

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 374/2018

Date of institution ... 10.07.2018

Date of judgment ... 25.03.2019

Faheem Ullah, Ex-Constable No. 1200, S/O Khamim Ullah
R/o Mohallah Sadri Khel Pir Piai, District & Tehsil Nowshera.

... (Appellant)

VERSUS

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa.
2. The Regional Police officer, Mardan Region-I, Mardan.
3. The District Police Officer, Nowshera.

... (Respondents)

AMENDED SERVICE APPEAL AGAINST THE FINAL ORDER DATED 08.05.2018 PASSED BY THE PROVINCIAL POLICE OFFICER KHYBER PAKHTUNKHWA (RESPONDENT NO. 1) WHEREBY THE REVISION PETITION FILED BY THE APPELLANT WAS PARTIALLY ACCEPTED AND HE WAS REINSTATED IN SERVICE. HOWEVER, THE PENALTY OF DISMISSAL FROM SERVICE WAS CONVERTED INTO MAJOR PENALTY OF REDUCTION IN PAY BY TWO STAGES FOR TWO YEARS WITHOUT ANY FINANCIAL BENEFITS.

Mr. Rizwanullah, Advocate.

.. For appellant.

Mr. Ziaullah, Deputy District Attorney

.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (JUDICIAL)

MR. HUSSAIN SHAH

.. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Appellant

alongwith his counsel present. Mr. Ziaullah, Deputy District Attorney alongwith

Mr. Atta-ur-Rehman, Sub-Inspector (Legal) 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 and was on deputation from Nowshera Police to Highway staff Traffic Police Khyber Pakhtunkhwa. He was imposed major penalty of dismissal from service vide order dated 08.01.2018

by the competent authority on the allegation of taking illegal gratification from the drivers as viral on a private news channel on 28.11.2017. The appellant filed departmental appeal on 05.01.2018 which was rejected on 19.02.2018 thereafter, the appellant filed revision petition before the Inspector General of Police on 08.03.2018 which was not decided within the stipulated period therefore, the appellant filed present service appeal on 15.03.2018 but ~~during~~ ^{after} the institution of service appeal, the revision petition of the appellant was decided by the Inspector General of Police on 08.05.2017 which was partially accepted and the major penalty of dismissal from service was converted into major penalty of reduction in pay by two stage for two years whereas the intervening period was ordered to be counted towards service but not on duty and he was also held not entitled for any financial benefits including the monthly salaries for the said period therefore, the appellant also challenged the said order through amended service appeal.

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

4. Learned counsel for the appellant contended that the appellant was serving in Police Department as Constable and was on deputation from Nowshera Police to Highway staff Traffic Police Khyber Pakhtunkhwa. It was further contended that he was involved alongwith other in taking illegal gratification from the divers as viral on the private news channel on 28.11.2017. It was further contended that the Provincial Police Officer Khyber Pakhtunkhwa straight away constituted inquiry committee against the appellant and two other police employees namely Irshad Khan HC No. 502 and Maqsood Alam HC No. 1450 respectively. It was further contended that the competent authority of the appellant was DPO/SSP/SP as per schedule of Police Rules, 1975 but the inquiry committee was constituted on the direction of Provincial Police Officer and on the basis of which the appellant was imposed the aforesaid penalty. It

M. Anwar
25.3.2019

was further contended that the said committee conducted inquiry and held above employees guilty and recommended for award of major penalty and than submitted report to the Capital City Police Officer Peshawar vide memo No. 1176 dated 29.11.2017, this report was further forwarded to the Provincial Police Officer vide memo No. 2083/PSO dated 30.11.2017 as evident from the impugned order. It was further contended that on the basis of said report, the Provincial Police Officer passed the following order “ while perusing the inquiry report of SSP Traffic, Peshawar into the subject matter, the worthy IGP ordered as under:

- i. HC/TO Irshad Khan No. 502 (on deputation from CCP)
I/C EPA Squad.
 - ii. FC Maqsood Alam No. 1450 (on deputation from
Charsadda)
 - iii. FC Faheem Ullah No. 1300/52 (on deputation from
Nowshera)
- (Call in O.R may be dismissed from service)

The orders of the worthy IGP may be complied and the dismissal order of the mentioned officials may be sent to this office, for the perusal of the IGP”

It was further contended that the impugned order of dismissal from service of the appellant was passed by the DPO on the direction of IGP therefore, it was contended that the IGP was not the competent authority hence, the impugned order is illegal and liable to be set-aside. It was further contended that neither charge sheet, statement of allegation was framed or served upon the appellant nor statement of witnesses were recorded in the presence of the appellant nor opportunity of cross examination, defence and personal hearing was provided to the appellant. It was further contended that after submitting inquiry report, the competent authority had also not issued any show-cause notice to the appellant,

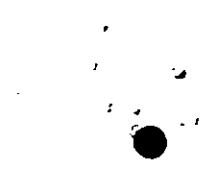
M. J. Khan
25.3.2019

therefore, the appellant was condemned unheard which has rendered the whole proceeding illegal and liable to be set-aside. It was also contended that mere producing of CCTV footage as a piece of evidence was not sufficient to rely upon the same unless and until to examine the person who prepared such footage from the CCTV system. It was further contended that the other two employees were also involved in taking illegal gratification but the appellant was made scapegoat and awarded him major penalty therefore, the appellant was discriminated and prayed for acceptance of appeal. Learned counsel for the appellant in support of his arguments also relied on PLD 1980 Supreme Court 310, 1989 SCMR 1690 [Shariat Appellate Bench], 1991 PLC 2 [Lahore High Court], 2000 SCMR 1743 [Supreme Court of Pakistan], 2002 SCMR 82 [Supreme Court of Pakistan], 2003 SCMR 104 [Supreme Court of Pakistan], 2008 SCMR 1148 [Supreme Court of Pakistan], 2009 SCMR 605 [Supreme Court of Pakistan], 2010 SCMR 1933 [Supreme Court of Pakistan], 2011 PLC (C.S) 7 [Peshawar High Court] and 2016 SCMR 2084 [Supreme Court of Pakistan].

5. On the other hand, learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was serving in Police Department. It was further contended that the appellant was imposed aforesaid penalty on taking illegal gratification. It was further contended that all the codal formalities were fulfilled as per rule and law and the appellant was rightly imposed aforesaid penalty. It was also contended that the other two employees was also imposed the same penalty as awarded to the appellant therefore, the appellant was not discriminated and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was serving in Police Department. He was departmentally proceeded for taking illegal gratification and was imposed the aforesaid penalty by the respondent-department but

M. Amin
25-3-2019



neither charge sheet, statement of allegation was framed or served upon the appellant nor the inquiry officer recorded the statement of witnesses in the presence of the appellant nor opportunity of cross examination and defence was provided to the appellant nor after submitting inquiry report any final show-cause notice alongwith inquiry report was issued to the appellant therefore, the appellant was condemned unheard. Moreover, the record also reveals that the competent authority of the appellant was DPO/SSP/SP but the record reveals that the inquiry committee was constituted on the direction of Provincial Police Officer and after submitting inquiry report, the Provincial Police Officer also directed the DPO to impose major penalty of dismissal from service. Meaning thereby that the all the proceedings and awarding the major penalty was done on the direction of the Provincial Police Officer therefore, on this score the impugned order is illegal. As such, we partially accept the appeal, set-aside the impugned, ^{order in} the appellant has already been reinstated in service by the Inspector General of Police therefore, no need for fresh reinstatement order. However, the respondent-department is directed to conduct de-novo inquiry as per Police Rules, 1975. 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
25.03.2019


(HUSSAIN SHAH)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

07.12.2018

Appellant alongwith counsel and Mr. Muhammad Jan, DDA alongwith Wisal Muhammad, Inspector for the respondents present.

Representative of the respondents states that requisite reply/comments are in the process of preparation, therefore, requests for some more time.

Adjourned to 16.01.2019 on which date the needful be done positively.

16.1.2019

Counsel for the appellant and Addl. AG alongwith Muhammad Fayaz H.C for the respondents present.

Reply on behalf of respondents has been submitted which is placed on file. To come up for arguments before D.B on 25.03.2019. The appellant may submit rejoinder within a fortnight, if so advised.

Chairman


25.03.2019

Appellant alongwith his counsel present. Mr. Ziaullah, Deputy District Attorney alongwith Mr. Atta-ur-Rehman, Sub-Inspector (Legal) for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of five pages placed on file, we partially accept the appeal, set aside the impugned order, the appellant has already been reinstated in service by the Inspector General of Police therefore, no need for fresh reinstatement order. However, the respondent-department is directed to conduct de-novo inquiry as per Police Rules, 1975. 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

25.03.2019


(HUSSAIN SHAH)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

03.08.2018

Appellant Faheemullah in person alongwith his counsel Mr. Rizwanullah, Advocate present and heard in limine.

Contends that major punishment has been imposed upon the appellant but without adopting the legal procedure prescribed under the law.

Points raised need consideration. The appeal is admitted to full hearing, subject to all legal objections. 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 18.09.2018 before S.B.

Appellant Deposited
Security & Process Fee


Chairman

18.09.2018

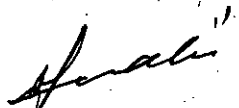
Appellant with counsel present. Mr. Kabirullah Khattak, Addl: AG for respondents present. Written reply not submitted. Learned AAG sought some time to submit the same. Case to come up for written reply/comments on 23.10.2018 before S.B.


Member

23-10-18

Due To Retirement of Honorable
Chairman the Tribunal is non
functional therefore the case is
adjourned to come up for the same on

7-12-2018


Reader

18.04.2018

Counsel for the appellant present and seeks adjournment.
To come up for preliminary hearing on 09.05.2018 before S.B.


(Ahmad Hassan)
Member

09.05.2018

The Tribunal is non functional due to retirement of the Honorable Chairman. Therefore, the case is adjourned. To come up for the same on 06.07.2018 before S.B.


Reader

06.07.2018

Counsel for the appellant Faheem Ullah present. It was contended by learned counsel for the appellant that the appellant was serving in Police Department, however, during service he was dismissed from service on the allegation of illegal gratification. He filed Departmental appeal but the same was rejected and later on the appellant filed revision petition before the competent authority which was also not responded hence, the present service appeal. It was further contended that during the pendency of the present service appeal the revision authority has partially accepted the revision petition of the appellant and reinstated the appellant into service however, the penalty of dismissal from service was converted into reduction in pay by two stages for two years therefore, requested for amendment in service appeal. Request is allowed. To come up for amended appeal as well as preliminary arguments on 03.08.2018 before S.B.


(Muhammad Amin Khan Kundi)
Member

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 374/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	15/03/2018 <i>P</i>	<p>The appeal of Mr. Faheemullah presented today by Mr. Rizwanullah Advocate may be entered in the Institution Register and put up to Learned Member for proper order please.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR</p>
2-	19/03/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>02/04/18</u>.</p> <p style="text-align: right;"><i>[Signature]</i> MEMBER</p>
	02.04.2018	<p>Due to general strike of the bar, the case is adjourned. To come up for preliminary hearing on 18.04.2018 before S.B</p> <p style="text-align: right;"><i>[Signature]</i> Member</p>

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

Amended Service Appeal No. 374 /2018

1. Faheem Ullah, Ex-Constable No. 1200, S/O Khamim Ullah R/O Mohallah Sadri
Khel Pir Piai, District Tehsil Nowshera.

APPELLANT

VERSUS

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

RESPONDENTS

I N D E X

S.No	Particulars	Annexure	Pages #
1	Service Appeal	-	1-10
2	Affidavit	-	11
3	Copy of order dated 06-12-2017	"A"	12
4	Copy of dismissal order dated 8-01-2018	"B"	13
5	Copy of departmental appeal dated 25-01-2018	"C"	14-15
6	Copy of Rejection order dated 19/2/2017	"D"	16
7	Copy of revision petition	"E"	17
8	Copy of final order dated 08/05/2018	"F"	18
9	Copy of order sheet dated 06-07-2018	"G"	19-20
10	Wakalatnama	-	

Faheem Ullah
Appellant

Through

Dated: 10/07/2018

Rizwanullah
Rizwanullah
M.A LL.B

Advocate High Court, Peshawar.

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

Khyber Pakhtukhwa
Service Tribunal

Amended Service Appeal No. 374 /2018.

Diary No. 1136

Dated 10-7-2018

1. Faheem Ullah, Ex-Constable No. 1200, S/O Khamim Ullah R/O Mohallah Sadri Khel Pir Piai, District Tehsil Nowshera.

APPELLANT

VERSUS

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa.
2. The Regional Police Officer, Mardan Region-I, Mardan.
3. The District Police Officer, Nowshera.

RESPONDENTS

**AMENDED SERVICE APPEAL
AGAINST THE FINAL ORDER DATED
08-05-2018 PASSED BY THE
PROVINCIAL POLICE OFFICER
KHYBER PAKHTUNKHWA
(RESPONDENT NO.1) WHEREBY THE
REVISION PETITION FILED BY THE
APPELLANT WAS PARTIALLY
ACCEPTED AND HE WAS
REINSTATED IN SERVICE.
HOWEVER, THE PENALTY OF
DISMISSAL FROM SERVICE WAS
CONVERTED INTO MAJOR PENALTY
OF REDUCTION IN PAY BY TWO**

**STAGES FOR TWO YEARS WITHOUT
ANY FINANCIAL BENEFIT.**

Prayer in Appeal

By accepting this appeal, the impugned order dated 08-05-2018 passed by Provincial Police officer (respondent No. 1) may very graciously be declared as illegal, unlawful and without lawful authority and the same may kindly be set-aside with all consequential benefits to the appellant.

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

Respectfully Sheweth,

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

1. That the appellant was appointed as Constable on 31-01-2002 in the Police Department. He had 16 years unblemished service record to his credit.
2. That the appellant was on deputation from Nowshera Police to Highway Staff, Traffic Police Khyber Pakhtunkhwa. He was further posted to EPA Squad Traffic Police Peshawar.
3. That the appellant was performing his duty with great zeal, zest and devotion but strangely, it was reported that he "involved in taking illegal gratification from drivers as viral on a private News Channel on 28-11-2017". Resultantly, the Provincial Police Officer, Khyber Pakhtunkhwa (respondent No.1) straightaway constituted an Enquiry Committee against appellant and two other Police employees namely Irshad Khan HC No.502 and Maqsood Alam HC No.1450 respectively.

4. That the said Committee conducted enquiry and held the above employees guilty of the allegations and recommended for award of major penalty and then submitted the report to the Capital City Police Officer, Peshawar vide Memo No. 1176/PA dated 29-11-2017. This report was further forwarded to the Provincial Police Officer (respondent No.1) vide Memo No. 2083/PSO dated 30-11-2017 as evident from the impugned order.
5. That on the basis of such report, the Provincial Police Officer (respondent No.1) passed the following orders:

“while perusing the enquiry report of SSP Traffic, Peshawar into the subject matter, the worthy IGP ordered as under:

- i. **HC/TO Irshad Khan No.502
(on deputation from CCP) I/C EPA
Squad.**
- ii. **FC Maqsood Alam No. 1450
(on deputation from Charsadda)**
- iii. **FC Faheem Ullah No. 1300/52
(on deputation from Nowshera)**

(Call in O.R. may be dismissed from service)

The orders of the worthy IGP may be complied and the dismissal orders of the mentioned officials may be sent to this office, for the perusal of the IGP”.

(Copy of order/letter is appended as Annex-A)

6. That thereafter, the appellant was awarded major penalty of dismissal from service vide formal order dated 8-01-2018 passed by the District Police Officer, Nowshera (respondent No.3).

(Copy of impugned order is appended as Annex-B)

7. That the appellant felt aggrieved by the said order, filed a departmental appeal with the DIG Mardan Region-I, Mardan (respondent No.2) on 25-01-2018. But the same was rejected on 19/2/2017. He then filed a revision petition under Rule 11A(4) of Khyber Pakhtunkhwa Police Rules, 1975 but the same was not responded. Thereafter, he invoked the jurisdiction of this Hon'ble Tribunal by way of filing Service Appeal No. 374/2018.

(Copy of Departmental appeal, rejection order and revision petition are appended as Annex-C, D & E).

8. That during the pendency of said appeal, the respondent No. 1 vide order dated 08-05-2018 partially accepted the revision petition filed by the appellant and he was reinstated in service. However, the penalty of dismissal from service was converted into major penalty of reduction in pay by two stages for two years without financial benefits.

(Copy of final order is appended as Annex-F).

9. That the above appeal came up for preliminary hearing on 06-07-2018 and this Hon'ble Tribunal was apprised of the final order and that a request was also moved regarding filling of amended service appeal which was acceded to and the case was adjourned to 03-08-2018 .

(Copy of order sheet is appended as Annex-G)

10. That the appellant now files this appeal before this Hon'ble Tribunal inter-alia on the following grounds within the statutory period of law:

GROUND OF APPEAL

- A.** That respondents have not treated appellant in accordance with law, rules and policy on the subject and acted in violation of **Article 4 of the Constitution of Islamic Republic of Pakistan, 1973**. Therefore, the impugned orders are not sustainable in the eye of law.
- B.** That the Provincial Police Officer (respondent No.1) was not competent to initiate disciplinary proceedings and taken it to logical end against the appellant and other employees and the District Police Officer/SSP (respondent No.3) was the sole Authority to do so under the said Rules. It is well settled law that when a statute prescribes a particular mode of doing an act it must be done in that way alone to gain validity otherwise not at all. Reliance in this respect can be placed on the judgment of august Supreme Court of Pakistan reported in **2008-SCMR-1148(citation-b)**. It would be advantageous to reproduce the said citation for facility of reference:

2008-SCMR-1148(citation-b)
(b) Administration of justice---

---Where law provided for doing of a particular act in a particular manner, then same would be done in such particular manner or not at all.

It is also well settled principle of law that when the initial order or the very act which relates to the initiation of a proceeding is contrary to law and illegal then all subsequent proceedings and actions taken on the basis of such illegal and unlawful action would have no basis and would fall on the ground automatically. Reliance can also be placed on the judgment of august Supreme Court of Pakistan reported in **2009-SCMR-339 (citation-c)**. The relevant citation is as under:

2009-SCMR-339 (citation-c)
(c) Administration of justice---

---When initial order or act relating of initiation of proceedings was

contrary to law and illegal, then all subsequent proceedings and actions taken thereon would have no basis and would fall.

Thus, the entire proceedings from top to bottom are coram non-judice. Therefore, the impugned order is liable to be set aside on this score alone.

- C.** That the Competent Authority was under statutory obligation to have served a charge sheet alongwith statement of allegations on the appellant to explain his position in respect of so-called allegations. But he failed to do so and as such blatantly violated the law laid down by august Supreme Court of Pakistan reported in **2000-SCMR-1743 (citation-a)**. The relevant citation of the judgment is as follows:-

2000-SCMR-1743(citation-a)

Dismissal from service---Framing of charge and its communication to civil servant alongwith statement of allegations was not mere a formality but was a mandatory requisite which was to be followed.

Therefore, the impugned order is bad in law

- D.** That the so called enquiry was conducted in utter violation of law as neither any witness was examined in presence of appellant nor he was provided any opportunity of cross examination. Similarly, he was also not given any chance to produce his defence in support of his version and as such he was denied the right of fair trial as enshrined in **Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973**. Therefore, the impugned order is not sustainable in the eye of law.

- E.** That the Committee was under statutory obligation to have examined the person who had recorded such video and then displayed it on private News Channel so as to prove the genuineness of the said CCTV footage but they did not bother to do so and blatantly violated the law laid down by august Supreme Court of Pakistan reported in

2016-SCMR-2084 (citation-b). The relevant citation is mentioned below:

2016-SCMR-2084 (citation-b)
(b) Qanun-e-Shahadat (10 of 1984)—

—Art. 164—Closed-Circuit Television (CCTV) footage—Evidentiary value—Mere producing of CCTV footage as a piece of evidence in court was not sufficient to rely upon the same unless and until it was proved to be genuine—In order to prove the genuineness of such footage it was incumbent upon the defence or prosecution to examine the person who prepared such footage from the CCTV system.

The above dictum was also followed by this Hon'ble Tribunal vide judgment dated 08-01-2018 passed in Service Appeal No.613/2017 titled "Qamar Zaman, Ex-SHO/S.I PS Katlang, Mardan VS PPO etc". Hence, the impugned order is bad in law.

F. That the Provincial Police Officer (respondent No.1) had ordered to dismiss all the three employees but the appellant alone was made a scape goat and awarded him major penalty of dismissal from service. This is a disparity and anomaly and is also violation of **Article 25 of the Constitution of Islamic republic of Pakistan, 1973** which has unequivocally laid down that all citizens placed in similar circumstances are entitled to equal treatment and protection of law. The Hon'ble Supreme Court of Pakistan through various judgments has maintained that equal treatment is fundamental right of every citizen. Hence, this being a classic case of sheer injustice on the part of departmental authority and as such the impugned order is liable to be reversed on this count alone.

G. That so far as the challan of fine to the violator drivers is concerned, it is the duty and responsibility of Head Constable Irshad Khan to produce the same before the enquiry Committee and the appellant being a Constable had nothing else to do. But the Committee has

overlooked this important aspect of the case and also held the appellant guilty of allegations. Therefore, the impugned order is perverse and liable to be set aside.

H. That the respondent No.3 was legally bound to have served a show cause notice on the appellant before awarding major penalty of dismissal from service but he failed to do so and blatantly violated the law laid down by august Supreme Court of Pakistan reported in **1989-SCMR-1690 (citation-a) & 2009-SCMR-605 (citation-c)**. The relevant citations of the judgments are as under:

1989 S C M R 1690(citation-a)

--S.6--Constitution of Pakistan (1973), Art. 203-F--Repugnancy to Injunctions of Islam--Disclosure by a show-cause notice of grounds on which action under of the Act was proposed to be taken and of an opportunity of hearing to the person concerned against whom an action was required to be taken, held, was necessary and its absence from a statute was repugnant to the Injunctions of Islam.

2009 S C M R 605
(citation-c)

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

The above dictum was also followed by this Hon'ble Tribunal while deciding the following appeals:

S No.	Appeal No.	Title	Date of Decision
1.	1074/2012	Saqib Gul VS DPO Mansehra etc	23-11-2017
2	613/2017	Qamar Zaman VS PPO etc	08-01-2018

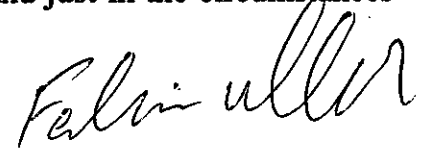
Hence, the impugned order is not tenable under the law.

- I.** That the Competent Authority (respondent No.3) was under statutory obligation to have provided a copy of enquiry report to the appellant being the requirement of law in order to enable him to prepare a suitable reply in support of his version. But the said Authority failed to do so. Therefore, the impugned order is not warranted under the law.
- J.** That the District Police Officer (respondent No.3) who was competent to pass order of dismissal of service of appellant acted on the order of Provincial Police Officer (respondent No.1) who had no Authority to do so under the relevant Rules and as such the impugned order passed cannot be deemed to have been passed by the District Police Officer (respondent No.3) independently who had simply given effect to the order of respondent No.1. Therefore, the impugned order is required to be reversed on this count alone.
- K.** That it is obvious from the record that when the so called video was displayed on TV channel, the Provincial Police Officer (Respondent No. 1) who was a Revisional Authority under the Khyber Pakhtunkhwa Police Rules, 1975 straightaway ordered for conducting enquiry against the appellant and two other police officials bypassing the Competent Authority and thereafter also ordered for the dismissal of the above employees and directed the Competent Authority for compliance of the same. This act/conduct of the said Revisional Authority was in sheer violation of principle that "No body can be a judge of his own cause" (nemo debet esse judex in causa propria sua). Therefore, such authority was not competent to hear revision petition against his own action and order. Hence, the impugned order is liable to be set-aside on this score alone.
- L.** That the impugned order is against law, facts of the case and norms of natural justice. Therefore, the same is not tenable under the law.

- M. That the respondent No. 1 has passed the impugned order in mechanical manner and the same is perfunctory as well non-speaking and also against the basic principle of administration of justice. Thus, the same is not warranted under the law.
- N. That the impugned order is based on conjectures and surmises. Hence, the same is against the legal norms of justice.
- O. That the appellant would like to seek the permission of this Hon'ble Tribunal to advance some more grounds at the time of arguments.

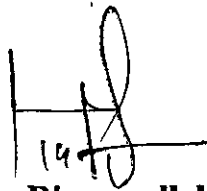
In view of the above narrated facts and grounds, it is, therefore, humbly prayed that the impugned order dated 08-05-2018 passed by Provincial Police officer (Respondent No. 1) may very graciously be declared as illegal, unlawful and without lawful authority and the same may kindly be set-aside with all consequential benefits to the appellant.

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


Appellant

Through

Dated: 10/07/2018


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

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

Amended Service Appeal No. _____/2018

1. Faheem Ullah, Ex-Constable No. 1200, S/O Khamim Ullah R/O Mohallah Sadri Khel Pir Piai, District Tehsil Nowshera.

APPELLANT

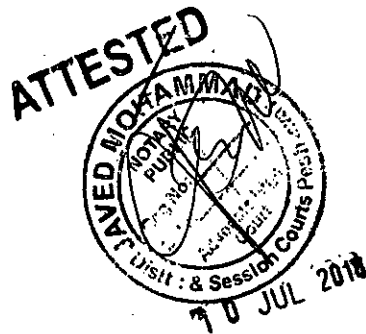
VERSUS

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

RESPONDENTS

AFFIDAVIT

I, Faheem Ullah, Ex-Constable No. 1200, S/O Khamim Ullah R/O Mohallah Sadri Khel Pir Piai, District Tehsil Nowshera, do hereby solemnly affirm and declare that the contents of the accompanied amended Service Appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.



Faheem Ullah

DEPONENT





mediate.

Tele: 991-9211947
Fax: 991-9211947

1/2

Office of the Inspector General of Police
Khyber Pakhtunkhwa, Peshawar.

No. 1607

/E&I, dated Peshawar the 06 -12-2017

To : The Deputy Inspector General of Police,
Traffic, Khyber Pakhtunkhwa, Peshawar.

Amin A

Subject: POLICE OFFICIALS SHOWN IN VIDEO.

Memo:

While perusing the enquiry ^{report} report of SSP Traffic, Peshawar into the subject matter, the worthy IGP ordered as under:-

- i. HC/TO Irshad Khan No.502(on deputation from CCP)/C EPA Squad.
- ii. FC Maqsood Alam No.1450 (on deputation from charsadda).
- iii. FC Faheem Ullah No.1300/52 (on deputation from Nowshera.
(Call in O.R. may be dismissed from service).

2. The orders of the worthy IGP may be complied and the dismissal orders of the mentioned officials may be send to this office, for the perusal of the IGP.

Matter most urgent.

Encl: As Above.

Imran

IMRAN AHMED MALIK, PSP
AIG Complaints & Enquiry,
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

No. /E&I.

Copy of above is forwarded for information to:

1. The Capital City Police Officer, Peshawar w/r 2083/PSO, dated 30-11-2017.
2. The DIG HQrs, Khyber Pakhtunkhwa, Peshawar.
3. The SSP Traffic, Peshawar w/r 1176/PA, dated 29-11-2017.
4. The District Police Officer, Nowshera.
5. The PSO to worthy IGP w/r 6143-47/PPO, dated 28-11-2017.
6. The District Police Officer, Charsadda.
7. The Registrar, C.P.O. Peshawar.

ATTESTED

Fahimullah
For Appellant

IMRAN AHMED MALIK, PSP
AIG Complaints & Enquiry,
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

ATTESTED

[Handwritten marks]

DISMISSAL ORDER

initiated in

This order will dispose off a departmental enquiry initiated in Khyber Pakhtunkhwa Police Rules, 1975 against FC Fakhem Ullah No. 1260 under allegations that he was transferred to Highway Staff, Traffic Police, Khyber Pakhtunkhwa deputation and posted in EPA Squad Traffic Police, Peshawar. He is reportedly involved in taking illegal gratification from the drivers as viral on a private news channel on 28.11.2017.

On account of which, he was placed under suspension, proceeded against departmentally through enquiry committee consisting of SSP Traffic Peshawar & DSP Investigation, CCP, Peshawar. The enquiry committee after fulfilling procedural formalities, submitted their report to Capital City Police Officer, Peshawar vide SSP Traffic office Memo: No. 1176/PA, dated 29.11.2017, wherefrom CCPO Peshawar forwarded the same to Worthy Inspector General of Police, Khyber Pakhtunkhwa vide his office Memo No. 2083/PSO, dated 30.11.2017, stating therein that he did not show the copy of challan issued to the violator driver as per his statement and suggested for major punishment. Upon perusal of the said enquiry report, the Inspector General of Police, Khyber Pakhtunkhwa ordered that he may be called in Orderly Room and dismissed from service.

He was heard in Orderly Room on 03.01.2018, wherein he failed to produce any cogent reason in his defense, therefore, he is hereby awarded major punishment of dismissal from service with immediate effect, in exercise of the powers vested in me under Khyber Pakhtunkhwa Police Rules, 1975.

OB 41
Dated 03/01/2018.

[Signature]
District Police Officer,
Nowshera.

No. 178-32 /PA, dated Nowshera, the 3/1/2018.

Copy for information and necessary action to the:-

1. Assistant Inspector General of Police, Complaints & Enquiry, Khyber Pakhtunkhwa w/r to his office Endst: No. 1608-14/E&I, dated 06.12.2017.
2. SSP Traffic, Peshawar.
3. PSO to Inspector General of Police, Khyber Pakhtunkhwa.
4. Pay Officer.
5. Establishment Clerk.
6. OHC.
7. FMC with relevant papers.

ATTESTED

Fahim Ullah
For Appellant

ATTESTED

To: Deputy Inspector General of Police,
Mardan Region-I Mardan.

Annex = C
14

Subject: APPEAL FOR REINSTATEMENT IN SERVICE

Respected Sir,

With profound respect and humble submission, I beg to submit that I have been awarded a Major Punishment of Dismissal from service by the DPO Nowshera for the allegation of corruption (viral on a private News channel on 28-11-2017) vide OB No.41 dated 08-01-2018, against which I am going to submit the present Appeal for Re-instatement in service, on the following grounds:-

1. While posted to Traffic CCP Peshawar, I was transferred to Nowshera District by the IGP KPK Peshawar for having involved in taking illegal gratification. It was also directed that the appellant be called in OR and should be dismissed from service. I have complied with the orders, appeared before the DPO Nowshera and explained my position but with no due consideration and I was straightaway dismissed from service.
2. Only a preliminary enquiry was conducted by SSP Traffic Peshawar and DSP Investigation CCP Peshawar. Neither any Show cause notice nor Charge sheet was issued to me. However, my statement was recorded wherein I have stated that the Traffic officials are not receiving the Traffic Challan fine in cash from the drivers/violators. I was performing my duties on Ring Road Peshawar under the command of TO Irshad Khan who was competent to give Challan to the drivers/violators and that I have no concern with the said duty.
3. I have not taken any illegal gratification from anyone.
4. I also complained that the video of taking illegal gratification as viral on a private News channel on 28-11-2017, was not clear and that the Traffic Staff could not be identified.
5. The name of driver, vehicle Number was not shown/identified during the course of enquiry.
6. The allegation was not proved against me and a major punishment was suggested against me.
7. Final show cause notice was also not issued.
8. The process was beyond/contrary to the rules (PR-1975).
9. I have served the department for 16 years, qualified in weapon Trg. Course, Fire Arms Course, Bomb Disposal Course, Bomb Reconnaissance course and Traffic Course.

ATTESTED

at the
for Appellant

ATTESTED

15

10. I have performed my duties up to the entire satisfaction of my superiors and there is no such complaint or any other kind of complaint against me during my whole/long service, but it was not taken into consideration at the time of issuing the above cited impugned order.
 11. I have performed my duties in PS Pabbi, Akora, Akbarpura, Nowshera Kalan and Traffic Staff Nowshera for a long time and there was no such complaint or any other complaint against me.
 12. I am totally innocent in the matter and that a very harsh and severe action was taken against me.
 13. I am the only dependant of a large family and am in continuous tension as well as facing financial hardships.
- I, therefore, approach your good self to kindly consider/accept my Appeal and the order of dismissal issued by DPO Nowshera vide OB No.41 dated 08-01-2018 may kindly be withdrawn for which I shall be highly obliged.

Yours Obediently,

Faheem Ullah

25/1/2018

(Faheem Ullah)
Ex- Constable No.1200.
s/o Khanim Ullah r/oMoh.
Sadri Khel Pir Piai The. &
Distt. Nowshera.
Mob No.0312-9307097.

ATTESTED

ATTESTED

Faheem Ullah
For Appellant

Annex-D (16)

ORDER.

This order will dispose-off the appeal preferred by Ex-Constable Faheem Ullah No. 1200 of Nowshera District Police against the order of the District Police Officer, Nowshera, whereby he was awarded Major punishment of dismissal from service vide District Police Officer, Nowshera OB No. 41 dated 05.01.2018.

Brief facts of the case are that the appellant was transferred to Highway Staff Traffic Police, Khyber Pakhtunkhwa on deputation and posted in EPA Squad Traffic Police, Peshawar. He was reportedly, involved in taking illegal gratification from the drivers as viral on a private news channel on 28.11.2017. On account of which, he was placed under suspension and proceeded against departmentally through enquiry committee consisting of SSP Traffic, Peshawar & DSP Investigation, CCP, Peshawar. The enquiry committee after fulfillment of codal formalities, submitted their report to Capital City Police Officer, Peshawar vide SSP Traffic office Memo: No. 1176/PA, dated 29.11.2017, wherefrom CCPO Peshawar forwarded the same to Worthy Inspector General of Police, Khyber Pakhtunkhwa vide his office Memo: No. 2083/PSO, dated 30.11.2017, stating therein that he did not show the copy of challan issued to the violator driver as per his statement and suggested for major punishment. Upon perusal of the said enquiry report, the Inspector General of Police, Khyber Pakhtunkhwa ordered that he may be called in Orderly Room and dismissed from service. He was heard in Orderly Room on 03.01.2018, by District Police Officer, Nowshera wherein he failed to produce any cogent reason in his defense, therefore, he was awarded major punishment of dismissal from service.

He was called in orderly room held in this office on 14.02.2018 and heard him in person, but he did not produce any substantial evidence about his innocence. Therefore, I find no grounds to intervene the order passed by the then District Police Officer, Nowshera. Appeal is rejected.

ORDER ANNOUNCED.

(Muhammad Alam Shinwari)PSP
Regional Police Officer,
Mardan

No. 1062 /ES. Dated Mardan the 18/02 /2018.

Copy to District Police Officer, Nowshera for information and necessary action w/r to his office Memo: No. 575/PA dated 26.01.2018. The Service Record is returned herewith.

(*****)

ATTESTED

EC JMC
For on action

Faheem Ullah
For Appellant

ATTESTED

177

Annex-E بخدمت جناب محترم آئی جی صاحب خیبر پختونخواہ

عنوان: اپیل برائے رحم و داد رسی

جناب عالی!

سائل ایک غریب اور ایماندار آدمی ہے سائل کے والد صاحب بہت ضعیف اور دل کے مریض ہے۔ سائل کے چار بچے ہیں اور سائل اپنے خاندان کا واحد سربراہ ہے۔ جناب عالی سائل کے خلاف سولہ سالہ نوکری میں کوئی بھی کمپنٹ / رشوت یا بدعنوانی کی شکایت موصول نہیں ہوئی ہے۔

جناب عالی سائل کو ایک جھوٹی ویڈیوں کے ذریعے نوکری سے نکلوایا گیا ہے جس میں کوئی سچ نہیں ہے۔ جناب محترم IGP صاحب سائل آپ سے رحم کی اپیل کرتا ہے اور سائل یہ توقع بھی رکھتا ہے کہ آپ میری اپیل رد

نہیں کریں گے۔

سائل آپ کو تاحیات دعا گورہیگا۔

شکریہ

العارض
Fahimullah

از طرف ایکس کنسٹیبل فہیم اللہ ولد خانم اللہ
No-13001/2018

سکنہ: پیرپائی ضلع نوشہرہ

موبائل: 0312-9307097

ATTESTED

Fahimullah
For Appellant

08/06/18

D-P- NO = 2062/SB

ATTESTED



OFFICE OF THE
INSPECTOR GENERAL OF PO
KHYBER PAKHTUNKHWA
PESHAWAR.

Annex - F (18)

No. S/ 1787 /18, dated Peshawar the 08/5/18.

ORDER

This order is hereby passed to dispose of departmental appeal under Rule II-A of Khyber Pakhtunkhwa Police Rules-1975 submitted by Ex-FC Faheem Ullah No. 1300. The petition was dismissed from service by DPO Nowshera vide OB No. 41, dated 05.01.2018 on the charge that he was transferred to Highway Staff Traffic Police Khyber Pakhtunkhwa on deputation and posted in EPA Squad Traffic Police Peshawar. He was reportedly, involved in taking illegal gratification from the drivers ~~as Viral~~ on a private news channel on 28.11.2017.

His appeal was rejected by Regional Police Officer, Mardan vide order Endst. No. 1062/ES, dated 19.02.2018.

Meeting of Appellate Board was held on 26.04.2018 wherein petitioner ~~was heard~~ was heard in person. During hearing petitioner denied the allegation of receiving illegal gratification.

There is long service of 15 years and 11 months at the credit of the petitioner; therefore, the Board decided that the petitioner is hereby re-instated into service and penalty of dismissal from service is converted into major penalty of reduction in pay by two stages for two years. However, the intervening period shall be counted towards service but not on duty. He will not be entitled for any kind of financial benefits including monthly salary for the said period.

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

(IRFAN ULLAH KI
AIG/Establishment
For Inspector General of
Khyber Pakhtunkhwa
Peshawar.

No. S/ 1788-94 /18.

Copy of the above is forwarded to the:

1. Regional Police Officer, Mardan.
2. District Police Officer, Nowshera.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. PA to AIG/Legal, Khyber Pakhtunkhwa, Peshawar.
7. Office Supdt: E-IV CPO Peshawar.

DIG, EC, FMIC, PO, OHC

For n. action

ATTESTED

Attested
Faheem Ullah
Appellant.

OBNO 547
dt 8-5-2018

DPOWS
8-5-2018

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

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No. 374 /2018

Diary No. 399

Dated 15-3-2018

1. Faheem Ullah, Ex-Constable No. 1200, S/O Khan:im Ullah R/O Mohallah Sadri Khel Pir Piai, District Tehsil Nowshera.

APPELLANT



VERSUS

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa.
2. The Regional Police Officer, Mardan Region-I, Mardan.
3. The District Police Officer, Nowshera.

RESPONDENTS

**APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
IMPUGNED ORDER DATED 8-1-2018
PASSED BY THE DISTRICT
POLICE OFFICER NOWSHERA
(RESPONDENT NO.3) WHEREBY THE
APPELLANT WAS AWARDED MAJOR
PENALTY OF DISMISSAL FROM
SERVICE AGAINST WHICH A
DEPARTMENTAL APPEAL WAS
FILED WITH (RESPONDENT NO.2) ON
25-1-2018 BUT THE SAME WAS
DISMISSED ON 19-2-2018.**

Filed to-day

Registrar
15/3/18

Certified to be true copy

CHIEF CLERK
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Appeal No. 374/2018
Faheemullah vs Govt



06.07.2018

Counsel for the appellant Faheem Ullah present

was contended by learned counsel for the appellant that the appellant was serving in Police Department, however, during service he was dismissed from service on the allegation of illegal gratification. He filed Departmental appeal but the same was rejected and later on the appellant filed revision petition before the competent authority which was also not responded hence, the present service appeal. It was further contended that during the pendency of the present service appeal the revision authority has partially accepted the revision petition of the appellant and reinstated the appellant into service however, the penalty of dismissal from service was converted into reduction in pay by two stages for two years therefore, requested for amendment in service appeal. Request is allowed. To come up for amended appeal as well as preliminary arguments on 03.08.2018 before S.B.

Date of Presentation of Application 6-7-18
 Number of Words 852
 Copying Fee 6
 Urgent 1
 Total 6
 Name of Copyist [Signature]
 Date of Completion of Copy 10-7-18
 Date of Delivery of Copy 10-7-18

Certified to be true copy
EXAMINER
 Khayber Pakhtunkhwa
 Service Tribunal,
 Peshawar

[Signature]
 (Muhammad Amin Khan Kundi)
 Member

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

Service Appeal No. 374 /2018

1. Faheem Ullah, Ex-Constable No. 1200, S/O Khanim Ullah R/O Mohallah Sadri
Khel Pir Piaj, District Tehsil Nowshera.

APPELLANT

VERSUS

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

RESPONDENTS

I N D E X

S.No	Particulars	Annexure	Pages #
1	Service Appeal	—	1-9
2	Affidavit	—	10
3	Copy of order	“A”	11
4	Copy of impugned order dated 8-01-2018	“B”	12
5	Copy of departmental appeal dated 25-01-2018	“C”	13-14
6	Copy of Rejection order dated 19/2/2017	“D”	15
7	Copy of revision petition	“E”	16
8	Wakalatnama	—	—

Fahim Ullah
Appellant

Through

Dated: 15/03/2018

H. Rizwanullah
14
Rizwanullah
M.A LL.B

Advocate High Court, Peshawar.

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

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No. 374 /2018

Diary No. 399

Dated 15-3-2018

1. Faheem Ullah, Ex-Constable No. 1200, S/O Khanim Ullah R/O Mohallah Sadri Khel Pir Piai, District Tehsil Nowshera.

APPELLANT

VERSUS

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa.
2. The Regional Police Officer, Mardan Region-I, Mardan.
3. The District Police Officer, Nowshera.

RESPONDENTS

Filed to-day
Registrar
15/3/18

**APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
IMPUGNED ORDER DATED 8-1-2018
PASSED BY THE DISTRICT
POLICE OFFICER NOWSHERA
(RESPONDENT NO.3) WHEREBY THE
APPELLANT WAS AWARDED MAJOR
PENALTY OF DISMISSAL FROM
SERVICE AGAINST WHICH A
DEPARTMENTAL APPEAL WAS
FILED WITH (RESPONDENT NO.2) ON
25-1-2018 BUT THE SAME WAS
DISMISSED ON 19-2-2018.**

Prayer in Appeal

By accepting this appeal, the impugned orders may very graciously be set aside and the appellant may kindly be reinstated in service with full back wages and benefits.

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

Respectfully Sheweth,

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

1. That the appellant was appointed as Constable on 31-01-2002 in the Police Department. He had 16 years unblemished service record to his credit.
2. That the appellant was on deputation from Nowshera Police to Highway Staff, Traffic Police Khyber Pakhtunkhwa. He was further posted to EPA Squad Traffic Police Peshawar.
3. That the appellant was performing his duty with great zeal, zest and devotion but strangely, it was reported that he **“involved in taking illegal gratification from drivers as viral on a private News Channel on 28-11-2017”**. Resultantly, the Provincial Police Officer, Khyber Pakhtunkhwa (respondent No.1) straightaway constituted an Enquiry Committee against appellant and two other Police employees namely Irshad Khan HC No.502 and Maqsood Alam HC No.1450 respectively. The said Committee was comprising of following three senior officers:

- i) CCP Peshawar,
- ii) SSP Traffic Peshawar
- iii) DSP Investigation

That the Committee conducted enquiry and held the above employees guilty of the allegations and recommended for award of major penalty

and then submitted the report to the Capital City Police Officer, Peshawar vide Memo No. 1176/PA dated 29-11-2017. This report was further forwarded to the Provincial Police Officer (respondent No.1) vide Memo No. 2083/PSO dated 30-11-2017 as evident from the impugned order.

4. That on the basis of such report, the Provincial Police Officer (respondent No.1) passed the following orders:

“while perusing the enquiry report of SSP Traffic, Peshawar into the subject matter, the worthy IGP ordered as under:

- i. **HC/TO Irshad Khan No.502**
(on deputation from CCP) I/C EPA
Squad.
- ii. **FC Maqsood Alam No. 1450**
(on deputation from Charsadda)
- iii. **FC Faheem Ullah No. 1300/52**
(on deputation from Nowshera)

(Call in O.R. may be dismissed from service)

The orders of the worthy IGP may be complied and the dismissal orders of the mentioned officials may be sent to this office, for the perusal of the IGP”.

(Copy of order/letter is appended as Annex-A)

5. That thereafter, the appellant was awarded major penalty of dismissal from service vide formal order dated 8-01-2018 passed by the District Police Officer, Nowshera (respondent No.3).

(Copy of impugned order is appended as Annex-B)

6. That the appellant felt aggrieved by the said order, filed a departmental appeal with the DIG Mardan Region-I, Mardan (respondent No.2) on 25-01-2018. But the same was rejected on

19/2/2017. He then filed a revision petition under **Rule 11A(4) of Khyber Pakhtunkhwa Police Rules, 1975** but the same was not responded.

(Copy of Departmental appeal, rejection order and revision petition are appended as Annex-C, D & E).

7. That the appellant is jobless since his dismissal from service.
8. That the appellant now files this appeal before this Hon'ble Tribunal inter-alia on the following grounds within the statutory period of law.

GROUND OF APPEAL

- A. That respondents have not treated appellant in accordance with law, rules and policy on the subject and acted in violation of **Article 4 of the Constitution of Islamic Republic of Pakistan, 1973**. Therefore, the impugned orders are not sustainable in the eye of law.
- B. That the Provincial Police Officer (respondent No.1) was not competent to initiate disciplinary proceedings and taken it to logical end against the appellant and other employees and the District Police Officer/SSP (respondent No.2) was the sole Authority to do so under the said Rules. It is well settled law that when a statute prescribes a particular mode of doing an act it must be done in that way alone to gain validity otherwise not at all. Reliance in this respect can be placed on the judgment of august Supreme Court of Pakistan reported in **2008-SCMR-1148(citation-b)**. It would be advantageous to reproduce the said citation for facility of reference:

2008-SCMR-1148(citation-b)
(b) Administration of justice---

----Where law provided for doing of
a particular act in a particular

manner, then same would be done in such particular manner or not at all.

It is also well settled principle of law that when the initial order or the very act which relates to the initiation of a proceeding is contrary to law and illegal then all subsequent proceedings and actions taken on the basis of such illegal and unlawful action would have no basis and would fall on the ground automatically. Reliance can also be placed on the judgment of august Supreme Court of Pakistan reported in **2009-SCMR-339 (citation-c)**. The relevant citation is as under:

2009-SCMR-339 (citation-c)
(c) Administration of justice---

---When initial order or act relating of initiation of proceedings was contrary to law and illegal, then all subsequent proceedings and actions taken thereon would have no basis and would fall.

Thus, the entire proceedings from top to bottom are coram non-judice. Therefore, the impugned orders are liable to be set aside on this score alone.

- C.** That the Competent Authority was under statutory obligation to have served a charge sheet alongwith statement of allegations on the appellant to explain his position in respect of so-called allegations. But he failed to do so and as such blatantly violated the law laid down by august Supreme Court of Pakistan reported in **2000-SCMR-1743 (citation-a)**. The relevant citation of the judgment is as follows:-

2000-SCMR-1743(citation-a)

Dismissal from service---Framing of charge and its communication to civil servant alongwith statement of allegations was not mere a formality but was a mandatory requisite which was to be followed.

Therefore, the impugned orders are bad in law



D. That the so-called enquiry was conducted in utter violation of law as neither any witness was examined in presence of appellant nor he was provided any opportunity of cross examination. Similarly, he was also not given any chance to produce his defence in support of his version and as such he was denied the right of fair trial as enshrined in **Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973**. Therefore, the impugned orders are not sustainable in the eye of law.

E. That the Committee was under statutory obligation to have examined the person who had recorded such video and then displayed it on private News Channel so as to prove the genuineness of the said CCTV footage but they did not bother to do so and blatantly violated the law laid down by august Supreme Court of Pakistan reported in **2016-SCMR-2084 (citation-b)**. The relevant citation is mentioned below:

2016-SCMR-2084 (citation-b)
(b) Qanun-e-Shahadat (10 of 1984)---
----Art. 164---Closed-Circuit
Television (CCTV) footage---
Evidentiary value---Mere producing
of CCTV footage as a piece of
evidence in court was not sufficient
to rely upon the same unless and
until it was proved to be genuine---In
order to prove the genuineness of
such footage it was incumbent upon
the defence or prosecution to
examine the person who prepared
such footage from the CCTV system.

The above dictum was also followed by this Hon'ble Tribunal vide judgment dated 08-01-2018 passed in Service Appeal No.613/2017 titled "Qamar Zaman, Ex-SHO/S.I PS Katlang, Mardan VS PPO etc". Hence, the impugned orders are bad in law.

F. That the Provincial Police Officer (respondent No.1) had ordered to dismiss all the three employees but the appellant alone was made a scape-goat and awarded him major penalty of dismissal from service. This is a disparity and anomaly and is also violation of **Article 25 of**

the Constitution of Islamic republic of Pakistan, 1973 which has unequivocally laid down that all citizens placed in similar circumstances are entitled to equal treatment and protection of law. The Hon'ble Supreme Court of Pakistan through various judgments has maintained that equal treatment is fundamental right of every citizen. Hence, this being a classic case of sheer injustice on the part of departmental authority and as such the impugned orders are liable to be reversed on this count alone.

G. That so far as the challan of fine to the violator drivers is concerned, it is the duty and responsibility of Head Constable Irshad Khan to produce the same before the enquiry Committee and the appellant being a Constable had nothing else to do. But the Committee has overlooked this important aspect of the case and also held the appellant guilty of allegations. Therefore, the impugned orders are perverse and liable to be set aside.

H. That the respondent No.3 was legally bound to have served a show cause notice on the appellant before awarding major penalty of dismissal from service but he failed to do so and blatantly violated the law laid down by august Supreme Court of Pakistan reported in **1989-SCMR-1690 (citation-a) & 2009-SCMR-605 (citation-c)**. The relevant citations of the judgments are as under:

1989 S C M R 1690(citation-a)

---S.6--Constitution of Pakistan (1973), Art. 203-F--Repugnancy to Injunctions of Islam--Disclosure by a show-cause notice of grounds on which action under of the Act was proposed to be taken and of an opportunity of hearing to the person concerned against whom an action was required to be taken, held, was necessary and its absence from a statute was repugnant to the Injunctions of Islam.



2009 S C M R 605
(citation-c)

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

The above dictum was also followed by this Hon'ble Tribunal while deciding the following appeals:

S No.	Appeal No.	Title	Date of Decision
1.	1074/2012	Saqib Gul VS DPO Mansehra etc	23-11-2017
2	613/2017	Qamar Zaman VS PPO etc	08-01-2018

Hence, the impugned orders are not tenable under the law.

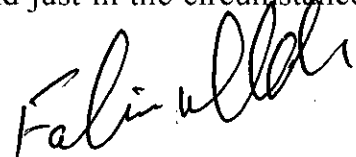
- I.** That the Competent Authority (respondent No.3) was under statutory obligation to have provided a copy of enquiry report to the appellant being the requirement of law in order to enable him to prepare a suitable reply in support of his version. But the said Authority failed to do so. Therefore, the impugned order are not warranted under the law.
- J.** That the District Police Officer (respondent No.3) who was competent to pass order of dismissal of service of appellant acted on the order of Provincial Police Officer (respondent No.1) who had no Authority to do so under the relevant Rules and as such the impugned order passed cannot be deemed to have been passed by the District Police Officer (respondent No.3) independently who had simply given effect to the order of respondent No.1. Therefore, the impugned orders are required to be reversed on this count alone.
- K.** That the impugned orders are against law, facts of the case and norms of natural justice. Therefore, the same are not tenable under the law.
- L.** That the respondents have passed the impugned orders in mechanical manner and the same are perfunctory as well non-speaking and also

against the basic principle of administration of justice. Thus, the same are not warranted under the law.

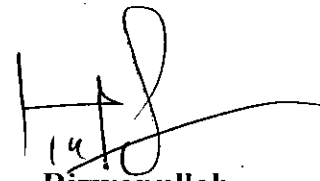
- M.** That the impugned orders are based on conjectures and surmises. Hence, the same are against the legal norms of justice.
- N.** That the appellant would like to seek the permission of this Hon'ble Tribunal to advance some more grounds at the time of arguments.

In view of the above narrated facts and grounds, it is, therefore, humbly prayed that the impugned orders may very graciously be set aside and the appellant may kindly be reinstated in service with full back wages and benefits.

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


Appellant

Through



Rizwanullah
M.A. LL.B

Advocate High Court, Peshawar.

Dated: 15/3/2018

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

Service Appeal No. _____/2018

1. Faheem Ullah, Ex-Constable No. 1200, S/O Khanjim Ullah R/O Mohallah Sadri Khel Pir Piai, District Tehsil Nowshera.

APPELLANT

VERSUS

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

RESPONDENTS

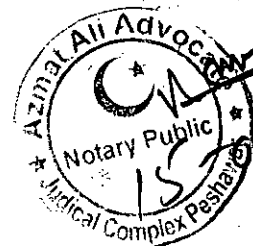
AFFIDAVIT

I, Faheem Ullah, Ex-Constable No. 1200, S/O Khanjim Ullah R/O Mohallah Sadri Khel Pir Piai, District Tehsil Nowshera, do hereby solemnly affirm and declare that the contents of the accompanied Service Appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

Faheem Ullah
DEPONENT

17301-1407677-1

ATTESTED





Media.

Tele: 091-9211947
Fax: 091-9211947

11

Office of the Inspector General of Police
Khyber Pakhtunkhwa, Peshawar.

No. 1607

/E&I, dated Peshawar the 06 -12-2017

To : The Deputy Inspector General of Police,
Traffic, Khyber Pakhtunkhwa, Peshawar.

Amir A

Subject: POLICE OFFICIALS SHOWN IN VIDEO.

Memo:

While perusing the enquiry report of SSP Traffic, Peshawar into the subject matter, the worthy IGP ordered as under:-

- i. HC/TO Irshad Khan No.502(on deputation from CCP)/IC EPA Squad.
 - ii. FC Maqsood Alam No.1450 (on deputation from charsadda).
 - iii. FC Faheem Ullah No.1300/52 (on deputation from Nowshera.
(Call in O.R. may be dismissed from service).
2. The orders of the worthy IGP may be complied and the dismissal orders of the mentioned officials may be send to this office, for the perusal of the IGP.

Matter most urgent.

Encl: As Above.

Imran

IMRAN AHMED MALIK, PSP
AIG Complaints & Enquiry,
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

No. /E&I,

Copy of above is forwarded for information to:

1. The Capital City Police Officer, Peshawar w/r 2083/PSO, dated 30-11-2017.
2. The DIG HQrs, Khyber Pakhtunkhwa, Peshawar.
3. The SSP Traffic, Peshawar w/r 1176/PA, dated 29-11-2017.
4. The District Police Officer, Nowshera.
5. The PSO to worthy IGP w/r 6143-47/PPO, dated 28-11-2017.
6. The District Police Officer, Charsadda.
7. The Registrar, Peshawar.

ATTACHED

Fatima ulle
For Appellant

IMRAN AHMED MALIK, PSP
AIG Complaints & Enquiry,
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

Imran

777

12

Annex B

NOVSBARA DISTRICT

POLICE DEPARTMENT

DISMISSAL ORDER

This order will dispose of a departmental enquiry initiated in Khyber Pakhtunkhwa Police Rules, 1975 against FC Faheem Ullah No. 1260, under allegations that he was transferred to Highway Staff, Traffic Police, Khyber Pakhtunkhwa deputation and posted in EPA Squad Traffic Police, Peshawar. He is reportedly, involve taking illegal gratification from the drivers as viral on a private news channel on 28.11.2017

On account of which, he was placed under suspension proceeded against departmentally through enquiry committee consisting of SSP Traffic Peshawar & DSP Investigation, CIP, Peshawar. The enquiry committee after fulfillment of codal formalities, submitted their report to Capital City Police Officer, Peshawar vide SSP Traffic office Memo: No. 1176/PA, dated 29.11.2017, wherefrom CCPO Peshawar forwarded the same to worthy Inspector General of Police, Khyber Pakhtunkhwa vide his office No. 2083/PSO, dated 30.11.2017, stating therein that he did not show the copy of challan issued to the violator driver as per his statement and suggested for major punishment. Upon perusal of the said enquiry report, the Inspector General of Police, Khyber Pakhtunkhwa ordered that he may be called in Orderly Room and dismissed from service.

He was heard in Orderly Room on 03.01.2018, wherein he failed to produce any cogent reason in his defense, therefore, he is hereby awarded major punishment of dismissal from service with immediate effect, in exercise of the powers vested in me under Khyber Pakhtunkhwa Police Rules, 1975.

OB 4/1
Dated 05/01/2018.

No. 126-82/PA, dated Nowshera, the 3/1/2018.
District Police Officer, Nowshera.

Copy for information and necessary action to the:-

- 1. Assistant Inspector General of Police, Complaints & Enquiry, Khyber Pakhtunkhwa w/r to his office-Endst: No. 1608-14/E&I, dated 06.12.2017.
- SSP Traffic, Peshawar.
- RSG to Inspector General of Police, Khyber Pakhtunkhwa.
- Pay Officer.
- Establishment Clerk.
- OHC.
- FMC with relevant papers.

ATTESTED
For Applicant

Annex-C
(13)

To: Deputy Inspector General of Police,
Mardan Region-I Mardan

Subject: APPEAL FOR REINSTATEMENT IN SERVICE

Respected Sir,

With profound respect and humble submission, I beg to submit that I have been awarded a Major Punishment of Dismissal from service by the DPO Nowshera for the allegation of corruption (viral on a private News channel on 28-11-2017) vide OB No.41 dated 08-01-2018, against which I am going to submit the present Appeal for Re-instatement in service, on the following grounds:-

1. While posted to Traffic CCP Peshawar, I was transferred to Nowshera District by the IGP KIPK Peshawar for having involved in taking illegal gratification. It was also directed that the appellant be called in OR and should be dismissed from service. I have complied with the orders, appeared before the DPO Nowshera and explained my position but with no due consideration and I was straightaway dismissed from service.
2. Only a preliminary enquiry was conducted by SSP Traffic Peshawar and DSP Investigation CCP Peshawar. Neither any Show cause notice nor Charge sheet was issued to me. However, my statement was recorded wherein I have stated that the Traffic officials are not receiving the Traffic Challan fine in cash from the drivers/violators. I was performing my duties on Ring Road Peshawar under the command of TO Irshad Khan who was competent to give Challan to the drivers/violators and that I have no concern with the said duty.
3. I have not taken any illegal gratification from anyone.
4. I also complained that the video of taking illegal gratification as viral on a private News channel on 28-11-2017, was not clear and that the Traffic Staff could not be identified.
5. The name of driver, vehicle Number was not shown/identified during the course of enquiry.
6. The allegation was not proved against me and a major punishment was suggested against me.
7. Final show cause notice was also not issued.
8. At the process was beyond/contrary to the rules (PR-1975).
9. I have served the department for 16 years, qualified in weapon Trg. Course, Fire Arms Course, Bomb Disposal Course, Bomb Reconnaissance course and Traffic Course.

ATTESTED
Fahimullah
For Appellant

- 10. I have performed my duties up to the entire satisfaction of my superiors and there is no such complaint or any other kind of complaint against me during my whole/long service, but it was not taken into consideration at the time of issuing the above cited impugned order.
- 11. I have performed my duties in PS Pabbi, Akora, Akbarpura, Nowshera Kalan and Traffic Staff Nowshera for a long time and there was no such complaint or any other complaint against me.
- 12. I am totally innocent in the matter and that a very harsh and severe action was taken against me.
- 13. I am the only dependant of a large family and am in continuous tension as well as facing financial hardships.

I, therefore, approach your good self to kindly consider/accept my Appeal and the order of dismissal issued by DPO Nowshera vide OB No.41 dated 08-01-2018 may kindly be withdrawn for which I shall be highly obliged.

Yours Obediently,

Faheem Ullah

25/1/2018

(Faheem Ullah)
 Ex- Constable No.1200.
 s/o Khanim Ullah r/oMoh.
 Sadri Khel Pir Piai The. &
 Distt. Nowshera.
 Mob No.0312-9307097.

ATTESTED

Faheem Ullah

For Appellant

Annex-3

15

ORDER.

This order will dispose-off the appeal preferred by **Ex-Constable Faheem Ullah No. 1200** of Nowshera District Police against the order of the District Police Officer, Nowshera, whereby he was awarded Major punishment of dismissal from service vide District Police Officer, Nowshera OB No. 41 dated 05.01.2018.

Brief facts of the case are that the appellant was transferred to Highway Staff, Traffic Police, Khyber Pakhtunkhwa on deputation and posted in EPA Squad Traffic Police, Peshawar. He was reportedly, involved in taking illegal gratification from the drivers as viral on a private news channel on 28.11.2017. On account of which, he was placed under suspension and proceeded against departmentally through enquiry committee consisting of SSP Traffic, Peshawar & DSP Investigation, CCP, Peshawar. The enquiry committee after fulfillment of codal formalities, submitted their report to Capital City Police Officer, Peshawar vide SSP Traffic office Memo: No. 1176/PA, dated 29.11.2017, wherefrom CCPO Peshawar forwarded the same to Worthy Inspector General of Police, Khyber Pakhtunkhwa vide his office Memo: No. 2083/PSO, dated 30.11.2017, stating therein that he did not show the copy of challan issued to the violator driver as per his statement and suggested for major punishment. Upon perusal of the said enquiry report, the Inspector General of Police, Khyber Pakhtunkhwa ordered that he may be called in Orderly Room and dismissed from service. He was heard in Orderly Room on 03.01.2018, by District Police Officer, Nowshera wherein he failed to produce any cogent reason in his defense, therefore, he was awarded major punishment of dismissal from service.

He was called in orderly room held in this office on **14.02.2018** and heard him in person, but he did not produce any substantial evidence about his innocence. Therefore, I find no grounds to intervene the order passed by the then District Police Officer, Nowshera. **Appeal is rejected.**

ORDER ANNOUNCED.

(Muhammad Alam Shinwari)PSP
Regional Police Officer,
Mardan

No. 1062 /ES, Dated Mardan the 19/02 2018.

Copy to District Police Officer, Nowshera for information and necessary action w/r to his office Memo: No. 575/PA dated 26.01.2018. The Service Record is returned herewith.

(*****)

ATTESTED

Faheem Ullah
For Appellant

EC, FMC
For no action

DPO-NSP
- 18

Annex E بخدمت جناب محترم آئی جی صاحب خیبر پختونخواہ

عنوان: اپیل برائے رحم و داری

جناب عالی!

سائل ایک غریب اور ایماندار آدمی ہے سائل کے والد صاحب بہت ضعیف اور دل کے مریض ہے۔ سائل کے چار بچے ہیں اور سائل اپنے خاندان کا واحد سربراہ ہے۔ جناب عالی سائل کے خلاف سولہ سالہ نوکری میں کوئی بھی کمپلنٹ / رشوت یا بدعنوانی کی شکایت موصول نہیں ہوئی ہے۔

جناب عالی سائل کو ایک جھوٹی ویڈیوں کے ذریعے نوکری سے نکلوایا گیا ہے جس میں کوئی سچ نہیں ہے۔ جناب محترم IGP صاحب سائل آپ سے رحم کی اپیل کرتا ہے اور سائل یہ توقع بھی رکھتا ہے کہ آپ میری اپیل رد نہیں کریں گے۔

سائل آپ کو تاحیات دعا گو رہیگا۔

شکریہ

العارض
Fahimullah

از طرف ایکس کنسٹیبل فہیم اللہ ولد خانم اللہ No-13000
08/03/2018

سکنہ: پیر پیاپی ضلع نوشہرہ

موبائل: 0312-9307097

ATTESTED
Fahimullah
For Appellant

D-P. No = 2062/SB



OFFICE OF THE
INSPECTOR GENERAL OF PO
KHYBER PAKHTUNKHW.
PESHAWAR.

No. S/ 1787 /18, dated Peshawar the 08 / 18.

ORDER

This order is hereby passed to dispose of departmental appeal under Rule II-A of Khyber Pakhtunkhwa Police Rule-1975 submitted by Ex-FC Faheem Ullah No. 1300. The petition ~~was~~ was dismissed from service by DPO Nowshera vide OB No. 41, dated 05.01.2018 on the charge that he was transferred to Highway Staff Traffic Police Khyber Pakhtunkhwa on deputation and posted in EPA Sayad Traffic Police, Peshawar. He was reportedly, involved in taking illegal gratification from the drivers ~~as~~ as Vira on a private news channel on 28.11.2017.

His appeal was rejected by Regional Police Officer, Mardan vide order Endst. No. 1062/ES, dated 19.02.2018.

Meeting of Appellate Board was held on 26.04.2018 wherein petitioner was heard ~~was heard~~ in person. During hearing petitioner denied the allegation of receiving illegal gratification.

There is long service of 15 years and 11 months at the credit of the petitioner therefore, the Board decided that the petitioner is hereby re-instated into service and penalty of dismissal on service is converted into major penalty of reduction in pay by two stages for two years. However, the ~~intervening~~ intervening period shall be counted towards service but not on duty. He will not be entitled for any kind of financial benefits including monthly salary for the said period.

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

(IRFAN ULLAH KH
AIG/Establishmen
For Inspector General of
Khyber Pakhtunkhw
Peshawar.

No. S/ 1788-94 /18.

Copy of the above is forwarded to the:

1. Regional Police Officer, Mardan.
2. District Police Officer, Nowshera.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. PA to AIG/Legal, Khyber Pakhtunkhwa, Peshawar.
7. Office Supdt: E-IV CPO Peshawar.

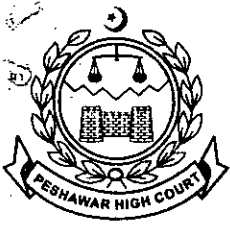
DIG, DCC, FMC, PO, OHC

For n action

OBNO 547

dt: 9-5-2018

*DPOWS
8-5-2018*



The
PESHAWAR HIGH COURT
Peshawar

All communications should be addressed to the Registrar Peshawar High Court, Peshawar and not to any official by name.

Exch: 9210149-58
Off: 9210135
Fax: 9210170

www.peshawarhighcourt.gov.pk
info@peshawarhighcourt.gov.pk
phcphs@gmail.com

Khyber Pakhtunkhwa
Peshawar

Diary No. 837
Dated 30-7-18

No. 3413 /HRC

Dated Peshawar, the 10-5-18

From:

The Director,
Human Rights Cell,
Peshawar High Court,
Peshawar.

To

The Chairman,
Khyber Pakhtunkhwa, Service Tribunal,
Peshawar.

Subject:

COMPLAINT (#14571)

Sir,

I am directed to forward herewith a copy of subject complaint, submitted by Mr.

Fahim Ullah, for disposal at your end, please.


Director,
Human Rights Cell

Encls. No. _____ /HRC

Dated Peshawar, the _____

Copy forwarded for information to:

- Mr. Fahim Ullah S/O Khanim Ullah R/O Mohallah Sadri Khel, Village Dirpai District Nowshera.


Director,
Human Rights Cell

*Place in file
No un-necessary adjournment
be granted in future
D. 10.5.18*

بخدمت جناب چیف جسٹس آف ہائی کورٹ خیبر پختونخواہ
محکومت = درخواست پرائے رحم

جناب عالی!

سائل ایک غریب آدمی ہے۔ سائل کے چار بچے اور بوڑھا باپ ہے۔ جو سائل کے غم کی وجہ سے دل کا مریض بن چکا ہے۔ جناب عالی اسائل کو ایک بڑے فراڈ کے ذریعے نوکری سے نکال دیا گیا ہے۔
جناب عالی سائل کو ڈال بنا کر پورا ہائی وے ٹریفک ختم کر دیا گیا ہے۔ سائل اپنا فریاد اپنے آفسران بالا کی خدمت میں لے گیا لیکن وہاں اسے کوئی انصاف نہیں ملا۔ اب سائل اپنا فریاد سروس ٹریبونل پشاور میں لے گیا ہے جہاں 37 دن گزر جانے کے بعد بھی اب تک کیس کو کارروائی میں نہیں لایا گیا ہے۔ سائل ایک مجبور اور بے بس آدمی ہے جو سراسر بے گناہ ہو کر بھی ان کئے گناہ کا سزا کھاٹ رہا ہے۔ سائل اپنے گھرانے کا واحد سربراہ ہے۔
سائل اللہ کا واسطہ دے کر آپ سے انصاف کا طالب ہے۔ جناب عالی اپیل کا پی نقولات درخواست کے ساتھ لف ہے۔ امید ہے کہ آپ سائل کو انصاف ضرور فراہم کریں گے۔

عین نوازش ہوگی

العارض

اللہ نسبا

از طرف: طالب مددگار خدا فہیم اللہ ایکس کنٹینیل

موبائل نمبر: 0312-9307097

پتہ: گاؤں پیر پائی محلہ صدری خیل ڈسٹرکٹ و تحصیل نوشہرہ

تاریخ = 21-04-2018

374/18
Date 3-8-2018

10

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 844 /ST Dated 29-4- /2019


To,

The Provincial Police Officer,
Govt of Khyber Pakhtunkhwa,
Peshawar.

SUBJECT: - ORDER IN APPEAL NO. 374/2018, FAHEEMULLAH VS GOVT.

I am directed to forward herewith a certified copy of Order/Judgment dated 25.03.2019 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR