

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 1467/2018

Date of Institution ... 07.12.2018

Date of Decision ... 15.03.2021

Umar Shairf, Ex. Head Constable No. 1631 i/c FRP, Khyber Pakhtunkhwa.
... (Appellant)

VERSUS

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

Present:

MR. ZARTAJ ANWAR, --- For Appellant.
Advocate

MR. KABIRULLAH KHATTAK, --- For respondents.
Additional Advocate General

MIAN MUHAMMAD --- MEMBER(Executive)
MR. HAMID FAROOQ DURRANI, --- CHAIRMAN

JUDGEMENT.

MIAN MUHAMMAD, MEMBER(E):- The appellant has impugned office order dated 18.04.2017 whereby he was awarded major penalty of dismissal from service and his departmental appeal rejected on 10.11.2017. His mercy petition was also turned down on 20.11.2018. The same have been challenged under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

FACTS.

02. Brief facts of the case are that the appellant while serving in Police Department was implicated in FIR No. 8 dated 20.03.2017 under Section-9(c) of CNSA Police Station Anti Narcotics Force, Kohat as a result of which he was

arrested on the same day. The respondent-department initiated disciplinary proceedings and issued him charge sheet/statement of allegations. Subsequently, he was dismissed from service vide impugned order dated 18.04.2017. The appellant filed departmental appeal on 16.06.2017 which was rejected on 10.11.2017. The appellant submitted mercy petition on 04.10.2018 which was also rejected on 20.11.2018, hence, the instant service appeal filed in Service Tribunal on 07.12.2018.

03. We have heard arguments of the learned counsels for the parties and thoroughly gone through the available case file and related additional documents including case laws produced during course of the respective arguments.



ARGUMENTS.

04. Learned counsel for the appellant argued that the appellant was falsely implicated in FIR No.8 dated 20.03.2017 and arrested on the same day. The enquiry proceedings were conducted on his back as he was behind the Bar. He was neither associated with the enquiry proceedings nor a fair chance of defense provided to him. He has been condemned unheard and not treated in accordance with law. His legal rights secured and guaranteed under Article-4 and 10-A of the Constitution have been negated. Neither proper procedure was followed nor proper enquiry conducted against him before awarding him the major penalty. Moreover, neither statement of witnesses were recorded in presence of the appellant nor the appellant was allowed the opportunity of cross examination. Thus, the entire proceedings are defective in the eyes of law and the orders so passed are liable to be set aside. The absence from duty was not deliberate on part of the appellant but compelled by circumstances. He placed reliance on 1995 SCMR 776. He therefore, submitted that

the period of absence is required to be treated under FR-54. It was contended that the case of present appellant is similarly placed as decided and relief granted to one Abid Zaman by Service Tribunal vide judgement dated 13.09.2019 in service appeal No. 1395/2017 titled Abid Zaman S/O Mir Madad Shah-vs-PPO Khyber Pakhtunkhwa and others. When learned counsel for the appellant was confronted with the question when the appellant was granted bail by the competent court of law? He replied that the appellant was granted bail on 26.05.2017 and he was acquitted of the charges by the court of judge Special Court (CNS) Peshawar on 25.09.2018. When confronted with yet another quarry that is there any provision for second departmental appeal under Police Rules 1975? He could only reply that second departmental appeal was preferred on 04.10.2018 after the appellant got released on bail on 26.05.2017 so as to get relief against the impugned order.

05. Conversely, learned Additional Advocate General argued that impugned order was passed on 18.04.2017 against which the appellant submitted departmental appeal on 15.06.2017. He contended that the service appeal is hit by limitation because he was required to have approached the Service Tribunal within thirty days after his departmental appeal was rejected on 10.11.2017. The departmental appeal was barred by time and subsequent service appeal is also time barred, defective and not maintainable. Moreover, neither application for condonation of delay has been submitted nor plausible reason(s) submitted to justify the delay. The question of limitation is to be taken seriously and not treated in an ordinary manner. Merits of the case cannot be discussed without taking into consideration the limitation period involved in the case. In support of his arguments he referred to 2010 SCMR 1982, 2011 SCMR 676, 2012 SCMR 195, 2013 SCMR 911, 2015 SCMR 165, Service Appeal No. 325/2011 titled Akhtar Wahid -vs- Inspector General of Police, Khyber

Pakhtunkhwa Peshawar and two others decided on 23.10.2017, service appeal No. 161/2016 titled Hameedullah, Ex-constable-vs-CCPO, Peshawar decided on 24.10.2017 and Civil Petition No. 1706 of 2018 titled Fakhar Zaman-vs- Govt: of Khyber Pakhtunkhwa decided on 16.01.2020. He submitted that the appellant filed second appeal on 04.10.2018 and not a review petition which is unprecedented and not tenable under the Khyber Pakhtunkhwa Police Rules 1975. He further contended that departmental and criminal proceedings are conducted independently and separately and have no bearing on the outcome of each other. It therefore does not mean that on acquittal in criminal case the appellant is absolved of the charges and his penalty imposed as a result of departmental proceedings would not sustain and would be waived off. In this respect he relied on 2006 SCMR 554, 2007 SCMR 562 and 2013 PLC (C.S) 1071.



CONCLUSION.

06. It is evident from record that the appellant had been arrested red handed on the spot by Anti Narcotics Force on 20.03.2017. Disciplinary proceedings were initiated against the appellant under the Khyber Pakhtunkhwa Police Rules 1975. He was issued proper charge sheet/statement of allegations as well as final show cause notice. The enquiry officer provided him ample opportunity of defense in jail during the inquiry proceedings. There are evidence of his signature to have been obtained as token on photo copy of the charge sheet to which he has replied accordingly. Similarly, final show cause also stands received to the appellant to which he did not however, reply. Sufficient opportunity of self defense and cross-examination was provided to the appellant within the jail premises where-after the impugned order dated 18.04.2017 was issued by the competent authority. The contention that second departmental appeal was preferred on 04.10.2018 after release of appellant on bail

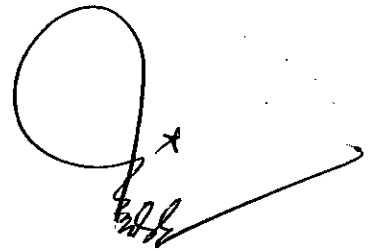
on 26.05.2017 is misconceived and miscalculated because he had already availed the chance of first departmental appeal on 16.06.2017 when he was on bail and no longer in jail to make it pretext to gain time for cover up the limitation period. Even the first departmental appeal dated 16.06.2017 against impugned order dated 18.04.2017 was time barred by two months which rendered it ineffective in the eyes of law. Learned counsel for the appellant could not establish and justify the delay as well as nature of the second departmental appeal despite having sufficient time given to prove his case with credible documentary evidence. Moreover, no parallel can be drawn between the instant appeal with that of his co-accused Abid Zaman on the basis of limitation who had approached to the Tribunal well within statutory period and got the relief for de-novo enquiry.

07. As a sequel to the above, the instant service appeal being hit by limitation under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 and no application for condonation with plausible reason(s) to justify delay has been submitted the same is therefore, dismissed. Parties shall, however, bear their respective costs. File be consigned to the record room.


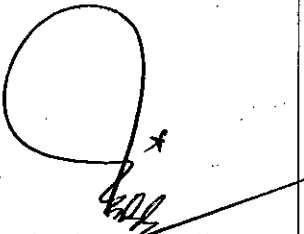
ANNOUNCED
15.03.2021



(HAMID FAROQQ DURRANI)
CHAIRMAN



(MIAN MUHAMMAD)
MEMBER(E)

S.No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	15.03.2021	<p><u>Present.</u></p> <p>Mr. Zartaj Anwar, Advocate ... For appellant</p> <p>Mr. Kabirullah Khattak, Additional Advocate General ... For respondents</p> <p>Vide our detailed judgment of today consisting of five pages placed on file, the instant service appeal being hit by limitation under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 and no application for condonation with plausible reason(s) to justify delay has been submitted the same is therefore, dismissed. The parties shall, however, bear their respective costs. File be consigned to the record room.</p> <p><u>ANNOUNCED</u> 15.03.2021</p> <p style="text-align: center;"> Chairman</p> <p style="text-align: right;"> (Mian Muhammad) Member(E)</p>

28.12.2020

Due to summer vacation, case is adjourned to
15-3 .2021 for the same as before.


Reader

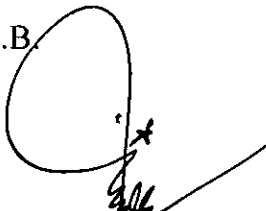
30.03.2020

Due to public holiday on account of COVID-19, the case is adjourned to 08.06.2020 for the same as before.


Reader

08.06.2020

Clerk to counsel for the appellant present. Addl: AG for respondents present. Due to general strike of the Khyber Pakhtunkhwa Bar Council, the case is adjourned. To come up for arguments on 17.08.2020 before D.B.


MEMBER


MEMBER

17.08.2020

Due to summer vacations, the case is adjourned to 27.10.2020 before D.B.


Reader

27.10.2020

Proper D.B is on Tour, therefore, the case is adjourned for the same on 28.12.2020 before D.B.


Reader

09.12.2019

Clerk to counsel for the appellant present. Addl: AG for respondents present. Clerk to counsel for the appellant seeks adjournment due to general strike of the Bar. Adjourned. To come up for arguments on 13.01.2020 before D.B.


Member


Member

13.01.2020

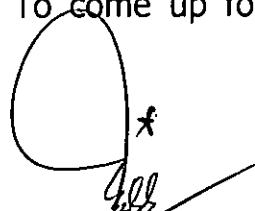
Due to general strike of the bar on the call of Khyber Pakhtunkhwa Bar Council, the case is adjourned. To come up for further proceedings/arguments on 03.03.2020 before D.B.


Member


Member

03.03.2020

Appellant in person present. Addl: AG for respondents present. Appellant submitted rejoinder which is placed on file and seeks adjournment. Adjourned. To come up for arguments on 30.03.2020 before D.B.


Member


Member

11.07.2019

Counsel for the appellant and Addl. AG alongwith Ihsanullah, ASI for the respondents present.

Representative of the respondents states that written reply prepared and placed before the respondents for signature. Last opportunity granted. Adjourned to 04.09.2019 before S.B.


Chairman

04.09.2019


Junior to counsel for the appellant and Mr. Usman Ghani District Attorney alongwith Ihsanullah, ASI for the respondents present.


Representative of the respondents has furnished written reply on behalf of respondents which is placed on record. The appeal is assigned to D.B for arguments on 20.11.2019. The appellant may submit rejoinder, within a fortnight, if so advised.


Chairman

20.11.2019

Clerk to counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Clerk of counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy before the Hon'ble Peshawar High Court, Peshawar and cannot attend the Tribunal today. Adjourned to 09.12.2019 for rejoinder and arguments before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

21.03.2019

Nemo for the appellant. Mr. Kabirullah Khattak learned Addl: AG for the respondents present. Written reply not submitted. Learned AAG request for time to file written reply/comments. Adjourn. To come up for written reply/comments on 23.04.2019 before S.B.


Member


23.04.2019

Appellant in person present. Addl: AG for respondents present. Written reply/comments not submitted. Requested for adjournment. Adjourned. Case to come up for written reply/comments on 18.06.2019 before S.B.


(Ahmad Hassan)
Member

18.06.2019

Clerk of counsel for the appellant and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Ihsanullah, ASI for the respondents present. Written reply on behalf of respondents not submitted. Representative of the department requested for further adjournment to submit written reply. Last chance is granted. Adjourned to 11.07.2019 for written reply/comments before S.B.


(Muhammad Amin Khan Kundi)
Member

1467/18

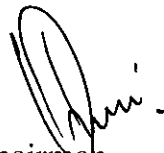
14.01.2019

Counsel for the appellant present.

Contends, inter-alia, that the impugned order dated 18.04.2017 was passed on account of appellant being involved in an offence of moral turpitude that had brought bad name to the department. However, the appellant stood acquitted on 25.09.2018 from case FIR No. 8 dated 20.03.2017 recorded under Section 9-C CNSA. In the impugned order reference was also made to the previous departmental proceedings against the appellant which were neither called for nor had any bearing on case before the competent authority, it was added. It was also argued that the departmental appellate authority, while considering the appeal/review petition of the appellant, also did not regard his acquittal from criminal charge.

In view of the averments of learned counsel, instant appeal is admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 21.03.2019 before S.B.


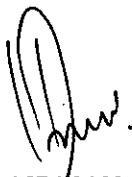
Appellant Deposited
Security & Process Fee


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. _____ 1467/2018 _____

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	07/12/2018	<p style="text-align: center;">The appeal of Mr. Umar Sharif presented today by Mr. Zartaj Anwar 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 2/12/18</p>
2-	13/12/2018	<p style="text-align: center;">This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>14/01/2019</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No. 1467/2018

Umar Sharif Ex. Head Constable No. 1631 i/c FRP, Khyber
Pakhtunkhwa.

(Appellant)

VERSUS

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

(Respondents)

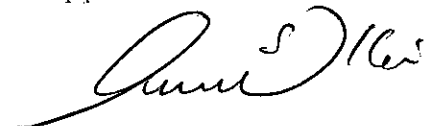
I N D E X

S.No	DESCRIPTION OF DOCUMENTS	ANNEX	PAGES
1.	Memo of Appeal and affidavit		1 - 5
2.	<i>Copy of the FIR</i>	A	6
3.	Copies of the charge sheet statement of allegation and statement	B	7-8
4.	Copies of the Acquittal order dated 25.09.2018, Dismissal Order dated 18.04.2017	C & D	9-10
5.	Copies of the departmental appeal dated 15.06.2017 and rejection order dated 10.11.2017	E & F	11-14
6.	Copies of mercy petition dated 04.10.2018 and rejection order dated 20.11.2018	G & H	15-16
7.	Other relevant documents		17-30
8.	Wakalatnama		31



Appellant

Through



ZARTAJ ANWAR
Advocates Peshawar

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Appeal No. 1467/2018

Diary No. 1736

Dated 07-12-2018

Umar Sharif Ex. Head Constable No. 1631 i/c FRP, Khyber
Pakhtunkhwa.

(Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Commandant Frontier Reserve Police, Khyber Pakhtunkhwa,
Peshawar.
3. Superintendent Frontier Reserve Police, Kohat Range, Kohat.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the Office Order dated 18.04.2017, whereby the appellant has been awarded the major penalty of dismissal from Service, against which the Departmental Appeal dated 15.06.2017, has also been rejected vide order dated 10.11.2017, not communicated to the appellant, and mercy petition dated 04.10.2018 was filed which was also dismissed on 20.11.2018.

Filed to-day

Registrar
7/12/18

Prayer in Appeal:

On acceptance of this appeal the impugned orders dated 18.04.2017, may please be set-aside and the appellant be reinstated into service with all consequential back benefits.

Respectfully Submitted:

1. That the appellant was initially enlisted as Constable in the Police Department, and has at his credit a bright and spot less service career. During the course of service the appellant was promoted to the rank of Head Constable Khyber Pakhtunkhwa Peshawar.
2. It is pertinent to mention here that ever since his enlistment the appellant has performed his duties as assigned to him with zeal and devotion and there was no complaint whatsoever regarding his performance.
3. That the appellant while serving in the respondent department, was falsely implicated in a criminal case in F.I.R No. 08 dated 20.03.2017 under Section 9-cCNSA PS ANF Kohat. The appellant was also arrested by the police on the same day. (*Copy of the FIR is attached as Annexure A*).
4. That on the basis of the said FIR, the appellant with charge sheet along with statement of allegation was issued but never communicated to the appellant containing the allegations of involvement in the said criminal case. (*Copies of the charge sheet statement of allegation and statement are attached as Annexure B*).
5. That the appellant while in jail, all the proceeding was conducted against him without associating the appellant with the so called proceeding conducted ex-parte inquiry and gave his findings wherein he recommended the appellant for major punishment.
6. That the appellant also applied for his release on bail, which was allowed to him and released on bail.
7. That thereafter the appellant when reported for duty after his acquittal vide order dated 25.09.2018 , he was informed that he has already been dismissed from service vide order dated 18.04.2017, however the penalty order never communicated to the appellant. The appellant requested for the provision of the penalty order, which was provided to him on 03.10.2017. (*Copies of the Acquittal order dated 25.09.2018, Dismissal Order dated 18.04.2017 are attached as Annexure C & D*).

8. That the appellant filed his departmental appeal dated 15.06.2017 before the Respondent No.2, however, his departmental appeal was also rejected vide order dated 10.11.2017, never communicated to the appellant. *(Copies of the departmental appeal dated 15.06.2017 and rejection order dated 10.11.2017 are attached as Annexure E & F).*
9. That the appellant filed mercy petition dated 04.10.2018 before the respondents which is also rejected vide order dated 20.11.2018. *(Copies of mercy petition dated 04.10.2018 and rejection order dated 20.11.2018 is attached as annexure G & H)*
10. That the impugned orders are illegal, unlawful, without lawful authority, against the law and facts, hence liable to be set aside on the following grounds;

GROUND OF SERVICE APPEAL:

- A. That the appellant has not been treated in accordance with law, and his right secured and guaranteed under the law have been violated.
- B. That the charges levelled against the appellant were never proved in the departmental enquiry albeit the enquiry officer illegally and unlawfully proved the appellant guilty.
- C. That no proper procedure has been followed before awarding the major punishment to the appellant, the appellant has not been served with any proceeding nor any proper inquiry was conducted, neither the appellant was ever associated properly with the inquiry proceedings, statement of witnesses, if any, were never taken in presence of the appellant, nor the appellant was allowed opportunity of cross examination, thus the whole proceedings are defective in the eye of law and orders based on such defective proceedings are liable to be set aside.
- D. That the appellant has not been allowed opportunity of personal hearing before awarding him the major punishment of removal from service, thus he has been condemned unheard.
- E. That since the appellant was behind the bar, therefore, he was never served with the initial charge and statement of allegations, moreover, he was never associated with the inquiry proceedings, thus he has not been given fair opportunity to defend himself against the charges leveled.

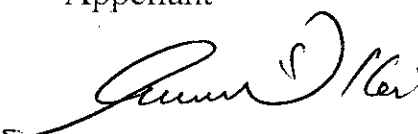
- F. That the appellant never committed any act or omission which could be termed as misconduct, he was falsely implicated in the criminal case and was arrested, the respondent should have waited for the outcome of the trial of the appellant albeit he has been illegally awarded the major penalty of dismissal from service.
- G. That the Superior Courts have always held that mere filing of FIR does not ipso-facto proves a person guilty of the commission of the offence, rather he would be presumed innocent unless convicted by the court of competent jurisdiction. So on this also the impugned orders are liable to be set-aside.
- H. That the case of the appellant is covered under FR-54 which provides that:
“F.R. 54----Where a Government Servant has been dismissed or removed is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty—
a) If he is honorably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed, and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal removal; or
b) If otherwise, such portion of such pay and allowances as the revising or appellate authority may prescribe.
In a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty unless the revising appellate authority so directs.
- I. That the Inquiry Officer has acted illegally and in violation of law by claiming to have proved the charges without any proof or evidence.
- J. That during the inquiry the statement of witnesses was never taken in presence of the appellant, nor was the appellant allowed opportunity to cross examine those, who may have deposed against him.
- K. That the appellant has at his credit bright and spotless service career of about seven years, the penalty imposed upon him is too harsh and liable to be set aside.
- L. That the appellant is jobless since his illegal dismissal from service.

M. That the appellant seeks the permission of this Honourable Tribunal to rely on additional grounds at the hearing of this appeal.

It is therefore prayed that on acceptance of this appeal the impugned order dated 18.04.2017, may please be set-aside and the appellant be reinstated into service with all consequential back benefits.

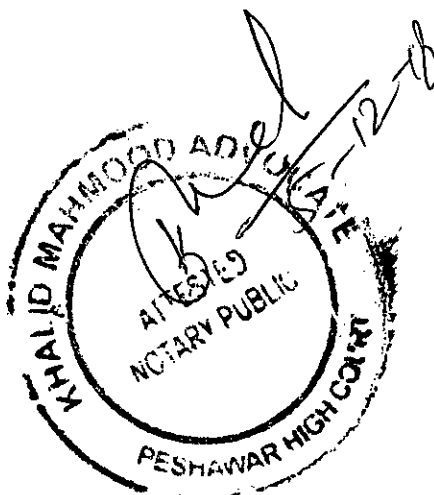

Appellant


Through


ZARTAJ ANWAR
Advocate, Peshawar

AFFIDAVIT

I, *Umar Sharif* Ex. Head Constable No. 1631 i/c FRP, Khyber Pakhtunkhwa. , do hereby solemnly affirm and declare that the contents of the above Appeal as well as Application for condonation of delay are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Court.




Deponent

CHARGE SHEET

- I) i, Mian Imtiaz Gul, SP FRP Kohat as competent authority, am of the opinion that you Head Constable Umar Sharif No. 1631 I/C FRP Platoon No. 122 deployed at Naryab Dam District Hangu have committed the following acts/omission as defined in Rule 2 (iii) of Police Rules 1975.
- a) As per report received from Control Room Operator, District Karak vide DD No. 15 dated 20.03.2017, you have been arrested by Anti Narcotics Force (ANF) Kohat vide Case FIR No. 08 dated 20.03.2017 U/S 9-C CNSA P.S ANF Kohat. It has further been reported that you had left your place of duty without any leave/permission of competent authority and in this regard your absence report has been recorded vide DD No. 04 dated 18.03.2017. Thus you have committed a gross "Misconduct" as defined in Rule 2 (iii) of Police Rules 1975.
- II). By reason of the above, you seem to be guilty as sufficient materials is placed before the undersigned, therefore it is decided to proceed against you in general police proceeding.
- III). You are; therefore, required to submit your written reply within 07 days of the receipt of this charge sheet to the Enquiry Officer.
- IV). Your written reply, if any, should reach the Enquiry Officer within specific period, failing which it shall be presumed that you have no defense to offer and in case, ex-parte action shall follow against you.
- V). Intimate as to whether you desire to be heard in person or not?
- VI) A statement of allegation is enclosed.

ATTESTED

(Mian Imtiaz Gul)
Superintendent of Police, FRP
Kohat Hangu, Kohat

DISCIPLINARY ACTION

I, Mian Imtiaz Gul, SP FRP Kohat as competent authority, am of the opinion that you Head Constable Umar Sharif No. 1631 I/C FRP Platoon No. 122 deployed at Naryab Dam District Hangu have committed the following acts/omission as defined in Rule 2 (iii) of Police Rules 1975.

STATEMENT OF ALLEGATION

1. As per report received from Control Room Operator, District Karak vide DD No. 15 dated 20.03.2017, you have been arrested by Anti Narcotics Force (ANF) Kohat vide Case FIR No. 08 dated 20.03.2017 U/S 9-C CNSA P.S ANF Kohat. It has further been reported that you had left your place of duty without any leave/permission of competent authority and in this regard your absence report has been recorded vide DD No. 04 dated 18.03.2017. Thus you have committed a gross "Misconduct" as defined in Rule 2 (iii) of Police Rules 1975.
2. For the purpose of scrutinize the conduct of said Constable with reference to the above allegations, Mr, Shoukat Hayat, Reserve Inspector FRP Kohat is appointed as enquiry officer.
3. The enquiry officer shall conduct proceeding in accordance with provision of Police Rules 1975 and shall provide reasonable opportunity of defense and hearing to the accused official, record it is finding and make with twenty five (25) days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused official.
4. The delinquent official shall join the proceeding on the date, time and place fixed by the officer.

(Mian Imtiaz Gul)
Superintendent of Police, FRP
Kohat Range, Kohat

ATTESTED

Ord. 11

25.09.2018



[Handwritten signature and scribbles]
25-09-18

Learned SP for the State and accused 1. Umer Sharif, 2. Abid Zaman and 3. Sirajam Khan on bail alongwith counsel present.

Today the case was fixed for evidence when learned counsel for accused Sirajam Khan requested that accused is desirous for pleading his guilt. It is stated at the bar that accused Sirajam Khan accepts the complete responsibility in respect of the recovery made from the vehicle; and that the other co-accused namely Umer Sharif and Abid Zaman have nothing to do with the recovery of contraband and have been malafidely roped in in the case. On that point learned counsel for accused Umer Sharif and Abid Zaman also requested for the acquittal u/s 265-K Cr.P.C of the accused, as there is no probability of the accused being convicted in the case.

It is discernable from the record that the accused facing trial were apprehended and 2400 gms charas was recovered from vehicle motor car Toyota Corolla No. ICT-LK-604-Islamabad, which the accused were allegedly trafficking jointly and thus all the three accused were arrested on 20.03.2017. They remained in custody and then were released on bail and have been languishing in the agonies of trial since then, which by itself is punishment.

Record of the case further shows that the same has been put in Court on 12.07.2017 but up-till now not even the single PW could be examined and the case has been un-necessarily prolonging. Faced with the anomalous position, the accused Sirajam Khan stated at the bar that he admits his guilt and recorded his statement in this respect wherein he has stated that he belongs to a very poor background. He is laborer by profession, having large family and there is no one to look after them. That he cannot afford the agonies of protracted trial. That he was deceived by anti-social elements for commission of instant crime due to his poverty. That the other co-accused namely Umer Sharif and Abid Zaman are his friends and co-villagers who were just travelling with him and was unaware of his trafficking of narcotic. He repents his crime and commits to be careful in future and also requests that lenient view may be taken in the matter.

Since the accused Sirajam Khan has made a clean breast admission of the commission of offence and since he has beseeched the mercy of this court, therefore, while considering the facts of the case, and punishment provided for the offence, accused Sirajam Khan

Certified to be True Copy
25/09/2018
Examiner
Copying Branch Judge Special Court
(CNS) Khyber Pakhtunkhwa.

ATTESTED

is convicted and sentenced to 02 year R.I. with a fine of Rs. 5000/- (five thousand) in default of payment of fine, the convict shall suffer further five months S.I. Accused deposited the amount of fine.

Since the accused is first offender, therefore, instead of actual imprisonment he is allowed to be released on probation provided he furnishes surety bonds of Rs.50,000/- (fifty thousand) with two sureties, each in the like amount to the satisfaction of Probation Officer Peshawar. Accused is on bail, taken into custody and shall be produced before the Probation Officer at Peshawar and if he succeeds in furnishing bail bonds to the Probation Officer concerned, he be released from custody, otherwise he kept in Judicial lockup till production of bail bonds before the Probation Officer.

As co-accused Umer Sharif and Abid Zaman were just travelling with the convicted accused, and they had no conscious knowledge of the concealment of narcotics in the vehicle as stated by the convicted accused Sirajam Khan in his statement recorded today, therefore, the co-accused can by no means be connected with the commission of offence. As such, there seems to be no probability of their being convicted in the case and therefore while accepting the request of counsel for accused Umer Sharif and Abid Zaman, they are acquitted u/s 265-K Cr.P.C of the charges leveled against them. They are on bail, therefore, their bail bonds are cancelled and sureties are discharged from their liability under the bail bonds.

Personal belongings / non incriminating articles of the convictee as well as acquitted accused shall be returned to them as per recovery memo while charas shall be destroyed as per law but after expiry of appeal/revision period.

As far as the vehicle Toyota Corolla car No. ICT-LK-604-Islamabad is concerned the same was already returned to its lawful owner. Sureties of the vehicle are absolved from their liabilities under the bonds.

File be consigned to record room after completion and compilation.

Announced.
25.09.2018

(Mrs. Nusrat Yasmeen Intekhab)
Judge Special Court (CNS),
Peshawar.

Certified to be True Copy

Examiner

Copying Branch Judge Special Court
(CNS) Khyber Pakhtunkhwa.

ORDER

10/2

10 ANNEX "D"

My this order will dispose off departmental enquiry conducted against Head Constable Umar Sharif No. 1631/FRP under Khyber Pakhtunkhwa Police Disciplinary Rules 1975 (Amended in 2014).

The allegations against defaulter official are that he, while posted as incharge FRP Platoon No. 122 deployed at Naryab Dam P.S Doaba District Hangu, absented himself from duty vide DD No. 03 dated 18.03.2017 without any leave and prior permission of the competent authority. Secondly he was arrested by ANF Kohat alongwith one Constable Driver namely Abid Zaman S/O Aamir Dad Shah of District Police Karak and one other person namely Sarjam Khan S/O Rangeen Shah who is his relative vide case FIR NO. 08 dated 20.03.2017 U/S 90-CNSA P.S ANF Kohat as Chars weighing 2500 gram was recovered from a Car No. LK-604, ICT Islamabad (White Colour) allegedly owned by the present defaulter official which he was going to smuggle but he did not succeed and intercepted by ANF officials at Amberi Kala Chowk in the limits of District Karak. He was suspended by this office vide OB No. 270 dated 21.03.2017 and further departmental enquiry was initiated against him. In this regard he was issued a charge sheet with summary of allegations vide this office No. 166/PA dated 21.03.2017 and Inspector Shoukat Hayat RI FRP Kohat was appointed as enquiry officer to unearth the actual facts. The Enquiry officer submitted his finding report wherein he recommended the defaulter official for major punishment. He was served with Final Show Cause Notice being issued vide this office No. 200/PA dated 06.04.2017 which was received by him personally on 08.04.2017 in District Jail Kohat but he failed to submit reply to Final Show Cause Notice within the stipulated time.

His Service record perused which revealed that he was appointed as Constable on 25.10.2004. There are 04 bad entries against him with 05 good entries in his credit.

From the perusal of record it revealed that once he was compulsory retired from service vide this office QB No. 246 dated 31.03.2016 on the basis of complaint lodged by residents of Mohallah Aliah Noor Khel Chokara District Karak for his involvement in immoral activities but later on reinstated in service by the competent authority.

After going his service record as well as Finding of Enquiry officer, I have come to the conclusion that he had left his place of duty without any leave or permission of the competent authority and had deliberately absented himself from duty. He is involved in an offence of moral turpitude. He has brought a bad name for the whole department and has also misused his official status. In such circumstances he does not deserve to be taken lenient view.

Therefore, I, Mian Imtiaz Gul SP FRP Kohat Range, Kohat in exercise of powers vest in me under Rule 5(5) of Khyber Pakhtunkhwa Police Rules-1975 (Amended in 2014), award him a major punishment of "Dismissal From Service" with immediate effect and his absence period is treated as absence from duty.

OB No. 333

Dated 18-04/2017

(Mian Imtiaz Gul)
Superintendent of Police, FRP
Kohat Range, Kohat.

Copy of above is submitted for favour of information to the:-

1. Worthy Commandant FRP, Khyber Pakhtunkhwa Peshawar w/r to his office letter No.2676/EC dated 27.03.2017, please.
 2. Pay Officer
 3. Reader
 4. SRC
 5. OHC
- } For necessary action.

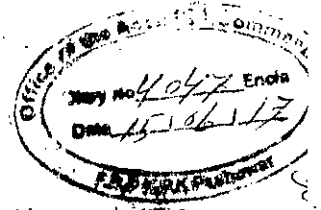
Bawl.
28/5/17

~~ATTACHED~~

(Mian Imtiaz Gul)
Superintendent of Police, FRP
Kohat Range, Kohat.

گورنمنٹ آف سندھ، قائد اعظم صاحب، لاہور، حیدر علی خان فوٹو گالری

درخواست میراوجالی سروس



جانب عالی
استدعا کی طاقی صحیح سائیکل پلاٹوں پر 22 مقامات، دو ایئر ضلع ہینڈو میں بطور ایجنڈا
پلاٹوں کی تصدیق تھا۔ مقامات دو ایئر سے 2 مساب 15:15:20 SAO مقامات دو ایئر صوبہ 17⁰³/₁₇
20⁰³/₁₇ تک 03 بجے روٹین کی شاہی پر گھر خود تھا۔ اس دوران سائیکل کو ایک
سائیکل کے تحت چھوٹی FIR نمبر 08 صوبہ 20⁰³/₁₇ 22-MSB-09/k-05 مقامات ANF کو
میں ملوث کیا گیا۔ اس کے بعد سائیکل کو بدستوری سے قید 18⁰³/₁₇ سے 18⁰³/₁₇ تک
کیا گیا۔

صوبہ 20⁰³/₁₇ ANF کے ملازم فصیح جس کے ساتھ بیماری زانیہ دیکھی گئی ہے اور
بیماریاں رشتہ دار بھی ہے۔ اس نے زانیہ دیکھنے کے بعد ہر دیگر ساتھیوں کے
ساتھ مل کر مجھے اور میرے دو ساتھیوں کے ساتھ جھگڑا کیا۔ اور یہ ساتھیوں کو ٹھیکہ
زخمی نہیں کیا۔ اور یہیں بکڑ کر گاڑی میں سے جانے لگے۔ اس دوران SAO مقامات
مقامات کے تحت ایف آئی (مقامات یعقوب حسین) ضلع کرک نے کنٹرول روم کو اطلاع دی اور موقع
پر خود پہنچا۔ اور ANF ملازمین کے ساتھ ٹکر کیا ان میں سے کوئیوں کو بکڑ
کرے جا رہے تھے۔ جتنوں نے بکڑا، ان کے پاس پاس ہے اس کے بکڑا ہے۔
SAO صاحب نے پورے مکان کا پتہ سبب موقع پر جس میں موجود نہیں تھے۔ اس
بارے میں SAO صاحب نے جو امداد روزنامہ 20⁰³/₁₇ 20⁰³/₁₇ کی تصدیق اور رپورٹ دینا
اور پتہ کی ہے۔ جو پتہ آہ لگا ہے۔ نقلد رپورٹ میں جو ہے قتل اور
ANF دالوں کے متعلق لگا ہے انہوں نے اطلاع دینے کے بعد قاعدے اور قاتلوں
کے خلاف کارروائی کی ہے۔

سائیکل کو جس عقیدہ میں صوبہ 26⁰³/₁₇ کو ضمانت مل چکی ہے۔ اور میرے ساتھ
FIR میں شریک ڈسٹرک کرک کا کل ماہر زمان کو ڈسٹرک پولیس کرک
نے اپنے عقیدہ پر لکھ کر کسی انٹو آئی کے پاس کیا ہے۔ اس کے بعد ساتھ
طلبہ ہوئے۔ اس کے بعد صرف چھوٹی ANF درجہ ہوا ہے اور دوسری جانب
جملہ پولیس سے برخواست کیا گیا ہے۔

ATTESTED


اور انکو آئی اف سر نے کسی اور شخص سے انکو ٹھکانا دیا ہے۔ اس کے علاوہ
کو Personal Hearing کا موقع بھی نہیں دیا گیا ہے۔ اور بعد کسی بھی
سائل کو تیار گزارا گیا ہے۔

اولیٰ کے مطابق جب تک کسی Criminal Case میں عدالت سے کوئی جرم
ثابت نہیں ہو جاتا اس وقت تک حکم کسی کو سزا نہیں دیا جاتا
میں سے اسکو ظلم ہوا ہے۔ اور میں یہ فقور ہوں۔

میرزا حبیب اللہ تارکوٹس فورس کے ملازمین اور حکام نے یعقوب خان سید (میت
نے) کے SAO صاحب کے سامنے تکرار میواری کی اس وقت کی ویڈیو
اپنا رڈ ٹیٹ میوہ پاس موجود ہے۔ صفا - SAO صاحب مدعو رہنے کے لیے
سے متعلقہ معلومات کی سکن وقوع پر ANF ایسٹا ان نے کسی قسم کی چرس و سٹ
میں نہیں کی ہے۔ ویڈیو میں ANF کامیوٹ فیم جو جو دی ہے۔ سکن
اس کا نام FIR میں نہیں ہے۔ ANF والوں نے حجے جوٹے FIR میں ملوث کیا ہے
کے ساتھ صرف عدالت سے ساقیوں کے ANF کے ساتھ رٹرائل جملہ اٹھا۔ اور ANF
کامیوٹ فیم ا۔۔۔ حجے اپنے رٹرائل کو بائیل بٹ 0346-4157885 سے
دفعہ کیوں دے رہا ہے۔

میں نے ANF ایسٹا ان کے خلاف ان کے رٹرائل میں حاصل کو اور اپنے
کو اپنے رٹرائل میں عدالت کو تحریری درخواست بھی کی ہے۔ اور عدالت
دفعہ میں بھی ان کے خلاف ایک ایک دفعہ دائر کروا گیا
استدعا کی جاتی ہے در تمام حالات واقعات اور سائل کی
بے گناہی کو مدنظر رکھتے ہوئے سائل کو حکم پورس میں نوٹری ہاؤس
بجائے نہ کہ کا حکم صادر فرمایا جائے۔ سائل تاحصلت و سٹاٹوٹری کا

آپ کا نام ایس ایس جید علی عمر شریف 1631 - سٹولڈر ایس ایس جید علی عمر شریف 1631


0333-6718937

EC
for n/active

COMMANDANT,
Frontier Reserve Police
Khyber Pakhtunkhwa Peshawar

ATTESTED

16/6/17

made for a
day shall be

ORDER

13
ANNEX F

This order will dispose of the departmental appeal preferred by Ex-Head constable Umar Sharif No. 1631 of FRP Kohat Range against the order of dismissal from service passed by SP FRP Kohat Range, Kohat vide OB No. 333, dated 18.04.2017. The applicant was proceeded against on the allegations that he while posted as Incharge FRP Platoon No.122 deployed at Naryab Dam P.S Doaba District Hangu, absented himself from duty with effect from 18.03.2017 without any leave and prior permission from his senior. Besides, he was found involved/arrested in a criminal case vide FIR No. 08 dated 20.03.2017 U/S 9C-CNSA Police Station Anti Narcotics Force, District Karak.

Proper departmental enquiry proceedings were initiated against him. He was issued Charge Sheet alongwith Statement of Allegations and Inspector Shoukat Hayat RI FRP Kohat was appointed as enquiry officer to conduct the enquiry against him. The enquiry officer submitted his findings, wherein he recommended the delinquent officer for major punishment. He was served with Final Show Cause Notice issued vide office No. 200/PA dated 06.04.2017 which was received by him personally on 08.04.2017 in District Jail Kohat, but he failed to submit his reply within stipulated period. Keeping in view the findings of enquiry officer, and other material available on record, he was dismissed from service vide OB No. 333 dated 18.04.2017.

Feeling aggrieved against the impugned order of SP FRP Kohat Range, Kohat, the applicant preferred the instant appeal. The applicant was summoned and heard in person in Orderly Room held on 09.11.2017.

From perusal of the enquiry file and the service record of the applicant, it is abundantly clear that the delinquent official has been found involved in a criminal case. Such conduct on the part of a police officer is bound to tarnish the image of the entire force. He had brought a bad name for the whole department and had also misused his official status. Besides, he had been awarded major punishment of compulsory retirement from service vide OB No. 246 dated 31.03.2016 on the basis of complaint lodged by residents of Mohallah Allah Noor Khel Chokara District Karak for his involvement in immoral activities.

ATTESTED

Based on the appreciation of the situation painted above, I, Sher Akber, PSP S.St Commandant FRP Khyber Pakhtunkhwa, Peshawar being the competent authority, finds no substance in the appeal, therefore, the same is rejected and filed being meritless.

Order Announced.

[Signature]
o/c **Commandant**
Frontier Reserve Police
Khyber Pakhtunkhwa, Peshawar.
etc

No 8515/EC, dated Peshawar the 16/11/2017

Copy of above is forwarded for information and necessary action to the:-

1. SP FRP Kohat Range, Kohat. His service record alongwith D file returned herewith.
2. Ex- Head constable Umar Sharif No. 1631 S/O Umar Nazif Khan, Village Surati Killa, PS Latamber, District Karak.

ATTESTED

8336 2
04 10 2018

حیدر علی

گزارش جینل سٹی فورسز 15/2004 سے متعلقہ لو لو لیس انعام کوئی نہیں
 سے بطور کٹل کرنی ہوا تھا۔ سٹی اینف ڈیویژن نیا نیا ایف ایف ڈیویژن کے تحت دارالکتاب
 سہ الحام دے رہا تھا اس دوران سٹی کے خلاف ANF والوں نے 90-cmba
 کا جوٹا مقدمہ درج کیا اور اس سے سٹی کو گرفتار کیا گیا۔ سٹی کے خلاف حکمانہ
 انکوائری شروع کی گئی۔ چونکہ اس سٹی میں سے تھا اور اس کے خلاف سٹی
 کو حکمانہ لو لیس سے فورسز 18/04/2007 پر حاکم کیا گیا۔ چونکہ سٹی کے خلاف مقدمہ
 چل رہا تھا اور لہذا اس سے سٹی کو اس سے خود اعلان حاکم کیا گیا۔
 ANF کورٹ سے سٹی کا ٹرائل فکس ہو گیا اور عدالت نے سٹی کو تینہ قرار دے
 کر بائیس ناظرین مقدمہ سے لے کر عدالت کا آرڈر نمبر 18/04/2007

کہ اس سٹی کے سب گوانے سے تعلق رکھتا ہے سٹی کے گوانے والے گوانے سے
 سٹی کے چھوٹے چھوٹے بچے اور بوڑھے والے ہیں۔ اس کے خلاف مقدمہ
 کے لئے سٹی کو تینہ قرار دیا گیا ہے حالات سے سٹی کے لئے
 کوئی ذریعہ نہیں ہے سٹی کے لئے سٹی کے لئے سٹی کے لئے
 کہ ان کے حاکم سے لے کر سٹی کے لئے سٹی کے لئے سٹی کے لئے
 کو سٹی کے لئے سٹی کے لئے سٹی کے لئے سٹی کے لئے
 کرنے کے لئے سٹی کے لئے سٹی کے لئے سٹی کے لئے
 دیکھو ریکارڈ

03135654116

ATTESTED

ایف ایف ڈیویژن کے لئے سٹی کے لئے سٹی کے لئے سٹی کے لئے
 ANF کوئی نہیں ہے سٹی کے لئے سٹی کے لئے سٹی کے لئے
 سٹی کے لئے سٹی کے لئے سٹی کے لئے سٹی کے لئے

ORDER

16 ANNEX H

This order will dispose of the departmental appeal preferred by Ex- Head constable Umar Sharif No. 1631 of FRP Kohat Range against the order of dismissal from service passed by SP FRP Kohat Range, Kohat vide OB No. 333, dated 18.04.2017. The applicant was proceeded against on the allegations that he while posted as Incharge FRP Platoon No.122 deployed at Naryab Dam P.S Doaba District Hangu, absented himself from duty with effect from 18.03.2017 without any leave and prior permission from his senior. Besides, he was found involved/arrested in a criminal case vide FIR No. 08 dated 20.03.2017 U/S 9C-CNSA Police Station Anti Narcotics Force, District Karak.

Proper departmental enquiry proceedings were initiated against him. He was issued Charge Sheet alongwith Statement of Allegations and Inspector Shoukat Hayat RI FRP Kohat was appointed as enquiry officer to conduct the enquiry against him. The enquiry officer submitted his findings, wherein he recommended the delinquent officer for major punishment. He was served with Final Show Cause Notice issued vide office No. 200/PA dated 06.04.2017 which was received by him personally on 08.04.2017 in District Jail Kohat, but he failed to submit his reply within stipulated period. Keeping in view the findings of enquiry officer, and other material available on record, he was dismissed from service vide OB No. 333 dated 18.04.2017.

Feeling aggrieved against the impugned order of SP FRP Kohat Range, Kohat, the applicant preferred the instant appeal. The applicant was summoned and heard in person in Orderly Room held on 14.11.2018.

From perusal of the enquiry file and the service record of the applicant, it is abundantly clear that the delinquent official has been found involved in a criminal case. Such conduct on the part of a police officer is bound to tarnish the image of the entire force. He had brought a bad name for the whole department and had also misused his official status. Besides, he had been awarded major punishment of compulsory retirement from service vide OB No. 246 dated 31.03.2016 on the basis of complaint lodged by residents of Mohallah Allah Noor Khel Chokara District Karak for his involvement in immoral activities.

From perusal of record, it has been found that his first appeal has already been rejected vide this office order Endst; No. 8515-16/EC, dated 10.11.2017 and there is no provision of second appeal in law. As such the appeal is once disposed off by this office, the petitioner should now filed appeal and impugn the order in Service Tribunal.

Based on the findings narrated above, I, **Sajid Ali PSP** Commandant FRP Khyber Pakhtunkhwa, Peshawar, being the competent authority, has found no substance in the appeal, therefore, the same is rejected and filed being badly time barred and meritless.

Order Announced.

Commandant
Frontier Reserve Police
Khyber Pakhtunkhwa, Peshawar.

No 11763-64 /EC, dated Peshawar the 20 / 11 / 2018.

Copy of above is forwarded for information and necessary action to the:-

1. SP FRP Kohat Range, Kohat. His service record alongwith D file sent herewith.
2. Ex- Head constable Umar Sharif No. 1631 S/O Umar Nazif Khan, Village Surati Killa, PS Latamber, District Karak.

TESTED

خدمت جناب انکوئری آفیسر صاحب دفتر سپرنٹنڈنٹ آف پولیس F&P کراچی

لوساطت جناب سپرنٹنڈنٹ صاحب ڈسٹرکٹ جیل کراچی

موضوع... چارج منیٹ بحوالہ لیٹر نمبر F&P 166 مورخہ 21.3.017

جناب عالی

موردہ منہ گذارشیں کے مسائل عمر شریف ولد عمر زلفی H.C نمبر 1631-6 عدہ پانچ روزہ

سے دفعہ 99ء تک ڈسٹرکٹ جیل کراچی میں بند رہے

بتاریخ 20/3/18 کو ANF نے بمقام FIR نمبر 8 نمونہ بالا نسلیں میں ملوث کیا
مسائل اس سلسلے میں اپنی گزارشات پیش کرتے ہوئے واقعہ کے پھر دراز مورخہ 20/3/18
مسائل 20/3/17 کو کراچی سے ہٹا کر بہراہ سر اجیم ولد رنگین شاہ (جن سے رشتہ منقطع
مذکورہ نسلیں کے انسانی طور پر کثرت آف گاڑی میں بٹھایا) اور دوسرا لائسینس
طوائف کے امتحان پیش کیا تھا۔ راستہ میں ANF نے گاڑی روک کر تلافی تو جیس بہراہ مورخہ
جس مسائل سے تعلق نہیں ہے اور نہ ہی مسائل اس سے باخبر تھا جبکہ سر اجیم ولد رنگین شاہ
نے اپنے ہم کاروں کے پاس اور دیگر بیان دیا کہ جیس اس کی ملکیت ہے۔ مسائل تا اس سے تعلق
نہیں۔ مسائل کے گناہ بے قصور ہے

دوسرے پھر لائسینس کے زمانہ ^{ایمپروڈنٹ} ولد ^{ایمپروڈنٹ} نے سر اجیم کے بیان کے تصدیق کی کہ واقعی
جیس اس کی ملکیت ہے۔ مسائل اس سلسلے میں بے گناہ ہے وہ ٹریک جو نہیں ہے

مسائل 19/3/17 سے 20/3/17 تک حسب اجازت 5410 صاحب تقاضہ درجہ سے رخصت ہوا تھا۔

جناب عالی... مسائل ایک مورخہ کے تعلق سے تعلق رکھتا ہے۔ اپنی عدہ بارہ مسائل کی پیشہ ورانہ طور پر
پیش رفت حکم یا انصاف کے بارے کو شکایت کا موقع نہ دیا۔ جسے ^{میس} ^{کونڈیشن} ^{میس} ^{کونڈیشن} کہا جاتا ہے۔

بہراہ کامرنگ نہ رہا۔ مسائل کے سابقہ ریکارڈ ایک صاف سے ایسے کی گناہوں کے لیے
میں مورخہ بھی نہیں لکھا اور سیکڑہ بھی رہے تاکہ ملک کی عزت و ناموس کا اس میں کوئی نقصان
ضرورت نہ پڑے۔ یہاں تدارکی فرسٹ ٹائلی اور جانفشانی سے احاطہ نہ ہو گیا

مسائل ذاتی طور پر انکوئری آفیسر صاحب کے درجہ میں پیش ہونے اور تصدیق اپنی بے گناہی ثابت
کرنے کے سعادت حاصل کرنے کا مستحق ہے۔ بہت شکریہ

العرض

عمر شریف ولد عمر زلفی نمبر 1631

ATTESTED

مقدمہ عدالت نمبر 08 مورخہ 20/03/2017 جرم (NSA) 15, 14, 9C نمائندہ ANF کوہاٹ 1997

- 1. عمر شریف خان ولد عمر زلفی خان قوم خٹک سکندہ پوروی مکہ تحصیل تخت لغری ضلع کوہاٹ
- 2. عابد زمان ولد میر محمد شاہ قوم خٹک سکندہ پوروی مکہ تحصیل تخت لغری ضلع کوہاٹ
- 3. سراج خان ولد رنگین شاہ قوم خٹک سکندہ پوروی مکہ تحصیل تخت لغری ضلع کوہاٹ

دو پروٹوکول ذیل ملزم مذکورہ پیشانی بالا سپریل نمبر 1 عمر شریف خان نے ٹیویٹا کرولا (LA) کار پوری

JCT 604 ISLAMABAD

LK برٹن سفید کی ڈرائیونگ سیٹ کے نیچے سے از خود ایک پبلک جسٹس بند بے پلاشک و زرد آنسو لینس ٹیپ من انسٹیٹوٹ SHO کے حوالے کیا جبکہ ملزمان مذکورہ پیشانی بالا سپریل نمبر 2، 3 عابد زمان اور سراج خان نے مذکورہ بالا کار کی کھلی سیٹ کے نیچے سے از خود ایک پبلک جسٹس بند بے پلاشک و زرد آنسو لینس ٹیپ من انسٹیٹوٹ SHO کے حوالے کیا ڈرائیونگ سیٹ کے نیچے سے برآمدہ ایک پبلک جسٹس کا وزن کرنر پر (1200) گرام جسٹس پائی جا کر جسٹس میں سے (10) گرام جسٹس بطور نمونہ بغرض نمونہ کیپٹائی کیلئے مثال کے پارسل نمبر 1 میں جبکہ لبا یا جسٹس کو پارسل نمبر 2 میں بند کر کے پارسل پائے پر 2/2 عدد مواہیر اسمی AA مثبت کر کے سربم کر کے جبکہ کار مذکورہ بالا کی کھلی سیٹ کے نیچے سے برآمدہ ایک پبلک جسٹس کا وزن کرنر پر (1200) گرام جسٹس پائی جا کر جسٹس میں سے (10) گرام جسٹس بطور نمونہ بغرض نمونہ کیپٹائی کیلئے مثال کے پارسل نمبر 3 میں جبکہ لبا یا جسٹس کو پارسل نمبر 4 میں بند کر کے پارسل پائے پر 2/2 عدد مواہیر اسمی AA مثبت کر کے سربم کر کے ملزم عمر شریف خان کی جامہ تلاشی سے برآمدہ 1. نقدی پاکستانی کرنسی مبلغ 500 روپے 2. 2- اپیل شناختی کارڈ بنام ملزم عمر شریف خان 3. ڈرائیونگ آنسو لینس بنام ملزم عمر شریف خان 4. خیمہ نمونہ خواہ پولیس سرپس شناختی کارڈ بنام ملزم عمر شریف خان پلمبرہ SI درجہ 2 - S. ATM - VISA کارڈ بنام UBL بنام ملزم عمر شریف خان 5. موبائل فون سام سنگ ماڈل Galaxy S3 جسٹس نمبر 0313-5654116 جبکہ ملزم عابد زمان کی جامہ تلاشی سے شناختی کارڈ برآمدہ نقدی پاکستانی کرنسی مبلغ 300 روپے اور 2 عدد منفرد و بند شناختی کارڈز جبکہ ملزم سراج خان کی جامہ تلاشی سے برآمدہ 1. نقدی پاکستانی کرنسی مبلغ 150 روپے 2. موبائل فون نوکیا ماڈل X1 جسٹس نمبر 9718594-0333-0333 و 176 نمونہ جامہ تلاشی ملزمان ٹیویٹا کرولا (LA) کار پوری JCT 604 ISLAMABAD لک برٹن سفید انجن نمبر 2NZ X 551880 جسٹس نمبر 6060105-120 NZE ماڈل 2007 جسٹس نمبر 2007

Imjad
اجید علی انسٹیٹوٹ SHO
نمائندہ ANF کوہاٹ
20-03-2017

کوانٹان
1- اظہار حیل HC نمائندہ ANF کوہاٹ
2- محمد مبارک کاشمیل نمائندہ ANF کوہاٹ

20-03-2017

TESTED

فرد نشاندہی

مقدمہ عدالت نمبر 08 مورخہ 20/03/2017 جرم C/NSA 14, 15, 1997 تھانہ ANF کوہاٹ

- 1. عمر شریف خان ولد عمر نظیف خان قوم خند سکنہ صورتی مکہ تحصیل تخت لغرن ضلع سرگ
- 2. عابد زمان ولد میر مدد شاہ قوم خند سکنہ صورتی مکہ تحصیل تخت لغرن ضلع سرگ
- 3. سراج حق خان ولد رنگین شاہ قوم خند سکنہ صورتی مکہ تحصیل تخت لغرن ضلع سرگ

رو بہرو گوانھان ذیل ملزمان تین کس مذکورہ بالا سے منشیات کی بابت پوچھنے پر پھونکے بغیر
 کے بعد اپنے زیر قبضہ ٹولویٹا سروا XL کار نمبری JCT 504 LK. بزنس سفید کی ڈرائیونگ سیٹ پر
 ISLAMABAD کے نیچے ایک پبلٹ جس میں

بیٹھے ہوئے ملزم عمر شریف خان نے مذکورہ بالا کار کی ڈرائیونگ سیٹ پر بیٹھے ہوئے ملزمان عابد زمان
 موجودگی تسلیم کر کے نشاندہی کی جبکہ مذکورہ بالا کار کی ڈرائیونگ سیٹ پر بیٹھے ہوئے ملزمان عابد زمان
 اور سراج حق خان نے مذکورہ بالا کار کی ڈرائیونگ سیٹ کے نیچے چھپائے گئے ایک پبلٹ جس میں موجودگی تسلیم
 کر کے نشاندہی کی جس پر رو بہرو گوانھان و ملزمان من انسپٹر/SHO کے چھاپے کرنے پر مذکورہ بالا کار
 کی ڈرائیونگ سیٹ اور ڈرائیونگ سیٹ کے نیچے جس میں دو عدد پیکٹس یا کیر جو تہ بند بہ بلا شکر و زرد
 انسولین ٹیب میں جس پر فرد نشاندہی جس میں ملزم عمر شریف خان ذیل سے تکمیل فرد نشاندہی
 پر مزاج کروائی جاتی ہے۔

گوانھان

Amjad Ali

اجید علی انسپٹر/SHO
 تھانہ ANF کوہاٹ
 20-03-2017

انظر الرحمن HC تھانہ ANF کوہاٹ

M.L. طاہر
 2. محمد شہاب کانسٹیبل تھانہ ANF کوہاٹ

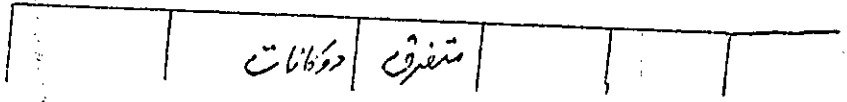
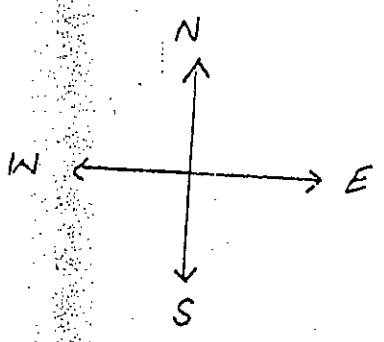
ATTESTED

ضلع کوہاٹ

نقشہ موقع نظری بلا سکین

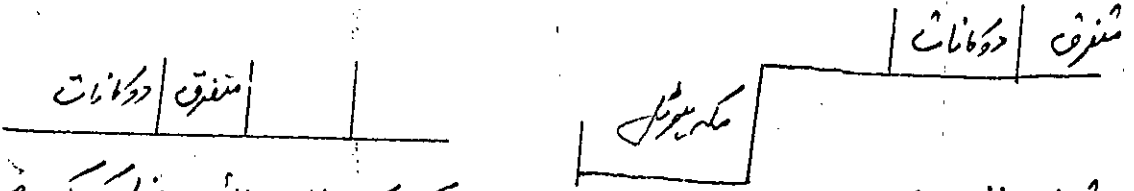
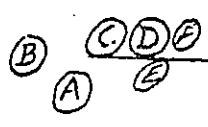
مقدمہ عدالت نمبر 08 مورخہ 20⁰³ 2017 جرم CNSA 1997 15, 14, 9 نشانہ ANF کوہاٹ

- 1۔ عمر شریف خان ولد عمر نظیف خان قوم خٹک سکندہ پوروی مکہ تحصیل تخت لغڑی ضلع کرکے
- 2۔ عابد زمان ولد میر مدد شاہ قوم خٹک سکندہ پوروی مکہ تحصیل تخت لغڑی ضلع کرکے
- 3۔ سراج خان ولد رنگین شاہ قوم خٹک سکندہ پوروی مکہ تحصیل تخت لغڑی ضلع کرکے



انڈس بائی وے روزنہ بجانب کرکے کوہاٹ و شہار

انڈس بائی وے روزنہ بجانب ڈیرہ اسماعیل خان کراچی



امتیازی نشانات :- نقشہ موقع میں جارا و قومہ نزد امپیری چوک مکے انڈس بائی وے ضلع کرکے ۵۔ نقشہ موقع میں

ABC وہ مقامات ہیں جہاں پر ANF کا مکملہ اور سناری گاڑیاں موجود ہیں جبکہ نقشہ موقع میں D وہ مقام ہے جہاں پر کوہاٹ کوروا لکھنؤ اور امپیری چوک کے درمیان میں واقع ہے۔

نقشہ موقع میں جہاں پر کوہاٹ کوروا لکھنؤ اور امپیری چوک کے درمیان میں واقع ہے۔

نقشہ موقع میں جہاں پر کوہاٹ کوروا لکھنؤ اور امپیری چوک کے درمیان میں واقع ہے۔

نقشہ موقع میں جہاں پر کوہاٹ کوروا لکھنؤ اور امپیری چوک کے درمیان میں واقع ہے۔

نقشہ موقع میں جہاں پر کوہاٹ کوروا لکھنؤ اور امپیری چوک کے درمیان میں واقع ہے۔

انڈس بائی وے انڈس پور
 نشانہ ANF کوہاٹ
 20.03.2017

نقشہ موقع نظری بلا سکین مشرف لکھا ہے۔

ضلع لوہاٹے

کارڈ گرفتاری

مقدمہ عدالت نمبر 08 مورخہ 20/03/2017 جرم CNSA 1997 9c, 14, 15 تھانہ ANF لوہاٹے

بنام :- عمر شریف خان ولد عمر نظیف خان مومن خٹک سکنہ اہوڑی ملکہ تحصیل تخت لہری ضلع لوہاٹے

جناب عالی

مقدمہ عنوان بالا میں ملزم مذکورہ پیشانی بالا و جرم بالا میں حسب ضابطہ گرفتار

کر کے کارڈ گرفتاری برائے اطلاع گزارش ہے۔

حلیہ ملزم

- قد : تقریباً 5' - 10"
- رنگ : گندمی
- رنگت آنکھ : براؤن
- عمر : تقریباً 39/40 سال
- شناختی علامت : ٹھوڑی کے بائیں جانب تیل

Impd
 ANF
 اچدی علی انسپکٹر/SHO
 تھانہ ANF لوہاٹے
 20-03-2017

کارڈ گرفتاری

مقدمہ عدالت نمبر 08 مورخہ 20/03/2017 جرم CNSA 1997 9c, 14, 15 شمارہ ANF نوٹس

بنام :- عابد زمان ولد میر محمد شاہ قوم خٹک سکشن 49 تحصیل قوت لفرقی ضلع بہاول

جناب عالی! مقدمہ عنوان بالا میں ملزم مقدمہ پیشانی بالا کو جرم بالا میں حسب ضابطہ

گرفتار کر کے کارڈ گرفتاری برائے اطلاع گزارش ہے۔

حلیہ ملزم :

قد : تقریباً 5'7"

رنگ : گندمی

رنگت آنکھ : براؤن

عمر : تقریباً 32 سال

شناختی علامت : بائیں کندھے پر تیل

Amjad Ali
اجد علی انسپکٹر SHO
شمارہ ANF نوٹس
20-03-2017

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ضلع کوہاٹ

23
نمائندہ ANF

کارڈ گرفتاری

مقدمہ عدالت نمبر 08 مورخہ 20/03/2017 جرم C/NSA 15, 14, 9C نمائندہ ANF کوہاٹ
1997

بنام :- سراج محمد خان ولد رنگین شاہ قوم خٹک سکنہ پورتن کلمہ تحصیل تخت پورتن ضلع کوہاٹ

جناب عالی!

مقدمہ عنوان بالا میں ملزم مندرجہ پیشانی بالا کو جرم بالا میں حسب ضابطہ

گرفتار کر کے کارڈ گرفتاری برائے اطلاع گزارش ہے۔

حلیہ ملزم :

قد تقریباً 5'5"

رنگ گندی

ذلت آنکھ براؤن

عمر تقریباً 38/39 سال

شناختی علامت سینے پر تیل

Jamjad
#1

اجید علی انیسٹریبل / SHO

نمائندہ ANF کوہاٹ

20-03-2017

بے برقرار

ATTESTED
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رپورٹ ضمنی

بیانات 161 ضف

بیان گواہ زیر ورف 161 ضف

48
 20 03
 17
 90, 14, 15
 CNSA
 ANF

مقدمہ ملت نمبر 08 درف 17-03-20-03 جرم CNSA 14, 15, 90 گمانہ ANF کوہاٹے

گواہ H/A اظہار عیان گمانہ ANF کوہاٹے نے بعد دربیانات بیان کیا کہ اندر آج اینٹیلر صاحب کے ہمراہ میں مدعا ANF علی نقی کینڈلان محمد شہاب بیسوع اللہ، مستحق احمد و دیگر نوری ANF ہمراہ غیر مدعا ماری گمانہ جوییل ڈر سیوران شاہ زمان، محمد ہارون، بریافن خان گمانہ ANF سے روایت ہو کر گئے وقوعہ نزد امیر کی چوکت علی ڈنڈا سے باہر کے پہلے ٹرک ٹنگر ڈیوٹی پر موجود تھا کہ آج اینٹیلر صاحب نے مناسب حکمت عملی ترتیب دیکر آرڈر سے آئے والی کاروں کی خفیہ نگرانی شروع کر دی قریب 1215 بجے خفیہ شدہ کار نمبری Test 604 کا Islamabad کو پورا پورا بلا برٹنگ لینڈ جانب کرد سے آئی ہوگی دکھائی دی جس میں تین اشخاص سوار تھے جسے حسب نشانہ میں غیر مدعا اور امیر ایساں حکمت عملی سے اشارہ کرتے آرڈر نامہ قندرقہ والا

کی ڈرائیونگ سیٹ پر بیٹھے ہوئے ایک شخص اور پچھلی سیٹ پر بیٹھے ہوئے دو اشخاص کو باہر اور امیر ایساں قابو کیا جا کر بعد دربیانات نامہ ویشہ ڈرائیونگ سیٹ پر بیٹھے ہوئے شخص نے آج اینٹیلر صاحب کو اینٹیلر ویشہ محمد شریف خان ولد محمد تقی خان قوم خٹک جبکہ ڈرائیونگ سیٹ کے پچھلی سیٹ پر بیٹھے ہوئے شخص نے اینٹیلر ویشہ محمد شریف خان ولد محمد تقی خان قوم خٹک جبکہ فرینٹ سیٹ کے پیچھے بیٹھے ہوئے شخص نے اینٹیلر ویشہ محمد شریف خان ولد محمد تقی خان قوم خٹک سائن نامہ تحصیل تخت لغری پہلے ٹرک ٹنگر کے قدامتوان محمد شریف خان اور عابد زمان نے مزید بتلایا کہ وہ غیر متعلقہ گواہ پولیس کے اظہار میں منشیات کی حالت پر پورے پورے اندر دوسرے گواہ کانٹیلر محمد شہاب ڈرائیونگ سیٹ پر بیٹھے ہوئے شخص نے کچھ لیسٹ و لعل کے بعد ڈرائیونگ سیٹ کے پیچھے ایک تیارہ جس کی موجودگی تسلیم کرنے نشانہ میں کی جبکہ پچھلی سیٹ پر بیٹھے ہوئے دو اشخاص عابد زمان اور سر اج خان نے پچھلی سیٹ کے پیچھے چھپاتے ہوئے ایک سٹیٹ جس کی موجودگی تسلیم کرنے نشانہ میں کی یہ دوسرے اور دوسرے گواہ ڈرائیونگ سیٹ اور پچھلی سیٹ کے نیچے جس کے کل دو عدد بیکٹس یا ٹر فرڈ نشانہ میں موجود تھے تھے کہ فرڈ نشانہ میں ہر میں نے اندر دوسرے گواہ اینٹیلر محمد شہاب نے اپنے اپنے دست پر اپنے اشخاص میں اپنی علاقہ جمع ہونے شروع ہوئے ہیں علاقہ زیادہ تعداد میں ہونے کی وجہ سے مذکورہ بالا اشخاص کو چھڑانے کی کوشش میں تھے کہ اسی دوران ملزم عابد زمان وقوع سے ناگوار ہوا کرتے ہوئے کوشش کرتے ہوئے مالک نامہ گاڑی کے دوسرے سے ٹکرا کر

20-03-2017

ATTESTED

08
90-5-12
115
17

صوبی زخمی ہوا موقع پر نقس ایف کے غور سے اور سیکورٹی حالات کو مد نظر رکھتے ہوئے
 محفوظ حالت میں کے تحت آپ انسپکٹر صاحب نے موقع سے ماحولہ کار و عملہ منشیات
 چوس و تین کس مفران کو ہمراہ ایئرنگ پائی انسپکٹر صاحب ANF کو آپ کے پاس لے کر
 کر فرود اڈا کول بدوڑہ انڈس صلائی وے پہنچ کر آپ پر جسٹس چیمبر خیر خواہ پولیس کی نگاہ
 لغوی نے درک کیا جن کی ماتحت آپ انسپکٹر صاحب نے ANF کے بارے میں مفران سے
 رابطہ کر کے تمام امور حال سے آگاہ کیا جن پر جسٹس چیمبر خیر خواہ پولیس کے بارے
 میں مفران نے پولیس اہلکاروں کو راستے سے ہٹنے کی تاکید کی جن کے بعد تمام ANF
 کو آپ انسپکٹر صاحب کے پاس لے کر آئے پھر ملزم عمر شریف خان نے دربار چوس
 اور دوسرے گواہ کینٹینل شہاب از خود ڈرائیونگ سیت کے پیچھے سے ایک عدالت
 چوس بنوڑہ بدوڑہ شہادت و زور دہشت گردی میں آپ انسپکٹر صاحب کے حوالے کیا جسے مفران
 عابد زمان ایئر سوائس خان نے دربار چوس کے ڈرائیونگ گواہ از خود پھیل سیت کے
 پیچھے سے ایک عدالت چوس بنوڑہ بدوڑہ شہادت و زور دہشت گردی میں آپ انسپکٹر صاحب
 کے حوالے کیا ڈرائیونگ سیت کے پیچھے سے ہزاروں چوس کے ساتھ مفران کا وزن کرنے پر
 1200 گرام چوس پائی جا کر جن میں سے (10) گرام چوس بطور نمونہ لفٹنٹ چیمبر خیر خواہ
 علیحدہ کر کے پراسس نمبر 4 میں جبکہ بقیہ چوس کو پراسس نمبر 2 میں بند سہ پائی کر کے پراسس
 نمبر 2 پر عدالت چوس پراسس ANF میں جسے پھیل سیت کے پیچھے سے ہزاروں
 آئیٹ چوس کا وزن کرنے پر (1200) گرام چوس پائی جا کر جن میں سے 10 گرام
 چوس بطور نمونہ لفٹنٹ چیمبر خیر خواہ علیحدہ کر کے پراسس نمبر 3 میں جبکہ بقیہ چوس کو
 پراسس نمبر 4 میں بند سہ پائی کر کے پراسس نمبر 2 پر عدالت چوس پراسس ANF میں
 میں پھر چھاپا میں چوس کل وزنی (2400) گرام پراسس نمبر 4 مفران بلا تین کس کی جامع
 عدالت چوس کی جا کر چیمبر منشیات جامع عدالت مفران و ٹیو ہونا کراہ مار نمبر 154604 LK پرنٹ
 سفید فہرست عدالت میں لی جا کر شامل فرود کراہ ایئرنگ فرود مہر چوس میں نے اور
 دوسرے گواہ کینٹینل شہاب نے اپنے اپنے دستخط لکھے ہیں اس قدر پورے بیان کے

ATTESTED

حصہ دوم (اندرونی)

رپورٹ ضمنی

بیانات 161 ضف

بیان گواہ زبیر دھرم 161 افیو

حصہ دوم عدالت نمبر 08 مورخہ 20-03-2017 جسٹس 9c, 14, 15 CNSA کوہاٹ

گواہ کینٹینل محمد شہاب کھانم ANF کوہاٹ نے لیدر ریاضت بیان کیا کہ انور ذرا اب انسپکٹر صاحب کے پیڑھے بیٹے محمد علی نقوی، H/A اظہار رحمان کینڈیلان وسیع اللہ مستحاق الحدود دیگر لڑکی ANF پیڑھے بیٹے محمد کرمادی گاڑیاں جنھیں ڈرائیور ان شاکر زمان، محمد ہارون، ماریا خان کھانم ANF کوہاٹ سے رہائش ہو کر جاتے دھرم نورد ایسٹریا جو کہ ایک انڈین ہائی اسکول ضلع ترقی پشاور ڈیوٹی پر موجود تھا کہ آپ انسپکٹر صاحب نے مذاہب عدالت علی قریب دیکھ کر کر کے آئے والی گاڑی کی خفیہ ٹیکسٹ کی تصویر لے لی اور وہی تصویر 1215 کے فون پر منسلک کر کے Lk Jet 604 کوہاٹ اور ایسٹریا کے قریب جانب ترقی سے آئی ہوگی دکھائی دی جن میں سب انسپکٹر صاحب سے ملے تھے۔ شہاب کھانم اور انہیں عدالت علی سے تیار کر کے عدالت لے کر گواہ قندرزہ بالا کی ڈرائیونگ سب سے پہلے ہوئے تھے اور انہیں عدالت علی سے تیار کر کے عدالت لے کر گواہ محمد علی کوہاٹ اور انہیں عدالت علی سے تیار کر کے عدالت لے کر گواہ بیٹے شفیق نے آپ انسپکٹر صاحب کو اپنا نام دیتے تھے کہ آپ خان ولد محمد شفیع خان قوم خٹک، جملہ ڈرائیونگ سب سے پہلے ہوئے تھے اور انہیں عدالت علی سے تیار کر کے عدالت لے کر گواہ عبد زمان ولد محمد لاہور شاہ قوم خٹک جملہ قریب سب سے پہلے ہوئے تھے اور انہیں عدالت علی سے تیار کر کے عدالت لے کر گواہ محمد اسماعیل خان ولد محمد شاہ قوم خٹک سنان سہروردی مکہ کھنڈ خٹک لعلی صاحب قریب جلائے محمد کورمان عمر شریف خان اور عبد زمان نے مذکورہ جلائے کو وہ جسر دھرم کوہاٹ پولیس کے اٹھارہ جیس منیسا کے بائیں پورے پورے اور دھرم کوہاٹ گواہ H/A اظہار رحمان ڈرائیونگ سب سے پہلے ہوئے تھے اور انہیں عدالت علی سے تیار کر کے عدالت لے کر گواہ کے بیٹے آیت بیگ جہاں کی موجودگی تسلیم کر کے منیسا میں کی جملہ پشاور پشاور پشاور ہوئے در انہما ہی عبد زمان اور سراج خان نے پشاور سب سے پہلے ہوئے تھے اور انہیں عدالت علی سے تیار کر کے عدالت لے کر گواہ آیت بیگ جہاں کی موجودگی تسلیم کر کے منیسا میں کی اور دھرم کوہاٹ ڈرائیونگ سب سے پہلے ہوئے تھے اور انہیں عدالت علی سے تیار کر کے عدالت لے کر گواہ محمد نے فرد منیسا میں پورے اور دھرم کوہاٹ H/A اظہار رحمان نے اپنے اپنے دستخط کیے اس کے دوران انہیں علاقہ جمع ہوئے شروع ہو گئے اہل علاقہ زیادہ تعداد میں ہوئے گاڑی سے مذکورہ جلائے مظہران کو چھڑانے کی کوشش میں تھے کہ اس دوران بلزم عبد زمان موقع سے فائدہ

P-T-0

ATTESTED

90-03-2017

حصہ دوم (اندرونی)

ANF کو برائے
20-03-17
90,15,14
ANF کو برائے

رپورٹ ضمنی

بیانات 161 ضف

بیان گواہ زیر درجہ 161 ضف

مندرجہ ذیل نمبر 08 مورخہ 20-03-17 عزم 90,15,14 نمبر 90 کو برائے ANF کو برائے

گواہ حصہ اولیٰ اسد امین نمبر 90 کو برائے ANF کو برائے نے بعد دریافت بیان کیا کہ ایڈریس میں نمبر 90 کو برائے ANF کو برائے میں بطور محدود ڈیوٹی پر موجود تھا کہ آپ انسپکٹر صاحب نے اس میں نمبر 90 کو برائے ANF کو برائے کے بعد از جانچ پڑتال پر یہ مندرجہ ذیل نمبر 08 مورخہ 20-03-17

90,15,14 کو برائے ANF کو برائے کے بعد مندرجہ ذیل حاصل کردہ نمونہ جات پراسسنگ 02 مورخہ 20-03-17 پراسسنگ نمبر 01 اور پراسسنگ نمبر 03 بند نہ پراسسنگ AA 02 مورخہ 20-03-17 پراسسنگ نمبر 04 اور پراسسنگ نمبر 05 بند نہ پراسسنگ AA 02 مورخہ 20-03-17

عام نمونہ جات پراسسنگ کے بعد مندرجہ ذیل حاصل کردہ نمونہ جات پراسسنگ 02 مورخہ 20-03-17 پراسسنگ نمبر 01 اور پراسسنگ نمبر 03 بند نہ پراسسنگ AA 02 مورخہ 20-03-17 پراسسنگ نمبر 04 اور پراسسنگ نمبر 05 بند نہ پراسسنگ AA 02 مورخہ 20-03-17

گواہ نے فریڈم سے منسلک اور مندرجہ ذیل مندرجہ ذیل گواہی لکھی LK Iet 604 90,15,14 کے بعد از جانچ پڑتال کے بعد مندرجہ ذیل حاصل کردہ نمونہ جات پراسسنگ 02 مورخہ 20-03-17 پراسسنگ نمبر 01 اور پراسسنگ نمبر 03 بند نہ پراسسنگ AA 02 مورخہ 20-03-17 پراسسنگ نمبر 04 اور پراسسنگ نمبر 05 بند نہ پراسسنگ AA 02 مورخہ 20-03-17

20-03-2017

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رپورٹ ضمنی

بیانات 161 ضف

بیان ملزم زید رفیق کاکا خاں

درجہ نمبر ۵۸

تاریخ ۲۵-۳-۱۶

قسم ۹۰۰۴۰۵

CNSA

تھانہ ANF

ملزم عمر شریف خان ولد ازلیف خان قوم خٹک سکنہ صدر ایف ٹیہ تحصیل خٹک لغاری ضلع کراچی نے بعد دریافت بیان کیا کہ میں ضلع کراچی میں پیدا ہوا میری عمر تقریباً 39/40 سال ہے میرے والدین زندہ ہیں میری والدہ کا نام جانان بی بی ہے میرے تین بھائی اور تین بہنیں ہیں میں بہنیں کھانوں میں سب سے بڑا ہوں میرے دیگر بھائیوں کے نام عمر شریف عمر خطاب اور عمر بابر ہیں میرا بھائی عمر شریف تقریباً ایک ماہ قبل فوت ہو گیا ہے جبکہ میرا بھائی عمر خطاب تقریباً ۱۵/۱۲ سال سے سعودیہ میں عین زندگی بسر کر رہا ہے عمر خطاب شادی کر چکا ہے جبکہ چھوٹا بھائی عمر بابر تقریباً 4/3 سال سے دبئی میں ڈرائیو کر رہا ہے وہ غیر شادی شدہ ہے میری دو بہنیں شادی شدہ ہیں جبکہ ایک بہن غیر شادی شدہ ہے میں خود بھی غیر شادی شدہ ہوں میری تعلیم ۸ ویں ہے اور میں محکمہ خیر خواہی پولیس میں 2004 میں بطور نیشنل بھرتی ہوا ابھی میری سروس تقریباً 12 سال ہو چکی ہے اور اس وقت میرا حال عمدہ سولڈر ہے میں بطور ری ہے پولیس میں 12 سال سروس کے دوران مختلف جگہوں پر عین عہدہ سنبھال چکا ہوں بھائیوں کے ساتھ ساتھ پولیس میں بطور ہیڈ کوارٹر ڈپٹی ایف ایف میں کام کر رہا ہوں حال تعلقاتی نمائندہ آفیس میں تریاب ڈیپوٹ ہو کر پھر بطور عوامی ایف ایف تقریباً 3 ماہ سے ڈپٹی ایف ایف میں کام کر رہا ہوں میری ماہانہ تنخواہ تقریباً 35000 روپے ہے میرا کفر تقریباً ایک کنال کا ہے جو کہ میرے والد کے نام ہے منٹھالی کے درمیان گذر اڑتات مشکل تھا چھوٹی بہن کی شادی اور اپنی شادی بھی کر لی تھی یہ سب بیان رہتا تھا کہ میرے گاؤں صوبائی کالج کے ریڈیو اسٹیشن عرف لکھی شاہہ ولد فتح محمد قوم خٹک سکنہ ایف ٹیہ تحصیل خٹک لغاری ضلع کراچی نے مجھے کہا کہ میں اگر ایک ایسے منشیات کی کھلیت کر دوں تو وہ اس کے بارے میں متعلقہ مفروضہ دے گا اور اس نے مجھے کہا کہ میں ملزم پولیس میں آئیسی ہوں لہذا مجھ پر کوئی شک نہیں کرے گا میں نے پچھلے چھ ماہ سے تقریباً 10/12 ماہ سے منشیات کے کسٹمز آفیس کے گاؤں کو فریڈ اسٹیشن خاں لینا چھاپا ہوں میرے عہدہ بھی بڑھ گیا اس عہدہ بھی میری ماہانہ منشیات عین میں نے اکثر سیکورٹی ڈیپوٹ میں لگنے میرے دوستوں عابد زمان اور کراچی خاں نے حضرت ائمہ عرف لکھی شاہہ سے لی تھی حضرت کا پتہ نیشنل نمبر 9296749-0312 ہے جبکہ کراچی LK Ict 604 ہے ایف ایف میں میری پتہ چھٹی آفیس ANF والوں نے ہمیں ایف ایف کے ناموں پر لکھی ہوئی ہے درجہ میں کراچی

91-03-2017

ATTACHED

حصہ دوم (اندرونی)

رپورٹ ضمنی

بیانات 161 ضف

بیان گواہ فرید رفیق ۱۶/۱۱/۱۷

مذکورہ نمبر 08
 03
 2017
 90, CNSA
 ANF

مذکورہ نمبر 08 مورخہ 20-3-2017ء جرم 14,15 CNSA 90 گمان ANF کوہاٹ

① گواہ نیشنل صحابہ محمود گمان ANF کوہاٹ نے بعد دریافت بیان کیا کہ اندر میں گمان
 جذا میں ڈیوٹی پر موجود تھا کہ خبر ASI اسد امین نے مذکورہ جذا سے حاصل کردہ
 نمبر یا سلسلہ 02 عدد پارسل نمبر 03 جرم 10/15 گمان بند
 منہ پھر اسی AA 02/02 عدد جن کے ادھر مذکورہ عدالت نمبر 08 مورخہ 20-3-2017ء جرم 14,15 CNSA
 درج تھا پوراہہ تحریر کی درخواست بنام نیشنل انٹرنیشنل انسپکشن سید راہداری اور ڈاٹک نوٹو گامیان
 FIR و فرد متعلقہ مہرے حوالے کرتے تھے نیشنل ایس ایئر لیا سید راہداری جمع کرواتے تھے
 جو کہ میں نے نیشنل ایس ایئر لیا سید راہداری پر مقدمہ اٹھانے کے حوالے کیے جس نے لہذا
 عدالتی نمونہ جات رسید راہداری پر اپنے دستخط اور مہر ثبت کرنے کے حوالے کی جو کہ
 میں نے والیں گمان بنکر عدالت محکمہ جتنی دست نمونہ جات پارسل سید راہداری
 ایسے راستے میں کوئی چھوٹا چھوٹا نمونہ ہرگز نہیں لے سکا اور بیان ہے کہ

88-03-2017

② گواہ خبر ASI اسد امین گمان ANF کوہاٹ نے بعد دریافت بیان کیا کہ اندر میں نے
 گمانہ گمان جذا سے جذا سے حاصل کردہ 02 عدد نمونہ جات پارسل نمبر 03
 پارسل نمبر 03 جرم 10/15 گمان بند منہ پھر اسی AA 02/02 عدد جن کے پاس
 نمبر 08 مورخہ 20-3-2017ء جرم 14,15 CNSA 90 گمان ANF کوہاٹ جرم 10/15 گمان بند
 لہذا میں تجزیہ میسجی درج تھا پوراہہ درخواست بنام نیشنل انٹرنیشنل انسپکشن سید راہداری
 رسید راہداری اور ڈاٹک نوٹو گامیان FIR و فرد متعلقہ مہرے حوالے کرتے تھے
 اسے نیشنل ایس ایئر لیا سید راہداری جمع کرواتے تھے جس نے لہذا
 عدالتی نمونہ جات رسید راہداری پر اپنے دستخط اور مہر ثبت کرنے کے حوالے کی جو کہ
 میں نے والیں گمان بنکر عدالت محکمہ جتنی دست نمونہ جات پارسل سید راہداری
 ایسے راستے میں کوئی چھوٹا چھوٹا نمونہ ہرگز نہیں لے سکا اور بیان ہے کہ

ATTESTED

POWER OF ATTORNEY

In the Court of ICDK Sarvee Tribunal Pesh

Umer Shahid

- } For
- } Plaintiff
- } Appellant
- } Petitioner
- } Complainant

VERSUS

Gouty KDK Ch

- } Defendant
- } Respondent
- } Accused
- }

Appeal/Revision/Suit/Application/Petition/Case No. _____ of _____
Fixed for _____

I/W, the undersigned, do hereby nominate and appoint

ZARTAJ ANWAR ADVOCATE, my true and lawful attorney, for me in my same and on my behalf to appear at Pesh to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits. Compromise or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or sub-poena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at Pesh
the _____ day to _____ the year _____
Executant/Executants [Signature]
Accepted subject to the terms regarding fee _____

[Signature]
Zartaj Anwar

Advocate High Courts
ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT
FR-3- 4, Fourth Floor, Biiour Plaza, Saddar Road, Peshawar Cantt
Ph.091-5272154 Mobile-0331-9399185
BC-10-9851
CNIC:17301-1610454-5

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1467/2018.

Umar Sharif, Ex-Head constable No. 1631, FRP, Khyber Pakhtunkhwa
.....Appellant.

VERSUS

1. Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
2. Commandant Frontier Reserve Police,
Khyber Pakhtunkhwa, Peshawar.
3. The Superintendent of Police,
Kohat Range, KohatRespondents.

PRELIMINARY OBJECTIONS

1. That the appeal is badly time barred.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has no cause of action to file the instant appeal.
4. That the appellant has not come to this Honorable Tribunal with clean hands.
5. That the appellant is estopped due to his own conduct to file the instant Service Appeal.
6. That the appellant is trying to conceal material facts from this Honorable Tribunal.

WRITTEN REPLY ON BEHALF OF RESPONDENTS.

RESPECTED SHEWETH.

FACTS:-

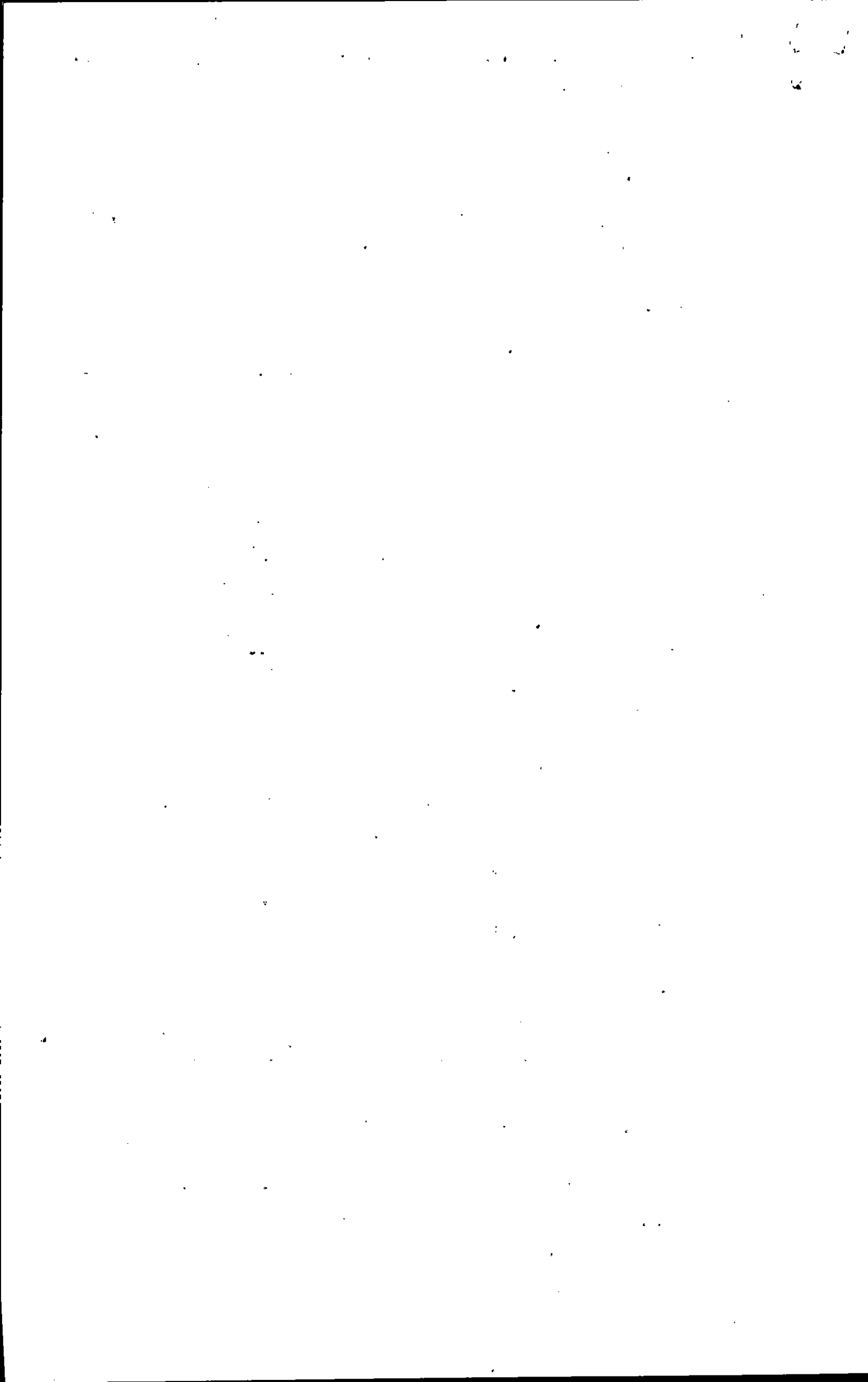
1. Para No. 1 is admitted to the extent that the appellant was enlisted/promoted as claimed however; the appellant was being a member of disciplined force involved himself in a moral turpitude nature offence.
2. Incorrect and denied. As reportedly the appellant was involved in immoral activities and not carries a good reputation as he developed links with criminal persons. Besides, the previous service record of the appellant revealed that he was awarded a major punishment of compulsory retired from service vide OB No. 246, dated 31.03.2016 on the basis of complaint lodged by residence of Mohallah Allah Noor Khel, chokara, District Karak for his involvement in immoral activities. Furthermore, there are four bad entries found recorded in his service record.
3. Incorrect and denied. The appellant was involved in a moral turpitude nature offence in the smuggling of narcotics to which he was arrested red handed on the spot by Anti Narcotics Force. In this regard the appellant was dealt with proper Enquiry and the allegations were fully proved against him during the course of enquiry.
4. Incorrect and denied. On the allegation of involvement in criminal case, the appellant was issued Charge Sheet alongwith Summary of Allegations and

Enquiry Officer was nominated to conduct proper Enquiry against him. The Charge Sheet was served upon him through special messenger in Jail and his signature was obtained as token on photo copy of Charge Sheet. The appellant submitted reply of Charge Sheet which was found unsatisfactory. (Copies of Charge Sheet and his reply are attached as annexure "A" & "B").

5. Incorrect and denied. For completion of enquiry, the Enquiry Officer visit the jail, wherein he recorded the statement of the appellant and an opportunity of cross examination was also provided to the appellant in Jail by the Enquiry Officer. The Enquiry Officer found him guilty of the charges leveled against him and recommended for major punishment. (Copies of his statement (cross examination) and enquiry report are attached as annexure "C" & "D").
6. Para No. 6 pertain to the appellant record needs no comments.
7. Incorrect and denied. Upon the findings of Enquiry Officer the appellant was served with Final Show Cause Notice in Jail, but he deliberately failed to submit his reply, within stipulated period, and after fulfillment of due codal formalities the appellant was dismissed from service on 18.04.2017. The appellant submitted an application on 31.05.2017 for obtaining the copy of dismissal order, which was already provided to him on 31.05.2017. (Copy of his application is attached as annexure "E").
8. The appellant submitted departmental appeal as admitted. The rest of Para is incorrect and denied as his departmental appeal was thoroughly examined and rejected on sound grounds, and a copy of which has already been conveyed to the appellant vide order Endst; No. 8515-16/EC, dated 10.11.2017. (Copy of rejection order is attached as annexure "F").
9. The mercy petition filed by the appellant was thoroughly examined and rejected on sound grounds.
10. Incorrect and denied. The orders issued by the respondents are legally justified and in accordance to law, therefore, the appellant has no cause of action to file the instant appeal and the same may kindly be dismissed on the following grounds.

GROUND:-

- A. Incorrect and denied. The appellant was treated in accordance to law/rules, as he was issued Charge Sheet alongwith Statement of Allegations and Enquiry Officer was nominated to conduct enquiry against him. The Enquiry Officer found him guilty of the charges leveled against him. It is settled preposition of law that the law helps the diligent and not indolent.
- B. Incorrect and denied. The charges leveled against the appellant were fully established against him during the course of enquiry. Therefore, the Enquiry Officer correctly recommended him for major punishment in the findings.
- C. Incorrect and denied. The allegations are false and baseless. The appellant being a member of disciplined force involved himself in a moral turpitude



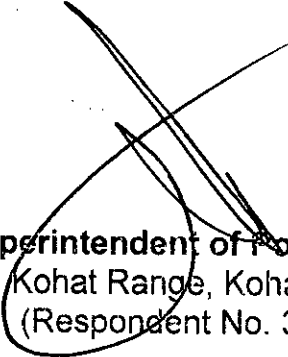
nature criminal case in the smuggling of narcotics. In this regard, he was proceeded against proper departmentally, as he was issued Charge Sheet and Statement of Allegations and Enquiry Officer was nominated to conduct proper enquiry into the matter to dig out the actual facts. The Charge Sheet was served upon him through special messenger in Jail. The appellant submitted reply of Charge Sheet, which was found unsatisfactory by the enquiry officer. The opportunity of cross examination was also provide to the appellant by the Enquiry Officer in Jail, but he failed to present any justification regarding to his innocence. The allegations were fully established against the appellant during the course of enquiry and therefore, awarded major punishment of dismissal from service. Thus the instant appeal may kindly be dismissed.

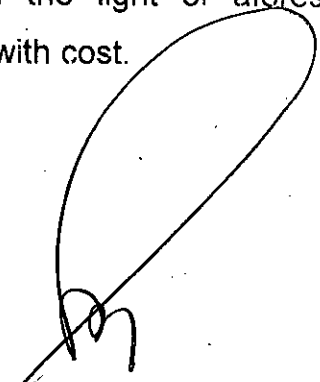
- D. Incorrect and denied. Upon the findings of Enquiry Officer the appellant was served with Final Show Cause Notice which was served upon him in the Jail through special messenger and his thumb impression was obtained as a token on the copy of Final Show Cause Notice, but he deliberately failed to submit his reply within stipulated period. An opportunity of personal hearing was also provide to the appellant, but he intentionally failed to avail this opportunity. (Copy of Final Show Cause Notice is attached as annexure "G").
- E. Incorrect and denied. The Charge Sheet alongwith Summary of Allegations issued and served upon him in Jail through special messenger and his signature was obtained as a token on the copy of Charge Sheet. The appellant submitted reply of Charge Sheet through Superintendent Jail before the Enquiry Officer, which was found unsatisfactory. (Copies of Charge Sheet and his reply have already been annexed with the instant reply as annexure "A" & "B"). The plea of non association with the enquiry proceedings of the appellant is after thought story. Moreover, the appellant was also provided the opportunity for defence, but he failed to present any justification before the Enquiry Officer or before the competent authority.
- F. Incorrect and denied. The appellant involved himself in a moral turpitude criminal case in the illegal smuggling of narcotics and arrested by the authority of Anti Narcotics Force on the spot. In this regard, the appellant was proceeded against proper departmentally to which he was found guilty of the charges leveled against him by the Enquiry Officer and recommended him for major punishment and after fulfillment the due codal formalities he was awarded major punishment of dismissal from service.
- G. Incorrect and denied. Each case is decided on its own facts and merit, however, the case mentioned by the appellant in the Para is not at par with the case of appellant.


- H. Para No. H is admitted to extent of legal provision to sustain pay and other financial benefits and remuneration. However, this prayer is subject to the reinstatement in service and acceptance of appeal.
- I. Incorrect and denied. During the course of enquiry the enquiry officer fulfilled all due codal formalities in accordance to the relevant law i.e Disciplinary Rules 1975 amended 2014. The allegations fully established after analyzing the entire evidence against the accused official by the enquiry officer.
- J. Incorrect and denied. That during the course of enquiry the statements of all concerned witnesses were recorded by the Enquiry Officer. The opportunity of cross examination was also provided to the appellant by the Enquiry Officer, but he failed to present any justification regarding his innocence.
- K. Incorrect and denied. That the previous service record of the appellant revealed that he was awarded a major punishment of compulsory retirement from service vide OB No. 246, dated 31.03.2016 on the basis of complaint lodged by residence of Mohallah Allah Noor Khel, chokara, District Karak for his involvement in immoral activities. Besides, there are four bad entries found in his service record. Moreover, the penalty awarded to the appellant is commensurate with the gravity of his gross misconduct.
- L. Incorrect and denied. The appellant is job less due to his own gross misconduct by involving himself in a moral turpitude natural offence, which subsequently solidly proved against him and after fulfillment all the due codal formalities he was accordingly dismissed from service.
- M. The respondents may also be permitted to adduce additional grounds at the time of arguments.

PRAYERS:-

It is therefore, most humbly prayed that in the light of aforesaid facts/submission the service appeal may kindly be dismissed with cost.


Superintendent of Police FRP,
Kohat Range, Kohat
(Respondent No. 3)


Commandant FRP,
Khyber Pakhtunkhwa, Peshawar
(Respondent No.2)


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

CHARGE SHEET

- I) I, Mian Imtiaz Gul, SP FRP Kohat as competent authority, am of the opinion that you Head Constable Umar Sharif No. 1631 I/C FRP Platoon No. 122 deployed at Naryan Dam District Hangu have committed the following acts/omission as defined in Rule 2 (iii) of Police Rules 1975.
- a) As per report received from Control Room Operator, District Karak vide DD No. 15 dated 20.03.2017, you have been arrested by Anti Narcotics Force (ANF) Kohat vide Case FIR No. 08 dated 20.03.2017 U/S 9-C CNSA P.S ANF Kohat. It has further been reported that you had left your place of duty without any leave/permission of competent authority and in this regard your absence report has been recorded vide DD No. 04 dated 18.03.2017. Thus you have committed a gross "Misconduct" as defined in Rule 2 (iii) of Police Rules 1975.
- II). By reason of the above, you seem to be guilty as sufficient materials is placed before the undersigned, therefore it is decided to proceed against you in general police proceeding.
- III). You are; therefore, required to submit your written reply within 07 days of the receipt of this charge sheet to the Enquiry Officer.
- IV). Your written reply, if any, should reach the Enquiry Officer within specific period, failing which it shall be presumed that you have no defense to offer and in case, ex-parte action shall follow against you.
- V). Intimate as to whether you desire to be heard in person or not?
- VI) A statement of allegation is enclosed

(Mian Imtiaz Gul)
Superintendent of Police, FRP
Kohat Range, Kohat

بیان اداں صدر کونسل عظیم شریف بلاٹون 122 کال زیر - ڈیم

میں تحریر کیے اور یہ اقرار کرنا ہے کہ چارج شیٹ میں جو بیان ہے وہ بیان ہے
میں جنرل کنیشن عبدالقیوم کو دیا تھا کہ دفتر FIR اپریل 1997ء میں تحریر کیا گیا

3337718937

حیرت

سوال کنیشن عابد زمان ولد عبدالرشید شاہ سراجیم خان ولد رنگین شاہ اس کے ساتھ آپ کا
کیا رشتہ ہے

جواب کنیشن عابد زمان اور سراجیم دونوں میرے گاؤں کے ہیں اور کوئی رشتہ و عہدہ
نہیں ہے

سوال موٹر کار کنیشن کا ہے جس میں حیرت پکڑی گئی ہے

جواب موٹر کار میری ملکیت نہیں ہے اور نہ موٹر کار سے حیرت برآمد ہوئی ہے
سوال FIR میں ہے کہ آپ حیرت کا گواہ کرتے ہو کتنا عرصہ پہلے ہوا

جواب میں حلفاً بیان کرنا ہے کہ میں نے کبھی یہ بڑا گواہ نہیں کیا ہے اور نہ اس بارے
میں پہلے میرے اہل خانہ کو کسی نے شکایت کی ہے

سوال حیرت میں موٹر کار میں پکڑی گئی ہے اس کے بارے میں آپ کیا کہتے ہیں

جواب میں تو معلوم نہیں تھا لیکن ANF والوں کو سراجیم خان ولد رنگین شاہ نے بتلایا کہ
یہ حیرت جو کسی نے دھوکے سے دئے ہیں

سوال آپ زیر - ڈیم میں بحالت الخاریج ہے مورخہ 17/07/2002 کو اپنے اوزار تاجر سے ادا کی گئی ہے
یا رخصت کیا ہے

جواب میں تو SHO صاحب نے میں کو اس کا راجسٹریڈ منظر کیا تھا لیکن بعد میں زمان نے بتلایا
کہ وہ کھنڈے وقت پر چلے جاؤ المیر میں گزار دو
سوال FIR میں ہے کہ موٹر کار میں گواہ کا ڈرائیونگ آپ کر رہے تھے کیا وہ درستی ہے

جواب FIR میں ہے کہ میں امیر کے ملک میں چلے گا وہ پکڑا گیا ہے
P-T-5

حادثہ جو بابل ضلع، مارشیا والا ہے چائے پی رہا تھا جس کا فائل نمبر مل اور ملازمین
گواہ ہے اور میٹل کے اثر فارمیو ہیں

سوال: فائرنگ سے میٹل میں کیوں ہوا کیا وجہ تھی

جواب: وہ لوگ سفید کپڑوں میں تھے اور لوگوں کو شک ہو گیا کہ یہ تو انوار مار ہے لہذا لوگوں نے
میٹل فائل کے ان لوگوں کو بگڑنے کی کوشش کی تو ان لوگوں کو فائرنگ کرنے اور مجبوراً پرتی
تھا وہیں میں ڈال دئے اور میں علاقہ نے پولیس کو اطلاع دیا تو مل ملازم کے قریب رہنے والوں
کو پولیس کو بلائی جو تقریباً 3 بجے تک جاری رہا ان لوگوں کے ساتھ آکر کچھ سونا تو شہر
میں کیشل فیم جو ہمارے گاؤں کے ساتھ رہتا ہے وہیں 3 بجے کے بعد کسی سے خبر نہ آئی

سوال: کیشل عابد زمانہ یہ لیکے گاؤں کا ہے

جواب: کیشل عابد زمانہ احمد والہ خان کے رہنے والے ہے جو فیما آگے سے تھوڑے دور ہے
لکھنؤ پولیس کو ان کا پتہ ہے

سوال: آپ کہتے ہو کہ میں مل میٹل کے فائل کے ساتھ بیٹھا تھا اس وقت کیشل عابد زمانہ
سراجیم آگے کے ساتھ تھے یا نہیں

جواب: یہ دونوں میرے ساتھ موجود نہیں تھے یہ البتہ سراجیم خان ولد انکلیں شاہ جو
ANF والوں کے ساتھ ملا ہوا تھا ANF ایک سراجیم خان کو فون کر چکا تھا یہ اس کے ساتھ
بیٹھا تھا اور مجھے بار بار سراجیم خان تقریباً 11 بجے کال کر رہا تھا کہ مل میٹل آواؤ
اور میں تقریباً 15:04 بجے مل میٹل آیا پورے 3 بجے اپنے گھر 03339718594 سے میرے
03339718937 پر بار بار کال کر رہا تھا FIR میں لکھا ہے کہ آپ نے Dikhan کا رپورٹ ہے
میں نے تو Dikhan کو کال کیا سو گیا، یا میرا کہیں ہو گا، میں ملکا بیان کرتا ہوں یہاں اپنے گھر
میں بیٹھا اسی پر کلمہ لیا پتہ اور ڈیوٹن جا رہا تھا

سوال: آپ خود مانتے ہو کہ فائل ANF کے ساتھ سراجیم خان ملا تھا اس پر پتہ سراجیم خان
جواب: مجھے اس پر شک ہے کہ وہ مجھے نہیں بلکہ میٹل ملا رہا تھا اور بار بار کال کر رہا تھا اور
CDR سے سب کچھ معلوم ہو گا

ال

03339718937
14203-848403-9

FINDING

This is departmental enquiry against Head Constable Umar Sharif No. 1631/FRP Incharge FRP Platoon No. 122 deployed at Naryab Dam District Hangu.

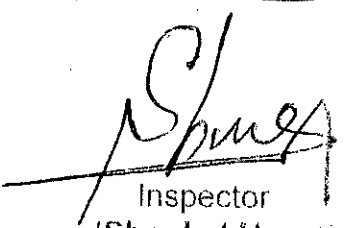
Facts are that a report received from District Control Room Karak vide DD report No. 15 dated 20.03.2017 regarding arrest of the above mentioned Head Constable by Anti Narcotics Force, Kohat vide Case FIR No. 08 dated 20.03.2017 U/S 9C-CNSA P.S ANF Kohat. He was issued charge sheet & Summary of allegations by worthy SP FRP Kohat and the undersigned was appointed as Enquiry Officer to conduct proper departmental enquiry against him and to submit finding in the stipulated period.

During the course of enquiry reply to the charge sheet & summary of allegations of defaulter Head Constable was received on 28.03.2017 in seal envelope from District Jail Kohat. In order to verify the contents of his statement I have proceeded to District Jail, Kohat and meet with the confined defaulter Head Constable who disclosed that the statement written by him is correct. He was given full opportunity of cross examination but he could not produce any cogent proof regarding his innocence in criminal case. Moreover from the perusal of FIR it revealed that ANF Staff Kohat had reliable information that Narcotics smuggler Head Constable Umar Sharif, Abid Ayub and Sarajam are intend to smuggle huge quantity of Narcotics in Motor Car No. LK-604, ICT-Islamabad (white Colour) towards D.I.Khan. They made Naka Bandi at Amberi Kalay Indus Highway district Karak. At about 12:15 hours the above mentioned motor car appeared from Karak side and was signal to stop. The Driver of motor car disclosed his name as Umar Sharif S/O Umar Nazeef Khan caste Khattak while the persons seated in rear seat disclosed their names as Abid Zaman S/O Amir Dad Shah and Sarjam Khan S/O Rangeen Shah, resident of Soorati Kalay Takht - E - Nasrati District Karak. During search of motor car 2400 grams were recovered from the secret cavity of motor car and taken into possession. Accused Umar Sharif S/O Umar Nazeef Khan and Sarajam Khan S/O Rangeen Shah were arrested on the spot while accused Abid Ayub taken advantage of the crowd made good his escape from the place of occurrence..

From the perusal of his service documents it revealed that he was enlisted in Police Department on 25.10.2004. He was awarded punishment of forfeiture of 01 year approved service vide OB No. 657 dated 31.02.2014 and also awarded major punishment of compulsory retirement from service on 31.03.2016 but reinstated on 07.06.2016. The defaulter Head Constable has not only misused the Police uniform but have also brought bad name to the entire force. His retention in the Department is not in the interest of Police Department.

Keeping in view the above facts, I came to the conclusion that Head Constable Umar Sharif No. 1631 has committed the offence besides he absented himself from the place of duty vide DD No. 04 dated 18.03.2017. He is stigma for the force, therefore he is recommended for major punishment.

Submitted please. -


Inspector
(Shoukat Hayat)
Enquiry Officer
R.I FRP Kohat
3-4-17

گزارش پیکر سائل لوہے غیر فائبر اور ANF

کی وجہ سے برخواست ہو چکا ہے لہذا آپ صاحبان سے

درخواست استرداد پیکر سائل کو برخواست آرڈر کا پی

حکم صادر فرمائیں

الغرض

علین نور محمد

تاریخ 31-05-17

رنگا ناج حکم E2 سائل غیر فائبر 1631

For 9/10 Dauda, Pleson

Handwritten signature/initials

Copy & order
be issued

Handwritten signature and date 24.5.17

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Superintendent of Police,
FRP Kohat Range,
Kohat

Handwritten number 11

ORDER

16 Annex 4

This order will dispose of the departmental appeal preferred by Ex- Head constable Umar Sharif No. 1631 of FRP Kohat Range against the order of dismissal from service passed by SP FRP Kohat Range, Kohat vide OB No. 333, dated 18.04.2017. The applicant was proceeded against on the allegations that he while posted as Incharge FRP Platoon No.122 deployed at Naryab Dam P.S Doaba District Hangu, absented himself from duty with effect from 18.03.2017 without any leave and prior permission from his senior. Besides, he was found involved/arrested in a criminal case vide FIR No. 08 dated 20.03.2017 U/S 9C-CNSA Police Station Anti Narcotics Force, District Karak.

Proper departmental enquiry proceedings were initiated against him. He was issued Charge Sheet alongwith Statement of Allegations and Inspector Shoukat Hayat RI FRP Kohat was appointed as enquiry officer to conduct the enquiry against him. The enquiry officer submitted his findings, wherein he recommended the delinquent officer for major punishment. He was served with Final Show Cause Notice issued vide office No. 200/PA dated 06.04.2017 which was received by him personally on 08.04.2017 in District Jail Kohat, but he failed to submit his reply within stipulated period. Keeping in view the findings of enquiry officer, and other material available on record, he was dismissed from service vide OB No. 333 dated 18.04.2017.

Feeling aggrieved against the impugned order of SP FRP Kohat Range, Kohat, the applicant preferred the instant appeal. The applicant was summoned and heard in person in Orderly Room held on 14.11.2018.

From perusal of the enquiry file and the service record of the applicant, it is abundantly clear that the delinquent official has been found involved in a criminal case. Such conduct on the part of a police officer is bound to tarnish the image of the entire force. He had brought a bad name for the whole department and had also misused his official status. Besides, he had been awarded major punishment of compulsory retirement from service vide OB No. 246 dated 31.03.2016 on the basis of complaint lodged by residents of Mohallah Allah Noor Khel Chokara District Karak for his involvement in immoral activities.

From perusal of record, it has been found that his first appeal has already been rejected vide this office order Endst; No. 8515-16/EC, dated 10.11.2017 and there is no provision of second appeal in law. As such the appeal is once disposed off by this office, the petitioner should now filed appeal and impugn the order in Service Tribunal.

Based on the findings narrated above, I, **Sajid Ali PSP** Commandant FRP Khyber Pakhtunkhwa, Peshawar, being the competent authority, has found no substance in the appeal, therefore, the same is rejected and filed being badly time barred and meritless.

Order Announced.

Commandant

Frontier Reserve Police
Khyber Pakhtunkhwa, Peshawar.

No 11763-64 IEC, dated Peshawar the 20 / 11 / 2018.

Copy of above is forwarded for information and necessary action to the:-

1. SP FRP Kohat Range, Kohat. His service record alongwith D file sent herewith.
2. Ex- Head constable Umar Sharif No. 1631 S/O Umar Nazif Khan, Village Surati Killa, PS Latamber, District Karak.

**BEFORE THE KHYBER PAKHTUNKWA
SERVICE TRIBUNAL PESHAWAR**

Appeal No. 1467/2018

Umar Sharif

(Appellant)

VERSUS

Inspector General of Prison and others

(Respondents)

REJOINDER ON BEHALF OF THE APPELLANT

Respectfully Submitted:

The appellant submit his rejoinder as under:

Preliminary Objections:

- A. That the present appeal is well within time.
- B. That the appellant has arrayed proper parties in his service appeal.
- C. That the appellant has the cause of action against the respondents.
- D. That the appellant has come to this court with clean hands.
- E. That no rule of estoppel applies to present appeal.
- F. That nothing has been concealed by the appellant from this honorable Tribunal.

ON FACTS:

1. Contents of Para 1 are incorrect and misleading to the extent of involving in moral turpitude nature offence, whereas rest of the Para is admitted correct by respondents
2. Contents of Para 2 is incorrect and misleading hence denied, while the contents of Para 2 of Service appeal is correct.
3. Contents of Para 3 are incorrect and misleading hence denied, while the contents of Para 3 of Service appeal is correct.
4. Contents of Para 4 are incorrect and misleading hence denied, while the contents of Para 4 of Service appeal is correct.
5. Contents of Para 5 are incorrect and misleading hence denied, while the contents of Para 5 of Service appeal is correct.
6. Contents of Para 6 are incorrect and misleading hence denied, while the contents of Para 6 of Service appeal is correct.
7. Contents of Para 7 are incorrect and misleading hence denied, while the contents of Para 7 of Service appeal is correct.
8. Contents of Para 8 are incorrect and misleading hence denied, while the contents of Para 8 of Service appeal is correct.
9. Contents of Para 9 are incorrect and misleading hence denied, while the contents of Para 9 of Service appeal is correct.
10. Contents of Para 10 are incorrect and misleading hence denied, while the contents of Para 10 of Service appeal is correct.

Grounds

All the grounds are taken by the respondents are legal and will be rebutted on the time of arguments with the prior permission of this honourable court.

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



Appellant

Through



ZARTAJ ANWAR

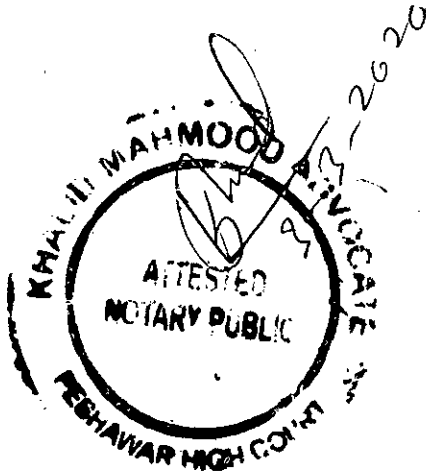
Advocate Peshawar

Affidavit

I, do hereby solemnly affirm and declare that the contents of the *above Rejoinder* are true and correct and that nothing has been kept back or concealed from this Honourable Court.



Deponent



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 1395/2017

Date of institution ... 18.12.2017

Date of judgment ... 13.09.2019



Abid Zaman S/o Mir Madad Shah

R/o Surati Kala Tehsil Takht-e-Nasrati District, Karak

... (Appellant)

VERSUS

1. Provincial Police Officer/Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Kohat Region, Kohat.
3. District Police Officer, Karak.
4. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.

... (Respondents)

APPEAL UNDER SECTION-4 OF SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 08.08.2017 PASSED BY RESPONDENT NO. 3 BY WHICH MAJOR PENALTY OF REMOVAL FROM SERVICE WITH IMMEDIATE EFFECT HAS BEEN AWARDED TO THE APPELLANT AND THE REPRESENTATION OF THE APPELLANT FILED ON 21.08.2017 HAS NOT YET BEEN DECIDED BY THE RESPONDENT NO. 2.

M. Amin
13.9.2019

Mr. Shahid Qayum Khattak, Advocate
Mr. Usman Ghani, District Attorney

.. For appellant.
.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI
MR. AHMAD HASSAN

.. MEMBER (JUDICIAL)
.. MEMBER (EXECUTIVE)

ATTESTED

JUDGMENT

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Appellant

alongwith his counsel and Mr. Usman Ghani, District Attorney for the respondents present. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant was serving in Police Department as Constable. He was imposed major penalty


of removal from service vide order dated 08.08.2017 on the allegation that he was involved in case FIR No. 8 dated 20.03.2017 under section 9/14/15 CNSA Police Station Anti Narcotics Force Kohat. The appellant filed departmental appeal on 21.08.2017 which was not responded hence, the present service appeal on 18.12.2017.

3. Respondents were summoned who contested the appeal by filing written reply/comments.

4. Learned counsel for the appellant contended that the appellant was serving in Police Department as Constable. It was further contended that the appellant was involved in case FIR No. 8 dated 20.03.2017 under section 9/14/15 CNSA Police Station Anti Narcotics Force Kohat alongwith two other persons namely Umar Sharif and Sirajum khan. It was further contended that the appellant was hon'able acquitted by the trial court vide detailed judgment dated 25.09.2018. It was further contended that the respondent-department was required to wait for conclusion of criminal case but without waiting for the fate of criminal case, the appellant was imposed major penalty of removal from service vide order dated 08.08.2017. It was further contended that neither proper departmental inquiry was conducted nor the appellant was associated in departmental proceeding nor any show-cause notice alongwith copy of inquiry report was issued to the appellant therefore the appellant was condemned unheard which has rendered the whole proceeding illegal and liable to be set-aside and prayed for acceptance of appeal.

5. On the other hand, learned District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was arrested on the spot by the Anti Narcotics force red handed. It was further contended that acquittal of the appellant is no ground for

ATTESTED


EXAMINER
 Kohat, Feroz Khan
 Service Tribunal,
 Peshawar

M. Amin
 13.9.2019

exonerating him from the departmental proceeding. It was further contended that proper departmental proceeding was initiated by the respondent-department and after fulfilling all the legal formalities, the appellant was rightly imposed major penalty of removal from service and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was serving in Police Department. He was involved in Narcotics case vide FIR No. 8 dated 20.03.2017 under section 9/14/15 CNSA Police Station Anti Narcotics Force Kohat alleging therein that the Anti Narcotics Force recovered 2400 grams Chars from the motorcar driven by the Umer Sharif while the appellant alongwith one other person namely Sirajum was sitting on the rear seat. The record further reveals that the respondent-department was required to wait for the fate of criminal trial but the respondent-department imposed major penalty of removal from service before conclusion of the criminal trial. The record further reveals that the appellant was acquitted by the trial court vide detailed judgment dated 25.09.2018. The record further reveals that the respondent-department initiated departmental proceeding against the appellant but the inquiry officer has not conducted the inquiry in the mode and manner prescribed under the Police Rule, 1975 even a show-cause notice alongwith copy of inquiry report was not handed over by the respondent-department to the appellant meaning thereby that the appellant was condemned unheard which has rendered the whole proceeding illegal and liable to be set aside. As such, we partially accept the appeal, set-aside the impugned order and reinstate the appellant into service with the direction to the respondent-department to conduct de-novo in the mode and manner prescribed under Police Rules, 1975 and respondent-department is also directed to fully associate the appellant in inquiry proceeding, providing opportunity of cross examination and issuing show-cause

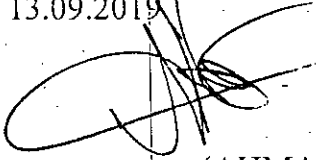
M. Aslam
13.9.2019

ATTESTED

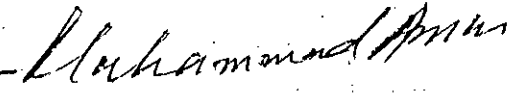
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EXAMINER
Cyber Panel, Kohwa
Service Tribunal,
Peshawar


notice alongwith copy of inquiry report. The issue of back benefits will be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

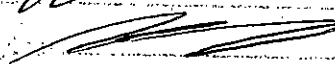
ANNOUNCED
13.09.2019



(AHMAD HASSAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

Certificate of true copy

MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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[Supreme Court of Pakistan]

Present: Javed Iqbal, Muhammad Sair Ali and Anwar Zaheer Jamali, JJ

MUNIR AHMAD---Petitioner

Versus

CHAIRMAN, WAPDA---Respondent

Civil Petition No. 497 of 2010, decided on 22nd July, 2010.

(On appeal from the judgment dated 2142-2009 passed by Federal Service Tribunal, Islamabad in Appeals No.710-712 (R)CS/2006).

Service Tribunals Act (LXX of 1973)---

---S.4---Constitution of Pakistan (1973), Art. 212(3)---Appeal---Limitation---Promotion---Grievance of civil servant was with regard to promotion on the basis of Water and Power Development Authority (Water Wing) Subordinate Scientific Staff Service Rules, 1982, which were acted upon in year, 1983, whereas civil servant assailed the promotion in year, 2006---Validity---Civil servant remained in deep slumber for more than 20 years and it was too late in the day to question the legality of additional note---No plausible justification could be furnished by civil servant for the delay, except that question of limitation was nothing more but a technicality which was an incorrect approach---Question of limitation could not be taken lightly, as in service matters such question should be considered seriously and applied strictly---Civil servant failed to point out any illegality or irregularity in the judgment passed by Service Tribunal and besides that no question of public importance was involved which was sine qua non for invocation of the provisions enumerated in Art. 212 of the Constitution---Leave to appeal was refused.

Chairman, District Screening Committee, Lahore and another v. Sharif Ahmad Hashmi PLD 1976 SC 258; S. Sharif Ahmad Hashmi v. Chairman, Screening Committee Lahore and another 1978 SCMR 367; Yousaf Ali v. Muhammad Aslam Zia and 2 others PLD 1958 SC Pak 104; Punjab Province v. The Federation of Pakistan PLD 1956 FC 72; Muhammad Swaleh and another v. Messrs United Grain and Fodder Agencies PLD 1964 SC 97; Chief Kwame Asante v. Chief Kwame Tawia PLD 1949 PC 45; Hussain Bakhsh and others v. Settlement Commissioner and another PLD 1969 Lah. 1039; Nawab Syed Raunaq Ali and others v. Chief Settlement Commissioner and others PLD 1973 SC 236; Chief Settlement Commissioner, Lahore v. Raja Muhammad Fazil Khan and other PLD 1975 SC 331; WAPDA v. Abdul Rashid Bhatti 1989 SCMR 467; Federation of Pakistan v. Muhammad Azim Khan 1949 SCMR 1271; Inspector-General of Police, Balochistan v. Jawad Haider and another 1987 SCMR 1606; WAPDA v. Aurangzeb 1988 SCMR 1354; Muhammad Naseem Sipra v. Secretary, Government of Punjab 1989 SCMR 1149; Muhammad Ismail Memon v. Government of Sindh and another 1981 SCMR 244; Qazi Sardar Bahadar v. Secretary, Ministry of Health, Islamabad and others 1984 SCMR 177; Smith v. East Elloe Rural District Council and others 1956 AC 736; Province of East Pakistan and others v. Muhammad Abdu Miah PLD 1959 SC (Pak), 276; Mehr Muhammad Nawaz and others v. Government of the Punjab and others 1977 PLC (C.S.T.) 165 and Fazal Elahi Siddiqi v. Pakistan PLD 1990 SC 692 rel.

Technicalities / Muhammad

Muhammad Abdu Miah (PLD 1959 SC (Pak), 276), Mehr Muhammad Nawaz and others v. Government of the Punjab and others (1977 PLC (C.S.T.)-165) and Fazal Elahi Siddiqi v. Pakistan (PLD 1990 SC 692).

3. The question of discrimination has been examined by the learned Federal Service Tribunal in the judgment impugned, relevant portion whereof is reproduced hereinbelow for ready reference:-

"9. Before proceeding to examine this appeal on merit, it is necessary to address the question of limitation raised by the learned counsel for the respondents. It is a matter of record that the appellants who entered service in 1977, are aggrieved on account of note added to the service Rules in the year 1983. Secondly, it is not denied that the matter has been agitated by the appellants for the first time in 2006 i.e. after the lapse of almost 21 years. There is no cavil with the general principle that the issue of discrimination can be agitated at any time. But the Tribunal has not been vested with powers which are available to the superior judiciary. The appeals filed before the Tribunal have to comply with the mandatory requirements of section 4 of the Service Tribunals Act, 1973, and it is a settled principle of law that the provisions of the Limitation Act are to be strictly applied to service appeal as held in the case reported in PLD 1990 SC 692. This was further reiterated in the order of the Hon'ble Supreme Court in CP No.700 of 2008 dated 24-6-2008.

10. Even otherwise, the question of discrimination can be pressed into service while comparing equals i.e. while comparing appeals with appeals and not appeals with pears. Perusal of the record reveals that there are two channels for appointment to the post of Assistant Research Officers i.e. through promotion on the basis of 75 % quota and through direct recruitment on the basis of 25% quota. The appellants admittedly have not challenged the recruitment rules nor have they agitated this fact in their oral arguments. Their grievance is directed against the grant of premium to Assistant Research Officers who possess Post-graduate qualification, which they claim is discriminatory. Plain reading of the 1983 amendment clearly shows that the respondents have only given premium to higher educational qualification. They have not disturbed the reserved quota for promotion, nor have they created any hindrance in the career path of the promoted officials because their seniority has been protected over directly appointed ARO's having higher qualification. The change that was brought about 30 years ago, relates only to the grant of premium to higher educational qualifications. But even in this case there is a proviso in the amendment which says that "with due regards to merit on the recommendation of the Selection Board". The premium under dispute in 1983 made no distinction between the directly recruited and promoted officials. It was uniformly applicable to all employees in the said cadre who possessed higher education qualification. Therefore the question of discrimination does not arise. The rules provide for recruitment on the basis of graduation degree at one stage and the post-graduation degree at another stage. The appellant has not been able to point out any violation of policy/instructions/rules by the respondents. Moreover, we find that weightage has been given to both sides. If one side has been given premium for possessing higher education qualification the other side has received weightage in promotion quota and retention of seniority in the higher grade. Therefore, in the final analysis the weightage is counter-balanced in the term of long-term career prospects. It is a matter of record that the cause of grievance accrued to the appellant almost 30 years ago. And according to him it was aggravated in 2001 with the introduction of new pay scales. In our opinion, the appellant should have agitated the grievance within time."

4. No illegality or irregularity could be pointed out in the judgment impugned and besides that no question of law of public importance is involved which is sine qua non for

invocation of the provisions as enumerated in Article 212 of the Constitution of Islamic Republic of Pakistan. The petition being devoid of merit is dismissed and leave refused.

M.H./M-86/SC

Petition dismissed.

innocence; the cause of his involvement projected by him is some political rivalry. But the evidence produced by the prosecution in bringing home the guilt does fully support and justify his involvement in the commission of offence, who has rightly been convicted for taking an innocent life of a child in a merciless and cruel manner for no fault of his minor boy. He does not deserve any leniency.

7. In view of the above, the appeal being without merit is dismissed accordingly.

N.H.Q./G-21/SC

Appeal dismissed

2011 S.C.M.R. 676

[Supreme Court of Pakistan]

Present: Ifikhar Muhammad Chaudhry, C.J.
Raja Fayyaz Ahmed and Ch. Ijaz Ahmed, JJ.

RAJA KHAN---Petitioner

versus

MANAGER (OPERATION) FAISALABAD ELECTRIC SUPPLY
COMPANY (WAPDA) and others---Respondents

Civil Petition No. 636 of 2009, decided on 21st May, 2009.

(Against the judgment dated 11-2-2009 passed by the Federal
Service Tribunal, Islamabad, in Appeal No. 445(R) CE of 2005).

(a) Removal from Service (Special Powers) Ordinance (XVII
of 2000)---

---Ss. 34 & 10---Constitution of Pakistan, Art. 212(3)---Compulsory
retirement from service---Dismissal of first departmental appeal
being time barred---Dismissal of second departmental appeal as not
competent---Dismissal of appeal by Service Tribunal on merits as well
as its being time barred---Validity---Petitioner had filed appeal, before
Tribunal without fulfilling mandatory requirement of S. 4 of Service
Tribunals Act, 1973 in regard to limitation---Court could not
compromise on limitation---Petitioner during four years of service had
been punished for unauthorized absence as many as eight times
Petitioner by his subsequent conduct had accepted punishment
compulsory retirement by getting his pension claim and monthly
pension regularly---Supreme Court refused to grant leave to appeal in
circumstances. [pp. 679, 680, 681, 682] A, B, F, H, I, M & N.

2011] Raja Khan v. Manager (Operation) Faisalabad Electric
Supply Company (Ch. Ijaz Ahmed, J)

677

Haji Ghulam Rasul's case PLD 1971 SC 376; Mst. Amina
Begum's case PLD 1978 SC 220 and Nawab Syed Raunaq Ali's case
PLD 1973 SC 236 rel.

(b) Constitution of Pakistan---

---Art. 212(3)---Service Tribunal, finding of fact---Such finding
being finding of fact would not call for interference by Supreme Court
[p. 680] C

Ch. Muhammad Azim's case 1991 SCMR 255 rel.

(c) Constitution of Pakistan---

---Art. 212(3)---Concurrent findings of fact by Appellate Authority and
Service Tribunal---Validity---Supreme Court would not interfere with
such findings. [p. 680] D

Ifikhar Ahmed Malik's case 2005 SCMR 806 rel.

(d) Service Tribunals Act (LXX of 1973)---

---S. 4---Departmental appeal being time-barred---Effect---Appeal
before Service Tribunal would not be competent. [p. 680] E

Chariman PIA and others v. Nasim Malik PLD 1990 SC 951;
Muhammad Aslam v. WAPDA and others 2007 SCMR 513 and
Government of Pakistan through Secretary, Establishment Division v.
Bashir Ahmad Khan PLD 1985 SC 309 rel.

(e) Limitation---

---Appeal, if required to be dismissed for being time-barred, then its
merits need to be discussed. [p. 681] G

Khan Sahib Sher Muhammad Mir's case 1987 SCMR 92 rel.

(f) Constitution of Pakistan---

---Art. 212(3)---Constitutional jurisdiction under Art. 212(3) of the
Constitution---Discretionary in character. [p. 682] J

(g) Constitution of Pakistan---

---Arts. 185(3) & 212(3)---Grant of leave to appeal by Supreme
Court---Discretionary. [p. 682] K

Ghulam Qadir Khan's case 1986 SCMR 1386 rel.

Time barred

AAJ

(h) Constitution of Pakistan---

---Arts. 199 & 212(3)---Void order---Constitutional jurisdiction of High Court and Supreme Court---Scope---Such jurisdiction might be refused, if same was meant to enable petitioner to circumvent provisions of law of limitation or if he was stopped by his conduct from challenging order: [p. 682] L.

Muhammad Ismail's case 1983 SCMR 168; Abdur Rashid's case 1969 SCMR 141 and Wali Muhammad's case PLD 1974 SC 106 rel.

Haider Hussain, Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Petitioner.

Nemo for Respondents.

ORDER

CH. IJAZ AHMED, J.---Raja Khan, petitioner, seeks leave to appeal against the impugned judgment dated 11-2-2009 whereby the learned Federal Service Tribunal, Islamabad, dismissed his appeal on merits as well as time-barred.

2. Detailed facts have already been mentioned in the impugned judgment. However, necessary facts out of which the present petition arises are that petitioner was appointed as Chowkidar with the respondents establishment from April, 1985. Show cause notice dated 23-2-2004 under section 5(4) of the Removal from Service (Special Powers) Ordinance, 2002 along with statement of allegations was served upon the petitioner containing the following charges:--

- (1) Whereas you Mr. Raja Khan, Chowkidar PESCO (WAPDA) Jhang Circle Jhang are charged with misconduct as per statement of allegations attached.
- (2) And whereas on the basis of documentary evidence available, it is not considered necessary to have formal inquiry against you and that proceedings are being initiated under section 5(4) of the Removal from Service (Special Powers) Ordinance 2002 which might entail imposition of a major penalty of dismissal from service as specified in section 3 of the said ordinance.
- (3) Now, therefore, you are required to show cause within 15 days from the date of receipt of this notice as to why the proposed action should not be taken against you.
- (4) If no response is received from you within the time stipulated above, it would be presumed that either you have no defence to

2011] Raja Khan v. Manager (Operation) Faisalabad Electric Supply Company (Ch. Ijaz Ahmed, J) 679

offer and/or you have willfully declined to do so. The case shall then be decided on 'ex parte' without further reference.

Whereas you Mr. Raja Khan, Chowkidar, PESCO Jhang Circle Jhang are charged with gross misconduct, inefficiency, corruption and mal practices for the following charges and other relevant circumstances.

As per report of Mr. Shahzad Nasir, Telephone Attendant and Mr. Ghulam Abbas Bhatti Telephone Attendant PESCO Jhang Circle Jhang. You are absent from duty w.e.f 6-2-2004 to 17-2-2004 without intimation/prior permission/sanction leave from the Circle Superintendent/Technical Officer/and by the undersigned.

If any mishap/incident create in Circle office, who are responsible. You are already so many times directed to present in the office after closing hours but you have failed in official duties."

Petitioner submitted reply to the show cause notice and admitted that he was absent from duty on account of illness. The competent authority after providing him personal hearing awarded major penalty of compulsory retirement from service w.e.f. 31-3-2004 vide order dated 29-3-2004. Petitioner being aggrieved filed departmental appeal on 6-4-2004 before the appellate authority who dismissed the same as time barred vide order dated 10-11-2004. Thereafter the petitioner filed another appeal before the Managing Director Power on 8-12-2004 which was dismissed vide order dated 4-2-2005 on the ground that there is no provision of second appeal "further appeal" under the rules. Petitioner being aggrieved filed Appeal No. 445(R)CS/2005 in the Federal Service Tribunal, Islamabad, on 12-4-2005 which was dismissed vide impugned judgment dated 11-2-2009. Hence the present petition.

3. Learned counsel for the petitioner submits that the impugned order of dismissal of the petitioner dated 29-3-2004 was passed by incompetent authority, therefore, the same was coram non judge and without lawful authority. He further urges that impugned order of the department was void, therefore, no limitation would run against such type of order. It can be agitated at any time and could be ignored being a void order. Learned Service Tribunal had not adverted to this aspect of the case, therefore, the impugned judgment was passed by the learned Service Tribunal without application of mind.

4. We have given our anxious consideration to the contentions of the learned counsel of the petitioner and perused the record. It is an admitted fact that show cause notice was served upon the petitioner

under the provisions of Removal from Service (Special Powers) Ordinance, 2002 wherein it is specifically provided under the provisions of the Ordinance that petitioner has to file departmental appeal within the prescribed period of 15 days. The order of compulsory retirement was passed by the competent authority on 29-3-2004. The petitioner filed departmental appeal on 6-4-2004 which was dismissed as time barred on 10-11-2004. Thereafter the petitioner filed second appeal before the Managing Director on 8-12-2004 which was also dismissed on 4-2-2005 in the following terms:-

"It is to inform you that your appeal under reference does not merit consideration as there is no provision of second appeal "further appeal" under the rules."

5. The learned Service Tribunal had rightly come to the conclusion that appellate authority was justified to dismiss his appeal as time-barred and second appeal was also dismissed with cogent reasons on account of non availability of any provision under the rules to file second appeal to higher authority after dismissal of the first appeal. We have also re-examined the material on record with the assistance of the learned counsel of the petitioner. We do not find any infirmity or illegality with regard to the conclusion arrived at by the learned Service Tribunal with regard to the finding mentioned in para 7 of the impugned judgment. It is settled principle of law that finding of service tribunal having findings of fact would not call for interference by this Court as law laid down by this Court in Ch. Muhammad Azim case (1991 SCMR 255). Even otherwise this Court does not interfere with the concurrent findings of fact arrived at by the departmental authorities and learned service Tribunal while exercising the power under Article 212(3) of the Constitution. See *Itikhar Ahmed Malik case* (2005 SCMR 806). It is settled proposition of law that when an appeal of the employee was time barred before the appellate authority then the appeal before the Tribunal was also not competent in view of the various pronouncements of this Court. See *Chairman PIA and others v. Nasim Malik* (PLD 1990 SC 951) and *Muhammad Aslam v. WAPDA and others* (2007 SCMR 513). The question of law with regard to the representation has already been decided by this Court in *Government of Pakistan through Secretary Establishment Division v. Bashir Ahmad Khan* (PLD 1985 SC 309). The relevant observation is as follows:-

"He challenged his first compulsory retirement through a review application filed on 23rd of October, 1974, which was decided on 3-6-1975. This was the final order passed on review. It could be challenged within 30 days, before the Tribunal under section 4 of the Service Tribunals Act. If the appellant chose not to file an appeal but only to repeat a representation before the same

authority who had decided the review, that by itself would not give him another cause of action to file an appeal under section 4. The period spent in making the representation this second or any other representation after the decision of the review application, could not be excluded as of right in counting the period of limitation The review petition filed by the respondent in that behalf was decided on 13-6-1978. Instead of filing an appeal before the Tribunal under section 4 within 30 days of this final order passed on review, he made another representation which caused further delay. The period consumed during the processing of the subsequent representation could not be excluded as of right. And there being no condonation on any good ground by the Tribunal, the appeal filed on 14-1-1979, was clearly time barred and should have been dismissed accordingly."

6. The appeal of the petitioner before Service Tribunal is incompetent under section 4(1)(b) of the Service Tribunal Act, 1973. Since the petitioner has filed appeal before the Service Tribunal without fulfilling the mandatory requirement of section 4 in regard to limitation and court cannot compromise on the limitation. See:-

Muhammad's case (1998 SCMR 1354)

Messrs Raja Industries' case (1998 SCMR 307)

Mst. Sirajun-Munira's case (1998 SCMR 785)

7. It is admitted fact that appeal is obviously time barred and it has been held by this Court in *Khan Sahib Sher Muhammad Mir's case* (1987 SCMR 92) that when an appeal is required to be dismissed on limitation, its merits need not be discussed. In spite of the aforesaid law laid down by this Court the learned Service Tribunal has considered the case on merits and the appeal was also dismissed on merits. It is pertinent to mention here that the competent authority awarded penalty of compulsory retirement vide order dated 29-3-2004. The petitioner had accepted the punishment awarded by the respondents due to his conduct on the basis of subsequent events as the petitioner applied for payment of his pensionary benefit to the respondents. Petitioner got settled his pension claim within three months after his retirement and received Rs.155,733 as well as monthly pension. He also received his monthly pension regularly. Petitioner preferred appeal before the Service Tribunal on 12-4-2005. This fact was also noted in the impugned judgment in para 10. Even on merits the learned Service Tribunal was justified to dismiss his appeal on the well known principal of "approbate and reprobate." See *Haji Ghulam Rasul's case* (PLD 1971 SC 376). The learned Service Tribunal was justified to dismiss his appeal on the well

known principle of estoppel keeping in view subsequent events: See *Mst. Amina Begum's case* (PLD 1978 SC 220).

8. The conduct of the petitioner has been highlighted by the Service Tribunal in para 10 of the impugned judgment which is reproduced herein below:--

"We have seen placed on the record a number of documents which indicate the service record of the appellant. From 1989 to 27-3-2003, the appellant has been punished for unauthorized absence as many as eight times. The punishment included censure, stoppage of one annual increment for one year (1983), reduction to three lower stage in time scale for a period of three years (1990), stoppage of one annual increment for one year (1993) and stoppage of annual increment for one year (1995)."

9. It is settled principle of law that constitutional jurisdiction under Article 212(3) is discretionary in character. It is settled law that grant of leave to appeal is discretionary. See *Ghulam Qadir Khan's case* (1980 SCMR 1386). It is also settled law that constitutional jurisdiction against void order may be refused if it was meant to enable petitioner to circumvent provisions of law of limitation or if he was estopped by his conduct from challenging of order. See:--

Muhamamad Ismail's case (1983 SCMR 168)

Abdur Rshid's case (1969 SCMR 141)

Wali Muhammd's case (PLD 1974 SC 106)

10. Keeping in view the conduct of the petitioner mentioned herein above in para 10 of the impugned judgment we are not inclined to exercise our discretion in favour of the petitioner on the well known maxim that he who seeks equity must come with clean hands as law laid down by this Court in *Nawab Syed Raunaq Ali's case* (PLD 1973 SC 236).

11. In view of what has been discussed above we do not find any infirmity or illegality in the impugned judgment. Even otherwise the learned counsel has failed to raise any question of public importance in the present case as contemplated under Article 212(3) of the Constitution. The petition has no merit and the same is dismissed. Leave refused.

S.A.K./R-7/SC

Leave refused

Ghulam Shabbir Ahmed v. State
(*Muhammad Farrukh Mahmud, J*)

2011 SCMR 683

[Supreme Court of Pakistan]

Present: *M. Javed Buttar, Muhammad Farrukh Mahmud*
and Muhammad Sair Ali, JJ

GHULAM SHABBIR AHMED and another---Appellants

versus

THE STATE---Respondent

Criminal Appeal No. 265 of 2005, decided on 28th May, 2009.

(On appeal against the judgment dated 24-10-2002 passed by the Lahore High Court, Multan Bench in Cr. A. No. 34 of 2002):

(a) *Penal Code (XLV of 1860)*---

---S. 302(b)---*Re-appraisal of evidence*---*Double murder*---*Prompt F.I.R.*---*Ocular account supported by medical evidence*---*Identity of accused was not disputed at all and he had been described by name and by his deeds in promptly lodged F.I.R.*---*Statements of prosecution witnesses were fully supported by medical evidence and corroborated by the facts*---*Matter was reported to police within 45 minutes and postmortem of both the deceased were conducted on the same night within six hours of their death*---*Motive as given in F.I.R. also stood proved and was corroborated by ocular account*---*Ocular account was also supported from report of Forensic Science Laboratory which revealed that empties recovered from spot were fired from one weapon*---*Statements of defence witnesses did not help the accused*---*Effect*---*Prosecution had successfully proved its case beyond doubt against accused and he was rightly convicted under S. 302(b), P.P.C.*---*Sentence of death awarded to accused by Trial Court and maintained by High Court was not interfered with by Supreme Court*---*Appeal was dismissed. [p. 687] A*

(b) *Penal Code (XLV of 1860)*---

---S. 302(b)---*Qanun-e-Shahadat (10 of 1984), Art. 22*---*Re-appraisal of evidence*---*Identification of accused in Court*---*Photographs of accused*---*Accused was not previously known to prosecution witnesses and was only described by features, who was arrested after two years of the occurrence*---*Prosecution witnesses had seen accused for very short time and they did not identify him during identification parade but identified him at the time of recording of his statement in Court*---*Effect*---*Such identification in Court was meaningless as by that time accused was already known to prosecution witnesses as only that*

Judgment

*Mst. Raheela vs
Arch/Lib*

for Respondent

2012 S C MR 195

[Supreme Court of Pakistan]

Present: Khilji Arif Hussain and Amir Hamid Muslim, JJ

SAJJAD HUSSAIN--Appellant

AAH

Versus

SECRETARY, MINISTRY OF RAILWAYS, ISLAMABAD and others--Respondents

Civil Appeal No. 224-K of 2010, decided on 9th August, 2011.

(On appeal from the order dated 5-7-2010 of the Federal Service Tribunal, Islamabad passed in Appeal No.21(K)(CS) of 2010).

Service Tribunals Act (LXX of 1973)--

---S. 4---Appeal before Service Tribunal---Limitation---Time barred departmental representation
Service Tribunal dismissed the appeal filed by civil servant as the same was barred by limitation
Validity---Departmental appeal filed by civil servant was barred by time; therefore, even if the a
filed before Service Tribunal was in time, no relief could be granted to him---Judgment passed
Service Tribunal was reasonable and proceeded on cogent ground---Civil servant was unable to a
to jurisdictional error or legal infirmity which could justify interference---Appeal was dismissed.

Muhammad Aslam v. WAPDA and others 2007 SCMR 513 and Zia-ur-Rehman v. Divisional
Superintendent Postal Services, Abbottabad and others 2009 SCMR 1121 rel.

Sanaullah Noor Ghouri, Advocate Supreme Court and Abdul Saeed Khan Ghouri, Advocate
on-Record for Appellant

Munib Ahmed Khan, Advocate Supreme Court and Mazhar Ali E. Chohan, Advocate-on-Record
Respondents

Date of hearing: 9th August, 2011.

ORDER

KHILJI ARIF HUSSAIN, J.--This appeal, with the leave of the Court, is directed against
judgment dated 5-7-2010 of the Federal Service Tribunal, Islamabad whereby appeal filed
appellant was dismissed as the same was hopelessly barred by time.

2. Heard the learned counsel for the parties and perused the available record minutely.

3. It is contended by the learned counsel for the appellant that the appeal filed by the appellant
the Service Tribunal was not barred by time. He has drawn our attention at page 45 of the
order passed by the departmental authority dated 30-4-2003 and departmental appeal on 28-6-

page 52, which admittedly filed much after expiry of 30 days from the order passed by the con authority.

4. We have taken into consideration arguments advanced by the learned counsel for the appell perused the record. From perusal of the record it appears that the departmental appeal of the ap was barred by time, even if the appeal filed before the Service Tribunal was in time, no relief granted to him. If any case-law is required one can see the cases of Muhammad Aslam v. WAPI others, (2007 SCMR 513) and Zia ur Rehman v. Divisional Superintendent Postal Se Abbottabad and others, (2009 SCMR 1121).

5. Having considered the matter from all angles in the light of material on file, we are of the vi the impugned judgment of the Federal Service Tribunal is eminently reasonable and proce cogent ground. The learned counsel for the appellant was unable to advert jurisdictional error i infirmity, which would justify interference.

In view of the above, we do not find any merit in the listed appeal which is dismissed.

Appeal dismissed.

M.H./S-54/SC

2007 (513)
SCMR

2009 SCMR 11

2013 S C M R 911

[Supreme Court of Pakistan]

Present: Anwar Zaheer Jamali and Muhammad Ather Saeed, JJ

ABDUL SATTAR---Petitioner

Versus

FEDERATION OF PAKISTAN and others---Respondents

C.P.L.A. No.957-K of 2011, decided on 6th June, 2012.

(On appeal from order of Federal Service Tribunal, Islamabad (Karachi Bench) dated 27-12-2011 passed in Appeal No.27(K)CS/2008.)

(a) Service Tribunals Act (LXX of 1973)---

---S. 4---Filing of appeal before Service Tribunal---Limitation---Successive departmental appeals cannot extend period of limitation (for filing appeal).

1998 SCMR 882; 1999 PLC (C.S.) 510 and 1999 PLC (C.S.) 862 ref.

(b) Service Tribunals Act (LXX of 1973)---

---S. 4---Filing of appeal before Service Tribunal---Limitation---Significance---Question of limitation should be considered seriously in service matters.

2010 SCMR 1982 rel.

(c) Service Tribunals Act (LXX of 1973)---

---S. 4---Filing of appeal before Service Tribunal---Limitation---Significance--- Question of limitation cannot be considered a technicality simpliciter as it had its own significance and would have substantial bearing on the merits of the case.

2011 SCMR 8 rel.

Ghulam Rasool Mangi, Advocate Supreme Court and Ghulam Qadir Jatui, Advocate-on-Record for Petitioner.

Sanullah Noor Ghorji, Advocate Supreme Court and A.S.K. Ghorji, Advocate-on-Record for Respondent No.1.

Ashiq Raza, D.A.-G. for Respondents Nos.2 and 3.

Date of hearing: 6th June, 2012.

AAJ

peal
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ORDER

ANWAR ZAHEER JAMALI, J.---This petition for leave to appeal assails the order dated 27-10-2011, in Appeal No.27(K)CS/2008, passed by Federal Service Tribunal, Islamabad, Karachi Bench, whereby the said appeal before the Tribunal was dismissed on the ground that it was barred by time. Relevant discussion contained in the impugned order reads as follows:--

"6. We have considered the above arguments and carefully perused the record. Apparently, appeal is time barred, as the appellant has approached this Tribunal on 22-3-2008 against the order dated 15-6-2007 after filing a departmental appeal on 15-7-2007, which remained un-responded. An application for condonation of delay has also been filed along with the appeal wherein no reasonable ground has been taken except that the appellant has been continuously approaching the respondents for promotion in the cadre of Commercial Inspector BS-16 as per merit, but the same remained unresponded. Last application submitted on 20-11-2007, has not been responded to. It may be mentioned here that successive departmental appeal cannot extend period of limitation. We rely on 1998 SCMR 882, 1999 PLC (C.S.) 510 and 1999 PLC (C.S.) 862. Besides, it has been held in 2010 SCMR 1982 that, "civil servant remained in deep slumber for more than 20 years and it was too late in the day to question the legality of additional note. No plausible justification could be furnished by civil servant for the delay, except that question of limitation was nothing more but a technicality which was an incorrect approach. Question of limitation could not be taken lightly, as in service matters such question should be considered seriously." In 2011 SCMR 8, it was also held that, "Question of limitation cannot be considered a "technicality" simpliciter as it has got its own significance and would have substantial bearing on merits of case."

2. Learned Advocate Supreme Court for the petitioner has not disputed that in fact the appeal preferred by the petitioner before the Tribunal was barred by time. This being the position, we find no valid reason for interference in the impugned order. Besides, no question of law of public importance is involved in this petition. Dismissed. Leave refused.

MWA/A-3/SC

Petition dismissed.

imitatio
abstantia

4/17/2011

basis of inferences, only such circumstances as are well authenticated.

Where there are indications of design, in the preparation of a case resting on circumstantial evidence, the Court should be on its guard against the possibility of being deliberately misled into false inference.

5. By now, it is a consistent view that when any case rests entirely on circumstantial evidence then, each piece of evidence collected must provide all links making out one straight chain where on one end is noose fit in the neck of the accused and the other end touches the dead body. Any link missing from the chain would disconnect and break the whole chain to connect the one with the other and in that event conviction cannot be safely recorded and that too on a capital charge. As was held in the case of Fazal Elahi (ibid) and in view of the changed social norms and standard of ethics of the society, to which the witness belong and also the questionable credibility of the investigating agency and its incompetency to professionally investigate such blind crimes, by now, the Courts have to exercise more and more cautions before accepting and resting its opinion of being guilty on circumstantial evidence collected apparently in a dishonest, dubious and rough manner.

6. Therefore, we are left with no option but to adopt the same care and caution, keeping in view the peculiar facts and circumstances of this case, which cannot be put apart from the one, cited above.

7. With all respects to the Bench of the learned Federal Shariat Court, these precautions and judicial care so required, was not observed and view of the trial Judge with regard to the guilt of the appellant endorsed by it. Thus, the approach to the evidence in the case was not accord with the principle since long well settled.

8. Accordingly, while extending benefit of doubt to the appellant, this appeal is allowed and the appellant Imran @ Dully is acquitted of all the charges, levelled against him by setting aside his conviction and all sentences awarded to him. He be set free forthwith if not required in any other case.

In view of our above findings, Criminal Shariat Appeal No. 1000 of 2014 is hereby

Muhammad Asif Chatha v. Chief Secretary, Government of Punjab (Ijaz Ahmed Chaudhry, J) 165.

2015 S C M R 165

[Supreme Court of Pakistan]

Present: Ijaz Ahmed Chaudhry and Umar Ata Bandial, JJ

MUHAMMAD ASIF CHATHA and others---Appellants

versus

CHIEF SECRETARY, GOVERNMENT OF PUNJAB, LAHORE and others---Respondents

Civil Appeal Nos. 222 to 238 of 2012, decided on 25th November 2014.

(On appeal against the judgment dated 25-11-2011 passed by Punjab Service Tribunal, Lahore in Appeals Nos. 2933 to 2936, 2939 to 2943, 2951, 2005, 4416 of 2006, 500 to 505 and 591 of 2006).

(a) Constitution of Pakistan---

Art. 212(3)---Civil service---Appeal against judgment of Service Tribunal filed before the Supreme Court---Question of fact---Such question could not be gone into in appeal proceedings before the Supreme Court under Art. 212(3) of the Constitution. [p. 170]-B

(b) Civil Servants (Appointment, Promotion and Transfer) Rules, 1973---

R. 8-B---Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, R. 13--- Appointment on acting charge/officiating basis---Promotion---Scope---Appointment on acting charge/officiating basis did not confer any vested right for regular promotion. [p. 170]-C

See also: Aziz-ud-Din's case 2010 SCMR 1301 ref.

(c) Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974---

R. 13---Promotion to higher post on officiating basis---Civil servants regularization of such promotion---Limitation---Delay of...

AAH

appointment on officiating basis in the years 1995-1998 could not have agitated the matter in the year 2001. Civil servants seemingly had accepted their appointment on officiating basis. Appeal filed by civil servants seeking regularization of their promotion was dismissed accordingly. [pp. 169, 170, 171] A, D, E & F

Jafar Ali Akhtar Yousafzai v. Islamic Republic of Pakistan PLD 1970 Quetta 115 distinguished.

(d) Service Tribunals Act (LXX of 1973)---

S. 4-- Departmental representation, filing of. Limitation period. Appeal filed before Service Tribunal. Limitation period and competency. When a departmental representation was barred by time then without disclosing any sufficient reason for delay, no subsequent order of disposal of such incompetent representation could create fresh cause of action and that the appeal filed before the Service Tribunal would be incompetent. [p. 171] G

* Abdul Wahid v. Chairman, Central Board of Revenue Islamabad and others 1998 SCMR 882 and NED University of Engineering and Technology v. Syed Ashfaq Hussain Shah 2006 SCMR 453 ref.

Saif ul Malook, Advocate Supreme Court for Appellants (in all cases).

Respondents in person.

Mudassir Khalid Abbasi, A.A.-G. for Government of Punjab

Date of hearing: 13th November, 2014.

JUDGMENT

IJAZ AHMED CHAUDHRY, J.---These appeals by leave of Court have been directed against the judgment dated 25-11-2011 passed by the learned Punjab Service Tribunal, Lahore, whereby the appeals filed by the appellants were dismissed.

2. Briefly stated the facts of the matter are that the appellants were possessing B.Sc. Engineering Degree were promoted to the post of Assistant Engineer/SDO in BS-17 on officiating basis between the years 1995 to 1998 whereas the respondents who were holding B. Tech (Hon

Appellants challenged the said order in Intra Court Appeal as also before this Court but remained unsuccessful. Thereafter, the Secretary, Communication and Works Department, Government of Punjab, took up the matter and vide the order dated 18-12-2002 he regularized the appointment of the appellants on the advice of the Regulating Wing of S&GAD and on the ground that regular posts were available in the year 1995-1998 at the time of promotion of the appellants on officiating basis. Consequently, the promotion of the respondents was converted as officiating. The respondents assailed this order before the learned Punjab Service Tribunal by filing Appeals. The learned Service Tribunal vide the order dated 10-12-2003, accepted the appeals and set aside the order dated 18-12-2002 of the Competent Authority and directed fresh hearing of the matter after hearing all concerned within a period of 60 days. Pursuant to the direction of the learned Service Tribunal, the Department again took up the matter and vide the order dated 27-7-2005 the Competent Authority decided that officiating promotion of the appellants could not be treated as regular. Feeling aggrieved, the appellants filed departmental appeals but as the same were not decided within the statutory period of 90 days, therefore, they filed the impugned appeals before the Punjab Service Tribunal. During the pendency of appeals before the Service Tribunal, it came to the notice of the learned Tribunal that one Section Officer in the office of Secretary C&W Department, Lahore, instead of putting departmental appeals before the Appellate Authority/Chief Secretary Punjab opted to decide these appeals of his own on 28-12-2005. On this, the learned Tribunal directed the Appellate Authority to decide the departmental appeals of the appellants within 60 days. Pursuant to this direction of the Tribunal, the Chief Secretary/Appellate Authority finally decided the matter and rejected the departmental appeals of the appellants. The learned Service Tribunal vide the impugned judgment also dismissed the appeals filed by the appellants. Thereafter, the appellants filed Civil Petitions Nos. 164 to 172, 230 to 236 and 240 of 2012 before this Court, out of which have arisen the instant appeals, in which leave was granted on 15-3-2012, which reads as under:--

"Leave to appeal is granted in all these listed petitions, inter alia, to examine if an official/officer has been authorized to be competent authority to hold a post against a clear vacancy in officiating capacity, whether it would tantamount to his promotion because an employee cannot be allowed to continue an officiating position for an indefinite period; subject to all just

3. Learned counsel for the appellants has contended that appointment of a duly qualified person against a permanent vacancy could not be described as officiating as the same could be deemed regular under section 2(2) of the Punjab Civil Servants Act, 1974; that the learned Service Tribunal while dismissing the appeals of the appellants has not taken into consideration the law laid down by this Court; that the learned Service Tribunal has wrongly relied upon the judgments of this Court reported at *Tariq Aziz ud Din and others* (2010 SCMR 1301) and *Dr. S.M. Inqisar Ali v. Government of Sindh* (2011 SCMR 121) and the unreported judgment passed in Civil Petition No. 1583-L of 1998; that even if the case is not covered by Rule 13 of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, even then an appointment made in the prescribed manner could not be treated as officiating; that during the period 1995-1998 the relevant qualification of the respondents for promotion was lacking; that long temporary service was to be considered as regular due to flux of time and that the competent authority had passed a detailed order on 18-12-2002, therefore, the same provided valid and legal basis for declaring the promotion of appellants as regular. Learned counsel in support of the contentions has relied on *Jafar Ali Akhtar v. Islamic Republic of Pakistan* (PLD 1970 Quetta 115); *Muhammad Tahir v. Secretary, Communication and Works Department, Government of Punjab etc.* (2009 PLC(C.S.) 527), *Khalid ur Rehman Khan, SP, Khanewal v. Muhammad Ali Mirza* (1992 SCMR 989); *Luqman Zareen and others v. Secretary Education, N.-W.F.P. etc.* (2009 SCMR 1938), *Irfan Majeed v. University of Karachi etc.* (2010 PLC (C.S.) 1118) and *Muhammad Amjad v. Dr. Israr Ahmed etc.* (2010 PLC (CS) 760).

4. Respondent Muhammad Farooq Malik, who appeared in person submits that the appellants had accepted their promotion on officiating basis and never challenged the same before any forum for about 6 years; that there was no question of ineligibility or lack of qualification on the part of the respondents because the matter stood finally decided by the competent authority that B.Tech. (Hons.) Degree be treated at par with B.Sc. (Engineering) Degree; that in view of Rule 13 of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974 officiating promotion neither confers any right of promotion on officiating basis nor any such promotee could claim the same as regular; that since 1995 to 2002 three seniority lists have been prepared as official

respondents and were not eligible for such promotion on regular basis; they were rightly ignored and their promotion was rightly treated as on officiating basis.

5. Learned Assistant Advocate-General, who appeared on behalf of the Government of Punjab has supported the impugned judgment.

6. We have heard learned counsel for the appellants, respondent in person, as also learned Assistant Advocate-General at some length and have perused the record.

7. The questions involved in these appeals are three fold; (i) whether the appointment of appellants on officiating basis was valid; (ii) whether the respondents were rightly promoted on regular basis in the year 2001; and (iii) whether the appeals before the Service Tribunal were time barred?

8. After the enforcement of Punjab Civil Servants Act, 1974; as well as Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, the legal position is clear, the Punjab Civil Servants Rules were framed by the Government pursuant to the powers conferred under section 23 of the Punjab Civil Servants Act, 1974. In terms of section 13 of the Rules, the Government conferred power on the appointing authority to make appointment by promotion against such post on officiating basis. It would be relevant to reproduce the said Rule, which is as under:--

13. *Appointment on officiating basis.*---(i) Where a post falls vacant as a result of deputation, posting outside cadre, leave, suspension or appointment on acting-charge basis of the (regular) incumbent or is reserved under the rules to be filled by transfer, if none is available for transfer, the appointing authority may make appointment by promotion against such post on officiating basis:

Provided that a post reserved for regular promotion; on deferment of a civil servant due to any reason, may be filled by promotion on officiating basis.

(ii) No person shall be promoted on officiating basis unless he possesses the qualifications and experience prescribed for the post and his promotion as such is approved by the chairman of the appropriate selection authority.

(iv) *Officiating promotion shall be made on the same terms and conditions as to pay as are prescribed for regular appointment by promotion.*

9. From the bare perusal of the above provisions, it is clear that the appointing authority is empowered to make appointments on officiating basis. This leads us to the question as to whether, at the time of promotion of the appellants on officiating basis, were there permanent posts available or not? We have found that regarding this matter, three inquiries have been held in order to resolve the issue. First was held on 10-9-2002 and vide the order dated 18-12-2002, the appellants were declared to be promoted on regular basis. Second was dated 27-7-2003 whereby it was mainly held that there is no ground for considering the officiating promotion of appellants as on regular basis on the ground that promotion cannot be granted with effect from an early date. Third inquiry was carried out by a committee headed by Additional Chief Secretary on the direction of the Chief Secretary. The Committee after detailed deliberation on 27-10-2010 held that the prayer of the appellants for promotion on regular basis is not legally tenable and is liable to be rejected and that there were no permanent posts available at the time of appointment of the appellants on officiating basis. Except the order dated 18-12-2002 which was passed without hearing some of the parties, it is the consistent stand of the Department that the appellants could not have been promoted on regular basis. Whether at that time permanent posts were available or not is also a question of fact, which cannot be gone into in these proceedings. This Court in *Tariq Aziz-ud-Din case* reported at 2010 SCMR 1301 has specifically cleared that appointment on acting or charge basis does not confer any vested right for regular promotion, as is evident from Rule 8-B of the Civil Servants (Appointments, Promotions and Transfer) Rules, 1973. It is important to note here that the said Rule 8-B is *pari materia* to Rule 13 of the Punjab Civil Servants (Appointments and Conditions of Service) Rules, 1974. It is noteworthy that the appellants never challenged the condition of 'officiating' for a long period of about 6 years. It was for the first time in the year 2001 when they agitated the matter before the learned High Court when the respondents were promoted as Assistant Engineers/SDOs on regular basis. Besides, since 1995 three seniority lists were issued showing the appellants not only junior to the respondents but also

(2015) Muhammad Asif Chatha v. Chief Secretary, Government of Punjab (Ijaz Ahmed Chaudhry, J)

with law; then the question of limitation is also a question of law. The appellants after their appointment on officiating basis in the years 1995-1998 could not have agitated the matter in the year 2001. It seems they had accepted their appointment on officiating basis. It is by now a well-settled principle of law that if a departmental representation is barred by time, then without disclosing any sufficient reason for delay, no subsequent order of disposal of such incompetent representation could create fresh cause of action and that the appeal filed by the civil servant before the Tribunal would be incompetent. Reliance in this regard has been placed on *Abdul Wahid v. Chairman, Central Board of Revenue, Islamabad etc.* (1998 SCMR 882) and *NED University of Engineering and Technology v. Syed Ashfaq Hussain Shah* (2006 SCMR 453). The question of limitation being basic requirement has to be strictly dealt with. So far as the eligibility of respondents is concerned, we find that the Federal Government had issued a policy letter dated 26-10-1973 holding that B.Tech (Hons) degree be treated at par with B.Sc. (Engineering) degree. Pursuant to this decision, the Government of Punjab also issued a notification on 1-2-1981 declaring B.Tech. (Hons.) degree in particular specialization equivalent to corresponding B.Sc. (Engineering) degree. The Government of Punjab also amended the Rules of (i) Communication and Works Department, (ii) Irrigation and Power Department, and (iii) Housing Physical and Environmental Planning Department for promotion of Sub-Engineers. As a result several persons were promoted. Despite the above said amendment, several employees of Physical and Environmental Planning Department were not allowed promotion on the ground that B.Tech (Hons) degree is not equivalent to B.Sc. (Engineering) degree. Pakistan Engineering Council also refused to recognize B.Tech. (Hons.) degree equivalent to B.Sc. (Engineering) degree. The matter ultimately then came up before this Court in Civil Petition No.216 of 1991 but this Court dismissed the same on 5-12-1992. However, this Court in *Suo Motu Review Petition* No. 52 of 1993 reopened the matter and while recalling its earlier order directed the competent authority to consider the case of B.Tech (Hons) degree holders for promotion to BS-17. Pursuant to this Direction of this Court the service rules of Assistant Engineers were amended on 16-12-2000 whereby B.Tech. (Hons.) degree holders also became eligible for their promotion as Assistant Engineers/SDO. Even otherwise, it has been

been promoted on regular basis vide order dated 27-12-2011, whereas cases of three have been deferred due to their incomplete service since the last DPC. Four more posts against 15% quota have fallen vacant and the appellants will be considered on their turn in the forthcoming meetings of Departmental Promotion Committee. The case reported as *Jafar Ali Akhtar Yousofai v. Islamic Republic of Pakistan* (PLD 1970 Quetta 115) on the basis of which leave was granted is distinguishable as it relates to the period before the enforcement of Punjab Civil Servants Act, 1974 and the Rules framed thereunder. The learned Punjab Service Tribunal has passed a well-reasoned judgment which is unexceptionable.

10. For what has been discussed above, we do not find any merit in these appeals, which are accordingly dismissed.

MWA/M-52/SC

2015 S.C.M.R 172

[Supreme Court of Pakistan]

Present: Anwar Zaheer Jamali,

Iqbal Hameedur Rahman and Qazi Faez Isa, JJ

The CHAIRMAN, NATIONAL ACCOUNTABILITY BUREAU---Appellant

versus

FEHMIDA BEGUM and others---Respondents

Civil Appeal No. 1038 of 2000, decided on 25th November, 2014.

(On appeal from judgment of Lahore High Court, Lahore, dated 30-6-2000, passed in Writ Petition No. 914 of 2000)

National Accountability Ordinance (XVIII of 1999)---

---S. 5(o)---"Person"---Definition---Person standing as guarantor for a loan obtained by the company---Company defaulting in payment of loan---Such person/guarantor liable for prosecution before Accountability Court---Scope---Any person may be a director

the guarantee, until all moneys due from the company had been paid, therefore, once the company defaulted in its liability to repay the loan amount, it was the obligation of the said employee/director to repay the loan amount. High Court was not right in holding that said employee/director, despite being a guarantor, was not liable for prosecution before the Accountability Court. Judgment of High Court was set aside in circumstances. Appeal was allowed accordingly. *Sp. 176(A, B & C)*

Raja M. Ibrahim Satti, Senior Advocate Supreme Court and Huzi Zaffar, Additional DPG NAB for Appellant.

M. A. Siddiqui, Advocate Supreme Court for Respondents Nos. 1 and 2.

Appeal dismissed

Ex parte Respondents Nos. 3 to 8.

Date of hearing: 10th November, 2014.

JUDGMENT

ANWAR ZAHEER JAMALI, J.---This civil appeal with leave of the Court in terms of the order dated 16-8-2000, is directed against the judgment dated 30-6-2000, passed by a five member Bench of the Lahore High Court, in Writ Petition No.914 of 2000, whereby the writ petition filed by respondent No.1 was allowed and consequently the writ proceedings in Reference No.8 of 2000, against respondent No.2, Mukhtar Hussain, the husband of the petitioner, were quashed by a majority of three to two.

The controversy involved in the said petition revolved around interpretation of "person" as defined in subsection (o) of section 5 of National Accountability Bureau Ordinance, 1999 (in short "the NAB Ordinance"), which at the relevant time read as under:--

(o) "Person" includes in the cause of a corporate body, the sponsors, Chairman, Chief Executive, Managing Director, elected Directors, by whatever name called, and guarantors of the company or any one exercising direction or control of the affairs of such corporate body, but will not include employees appointed and designated as Director or Chief Executive; and in the case of any firm, partnership or sole proprietorship, the partners, proprietor or any person having interest in the said

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 325/2011

Date of Institution ... 27.01.2011

Date of decision ... 23.10.2017

Akhtar Wahid S/O Gul Wahid
R/O Village Mohammad Khawaja, Tehsil & District Hangu. ... (Appellant)

Versus

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and 2 others.
..... (Respondents)

MR. ABDULLAH QAZI,
Advocate

... For appellant.

MR. ZIAULLAH
Deputy District Attorney

... For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. GUL ZEB KHAN,

... CHAIRMAN
... MEMBER

JUDGMENT

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

FACTS

2. The appellant was discharged from service under police rules on 13.10.2008, against which he filed departmental appeal on 01.12.2010 which was rejected on 27.12.2010 and thereafter the present service appeal on 27.01.2011.

ARGUMENTS

3. The learned counsel for the appellant argued that at the relevant time the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 was in vogue and the original order was passed under the Police Rules which is illegal. That no show-cause

*Time barred
if a case
is time barred
merits could
not be
discussed,*

AAH

notice was issued to the appellant. That in para-4 of the comments of the respondents it has been admitted that the service was made on the father of the appellant and not on the appellant.

4. On the other hand, the learned Deputy District Attorney argued that the appeal is hopelessly time barred because the departmental appeal was time barred. In this respect he relied upon judgments reported in 2006 SCMR 453 and 2007 SCMR 513. He further argued that the appellant himself admitted in para-4 of the appeal that he could not perform his duty due to family reasons. That the whole proceedings were initiated under the RSO 2000 and only final order was made under the police rules because the RSO did not provide for any penalty in case of willful absence.

CONCLUSION.

5. This Tribunal can enter into the merits of the case only when the appeal is within time. It has been time and against held by the superior courts that if a case is time barred then merit could not be discussed. The present departmental appeal is clearly time barred after having been preferred some 26 months. There is no application for condonation of delay. In accordance with the ruling reported as 2006 SCMR 453 time barred departmental appeal if decided on merits the same cannot be presumed to bring the departmental appeal and for that matter the service appeal within time.

6. As a result of the above discussion, this appeal is hopelessly time barred which is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

(Niaz Muhammad Khan)
Chairman

(Gul Zeb Khan)
Member

ANNOUNCED
23.10.2017

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No. 161/2016

Date of Institution ... 19.02.2016

Date of Decision ... 24.10.2017

Respondent
Limitation
can not touch
the merit of
the case

WAB

Muhammadullah Ex-Constable No. 866 District Police Charsadda son of Rafiullah
Juma Gul Koroona Sherpao, Tehsil Tangi, District, Charsadda. ... (Appellant)

VERSUS

Capital City Police Officer, Peshawar and 2 others. ... (Respondents)

MR. FAZAL SHAH,
Advocate

For appellant

MR. ZIAULLAH,
Deputy District Attorney,

For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. GUL ZEB KHAN,

CHAIRMAN
MEMBER

JUDGMENT

Arguments of the

NIAZ MUHAMMAD KHAN, CHAIRMAN.-

learned counsel for the parties heard and record perused.

FACTS

2. The appellant was dismissed from service vide order dated 16.08.2010, against which he filed departmental but no copy of departmental appeal or any date of the same is available on the file, however, his departmental appeal was rejected on 19.04.2012, both on the ground of limitation as well as merits. The appellant then filed application under Rule 11-A of the Khyber Pakhtunkhwa Police Rules,

975 on 30.03.2015 which was also rejected on 23.12.2015 and thereafter the present service appeal was filed on 19.02.2016.

ARGUMENTS.

The learned counsel for the appellant argued that the appellant was not provided with a personal hearing by the competent authority, hence the order is void. In this regard, he relied upon a judgment reported as 2009-SCMR-161. That the limitation would not be attracted on the ground of the order being void. That the order was given retrospective effect and in the light of judgment reported as 2011-SCMR-1220, such order is illegal. That the enquiry proceedings were defective as

4. On the other hand, the learned Deputy District Attorney argued that the departmental appeal was time barred, hence the present service appeal is also time barred. That when the present appeal is time barred, then this Tribunal has no power to discuss the merits of the case. In this regard, he relied upon judgments of the august Supreme Court of Pakistan reported as 2011-SCMR-676 and 2009-SCMR-1121. He further argued that the appellant was given personal hearing by the appellate authority and also by the enquiry officer.

CONCLUSION.

5. Admittedly, the departmental appeal was time barred and then after the rejection of the departmental appeal, the appellant resorted to revision which cannot enlarge the period of limitation as remedy of revision is not provided under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

6. This Tribunal is now first to determine the issue of limitation and if the appeal is time barred then this Tribunal cannot touch the merits of the case. The

learned counsel for the appellant tried to convince this Tribunal that non provision of personal hearing by the authority make the order void. The judgment referred to by the learned counsel for the appellant is regarding audi alteram partem. No where it has been mentioned that the personal hearing must be provided by the authority. The appellant was provided personal hearing by the enquiry officer and then by the appellate authority. The learned counsel for the appellant has not been able to pin point any provision in the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 whereby the authority was bound to provide personal hearing nor any such rule is there in the Khyber Pakhtunkhwa Police Rules, 1975. Under the general principles of *audi alteram partem*, at least one personal hearing is to be provided to the appellant which has been provided to him as discussed above. This Tribunal is not inclined to accept the arguments of the learned counsel for the appellant that this appeal should be treated within time merely on the ground of non provision of personal hearing by the authority.

7. Consequently, this appeal being time barred is dismissed. Parties are left to bear their own costs. File be consigned to the record room,

(GUL ZEB KHAN)
MEMBER

ANNOUNCED
24.10.2017

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

*not submitted
condonation of
delay application*

RESENT:
MR. JUSTICE GULZAR AHMED, CJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE SAJJAD ALI SHAH

Civil Petition No.1706 of 2018
(Against the judgment dated 9.3.2018 of
the KPK Service Tribunal, Peshawar
passed in Service Appeal No.649 of 2016)

Farkhar Zaman ... Petitioner(s)

VERSUS

Province of KPK thr. its Secy. Elementary &
Secondary Education, Peshawar & others ... Respondent(s)


For the Petitioner(s): Mr. Fazal Shah Mohmand, ASC
Mir Adam Khan, AOR (Absent)

For the Respondent(s): N. R.

Date of Hearing: 16.01.2020

ORDER

Gulzar Ahmed, CJ.- The KPK Service Tribunal, Peshawar in the impugned order has found that the petitioner's departmental appeal was time barred and thus dismissed the service appeal as being barred by time. Admittedly, no application for condonation of delay was filed by the petitioner. Petitioner's counsel relied upon the case of **Usman Ali Chhachhar Vs. Moula Bux Chachhar (2019 SCMR 2043)** we find that the case relied upon by the learned counsel is altogether distinguishable from the case in hand for that it does not relate to a matter where time barred departmental appeal was filed. No question of public importance in terms of Article 212(3) of the Constitution of the Islamic Republic of Pakistan has been raised in this petition calling for

ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad

AS

interference by this Court. This petition being without merit is dismissed and the leave is refused.

Sd/-HCJ
Sd/-J
Sd/-J

Certified to be True Copy

[Signature]
Court Associate
Supreme Court of Pakistan
Islamabad

Bench-I
Islamabad
16.01.2020
Not Approved for Reporting

[Handwritten]
29/1/20

2006 S C M R 554

[Supreme Court of Pakistan]

Present: Javed Iqbal and Ch. Ijaz Ahmad, JJ

SAMI ULLAH---Petitioner

Versus

INSPECTOR-GENERAL OF POLICE and others-Respondents

Civil Petition No.909-L of 2005, decided on 3rd February, 2006.

(On appeal from the judgment, dated 5-4-2005 of the Punjab Service Tribunal, Lahore, passed in Appeals Nos.2873, 2874 and 2876 of 2004).

(a) Punjab Police (Efficiency and Discipline) Rules, 1975---

---Rr. 3 & 4---Punjab Service Tribunals Act (IX of 1974), S.4---Constitution of Pakistan (1973), Art.212(3)---Dismissal from service---Police constable---Facilitating escape of convict, charge of---Acquittal of petitioner/constable from criminal case registered against him---Dismissal of appeal of constable by Service Tribunal---Validity---Custody of convict had been handed over to armed police officials with official vehicle to escort prisoners---Petitioner was a member of such police party and had stopped vehicle to facilitate escape of convict on a lame pretext that he wanted to ease himself---Vehicle could have been taken to the nearest police station to avoid any untoward incident---Police party duly armed with sophisticated weapons had remained highly negligent and acted in a very irresponsible manner and failed to perform their duties diligently and with vigilance---Unarmed and handcuffed convict could not have been escaped without collective connivance and facilitation of police party---No individual member of police party could be absolved from its responsibility---Acquittal of petitioner from criminal case would have absolutely no bearing on the merits of the case---Petitioner, after comprehensive inquiry, had been found responsible not only for gross negligence, but active connivance and facilitation resulting in escape of convict---Supreme Court dismissed petition and refused leave to appeal.

Muhammad Aslam v. Government of N.-W.F.P. 1998 SCMR 1993; Deputy I.-G. Police v. Anis-ur-Rehman Khan PLD 1985 SC 134; Muhammad Ayub v. Chairman E.B. WAPDA PLD 1987 SC 195 and Muhammad Nazir v. Superintendent of Police 1990 SCMR 1556 rel.

(b) Civil service---

---Disciplinary proceedings, initiation of---Acquittal of civil servant from criminal case---

*Criminal proceeding -
Department proceeding -*

*Facilitating ~~convict~~ escape
of convict + Active connivance*

ATM

-Effect---Such acquittal would have absolutely no bearing on merits of the case.

Muhammad Aslam v. Government of N.-W.F.P. 1998 SCMR 1993; Deputy I.-G. Police v. Anis-ur-Rehman Khan PLD 1985 SC 134; Muhammad Ayub v. Chairman E.B. WAPDA PLD 1987 SC 195 and Muhammad Nazir v. Superintendent of Police 1990 SCMR 1556 ref.

Talal Farooq Sheikh, Advocate Supreme Court for Petitioner.

Nemo for Respondents.

Date of hearing: 3rd February, 2006.

JUDGMENT

JAVED IQBAL, J.---Pursuant to the proceedings initiated against the petitioner under the Punjab Police (Efficiency and Discipline) Rules, 1975 on account of gross negligence penalty of dismissal from service was imposed by D.P.O. Mianwali vide order dated 28-6-2002. Being aggrieved an appeal was preferred which was also rejected and assailed by way of appeal before the Punjab Service Tribunal but with no avail. It is to be noted that a criminal case under sections 222, 223 and 224, P.P.C. was also got lodged against the petitioner as well as the other accused at Police Station Mitha Tiwana on 3-1-2002 but were acquitted by learned Magistrate Section 30, Khushab vide order, dated 10-3-2004.

2. Show-cause notice which was given to the petitioner is reproduced hereinbelow to appreciate the legal and factual aspects of the controversy:--

"You constables Sami Ullah No.1156; Hidayat Ullah No.86 and Khan Bahadur No.301, District Mianwali did not perform your official duty in a proper and disciplined manner in that as per report of D.S.P.S.D.P.O., Mitha Tiwana received from the Superintendent of Police, Khushab vide his Memo. No.30/PA, dated 5-1-2001, on 2-1-2002, you were detailed to collect two criminals namely Muhammad Ramzan son of Allah Ditta caste Mitra resident of Hamoli involved in case F.I.R. No.92 dated 21-8-1999 under section 302/34, P.P.C. 7-A.T.A., Police Station Piplan from Central Jail, Mianwali to produce them in the Court of Special Judge, A.T.A. Sargodha. Official Vehicle No.4579/MIA was provided to escort the prisoners. H.C. Shahbaz Khan No.93 was driver of the said vehicle. The learned Special Judge convicted, and sentenced them to undergo 14/17 years' R.I. each.

Thereafter, you along with above named convicts proceeded to Mianwali. At about 8-45 p.m., the vehicle was intentionally stopped near Tanveer Petroleum in the area of Police Station Mitha Tiwana, District Khushab in order to facilitate the convict Muhammad Ramzan to escape from police custody. As a result of your mala fide intention, he managed to escape from our lawful custody. In this regard, case F.I.R. No.2, dated 3-1-2002, under sections 222/223/224, P.P.C. was registered at Police Station Mitha Tiwana, District Khushab against you and other

police officials which is under investigation and you have been placed under suspension.

It is thus, evident from the facts and circumstances that you all in connivance with each other facilitated the above named Muhammad Ramzan to escape from your lawful custody and also did not make any fruitful efforts to arrest him which amounts to grave misconduct under Punjab Police (E&D) Rules, 1975, warranting disciplinary action against you.

3. Heard Mr. Talat Farooq Sheikh, learned Advocate Supreme Court on behalf of petitioner who mainly argued that no evidence whatsoever has come on record on the basis whereof petitioner could be held responsible for the escape of convict Muhammad Ramzan which aspect of the matter has been ignored by the Police Department as well as learned Service Tribunal which resulted in serious miscarriage of justice. It is next contended that the petitioner could not have been dismissed from service after having clean acquittal from the criminal case got registered against him on the same charges in violative of the dictum as laid down by this Court in Muhammad Aslam v. Government of N.-W.F.P. 1998 SCMR 1993.

4. We have carefully examined the contention as mentioned in the preceding paragraph, thrashed out the entire record and perused the judgment impugned carefully. After having gone through the entire record we are of the view that the factum of gross negligence has been proved. A comprehensive inquiry was got conducted and the petitioner was found responsible not only for gross negligence but active connivance and facilitation which resulted in the escape of convict Muhammad Ramzan who was convicted and sentenced to death with 14 years' R.I. by the learned Special Judge, A.T.A., Sargodha in case got registered vide F.I.R. No.92, dated 21-8-1992 under section 302/34, P.P.C. read with section 7 of the Anti-Terrorism Act, 1997. There is no denying the fact that custody of convict Muhammad Ramzan was handed over to the armed police party with official Vehicle No.4579/MIA to escort the prisoners and petitioner was admittedly the member of that police party. The vehicle was stopped without any justification to facilitate the escape of Muhammad Ramzan on a lame pretext that he wanted to ease himself. The vehicle could have been taken to Mitha Tiwana Police Station to avoid any untoward incident which smacks of mala fides. The police party duly armed with sophisticated weapons remained highly negligent and acted in a very irresponsible manner and failed to perform their duties diligently and with vigilance which speaks a volume about their conduct. How an unarmed and handcuffed convict could have been escaped without the collective connivance and facilitation of police party. It cannot be a case of negligence simpliciter as pressed time and again by the learned Advocate Supreme Court on behalf of petitioner. It hardly matters that the handcuffs of escaped convict was buckled with whose belt as they all were responsible for the safe custody of convicts and being vicarious liability no individual member of the police party can be absolved from its responsibility. We are not persuaded to agree with the prime contention of learned Advocate Supreme Court that after having clean acquittal from the criminal case there was absolutely no lawful justification for the initiation of B disciplinary proceedings which culminated into dismissal from service for the reason 'that result of criminal

proceedings would have absolutely no bearing on merits of the case. In this regard we are fortified by the dictum laid down in Deputy I.-G. Police v. Anis-ur-Rehman Khan PLD 1985 SC 134; Muhammad Ayub v. Chairman E.B. WAPDA PLD 1987 SC 195 and Muhammad Nazir v. Superintendent of Police 1990 SCLR 1556.

In our view the procedural lapses are not very serious and no prejudice whatsoever has been caused against the petitioner. No question of law of public importance is involved in the matter on the basis whereof leave could be granted. The petition being meritless is dismissed and leave refused.

S.A.K./S-9/SC

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Leave refused.



Supreme Court of Pakistan

Present: Abdul Hameed Dogar and Mian Shakirullah Jan, JJ

UPERINTENDENT OF POLICE, D.I. KHAN and others---Petitioners

versus

HSANULLAH---Respondent

Civil Petition No.384-P of 2005, decided on 14th November, 2006.

On appeal from the judgment, dated 10-5-2005 of the N.-W.F.P. Service Tribunal Peshawar in Appeal No.180 of 2004).

North-West Frontier Province Service Tribunals Act (I of 1974)---

---S. 4---Dismissal from service on account of his arrest in a criminal case---Acquittal from criminal charges---Time-barred appeal---Civil servant was dismissed from service. after he was arrested in criminal case---Civil servant during his arrest, filed departmental representation but did not avail remedy of appeal before Service Tribunal---Civil servant, after he was acquitted from criminal charge, filed appeal before Service Tribunal, which was accepted and he was reinstated in service---Validity---Appeal before Service Tribunal was filed belatedly from date of his dismissal and after five months from the date of his acquittal from criminal charges---Civil servant had lost his right and could not agitate for reinstatement---Acquittal of civil servant from criminal charges would have absolutely no bearing on merits of case as disciplinary proceedings were to be initiated according to service rules independently---Judgment passed by Service Tribunal, reinstating civil servant in service, after acquittal from the criminal charge was not sustainable in law---Supreme Court set aside the judgment passed by Service Tribunal and order of dismissal of civil servant from service was maintained---Appeal was allowed.

Executive Engineer and others v. Zahid Sharif 2005 SCMR 824 and Sami Ullah v. Inspector-General of Police and others 2006 SCMR 554 ref.

Khushdil Khan, Additional Advocate-General N.-W.F.P. and Altaf, S.-I. (Legal) for Petitioners.

Abdul Aziz Kundi, Advocate Supreme Court for Respondent.

ORDER

ABDUL HAMEED DOGAR, J.--- This petition is directed against judgment, dated 10-5-2005 passed by learned N.-W.F.P. Service Tribunal, camp at D.I. Khan whereby Appeal No.180 of 2004 filed by respondent was allowed and he was reinstated into service without back-benefits.

2. Brief facts leading to the filing of instant petition are that respondent was dismissed from service on

4/14/2015 11:00 AM

*Criminal
proceeding and
deft proceeding*

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allegation that on 12-7-2001 he was found in possession of 225 grams of Charas. Case was registered against him in which he was arrested and sent up to face the trial. According to learned counsel for the respondent he made representation to the competent authority but did avail the remedy of filing appeal before the learned Tribunal challenging his dismissal. According to him after his acquittal from the criminal case which took place on 9-10-2003 he filed instant appeal before Tribunal on 18-3-2004 mainly on the ground that he was acquitted from criminal charges as such he reinstated in service. The appeal before the Tribunal was filed belatedly from date of his dismissal and after five months from the date of his acquittal from the criminal charges. This being so, respondent has lost his right and cannot litigate for reinstatement. By now it is the settled principle of law that acquittal of civil servant from criminal charges would have absolutely no bearing on the merits of the case as the disciplinary proceedings are to be initiated according to service rules independently. Reliance can be made to the cases of Executive Engineer and others v. Zahid Sharif 2005 SCMR 824 wherein it has been held that acquittal of civil servant from Court would not impose any bar for initiation of disciplinary proceedings as his acquittal would have no bearing on disciplinary proceedings at all. In case of Sami Ullah v. Inspector-General of Police and others 2006 SCMR 554 it has been held that acquittal of petitioner from criminal case would have absolutely no bearing on the merits of the case and in the case of N.E.D. University of Engineering and Technology v. Syed Ashfaq Hussain Shah 2006 SCMR 453 it has been held that departmental representation of civil servant was barred by limitation and on the basis of such representation Service Tribunal could not reinstate him in service.

3. In view of what has been discussed hereinabove and the case-law referred (supra) the impugned judgment reinstating the respondent in service after acquittal from the criminal charge is not sustainable in law hence the same is set aside. The petition is converted into appeal and allowed. The order of dismissal from service of respondent is maintained.

Appeal allowed.

M.H./S-81/SC

4/14/2015 11:00 AM

Time barred.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 325/2011

Date of Institution ... 27.01.2011

Date of decision ... 23.10.2017

Akhtar Wahid S/O Gul Wahid
R/O Village Mohammad Khawaja, Tehsil & District Hangu.

... (Appellant)

Versus

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and 2 others.
.... (Respondents)

MR. ABDULLAH QAZI,
Advocate

... For appellant.

MR. ZIAULLAH
Deputy District Attorney

... For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. GUL ZEB KHAN,

... CHAIRMAN
... MEMBER

JUDGMENT

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

FACTS

2. The appellant was discharged from service under police rules on 13.10.2008,
against which he filed departmental appeal on 01.12.2010 which was rejected on
27.12.2010 and thereafter the present service appeal on 27.01.2011.

ARGUMENTS

3. The learned counsel for the appellant argued that at the relevant time the Khyber
Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 was in vogue and
the original order was passed under the Police Rules which is illegal. That no show-cause

notice was issued to the appellant. That in para-4 of the comments of the respondents it has been admitted that the service was made on the father of the appellant and not on the appellant.

4. On the other hand, the learned Deputy District Attorney argued that the appeal is hopelessly time barred because the departmental appeal was time barred. In this respect he relied upon judgments reported in 2006 SCMR 453 and 2007 SCMR 513. He further argued that the appellant himself admitted in para-4 of the appeal that he could not perform his duty due to family reasons. That the whole proceedings were initiated under the RSO 2000 and only final order was made under the police rules because the RSO did not provide for any penalty in case of willful absence.

CONCLUSION.

5. This Tribunal can enter into the merits of the case only when the appeal is within time. It has been time and against held by the superior courts that if a case is time barred then merit could not be discussed. The present departmental appeal is clearly time barred after having been preferred some 26 months. There is no application for condonation of delay. In accordance with the ruling reported as 2006 SCMR 453 time barred departmental appeal if decided on merits the same cannot be presumed to bring the departmental appeal and for that matter the service appeal within time.

6. As a result of the above discussion, this appeal is hopelessly time barred which is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

(Niaz Muhammad Khan)
Chairman

(Gul Zeb Khan)
Member

ANNOUNCED
23.10.2017

2013 P L C (C.S.) 1071

[Sindh High Court]

Before Naimatullah Phulpoto and Farooq Ali Channa, JJ

KHURSHID ALI JUNEJO

Versus

PROVINCE OF SINDH through Chief Secretary and 5 others

Constitutional Petition No.D-1971 of 2011, decided on 12th December, 2012.

(a) Constitution of Pakistan---

---Arts. 212(3) & 199---Penal Code (XLV of 1860), S.409---Prevention of Corruption Act (II of 1947), S.5(2)---Constitutional petition---Appeal against order of Service Tribunal---Forum---Judgment of Service Tribunal impugned through Constitutional petition before High Court instead of preferring an appeal before the Supreme Court---Maintainability---Accused/petitioner, who was serving in the Food Department, was alleged to have misappropriated bags of wheat---Departmental proceedings were initiated against accused and an F.I.R. was also lodged against him---Accused was removed from service after departmental proceedings and his departmental appeal was also rejected---Service Tribunal converted dismissal of accused to compulsory retirement---Accused was, however acquitted from the charges levelled against him in the F.I.R., and as a result moved an application before the Department for his reinstatement---Department contented that judgment of Service Tribunal was impugned through present Constitutional petition instead of preferring an appeal before the Supreme Court, and that departmental proceedings were entirely different from criminal proceedings---Validity---Constitutional jurisdiction of High Court could only be invoked if no other adequate remedy was provided in law---Remedy available with accused against the order of Service Tribunal was to file a petition for leave to appeal before the Supreme Court in terms of Art.212(3) of the Constitution---Article 212(3) of the Constitution ousted the jurisdiction of all other courts---Criminal proceedings against the accused, from which he was acquitted were neither co-extensive nor interconnected with departmental proceedings initiated against him---Constitutional petition was dismissed in circumstances.

2004 SCMR 540 ref.

(b) Civil service---

---Proceedings against civil servant---Simultaneous departmental and criminal proceedings---Scope---Departmental proceedings and criminal proceedings were entirely different---Both said proceedings were neither co-extensive nor interconnected.

2004 SCMR 540 rel.

(c) Service Tribunal Act (LXX of 1973)---

---Ss. 3(2) & 4(1) & Preamble---Constitution of Pakistan, Art.199---Constitutional petition---Maintainability---Appeal against orders of Departmental authority---Forum---Order of Departmental authority, even if passed without jurisdiction, could not be challenged before the High Court, as adequate/alternate remedy had been provided under the law.

(d) Constitution of Pakistan---

12/3/2020, 10:48 AM

---Arts. 212(3) & 199---Constitutional petition---Maintainability---Scope---Civil service--High Court could not exercise jurisdiction in service matters in terms of the ouster clause provided under Art.212(3) of the Constitution.

Saleem Raza Jakhar for Petitioner.

Muhammad Bachal Tunio, Addl. A.-G. for Respondents.

Date of hearing: 12th December, 2012.

ORDER

NAIMATULLAH PHULPOTO, J.- Petitioner Khurshed Ali Junejo has invoked the Constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, seeking following reliefs:---

- (i) That, this Honourable Court may graciously be pleased to declare the departmental action against petitioner is unlawful and without justification of law.
- (ii) That, petitioner may be reinstated in service with all back-benefits.
- (iii) To award cost of this petition to the petitioner.
- (iv) That, grant any equitable relief which this Hon'ble Court deems fit and proper in the circumstances of the petition.

2. Facts in brief leading to filing of petition appear to be that petitioner was serving as Supervisor (BPS-5) in Food Department with honesty and hardworking. F.I.R was registered against petitioner by Anti-Corruption Establishment, Larkana on 8-6-1998, after investigation he was challaned in the Court of Special Judge, Anti-Corruption, Larkana for offence under Section 409, P.P.C. read with section 5(2) Act-II of 1947. Departmental enquiry was conducted against petitioner, according to him, he was exonerated in enquiry. In spite of that, competent authority found petitioner guilty and removed him from service on 2-11-1999. Petitioner's departmental appeal was rejected by Director Food, Government of Sindh vide order dated 29-1-2000. Petitioner filed Appeal No.45 of 2000 before Sindh Services Tribunal, at Karachi, which was dismissed converting the penalty of removal of petitioner from service to compulsory retirement, so also recovery of 239 wheat bags at the rate of Rs.700 per bag vide judgment dated 24-6-2005. It is mentioned in the petition that petitioner has been acquitted of the charge of misappropriation by the Special Judge, Anti-Corruption, in above Anti-Corruption Case by judgment dated 21-9-2010. Petitioner also moved an application for reinstatement to Secretary, Food Department, the same has not yet been decided.

3. Notices were issued to respondents for parawise comments.

4. Secretary, Food Department, Govt. of Sindh, respondent No.2 and Deputy Director Food, Larkana in their parawise comments have stated that petitioner was posted as Food Supervisor as Centre Incharge, WPC Bangul Dero, Larkana. During Crop Season 1996-97 he procured a quantity of 2520 bags of wheat, out of which 1682 bags of wheat were dispatched to Provincial Reserve Centre, whereas remaining 838 bags were misappropriated, therefore, petitioner was suspended. After departmental disciplinary proceedings, petitioner was removed from service on 2-11-1999, his departmental appeal was also rejected by the competent authority. The penalty imposed upon him was assailed and Sindh Services Tribunal while maintaining the penalty converted dismissal of petitioner to "compulsory retirement". It is further stated that departmental and criminal proceedings are neither co-extensive, nor inter-connected. It is stated that petitioner failed to prefer appeal before Hon'ble Supreme Court of Pakistan against the

12/3/2020, 10:48 AM

judgment of Service Tribunal.

5. We have heard the petitioner in person, Mr. Muhammad Bachal Tunio, Additional Advocate General Sindh for respondents and perused the record.

6. Petitioner was admittedly Food Supervisor (BPS-5) in Food Department, Government of Sindh. Petitioner has invoked the Constitutional jurisdiction of this Court under Article 199 of Constitution. The petitioner has challenged departmental action by which he was removed from service. In order to resolve the controversy/legal issue involved in the present petition, it is essential to decide issue of jurisdiction and maintainability of this writ petition, at the first instance. In this respect, the provisions of Article 199 of Constitution are very much important.

7. Article 199(1) of Constitution of Islamic Republic of Pakistan, 1973 is reproduced hereunder :---

"199. Jurisdiction of High Court.--- (1) Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law."

It is evident from the perusal of above mentioned Article that Constitutional jurisdiction of the High Court could only be invoked if no other adequate remedy is provided in law. In the instant case as mentioned earlier petitioner availed remedy after his dismissal from service before Sindh Service Tribunal and his Service Appeal No:45 of 2000 was dismissed, however the penalty was converted to that of compulsory retirement. Petitioner moved an application to the Secretary, Government of Sindh, Food Department, for reinstatement after acquittal in anti-corruption case but his request was turned down while observing that departmental proceedings are entirely different from those of criminal proceedings on criminal charges. Both the proceedings are neither co-extensive nor interconnected. Reference can be made to dictum laid down in a case reported in 2004 SCMR 540, relevant portion is reproduced as under:---

".... There is no bar to proceed departmentally against any civil servant as departmental proceedings are entirely different from that of the criminal proceedings on criminal charges and are neither co-extensive nor inter-connected...."

"In view of the above, since the officers concerned are charged for misappropriation, they can be proceeded against for criminal misappropriation under section 409 of P.P.C. notwithstanding the departmental proceedings being initiated against them under the Removal from Service (Special Powers) Sindh Ordinance, 2000."

8. Remedy available to petitioner under the law was to file a petition for leave to appeal before the Honourable Supreme Court of Pakistan against, the orders of the Sindh Services Tribunal but he failed to do so.

9. In above stated circumstances, the Constitutional jurisdiction of this Court cannot be invoked to get such controversy resolved. The provisions as contained in Article 212 of sub-Article (2) of Islamic Republic of Pakistan oust the jurisdiction of all other Courts. Orders of the Departmental authority, even if without jurisdiction cannot be challenged before this Court because other adequate remedy is provided under the law, as such this Court cannot exercise the jurisdiction in service matters in terms of ouster clause provided under Article 212(2) of the Constitution. The provisions as contained in Article 212(2) of the Constitution and section 6 of the Service Tribunals Act, 1973 make it abundantly clear that after the establishment of Service Tribunal the jurisdiction of all other Courts in service matters has been ousted. Constitutional jurisdiction of High Court, would be declined where the petitioner has not exhausted all remedies available to him before filing of Constitutional petition and aggrieved party must approach specific authority for the redressal of his grievances. Even otherwise where a particular statute provides a self-contained machinery for the determination of question arising under the Act where law provides a remedy by appeal or revision to another Tribunal fully competent to give any relief, any indulgence to the

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contrary by the High Court is bound to produce a sense of distrust in statutory Tribunal.

10. In view of the above petition is without force and the same is hereby dismissed.

MWA/K-2/K

Petition dismissed.

12/3/2020, 10:48 AM

1995SCMR776

[Supreme Court of Pakistan]

Present.- Ajmal Mian and Wali Muhammad Khan, JJ

CHIEF ENGINEER (NORTH) and another---Petitioners

versus

SAIFULLAH KHAN KHALID---Respondent

Civil Petition No. 246(L) of 1993, decided on 4th May, 1994.

(On appeal from the judgment dated 22-11-1992 of Punjab Service Tribunal in Appeal No. 209 of 1992).

(a) Punjab Service Tribunals Act (IX of 1974)---

---S. 4---Appeal---Limitation---Civil servant had the choice either to file appeal immediately on the expiry of 90 days from the date of filing of Departmental Appeal or he could have waited for the decision of same and filed appeal within 30 days thereof---Civil servant's option for the latter was in consonance with legal requirement.

Haji Kadir Bux v. Province of Sindh and another 1982 SCMR 582 rel.

(b) Punjab Civil Servants (Efficiency and Discipline) Rules, 1974.--

---R.4---Constitution of Pakistan (1973), Art. 212 (3)---Civil servant--Dismissal from service on ground of unauthorized absence---Validity---Where absence was not wilful and civil servant had not deliberately stayed away from duty, and period of absence was less than one week, major penalty could not be imposed upon him in view of Policy Letter of Government' dated 28-4-1971---Service Tribunal's decision to re-instate civil servant did not warrant interference---Leave to appeal was refused in circumstances.

Abdul Majid Shaikh, Advocate Supreme Court and Rao Muhammad Yusuf Khan, Advocate-on-Record for Petitioners.

Hafiz Tariq Nasim, Advocate Supreme Court and M. Aslam Choudhry, Advocate-on-Record for Respondent.

Date of hearing: 4th May, 1994.

ORDER

AJMAL MIAN, J: ---This is a petition for leave to appeal against the judgment dated 22-11-1992 passed by the learned Punjab Service Tribunal, Lahore, hereinafter referred to as the Tribunal, in Appeal No. 209/92 filed by the respondent against his removal from service by the order of Petitioner No.2 dated 4-3-1985 on the ground of unauthorized absence, allowing the same by setting aside above order of his removal and reinstating the respondent with effect from the date of his removal with all back benefits.

2. The brief facts are that the respondent availed of four casual leaves on the dates mentioned in the impugned judgment. According to him his mother was seriously ill after the death of his father. The respondent was removed because of above unauthorized absence as leave was not granted. Respondent filed a departmental appeal which remained pending and was dismissed on 5-5-1992. Thereupon, the respondent filed above Service Appeal within 30 days, which was allowed for the following reason:--

For Appealant

"Vide its Policy Letter No. SORI (SGA&ID) 1-73/70 dated 28-4-1971 Government had decided that 'unauthorised absence for one week or more should result in the initiation of proceedings for the imposition of one of the major penalties laid down in the Efficiency and Discipline Rules'. The intention of Government was that 'absence for a period of less than one week should be visited with minor penalty.....' Thus, if the absence is not wilful and the circumstances of the present case clearly indicate that the appellant had not deliberately stayed away from duty, and the period of absence is also less than one week, then even proceedings under the Efficiency and Discipline Rules may not be initiated. The instant case is a classical example of abuse of authority."

The petitioners have, therefore, filed present petition for leave to appeal.

3. In support of the above petition Mr. Abdul Majid Sheikh, learned counsel appearing for the petitioner, has vehemently contended that since the respondent was removed by order dated 4-3-1985, he should have filed Service Appeal after 90 days as provided in the Punjab. Service Tribunals Act (IX of 1974), hereinafter referred to as the Act, and, therefore, the respondent's " " above appeal, which was filed in June 1992, was barred by time.

The above contention is devoid of any force as rightly pointed out by Hafiz Tariq Nasim, learned ASC for the respondent/Caveator. The respondent had the choice either to file appeal immediately on the expiry of 90 days from the date of filing of Departmental Appeal or he could have waited for the decision upon his Departmental Appeal, as has been held by this Court in the case of Haji Kadir Bux v. Province of Sindh and another reported in 1982 SCMR at page 582. The respondent opted for the latter, which was in consonance with the above judgment of this Court.

4. Then it was urged by Mr. Abdul Majid Sheikh that factually the respondent was absent unauthorisedly without filing any leave application and that the respondent's plea that he sent leave application through his brother was an afterthought plea.

However, he has not been able to deny the applicability of the Policy Letter dated 28-4-1971 relied upon by the Tribunal in the above-quoted para. 4 of the judgment. In this view of the matter, the major penalty of removal could not have been imposed on the respondent as he did not remain absent unauthorisedly for one week.

5. In view of the above legal position even we were to agree with the learned counsel for the petitioners that the respondent had not factually sent leave application through his brother, it would not make any difference.

6. The petition has no merits. Leave is, therefore, refused.

AA./C-147/S

Leave refused.