Authority.


(MUHAMMAD ALI BABAKHEL)


Add: IGP/HQrs:
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

26/03

No. S/ 1177-85/18.

Copy of the above is forwarded to the:

1. Regional Police Officer, Mardan.
2. District Police Officer, Charsadda.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. PA to Add: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. PA to DIG/Training, Khyber Pakhtunkhwa, Peshawar.
7. PA to AIG/Establishment, Khyber Pakhtunkhwa, Peshawar.
8. PA to AIG/Legal, Khyber Pakhtunkhwa, Peshawar.
9. Office Supdt: E-II, CPO, Peshawar.


ATTESTED

بیگانه جوڈیشل

279/186/2017/مکمل عدالت صوبائی
436 جوڈیو 28/17

بیگم شہناز بیگم جوڈیشل آف دہلی
42/468/471

صاحبان عدالت جوڈیشل آف دہلی صاحبان عدالت جوڈیشل آف دہلی
کاملاً حراست میں ہے جوڈیشل آف دہلی، بیگم شہناز بیگم
بیگم شہناز بیگم جوڈیشل آف دہلی 14/11/17
جوڈیشل آف دہلی صاحبان عدالت جوڈیشل آف دہلی

ASST PS MAEN
9.11.2017

forwarded
9/11/2017

Order
09.11.2017

The accused is produced in custody. The offence is bailable, therefore, the accused is released on bail by furnishing bail bonds in the sum of Rs. 5000/- with two sureties. Failing which he kept in judicial lock-up upto 23.11.2017.

ATTESTED
[Signature]

VAKALAT NAMA

NO. _____/20

IN THE COURT OF Service Tribunal Peshawar

Shaher Shah Khan (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Police Deptt (Respondent)
(Defendant)

I/We, Shaher Shah Khan

Do hereby appoint and constitute **M. Asif Yousafzai, Advocate Supreme Court Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20

Shaher Shah Khan

(CLIENT)

ACCEPTED

M. Asif Yousafzai
M. ASIF YOUSAFZAI
Advocate Supreme Court
Peshawar.

Taimur Ali Khan
Taimur Ali Khan
Advocate High Court

Syed Nauman Ali Bukhari
Syed Nauman Ali Bukhari
Advocate

OFFICE:

Room # FR-8, 4th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawar
Cell: (0333-9103240)

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

Service Appeal No. 700/2018

**Shahenshah Khan, Ex-Inspector, In-charge Traffic Unit
Charsadda.....Appellant**

VS

IGP/KPK etc:Respondents

INDEX

S.No.	Description of documents	Annexure	Pages
1	Reply	-	1-3
2	Enquiry report	A	4-9
3	Statements	B	10-13
4	Final Show Cause Notice	C	14
5	Reply to Final Show Cause Notice	D	15-18
6	FIR	E	19

Respondents

Through:


Inspector Legal Charsadda

①

BEFORE THE HONOURABLE KPK SERVICES TRIBUNAL PESHAWAR

Service Appeal No. 700/2018

Shahenshah Khan, Ex-Inspector, In-charge Traffic Unit Charsadda
.....Appellant

VERSUS

IGP/KPK etc:Respondents

REPLY/PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 1 TO 3.

Respectfully Sheweth:

Preliminary Objections:

1. That appellant has not approached this Hon'ble tribunal with clean hands.
2. That appellant has suppressed actual facts/factual position from this Hon'ble tribunal.
3. That the appeal of appellant is not based on facts.
4. That the appeal of appellant is bad for non-joinder of necessary parties.
5. That the appellant is estopped by his own conduct to file the present appeal.

REPLY ON FACTS:

1. Para pertains to initial appointment and subsequent promotion of the appellant, hence needs no comments.
2. Correct to the extent that appellant while posted as Incharge Traffic Unit Charsadda, was charged in a case vide FIR No.436 dated 28.10.2017 u/s 186/279/156 (89) Custom Act PS Mandani, on the report of Sohail Ahmad Inspector Excise Charsadda, Inspector Sohail Ahmad reported that he alongwith SI Nadeem Rafiq, Constables Abdul Basit, Gul Nawaz, Sajjad Ali, Farooq and Gul Zeb was present at Kochyan Road, in connection with checking of suspect/NCP vehicles in a motor car bearing Reg: No. A-1088 and another mobile P(6). In the meanwhile at about 0620 hours a white color corolla G bearing Reg: No.LA-037 Islamabad, seen coming from Shahalam Jowr side. The car was signaled to stop, but driver of the car rather to stop, increased speed of his car.

The car was chased by the squad and the 2nd squad P(6) present on nakabandi near Safi Tent Home Harichand Road was also informed to stop the car. When the car reached near the 2nd squad, they also signaled to stop. But the driver instead to stop tried to run the car over the squad officials. In order to stop the car, the squad official fired at the tires of motorcar. A few yards onward, the car was stopped. Driver who was hit and got injured, de-boarded and disclosed his name as Shahenshah r/o Dakki. However, no documents regarding the said motorcar were produced. The car was taken into possession and driver Shahenshah was referred/taken in injured condition to DHQ Hospital Charsadda for treatment. On receipt of written

application from Inspector Sohail Muhammad of Excise department the instant case was registered.

3. Incorrect. A proper enquiry was conducted against appellant. He was given full opportunity to defend himself as well cross examine the witnesses but he failed to present even a signal evidence in his defense. **Copy of enquiry, statements and cross are annexed A & B.**
4. Correct to the extent that appellant was issued final show cause notice to which he submitted his reply. However, the same was found unsatisfactory. **Copy of final show cause notice and reply is annexed as annexure C & D.**

It is worth mentioning here that after dismissal from service, the appellant was again found involved in the practice of smuggling NCP vehicles. In respect of which a case vide FIR No. 24 dated 12.01.2018 u/s 420/468/471-PPC PS Umarzai was registered against the appellant (**copy of FIR is annexed as annexure E.**)

5. Correct to the extent that the appellant filed departmental appeal before the appellate authority i.e Deputy Inspector General of Police Mardan Region, which was rejected vide order dated 22.12.2017. Later on appellant moved departmental appeal under rules 11-A of Khyber Pakhtunkhwa Police Rules 1975 before the worthy Inspector General of Police Khyber Pakhtunkhwa, however, the same was also rejected vide order dated 28.03.2018.
6. That respondents approach this Hon'able Tribunal to dismiss appeal of the appellant on the following grounds:

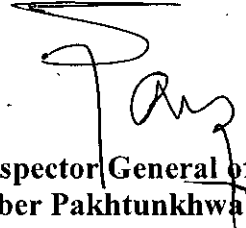
GROUND:

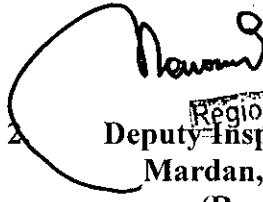
- A. Incorrect. Orders passed by the competent authority as well as appellate authorities are in accordance with law, norms of justice and material facts, therefore, are liable to be maintained.
- B. Incorrect. Proper enquiry was conducted wherein all codal formalities were fulfilled and appellant was provided full opportunity to defend himself but he bitterly failed to produce even a single evidence in his defence.
- C. Incorrect. All statements were recorded in the presence of appellant and he was also provided the opportunity to cross examine the witnesses, which is evident from the annexed statements.
- D. Incorrect. Mere grant of bail does not exonerate/discharge anyone from the criminal liabilities/charges.
- E. Incorrect. Departmental and criminal proceedings are two separate entities and both can run side by side. Fate of one will have no effect on the other.

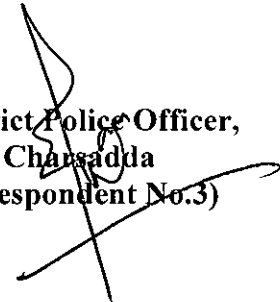
3

- F. Incorrect. Appellant was provided full opportunity of defending himself but he failed to produce even single evidence in his defense.
- G. That the respondents also seek permission of this Honorable Tribunal to advance additional grounds at the time of arguments.

Keeping in view the above facts, it is most humbly prayed that appeal of appellant being without merit and substance, may be dismissed with cost.

1. 
Inspector General of Police,
Khyber Pakhtunkhwa Peshawar
(Respondent No.1)

2. 
Regional Police Officer,
Deputy Inspector General of Police,
Mardan, Region-I Mardan
(Respondent No.2)

3. 
District Police Officer,
Charsadda
(Respondent No.3)



**OFFICE OF THE SUPERINTENDENT OF POLICE
INVESTIGATION CHARSADDA
PHONE No. 091-9220063**

To: - The **District Police Officer,
Charsadda.**

No: 3639 Invest: dated Charsadda, the 13 November, 2017.

Subject: - **DEPARTMENTAL ENQUIRY AGAINST INSPECTOR SHAHEN SHAH**

Memo:-

Kindly refer to your office Endst: No. 6521-22/HC dated 30-10-2017.

ALLEGATIONS:-

It is submitted that Inspector Shahen Shah while posted as in-charge Traffic unit Charsadda, he was charged in case FIR No. 436 u/s 186/279/156(89) Custom Act PS Mandani. Being a member of disciplined force his act is highly objectionable and against the rules & regulations of the disciplined force and earns very bad name for the force.

He was charge sheeted and statement of allegations and the undersigned was nominated as enquiry officer.

BRIEF OF FIR:-

Sohail Muhammad Inspector Excise Charsadda reported that he along with SI Nadeem Rafiq, constables Abdul Basit, Gul Nawaz, Sajjad Ali, Farooq and Gul Zeb were present at Kochyan Road in connection with checking of suspect/NCP vehicles in a motor car bearing Reg: No. A-1088 and other mobile P(6). In the meanwhile at about 06:20 hrs a white color motor car corolla G bearing Reg: No.LA-037 Islamabad, seen coming from Shahalam Jowr side. The car was signaled to stop, but driver of the car increased speed of his car instead to stop.

The car was chased by the squad and the 2nd squad P(6) present on nakabandi near Safi Tent House Harichand Road was also informed to stop the car. When the car reached near the 2nd squad, they also signaled to stop. But the driver instead to stop tried to run the car over the squad officials. In order to stop the car, the squad official fired at the tires of motor car. A few yards onward, the car was stopped. Driver who was hit and got injured, de-boarded and disclosed his name as Shahen Shah r/o Dakki. However, no documents regarding the said motor car were produced. The car was taken into possession and driver Shahen Shah was dispatched in injured condition to DHQ hospital Charsadda for treatment. On receipt of written application from Inspector Sohial Muhammad of Excise department the instant case was registered vide FIR No. 436 u/s 186/279/156(89) Custom Act PS Mandani.

After registration of the case ASI Gul Nabi Khan was entrusted with the investigation of the case.

His statement was recorded. Who disclosed that the incident has taken place in the instant place and from the conducted investigation so far Inspector Shahen Shah was found guilty. He further stated that report made by Inspector Shahen Shah, which has been entered into DD No. 12 dated 28-10-2017 is false and fabricated.

BRIEF OF THE DD:-

Inspector Shahen Shah made a report to in-charge casualty LRH Peshawar in injured/conscious condition along with Khadim Shah s/o Noor Rehman r/o Dakki that he is Incharge Traffic Police Charsadda. Today at morning as usual he was on his way to Charsadda for performing his duty by motor car without Reg: No. model 2005 white color, when reached to the place of occurrence, a private motor car parked at the opposite side of the road, from where

an unknown accused fired on him with the intension of murdering him. As a result he was hit near armpit and got injured. Later on he was referred / rushed by the passers-by to LRH Peshawar for treatment. No motive behind the occurrence was disclosed. He charged unknown accused for the offence and stated that after confirmation of the actual accused he will charge them.

On this report a murasila was drafted and sent to the police station which was entered in DD No. 12 dated 28.10.2017 PS Mandani.

SI Shakir Ullah of PS Tangi of investigation staff is enquiring the case.

PROCEEDINGS:-

During the course of enquiry, the following concerned individuals including the default officer were called. They were heard in person and their statements were recorded:-

1. Inspector Sohail Muhammad Excise Department Charsadda.
2. ASI Nadeem Excise Department Charsadda.
3. SI Shakir Ullah CIO PS Tangi.
4. ASI Gul Nabi Khan PS Mandani.

Inspector Sohail Muhammad Excise Department Charsadda:-

He stated that on 28-10-2017 he got information that at early in the morning some suspect/NCP vehicles will pass through Harichand road. Hence a plan was prepared for nakabandi at 6:00 hrs. The squad was divided into two groups.

In 1st squad he along with constables Farooq, Sajjad and Gul Nawaz arranged nakabandi at Bagh Killi Road while the 2nd squad comprising of ASI Nadeem constable Shah Zeb, Abdul Basit took position at Kochyan Road Harichand.

At about 6:20 hrs a motor car bearing Reg: No.LA-037 Islamabad having White color model 2004 Chassis No.NZE-121-3271292 & Engine No.268052 was seen coming from Shahalam Jowar. The car was signaled to stop by the 2nd squad present at Kochyan Road Harichand but the driver of motor car increased the speed instead to stop. The car was chased by the squad, further more constable Abdul Basit informed the 1st squad telephonically that they are chasing the car and further inform them to decamp from Bagh Killi Road and arrange nakabandi at Harichand Road and try to stop the car.

On this information P (6) mobile immediately rushed from there and arranged nakabandi at Harichand Road near Safi Tent House. In the meanwhile when the vehicle reached near squad P (6) mobile, was signaled to stop. The driver of the motor car instead to stop increased speed rashly and tried to run the car over the squad. Then the squad fired on the tyers of the car for self defense. But the driver again instead to stop turned the car to right side towards Bagh Killi. By taking the vehicle onward in very rash and negligence driving, after some distance the driver stopped the car and de-boarded, removed the mask from his face and disclosed his name as Shahen Shah, who was identified by the squad member namely Gul Zeb and Abdul Basit. Driver Shahen Shah told that he has been injured while failed to produce registration of the car. Due to his injured condition he was brought to DHQ Charsadda by the squad and later on referred to LRH Peshawar.

His car bearing Reg: No. LA-037 Islamabad was taken into possession and as per direction of DG Excise the car was sent to ware-house Peshawar for further proceedings under Seizer & Disposal Rules 2015.

Inspector Shahen Shah crossed examined him. Detail statement is attached.

ASI Muhammad Nadeem Rafiq Excise Department Charsadda:-

He was heard in person. He repeated his stance in support of the statement of Inspector Sohail Muhammad of Excise Department.

Inspector Shahen Shah crossed examined him. Detail statement is attached.

⑥

SI Shakir Ullah CIO PS Tangi:-

He stated that on 02-11-2017 an enquiry having DD. No. 12 dated 28-10-2017 u/s 156(3)-Cr.PC was received from DSP Tangi which is being investigated by him. During enquiry statement of Shahen Shah was recorded u/s 161-Cr.PC. He stated that the NCP motor car with out Reg: No. was with him at the time of occurrence. That car was under the use of him (Inspector Shahen Shah) for 05 months. He was injured in the said car.

ASI Gul Nabi Khan PS Mandani :-

He stated that on 28.10.2017 he was present at police station. In the meanwhile a written application was received from Excise Department Charsadda. Upon which a case vide FIR No. 436 dated 28-10-2017 u/s 186/279/156(89) Costume Act PS Mandani was registered. After registration, investigation was handed over to him. The case was discussed with the DPP. Who issued a written order to delete the section 156(89) of Custom Act as it was not in the domain of Police to investigate. Site plan was prepared on the pointation of Insp: Sohail Muhammad. An empty shell of 7.62 bore fresh fired was recovered from the spot and taken into possession. Statement of the officials of Excise Department and witnesses of recovery memo were recorded. During investigation it has come to know that the accused Shahen Shah also made a report in injured condition at Casualty DHQ Hospital Charsadda. In which he shows the place of occurrence as Harichand Road near Mobin Qilla while in fact the incident had taken place near Safi Tent House Harichand Road. Accused involved in the case has been arrested and challaned to court from where he was released on bail.

During cross examination he disclosed that from the investigation conducted so far the defaulter official is found guilty. And he further told that his report which was entered in DD no 12 dated 28/10/17 was fake and fabricated.

Inspector Shahen Shah the then Incharge Traffic (under suspension):-

The alleged official was also called to the office of the undersigned. He presented a written statement which is reproducing below.

1. That for reason more particularly below the statement of allegation s and charge sheet is ex-facie misconceived and the proceedings required to be closed and giving a quiet to at this stage itself.
2. The proceedings are actually based upon on an incident which took place on 28-10-2017 at Mobin Qilla in between Dakki and Amirabad. When he was on his way for duty and his white corolla car w/o No. plates where a private car without signaling him open fire at him as a result he injured on left side very deeply.
3. Due to fear and prevailing situation of terrorism he didn't stop but after 500/600 meters he could bear the stress of deep wounds and stopped 100 meters or less before the said Pull. There a white car stopped with him and the persons shifted him to the back seat of his car and took him to Charsadda hospital. Where he was referred to LRH. At the time of report he didn't know that who fired at him but he thought that he will nominate them u/s 164-Cr.PC.
4. That next day in the hospital he came to know that Excise have lodged an FIR No. 436 u/s 186/279/156(89) custom act PS Mandani, then he realized that the helpers were the shooter too. Till that time he thought that they were on their way and stopped for my help. They were aware of their mistake therefore took me to the hospital.
5. Till today he did not known that why Excise opened fire at him. Do they have the right to do so? If he would have recognized at the time of fire ore they have signaled him then he would have directly charged them in my report. He reported against unknown for the purpose that when he knows will nominate

them in his 164-Cr.PC statement. But no one supported him and his report was written in DD for which he feel very alone and very grief.

6. That as it is yet to be determined that whether the alleged offence has been committed or not but in the present case the replying accused employee has been punished before conviction.
7. That in the case of charge of inefficiency and misconduct suspension couldn't be ordered in the light of reported judgment as PLD 1979 Lahore 56 and PLD 1965 SC 106 but here the matter is totally on opposite direction more particular the replying accused has already been suspended on 30-10-2017.
8. His right hand is half conscious as a result of an accident when a steel rod enters in his right hand above the elbow and breaks his elbow joint bone and cut radial nerve as well. Which result into half consciousness of his right hand till today. How can he be liable to 186 and 279 that the Excise stopped him with bullet. Copy of conducted test on 29-05-2017 is attached.
9. That in this ground he pained instead of standing up for him and advising the Excise to desist for making report patently irresponsible, unfounded and motivated allegations against him and have chosen to issue the statement of allegation and charge sheet by not considering him bad injury and life and death situation and contribution with bad stigma/complainant in your esteemed department.
10. That the statement of allegation makes various assumptions and presumptions which are totally misconceived and baseless. Moreover it should be responsibly exercised for sound and good reasons of considerations and it also not be used to settle score. But here the matter is totally different because there commission or omission which could be termed as misconduct, inefficiency or lack of interest in duty or service.
11. That in the aforesaid circumstances, he submit before your good self that there is no merit what so ever in the statement of allegation coupled with the charge sheet sought be raised against him and may very graciously be withdrawn for the best interest of law, fairness and justice. Keeping in view his future service carrier.
12. That before response to the allegations in the statement he has already adverted to the facts which are manifest the malice, ill will and animus but even then he was suspended on 30-10-2017 which is also on the basis of the said case after the unfortunate day of incident i.e. 28-10-2017 and falls within the scope and ambit the following articles of constitution of mother land.
 - a. **Article-13:-** protection against double punishment and self incrimination no person shall be prosecuted or punished for the same offence more than once or shall when accused of an offence be compelled to be a witness against himself.
 - b. **Article-20(2)** of Indian act is about dual proceeding of identical charges.
 - c. **26 General Clause Act**
 - d. **403-Cr.PC.**

Under the above a,b,c,d dual proceeding in identical charges cannot proceed. Because the alleged offence is the same but he has been choose n to be punish twice. In view of the above he humbly requested to keep his inquiry pending till the decision of the Court.

- i. Do the Excise have informed the concerned Police Station about their arrival and nakabandi or about the incidence at the time of occurrence? Definitely not because they have reported at 1300 hrs.
- ii. If they fired near Kochyan then why did they not turn to RHC Harichand for first Aid which was in their way in about a minute. First aid has a key role in emergency.
- iii. Similarly after hospital comes Jamalabad check post who were also kept unaware if the incident have taken place at Kochyan it means the incident have not taken place at Kochyan.
- iv. Next comes PS Mandani which is concerned Police Station. It was their responsibility to take him first to the PS Mandani but they didn't do so. Which also point out about the place of incident is some where else.
- v. They report time of incident at 06:20 but his depart for duty is about 06:15 hrs then how can he reach there in 05 minutes.
- vi. His car have no scratch on any side which show that he has driven over them or there is any one of Excise official have a minor injury on their body or vehicle which that he have driven over them.
- vii. If he was in such a high speed and they fired and hit him then why his car didn't struck to some thing or went into nearby fields. It means that he was in normal speed by they fired at him without signaling and he himself stopped about 500/600 meters away as a result of stress of the wound & fear of terrorism.

14. He further requested to keep his enquiry pending in the light of above discussion till the decision of the Court.

When he was cross questioned, he confessed that the said motor car Corolla-G model 2004 was his own. He also stated that the said motor car was NCP which he has bought for his use.

Inspector Shahenshah and witnesses were confronted to each others. Opportunity of cross examination was provided to the defaulter official.

FACT FINDINGS:-

After perusal of statements and available record the following points came to surface:-

1. On the day of occurrence the default official was driving NCP car having Reg: No. LA-037 from Charsadda towards Harichand.
2. When he was stopped twice by the Excise Squad duly in proper uniform in two different places (1st squad at Bagh Killi Road while the 2nd squad at Kochyan Road) but he didn't stop his car for the reason best known to him.
3. It is worth to mention here that although the delinquent official knew that he was fired by the Excise Staff who took him to the hospital. But he wrote another fabricated report of the incident and charged unknown accused for the offence, this fabricated report shows his mala fide intention and shows that he wants to conceal the real/actual facts.
4. When he stopped his car he did not produce any documents regarding his car to the excise officials.

9

5. His statements are full of contradictions. Although he cross examined the witnesses including the Excise Officials but he didn't charge any one for the offence so far.
6. By fabricating report he tried to deceive his senior officers
7. During cross examination he admitted that on the day of occurrence he had the motor car which was NCP and he further stated that he had bought the said car for his own use.
8. His reply to the question was not satisfactory, that whether selling and buying of NCP vehicles are illegal or otherwise.
9. MRA report received which shows that the car in question having Reg no LA-037 Islamabad Chassis No NZE 121-3271292 Engine no B 268052 which was recovered from the possession of the default official Inspector Shahen Shah, particulars of the vehicle registered on the said Reg No are as under.

Registration No	<u>LA-037</u>
Registration No.	<u>27-Feb-07</u>
Chassis No.	<u>NZE121-3117617</u>
Engine No.	<u>A396200</u>
Class of vehicle	<u>TOYOTA/COROLLA</u>
Color	<u>WHITE</u>
Model	<u>2002</u>
Registration Status	<u>REGISTERED</u>
Book Status	<u>Original</u>
Name of owner	<u>Ijaz Ahmad Khan</u>


Which shows that bogus no plate was affixed by the default official on the car.

CONCLUSION:-

After the conducted enquiry and the recorded statements it transpired that Inspector Shahen Shah remained involved in the illegal business of Non Custom Paid vehicles. He miss-used his powers.

Being a member of disciplined force his this act is highly objectionable and against the norms of the disciplined force and earned very bad name for the KPK Police in general and the Charsadda district Police in particular.

Therefore, he is recommended for major punishment


Head of Investigation,
Charsadda.

R/Sig Submitted for H/O Perusal
and further orders please

Head Clerk
7/11/07

Issue F.S.C.N.

w/ DPO/Chd.


Head Clerk

میں سے ڈر ڈریم شیو (A-51) اس کے ساتھ ہمارے بیان

کرنے پر 28/17 کو میا انٹرنیشنل کے ڈیپارٹمنٹ کے ملازمین کو بھی لکھی گئی

الغیر کی شکایت / ACP کے بارے میں ہرگز نہیں لکھی گئی۔ جبکہ تقریباً 2006 میں
میں انٹرنیشنل کے ڈیپارٹمنٹ کو دو مہینوں میں لکھ کر دیا گیا تھا۔
کامیٹیاں مل ذریعے عبدالواسط کے ذریعے روڈ ٹریفک حادثے پر روزناموں
سبھی نے کہا تھا کہ خود بخود کامیٹیاں غارتوں میں لگائی گئی ہیں اور سجاد علی کے
P-6 سوال میں باغ ٹکے روڈ پر حادثے کی

تقریباً 2006 کا باغ شاہ عالم ٹورسٹی کے

قاری علی LA-037 اسلام آباد ٹریفک سیکورٹی ڈیپارٹمنٹ 2006 میں

انٹرنیشنل کے ڈیپارٹمنٹ کے بارے میں لکھا گیا۔ لیکن ڈرائیور کو
مذکورہ نے گاڑی روکنے کی بجائے گاڑی کو تیز کر دیا۔ جس پر
کے بعد کامیٹیاں مل ذریعے اور عبدالواسط قاری کا تعلق شروع کیا۔

اور اسی دوران کامیٹیل عبدالواسط نے مذکورہ ٹریفک (P-6) سوال سکوڑا کر
اطلاع دیا کہ ہم گاڑی مذکورہ کا تعلق کر رہے ہیں اور آپ بھی باغ ٹکے ڈور
میں روانہ ہو کر ٹریفک حادثے پر حادثے کی تہہ بند کی ہے۔ جس پر سہیل خان انٹرنیشنل

نے باغ سکوڑا کر ٹریفک حادثے کی تہہ بند کی تہہ بند کی ہے۔ اس دوران
میں گاڑی مذکورہ سکوڑا کر P-6 سوال کے قریب لکھی گئی تھی۔ گاڑی مذکورہ
کو روکنے کا اشارہ دیا۔ جس پر ڈرائیور کو ٹریفک سے روکنے کی بجائے
ڈرائیورنگ کرتے ہوئے گاڑی کو سکوڑا کر لے کر چلے گئے۔

جس پر سوال سکوڑا کر لے کر چلے گئے۔ جس پر Self-Defense میں

گاڑی مذکورہ کے ٹریفک حادثے میں تہہ بند کی ہے۔ گاڑی ڈرائیور نے
گاڑی کا رخ دائیں طرف مڑا دیا اور باغ ٹکے کے دائیں سرروانہ کر دی
اور اسی طرح غلطی ڈرائیور نے کیا ہے۔ اس پر سہیل خان

فائل میں لکھے گئے۔ بعد گاڑی مذکورہ کو باغ ٹکے روڈ پر روک کر قاری
سے ڈر لکھی گئی۔ جس پر سہیل خان نے اپنا نام سہیل خان لکھا ہے۔ جس
کو فوراً سکوڑا کر مل ذریعے اور عبدالواسط نے بیان کیا کہ یہ کو ٹریفک

انچارج چارٹرڈ سہیل خان ہے۔ ڈرائیور سہیل خان کو قاری کے متعلق
کسی قسم کی رپورٹ نہیں دی گئی۔ اور سہیل خان کو سکوڑا کر لکھا (P-6)

بہتر بارک وہ زنجی ہے لہذا ڈیٹوری زخمی خانہ کو دیکھتے ہوئے اسے
فورا DHB چار سترہ بجہ سٹوڈ روانہ کیا جہاں پر ابتدائی طبی امداد
کے بعد CRH لیٹرار سٹوڈ کے ساتھ مزید علاج معالجے کے لیے روانہ
کر دیا گیا۔

فزیو لوجی مہتری 037- LA اسلام آباد رولوائٹری سہیل محمد
ایٹار جیوٹیل سٹوڈ (P) چار سترہ نے اپنی مچھل میں بڑے بڑے پتھر
D.G. ایکس ٹریٹمنٹ اینڈ ٹیکسٹائل سٹوڈ

Beizer and Disposal Rule 2015 کے تحت مزید رپورٹ کے لیے ایٹار ٹریٹمنٹ
لیٹرار روانہ کیا۔

لیٹرار رپورٹیں

محمد امین افیش A.S. 1/1/19

Cross by map/shahousha

سوال: کیا تم نے قلعہ قبا کو آقاہ کیا تھا؟ ہم قبا میں ٹورنٹ پر گیا، پتھر لائے؟
جواب: ہم نے DG آفس کو مطلع کیا تھا، بیٹا رپورٹ ہم میں کر رہے ہیں۔
سوال: فائر کی ٹوٹ ٹیوں آئی، کیونکہ ہم آگے گاڑی میں ٹوٹا ہوا اور
ہی ٹوٹا رہا ہے۔

جواب: آگ دو سکوار ڈوٹ کے اشارہ کیا آپ لپٹا رہے۔ اور سٹاف
پر گاڑی چڑھانے کی کوشش کی۔

سوال: اگر میں قبا میں چڑھا دیتا، تو کون کون سا زخمی؟ ان میں سے کون
جواب: ڈیکلریشن قبا کی اطلاع باغی کے طرف ہو رہی۔ تو ہم بھی گئے۔

سوال: جب میں زخمی تھا، تو فرسٹ ایڈ کیا دیا؟
لپٹا رہا ہے تھا۔
جواب: ڈیکلریشن قبا کے علم میں RHC لپٹا رہا اور ڈیکلریشن قبا کے علم میں اسکو

فلم اور فلم چارٹر DHA لیکھا اور باہر چلے گئے تھے۔

کروڑوں کے بجائے لکھوں کے بجائے۔

بیسویں

Cross by me

سوال: کیا آپ نے کسی اطلاع پر نام لگایا تھا۔

جواب: جی ہاں ہم نے جس اطلاع (فون) اور ہم نے اپنے office کو

بیر وقت اطلاع دلائی۔

سوال: آپ نے اس کے گاڑوں کو فیسوں اور سارے دیا۔

رہائے تھے۔ تین تین افراد اور فون کو حالت میں آدھا تو اس

وجہ سے ہم نے اطلاع دیا۔

Attested

M. K. K.
Head of Investigation,
Dist: Charsadda

معرض ہوں کہ جزوہ ۱۷/۲۸ کو میں نماں میں جو در کتابہ حکمہ انیسائے
 چارہ کے جانب سے ایک نئی ریہا درواست۔ جو کل پورہ افران بہ
 کے گوشہ میں ایسا جاڑ خون تہ صدفہ حکمہ 186-279 کہیں
 دراج رہبروت کی حدایت (تفسیر من ۱۵۶۸۹) ۱۵۶۸۹
 تہہ صاب۔ ۱۵۶۸۹ چارہ سے ڈسٹس خون ۱۵۶۸۹
 حکمہ نئی کی ریہا دیکھنے میں صدفہ ہے در ان تفسیر تفسیر
 صدفہ نشاندہی انیکر سیرالہم صدفہ کے وقت سے ایک دروا
 ۱۵۶۸۹ تازہ جلدوں؟ تھا گا اور بیرونی تہہ صدفہ اولیٰ حق
 دیکھا نہک انکا مان اور گواہان خود کے بیانات ہے در ان
 تفسیر حکمہ ہوا کہ منظم مشاہدے کیوں کیا چارہ میں
 بحالت خود صدفہ پورہ شوق جس میں جانے وقوع حدی صدفہ
 روڈ نرو جو میں قلا بنڈیا صدفہ اصل میں وقوع صدفہ ٹینٹ
 حادیں نرو حدی صدفہ روڈ روفا پورہ صدفہ منظم در صدفہ
 کی چاندی عہدات یہاں جو تہہ صدفہ پورہ صدفہ
 جو تہہ صدفہ پورہ صدفہ پورہ صدفہ پورہ صدفہ

Asi
 Asi As mai
 9. 11. 2017

سوال: آپ کے لئے تفسیر کے حلاق اسلڈر مشاہدہ کیا ہے یا
 ہے گناہ

جو تہہ صدفہ پورہ صدفہ پورہ صدفہ پورہ صدفہ پورہ صدفہ
 وقوعہ جو صدفہ وقوعہ اسلڈر مشاہدہ کیا ہے اور روز
 جمعہ صدفہ صدفہ صدفہ صدفہ صدفہ صدفہ صدفہ
 اور من گھڑت ہے
 Attested
 Asi

میں سمجھے پہلے محمد الذیکر السلام نے کہا اور وہ آہستہ آہستہ بیان کرتا ہے

کہ جو کہ 15/17 کو جمعے کو خیر المصالح تھی کہ علی الفہم کی مشورہ / NCP قاضیوں نے اس پر ہندو نہیں گئی۔ لہذا تقریباً 2006 تک جمع میں نانہ ہندی کرنے کی حلف علی تیار کی اور اور سکواڈ کو دو مہموں میں تقسیم کر کے ایک سکواڈ میں میں جمع مانڈیلاں فاروقی استیاری اور علی نواز نے باغ قلعے روڈ پر نانہ ہندی کی جبکہ دوسرے سکواڈ میں میں نے آئی۔ ایم ایم جمع مانڈیلاں قلعے میں، عبدالواسطہ کو کی جہاں روڈ پر ہندی کر کے پورے میں رہنے لگے گا تھا۔

تقریباً 2006: باغ قلعے کے خیر المصالح کوڑی مہاوت سے موٹر گاڑی LA-037

اسلام آباد ہائیڈرو پاور ہاؤس، ماڈل 2004، ایم پی سی نمبر 3271292-3271292، N2E-124، ایچ این نمبر B268052 کو آئے ہوئے دیکھا گیا۔ میں کو سکواڈ عدلہ کوہ جہاں روڈ پر ہندی کر کے موجود جہاں رہنے کے لیے استعارہ لیا۔ گلہ ڈرائیور موٹر گاڑی کوڑی روڑے کی جگہ سے گاڑی کی رفتار خیر ہندی کر دی۔ میں نے سکواڈ عدلہ نے گاڑی کا تعاقب شروع کر دیا۔ اور مزید فائنٹیل عبدالواسطہ نے اپنے دوسرے سکواڈ کو نیزہ پلو ٹرن المصالح دی کہ ہم گاڑی کا تعاقب کر دیے ہیں اور آپ بھی باغ قلعے روڈ سے روانہ ہو کر ہندی ہندی روڈ پر نانہ ہندی کریں اور گاڑی کو روڑے کی کوشش کریں۔ لہذا اس المصالح پر میں نے فوراً "P(1) حوائل کو باغ قلعے سے روانہ کر کے

ہندی ہندی روڈ پر ہندی ہندی ہاؤس نانہ ہندی کی۔ اس دوران صبح گاڑی فزولورہ سکواڈ P(6) حوائل کے قریب پہنچی تو ہم نے فزولورہ گاڑی کو روڑے کا اشارہ کیا۔ ہمیں گلہ ڈرائیور موٹر گاڑی کے روڑے کی جگہ فزولورہ فزولورہ ڈرائیور کے ہوتے ہوئے گاڑی کو سکواڈ عدلہ پر چڑھانے کی کوشش ہی میں کے نتیجے میں P(6) حوائل سکواڈ عدلہ نے self-defense میں گاڑی فزولورہ کے اشارے پر فزولورہ کیے۔ گلہ گاڑی فزولورہ کے ڈرائیور نے کھمبھی گاڑی روڑے کی جگہ سے گاڑی کو دائیں طرف موڑنے سے پہلے باغ قلعے کی طرف کر دیا۔ اور اسی لمحے فزولورہ

ڈرائیور کو گرفتار کیا گیا۔ آگ لگنے سے ڈھکے ڈھکے فزولورہ کے آگ سے فزولورہ گاڑی باغ قلعے روڈ پر رہی تو ڈرائیور نے مارتے ہی اپنے چہرے سے فاسک دھٹکا اور اپنا نام شہنشاہ قبلا لیا۔ میں کو سکواڈ عدلہ قلعے میں اور عبدالواسطہ لہجے میں کہے کہ فزولورہ ڈرائیور لٹیف ایچ جہاں سہرا تھا۔ آگ سے ہی ڈرائیور شہنشاہ نے قبلا لیا کہ وہ زخمی ہے اور فزولورہ

گواہی کے بارے میں یہی حکم ہے کہ گواہوں کو کسی بھی قسم کی دہشت گردی سے بچانے کے لیے
ان کی حالت کو دیکھتے ہوئے ڈراموں اور شہادت کو رکھ کر گواہوں کو
چاہئے DHA کے تحت لایا گیا ہے اور ان کے لئے DHA منتقل کیا گیا ہے۔

گواہی نمبری 037-CA اسلام آباد کی

اپنی کاپی میں لکھی ہے کہ D. اس کے تحت 2015 Seizer and Disposal Rules کے تحت
ضروری طور پر اس کے لئے لیا گیا ہے اور وہ اس کے لئے لیا گیا ہے
لکھی ہے کہ اس کے لئے لیا گیا ہے

اس کے لئے لیا گیا ہے
اس کے لئے لیا گیا ہے
اس کے لئے لیا گیا ہے
اس کے لئے لیا گیا ہے

Cross by Shakti

میرا یہ ہے کہ گواہوں اور دہشت گردوں کے وقت میں فرق ہے
جو ہے کہ گواہوں میں سے کسی ایک میں بھی گواہوں کے ساتھ ملاقات کی
اور اس کے لئے FIR درج کیا گیا ہے

اس کے لئے لیا گیا ہے
attested
Signature
DHA Islamabad



FINAL SHOW CAUSE NOTICE

Whereas, the charge of absence was referred to enquiry officer for General Police Proceedings, contained u/s 5(3) Police Rules 1975.

AND

Whereas, the enquiry officer has submitted his findings, recommending you for major penalty.

AND


Whereas, I am satisfied with the recommendation of the enquiry officer that you **Inspector Shehenshab Khan**, while posted as I/C Traffic Unit Charsadda, On 28.10.2017 you were charged in Case FIR No. 436 u/s 186/279/156 (89) Custom Act PS Mandani. Being a member of discipline force your act is highly objectionable and against the rules and regulations of the discipline force and also earns bad name for the force. Thus the act amounts to gross misconduct and renders you liable for punishment, under Police Rules 1975.

Therefore, I, Zahoor Babar Afridi, District Police Officer, Charsadda in exercise of the powers vested in me under rules 5(3) (a) (b) of Police Rules 1975, call upon you to explain as to why the proposed punishment may not be awarded to you.

Your reply should reach the undersigned within 07-days of receipt of this notice, failing which ex-parte action will be taken against you.

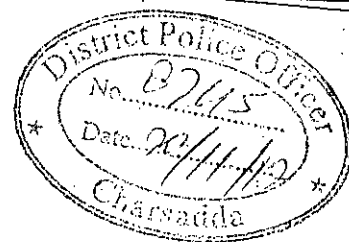
You are at liberty to appear in person before the undersigned for personal hearing.

Dated 14/11/2017


District Police Officer,
Charsadda
o/c


14-11-2017

15



DSP/leged

Q. 5/15

[Handwritten signature]
20-11-17

To

The worthy DPO,
Charsadda.

Subject: Reply to the final show cause notice.

Respected Sir,

I am in receipt of final show cause notice in response there to I wish to submit the following.

① My inquiry is actually based upon an incident which took place on 28-10-17 near Mobeen Sika where the excise officials in a private car opened fire at me without signaling, when I was on my way for duty in my white Corolla car without number plates. As a result of fire I deeply injured on my left side. Due to fear and prevailing situation of terrorism I did not stop and about 500/600 m I stopped because stress of deep wound and bleeding.

4) According to the reported judgements of PLD 1979 Lahore 56 and PLD 1985 SC 106. Suspension could not be ordered in the case of charge of in efficiency and misconduct but here I have already been suspended on 30-10-17.

3) That as it is yet to be determined that whether the offence has been committed or not but in the present case the accused is being punished before the conviction.

2) I was taken to JHQ Charsadda and refer to LRH for further treatment. In the hospital I came to know that the attack was from the exercise as they have lodged an FIR against me in PS mandani. I did not nominated in report because at that time I did not realised who were attackers. I thought that later on I shall nominate them under 141 CrPc in the court but no one helped me in this connection for which I feel very grief and alone.

17

⑤ under the following articles:

- ① Article 13 - protection against double punishment and self⁷ in criminatation: No person...
 Shall be prosecuted or punished for the same offence more than once or
 shall ~~be~~ when accused of an offence be compelled to be a witness against himself.

In view of the above I humbly request not to punish me twice as the case^{is} in the court and the inquiry is also in progress.

- ② If the excise^s officials are asked some questions then it will leads to reglity which I humbly request.
- ③ Have the excise informed concern ps about nakbandi and the place of incidence and incidence?
- ④ If I was fired near Kochian then why I was not taken to RMC for first aid.
- ⑤ Jamal abad check post also unaware.
- ⑥ ps mandani also unaware about the incident and about 7 hours later report was submitted in ps mandani.
- ⑦ No scratch on my car or on the excise car and no person of excise have minor injury then how I was in high speed that I driven over them.

6) According to exercise I was in very high speed and they quired then why my car did not struck to something or went to fields.

If it was according to their statement then I would have struck to a tree or went to nearby fields.

I was in normal speed and they did not even signal me to stop because they were waiting for something else in mobeen Qila.

7) So I humbly request that charges levelled against me are totally baseless and keeping in view the earlier mentioned article and facts do not award me major punishment and double punishment as my case is in the court. There fore for the sake of my family and children not award me major punishment as I am innocent in this case.

My family and my children will pray you for the rest of our lives for this act of kindness.

Date: 18-11-17.

Per by inq accused

insp) Shaken Shah

MPR-97

گورنمنٹ پبلسٹک اور جاب نمبر 2286/13 قاری طور تعداد ایک ہزار چھتر سو 20.06.2011 بی فور (قاری طور جاب) قاری (پولیس)

پولیس صوبہ سرحد قاری نمبر ۷۳

طرح ۱۷-۱۷۳۸۳۵۸-۱۷۱۰۲ قاری نمبر ۱۵-۲۳ (۱)

341/5

فائل

ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ ۱۵۴ مجموعہ ضابطہ فوجداری

ضلع	حار سید	گھنٹی	
تاریخ	۱۸ ۰۱ / ۱۲ ۱۸۵۵	۲۶	38

تاریخ وقت رپورٹ	۱۸ ۰۱ / ۱۲ ۱۸۵۵	تاریخ وقت رپورٹ	۱۸ ۰۱ / ۱۲ ۱۸۵۵
نام و سکونت اطلاع دہندہ مستغیث	انصاف خان Asi	نام و سکونت ملزم	شہیناہ ولدہ حفیظ شاہ ساکن حاجی غلام سید کورونہ ٹھکانے
مختصر کیفیت جرم (معدومہ) حال اگر کچھ لیا گیا ہو۔	PPC 490-468/471	کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو	تھانہ سے روانگی کی تاریخ و وقت
جائے وقوعہ فاصلہ تھانہ سے اور سمت	شاخ عری		

ابتدائی اطلاع نیچے درج کرو۔

مستغیث، صوبہ سرحد پولیس کے سٹیبل ڈیپارٹمنٹ میں۔ تاریخ ۱۱/۱۲/۲۰۱۱ء کو اطلاع دی گئی کہ شاخ عری کے محل میں ایک شخص نے ایک لاکھ روپے کی نقد رقم چوری کر لی ہے۔

معدومہ (شاخ عری) کے پولیس سٹیشن پر اطلاع دی گئی کہ ایک شخص نے ایک لاکھ روپے کی نقد رقم چوری کر لی ہے۔ پولیس سٹیشن پر اطلاع دی گئی کہ ایک شخص نے ایک لاکھ روپے کی نقد رقم چوری کر لی ہے۔ پولیس سٹیشن پر اطلاع دی گئی کہ ایک شخص نے ایک لاکھ روپے کی نقد رقم چوری کر لی ہے۔

پولیس سٹیشن پر اطلاع دی گئی کہ ایک شخص نے ایک لاکھ روپے کی نقد رقم چوری کر لی ہے۔ پولیس سٹیشن پر اطلاع دی گئی کہ ایک شخص نے ایک لاکھ روپے کی نقد رقم چوری کر لی ہے۔ پولیس سٹیشن پر اطلاع دی گئی کہ ایک شخص نے ایک لاکھ روپے کی نقد رقم چوری کر لی ہے۔

پولیس سٹیشن پر اطلاع دی گئی کہ ایک شخص نے ایک لاکھ روپے کی نقد رقم چوری کر لی ہے۔ پولیس سٹیشن پر اطلاع دی گئی کہ ایک شخص نے ایک لاکھ روپے کی نقد رقم چوری کر لی ہے۔ پولیس سٹیشن پر اطلاع دی گئی کہ ایک شخص نے ایک لاکھ روپے کی نقد رقم چوری کر لی ہے۔

M. S. A.

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 334 /ST Dated 11/02/2021

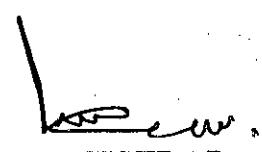
To

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

Subject: JUDGMENT IN APPEAL NO. 700/2018, MR. SHAHENSHAH KHAN.

I am directed to forward herewith a certified copy of Judgement dated 03.02.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 700/2018

Shahenshah Khan`

VS

Police Deptt:

.....
REJOINDER ON BEHALF OF APPELLANT
.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-5) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

1. No comments endorsed by the respondent deptt which means that the respondent deptt: admitted para-1 as correct.
2. Admitted correct by the respondent to the extent that the appellant was charged in FIR no. 436 while rest of the contention of the respondent deptt is incorrect. Moreover, the para-2 of the appeal is correct. Further it is added that the appellant is now acquitted by the competent court of law, so no more ground remained to punish the appellant. **Copy of judgment is attached as annexure-R.**
3. Incorrect and misleads the Hon'able Tribunal. While para-3 of the appeal is correct as mentioned in the main appeal of the appellant.
4. Incorrect and misleads the Hon'able Tribunal. While para-4 of the appeal is correct as mentioned in the main appeal of the appellant. Moreover. The respondent not considered the reply properly.
5. In first portion the para-5 of the appeal is admitted correct while rest of the contention of the respondent deptt: is incorrect. Moreover, the appeal of the appellant was rejected without any solid ground.
6. Incorrect. The appellant has a good cause of action, so the appeal of the appeal may be accepted on the following grounds.

GROUND:

- A. Incorrect. The impugned orders are against the law, rules norms of justice and material on record, therefore, not tenable and liable to be set aside.
- B. Incorrect. While para B of the appeal is correct. Moreover. No proper inquiry was conducted as the appellant was behind the bar at the time of inquiry proceeding, which is means that the appellant was no associated with the inquiry which is against the law and rules.
- C. Incorrect. While para C of the appeal is correct. As explained in above para-B
- D. Incorrect. While para D of the appeal is correct. Moreover, the appellant is now also acquitted by the competent court of law.
- E. Incorrect. While para E of the appeal is correct. Moreover, the separate proceeding does not means that the proceeding conducted against the law and rules.
- F. Incorrect. While para F of the appeal is correct.
- G. Legal.

It is, therefore, most humbly prayed the appeal of appellant may kindly be accepted as prayed for.

Amir S. Jai

APPELLANT

Through:

Amir S. Jai

**M.ASIF YOUSAFZAI
ADVOCATE SUPREME COURT**

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.

Amir S. Jai
DEPONENT



71

فیصلہ/جسٹس شریف حسین سہیل راجح آگسٹی

**IN THE COURT OF MR. SHAUKAT HUSSAIN
JUDICIAL MAGISTRATE-II, TANGI (CHARSADDA)**

Case No.29/2P of 2018

Date of institution: 07.02.2018

Date of decision: 29.01.2019

The State

VERSUS

SHAHENSHAH KHAN s/o Jaffar Shah r/o Dhaki Tehsil Tangi District
Charsadda.

.....(Accused facing trial on bail)

CHARGE UNDER SECTIONS 420/468/471/
186/279 P.P.C IN CASE FIR # 436, DATED
28.10.2017 POLICE STATION MANDANI,
DISTRICT CHARSADDA.

Case argued by:

1. Mr. Muhammad Ullah Khan, APP for state
2. Mr. Taimur Khan, Advocate, for the accused facing trial.

JUDGMENT

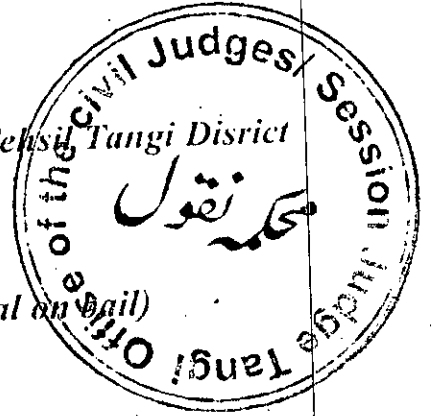
29.01.2019

1. On 28.10.2017 at 06:20 hours, at Kochiyan Road Mandani complainant Sohail Muhammad (Excise Inspector) alongwith other excise staffs were searching NCP vehicles. Meanwhile a Motorcar Corolla-G

Shaukat Hussain
Civil Judge Jull. Magistrate II
Tangi Distt. Charsadda
29-1-19

ATTESTED

Examiner/ Muharrir
Copying Agency Branch
Court of CJ / ADJ Tangi



32

having No.LA-037 Islamabad was coming from Shah Alam Jowar side, who was signaled to stop but the driver of the alleged car accelerated the car speed and run away. The second squad who were present at place of occurrence were informed to stop the vehicle but the driver also did not stop the car there and try to run away. At this the second squad fired on the Tire of the alleged car. Resultantly the car was stopped at some distance, wherein the driver was injured due firing. The driver could not produce any documents regarding the said Motorcar and the number plates, so the said Motorcar was took into possession while accused named above was shifted to DHQ Hospital Charsadda. Hence instant F.I.R was lodged.

2. Investigation was conducted after registration of case. The accused was released on bail. After completion of investigation, prosecution submitted challan against the accused facing trial.

3. On receipt of Challan, the accused was summoned. After complying the provisions of section 241-A Cr.P.C, the accused was indicted. He pleaded not guilty to the charge, and claimed trial.

4. Trial commenced and the Prosecution was asked to adduce evidence. The Prosecution produced 06 PWs and closed its evidence. Brief resume of the prosecution evidence is as under:

- i. **PW-1: SI Gul Nabi Khan ASI PS Tangi** deposed that On the receipt of FIR EXPA proceeded to the spot and prepared the site plan EXPB on the instance and pointation of the complainant. during the spot inspection I also

Shah Waliullah
Civil Judge, Tangi, Muzaffargarh
Tangi District, Charsadda
28-1-19

ATTESTED

Examiner / Muharrir
Coaching Agency Branch
Court of CJ / ADI

recovered and took into possession one empty of 7.62 bore giving fresh smell of discharge, the same were sealed in the parcel by affixing monogram of the name of RU vide RM EXPW-1/1 in the presence of marginal witnesses. On 28-10-2017 accused Shaheen Shah came to the PS and surrendered before me. I arrested him and issued his arrest card EXPW-1/2. I produce the accused before the Judicial Magistrate vide my application EXPW-1/3 as the offences were bailable so the accused was release on bail. On receiving the report from the ETO department section of law 420/468 and 471 were added in the FIR vide my application EXPW-1/4. After the addition of section of law in the FIR the case was transfer from me to the investigation wing and handed over the case file to the CIO Investigation. I also recorded the statements u/s 161 Cr.PC of the PWs and accused. Today I have seen the above mentioned documents which are correct and correctly bear my signature.

33


28-10-2017
 ARRESTED
 Sd/-
 Copying Agency Branch
 Court of C...

ii. *PW-2: Sohail Muhammad (Excise and Taxation Office, Charsadda* deposed that On 28-10-201 at 06:20 am I along with constables namely Sajjad, Farooq and Gul Muhammad were present at Bagh Kale near Safi Cantt house for checking of NCP cars. While Nadim Rafique ASI, Basit constable and Gulzeb constable were present at Narenjano Bagh for checking the NCP cars and informed me on my mobile cell that a corolla car white in colour bearing

No.LA037 Islamabad who was signaled to stop but the car did not stop and cross the said Naqa Bandi without obeying the order of the concern officer and there after they chased the said car and also informed me to stop the said car if reached in my Naqa Bandi. In the meanwhile the said car appeared which was signaled to stop but he did not stopped the car in order to we made a fire in our self defense on the tire and upon the said firing the car in question stopped himself. When we saw the driver he was injured with the said firing he sustained injury and when Basit constable opened the door of the car the driver was having a mask on his face and when the mask was removed the driver disclosed his name as Shaheen Shah r/o Dhakki. The driver could not produce any valid documents of the car. We took into possession the car in question. I shifted the driver Shaheen Shah to DHQ Hospital Charsadda for medical treatment. Later on from Charsadda he was referred to LRH Peshawar. I also went with the injured driver to LRH Peshawar. When I returned from Peshawar at 12:00 noon, I drafted murasila

EXPA and sent the same to the PS for the registration of the case. I prepared the RM EXPW-2/1 vide which I took into possession the said car bearing No.LA-037 Islamabad Chasses No.NZE-121-3271292 Toyota Corolla. On the registration of the case I went to the police officials and prepared the site plan on my instance and pointation. Today I

37


29-1-2018

ATTESTED
Examiner/ Muharrir
Copying Agency Branch
Court of CJ / ADJ Taji

have seen the above mentioned documents which are correct and correctly bear my signature.

iii. *PW-3: Constable Sajjad ETO, Charsadda* deposed that on 18-10-2017 at 06:20 am I was present with Inspector Sohail Muhammad and other police party and made a Naqabandi at Safi Cantt for checking the NCP cars. Inspector Sohail received information from the other squad which was already present at Narenjano Bagh that a motorcar which was driven by the driver with rashly and negligently did not stopped on our signaled. In meanwhile a white Motor Corrolla came which was driven rashly and negligently did not stopped on our signaled. So the Excise Police fired at the tire of the car and due to that firing the car stopped at some distance and when we went to near the car the driver was injured. He was shifted to the Hospital for medical treatment. The IO came to the spot and prepared the site plan on the pointation of Sohail Muhammad. My statement was recorded u/s 161 Cr.PC.

iv. *PW-4: Muhammad Nadim Khan S.I ETO Peshawar* deposed that During the days of occurrence I was posed as ASI in ETO Office, Charsadda. I am marginal witness to the RM already exhibited as EXPW-2/1 vide which Inspector Sohail Muhammad took into possession the motorcar bearing No.LA037-Islamabad, Chasses No.NZE-1213271292, Model 2004 white colour Toyota Corolla. The same car EXP1 was deposited in Excise Ware House Peshawar. My statement u/s 161 Cr.PC was also recorded by the IO. Today I have seen the RM which correctly bears my signature.

Shaukat Hussain
Civil Judge, Judd, Magistrate II
Tangi Distt: Charsadda
28-11/18

ATTESTED

Examiner/ Muharrir
Copying Agency Branch
Court of CJ / ADJ Tangi

v. **PW-5: Muhammad Naeem Constable PS Mandani** deposed that I am marginal witness to the RM already exhibited as EXPW-2/1 vide which the IO took into possession one empty of 7.62 bore giving fresh smell of discharge which was sealed in parcel No.1 by affixing monogram of RU. My statement u/s 161 Cr.PC was also recorded by the IO. Today I have seen the RM which correctly bears my signature.

vi. **Habib-ul-Hassan SI/CIO PS Sardheri** deposed that During the days of occurrence I was posted as CIO in PS Mandani. The case file was handed over to me for the purpose of investigation. Vide my application EX.PW-6/1 I submitted an application to the DPP Charsadda for obtaining legal opinion. The opinion was accorded on the basis of which I deleted section 156 (89) of Custom Act and handed over the case file back to the Operation staff. Parwana is EXPW-6/2. The Operation staff added section 420/468/471 PPC and handed over the case file to me. I received the FSL report from ETO Office which is EXPW-6/3 and handed over the case file to the SHO concerned for submission of challan who submitted the same in the instant case. The Challan is EXPK. Today I have seen the above mentioned documents which are correct and correctly bear my signature.

5. After completion of prosecution evidence, statements of the accused recorded U/S 342 Cr.PC. The accused neither wished to produce defense evidence nor did he opt to be examined on oath.

6. Arguments heard and record perused.

Shahid Hussain
Civil Judge - I, Tangi District
Charsadda
28-1-18

ATTESTED

Examined by: Mubharir
Copy in Agency Branch
Court of CJ / ADJ Tangi

7. For the following reasons;

A. No offence is made out against accused facing trial because no iota of evidence is available on file to establish his connection with the story alleged in the F.I.R,

B. Offences U/S 419, 420 & 468 P.P.C are not applicable at all.

Because there is no evidence that accused facing trial possess or delivered any forged document to anyone. As far as offence U/S 471 P.P.C is concerned, though a photocopy of report of Excise & Taxation Department/Motor Registration Authority, Islamabad is placed on file, according to which another vehicle i.e Chassis No.NZE121-3117617, Engine No.A396200, Model 2002 is registered on registration No.LA-037 but the same report is neither attested by the issuing authority rather attested by the ETO, Charsadda nor exhibited by concerned authority. Even the prosecution did not produce the concerned authority to depose against the accused. If no evidence is available on the file that the said number plates are fake then how it can be held that the offence of forgery has been committed by accused facing trial?

Nevertheless, neither the vehicle nor its number plates were produced by the Prosecution as evidence during trial. All these reasons are fatal to the case,

C. The Prosecution has failed to prove that accused facing trial while driving the car rashly and obstruct a public servant from discharging his public duty. Though PW-3 in his examination in

ATTESTED

Examiner / Muhammad
Copying Agency Branch
Court of CJ / ADJ Jhang

28-1-019

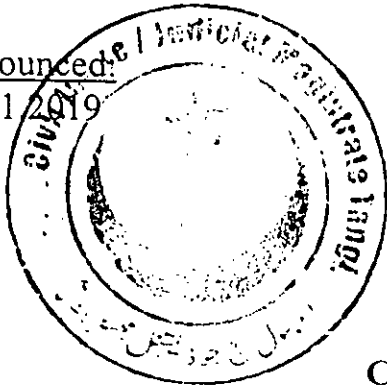
chief stated that accused facing trial drove the car rashly and negligently but the other PWs even the complainant did not utter a single word regarding rashly driving by the accused facing trial. Furthermore no independent witness is associated. No one can be convicted on mere assertion.


This court comes to the conclusion that the prosecution has failed to prove the charges against the accused. Resultantly, accused is acquitted. Sureties are absolved from the liabilities of bail bonds.

8. According to record case property already has been taken into possession by the Custom Authority.

9. File be consigned to Record Room after compilation.

Announced
29.01.2019




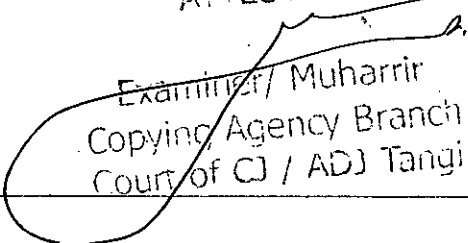

Shaukat Hussain
Judicial Magistrate-II,
Tangi(Charsadda).

CERTIFICATE

Certified that this judgment consists of eight (08) pages, each page has been read, signed and corrected by me wherever necessary.




Shaukat Hussain
Judicial Magistrate-II,
Tangi(Charsadda).
ATTESTED


Examiner/ Muharrir
Copying Agency Branch
Court of CJ / ADJ Tangi

Serial No. of Order or Proceedings	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary.
1	2	3

ORDER-20

29.01.2019

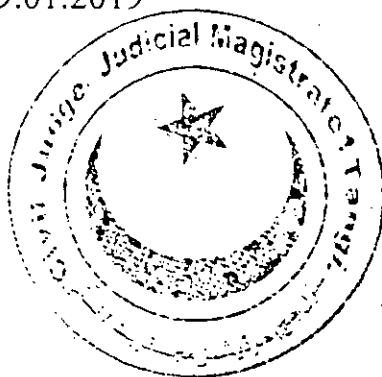
Muzafar Khan APP for state is present. Accused Shahenshah, on bail, is present. Arguments already heard and record perused.

2. Vide my detailed judgment of today, separately placed on file, consisting of 08 pages, the prosecution failed to prove its case against the accused beyond any shadow of doubt. Accordingly, the accused facing trial is acquitted. Sureties are absolved of the liability of their bail bonds.

3. According to record case property already has been taken into possession by the Custom Authority.

4. Police file be returned forthwith. File of this Court be consigned to Record Room after compilation.

Announced:
29.01.2019



(Signature)
Shaukat-Hussain
Judicial Magistrate-II,
Tangi (Charsadda)

No.	329
Date of Application	07/01/19
Appliance	06 جنریشن
Words	5600
Delivery Date	07/3/19

ATTESTED

(Signature)
Examiner/ Muharrir
Copying Agency Branch
Court of CJ / ADJ Tangi

