

Service Appeal No. 975/2018

Date of Institution ... 07.08.2018

Date of Decision ... 04.06.2021

Ashfaq Ali No. 182, Ex-Constable
S/o Mir Ali Khan R/o Ako Dheri, P/o Lund Khwar,
Tehsil Takht Bhai, District Mardan.

... (Appellant)

VERSUS

Inspector General of Police/Provincial Police Officer, Khyber
Pakhtunkhwa Peshawar and three others.

... (Respondents)

Mr. AMJID ALI,
Advocate

--- For appellant.

MR. RIAZ AHMAD PAINDAKHEIL,
Assistant Advocate General

--- For respondents.

MR. SALAH-UD-DIN ---
MR. ATIQ-UR-REHMAN WAZIR ---

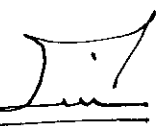
MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGEMENT:

SALAH-UD-DIN, MEMBER:- The appellant has filed the instant service appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 16.07.2018, whereby the departmental appeal of the appellant was rejected and the wrong and illegal order of his dismissal dated 09.11.2017 was upheld.

2. Precisely stated the facts are that the appellant was serving as Constable, who was charged in a criminal case bearing FIR No. 492/2017 under sections 419, 420, 468, 471 and 171 PPC read with section 15AA registered at Police Station Lund Khwar Mardan. The appellant was issued show-cause notice, charge sheet as well as statement of allegations by Deputy Inspector General of Police (CTD) Khyber Pakhtunkhwa Peshawar

and after conducting of inquiry against the appellant, he was issued final show-cause notice by the Deputy Inspector General of Police (CTD) Khyber Pakhtunkhwa Peshawar. The appellant submitted reply to the show-cause notice and after providing him an opportunity of hearing, the appellant was dismissed by the Deputy Inspector General of Police (CTD) Khyber Pakhtunkhwa Peshawar vide order dated 09.11.2017. The appellant impugned the afore-mentioned order dated 09.11.2017 by way of filing departmental appeal to the Inspector General of Police Khyber Pakhtunkhwa, which was rejected vide order dated 16.07.2018, hence the instant appeal.

 3. Mr. Amjid Ali, Advocate, representing the appellant has contended that the show-cause notice, charge sheet and statement of allegations were issued by Deputy Inspector General of Police (CTD) Khyber Pakhtunkhwa Peshawar, who also passed order of dismissal of the appellant, rendering the whole inquiry proceedings as nullity in the eye of law because as per Schedule-I of Police Rules 1975, Deputy Inspector General of Police (CTD) Khyber Pakhtunkhwa Peshawar being Appellate Authority was not the Authority competent under the law to proceed himself against the appellant. He next contended that the whole inquiry proceedings were conducted in a hurried manner, without providing the appellant an opportunity of cross examination of the witnesses examined during the inquiry. He further argued that the appellant is quite innocent and has been condemned unheard, therefore, the impugned order may be set-aside and the appellant be re-instated into service by extending him all back benefits.


4. On the other hand, Mr. Riaz Ahmad Paindakheil, learned Assistant Advocate General has argued that the appellant was found involved in criminal activities and an FIR was also registered against him, therefore, after conducting of inquiry against the appellant, he was dismissed from service. He also argued that the inquiry was conducted in a legal manner by providing opportunity of hearing to the appellant. He next contended that after conducting of proper inquiry against the appellant, the inquiry committee came to the conclusion that the charges against the appellant were proved, therefore, he has been rightly dismissed from service and his departmental appeal was also rightly dismissed.

5. We have heard the arguments of both the sides and have perused the record.

6. The show-cause notice, charge sheet as well as statement of allegations were issued to the appellant by Deputy Inspector General of Police (CTD) Khyber Pakhtunkhwa Peshawar and after conducting of the inquiry by Mr. Fazl-e-Hamid SSP/Int & Sur CTD and Mr. Quaid Kamal DSP HQrs: CTD Khyber Pakhtunkhwa, final show-cause notice was issued to the appellant by Deputy Inspector General of Police (CTD) Khyber Pakhtunkhwa Peshawar. Similarly, the order of dismissal of the appellant was also passed by Deputy Inspector General of Police (CTD) Khyber Pakhtunkhwa Peshawar. Keeping in view the Police Rules 1975, the action taken by Deputy Inspector General of Police Khyber Pakhtunkhwa Peshawar was illegal, without jurisdiction and void ab-initio because he was the Appellate Authority, therefore, he could not have taken upon himself the role of the Authority competent to proceed against the appellant and award him the punishment.

7. One Mr. Niaz, Inspector CTD Mardan was also charged in the same FIR, which resulted in initiation of disciplinary action against the appellant as well as Mr. Niaz, Inspector CTD Mardan. Thus in light of Schedule-I of Police Rules 1975, officer of the rank of DPO/SSP, being Authority competent to award punishment to the appellant, can legally take disciplinary action against the appellant.

8. In view of the foregoing discussion, the impugned order of dismissal of the appellant stands set-aside. The appellant is re-instated into service and the matter is remanded back to the department for de-novo inquiry against the appellant in accordance with law. It is directed that the de-novo inquiry proceeding shall be completed within a period of one month from the date of receipt of copy of this judgment. The appeal in hand stands disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room.



**(SALAH-UD-DIN)
MEMBER (JUDICIAL)**



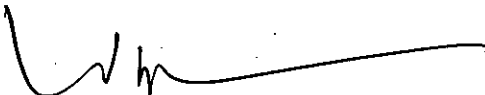
**(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)**

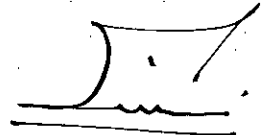
**ANNOUNCED
04.06.2021**

ORDER
04.06.2021

Appellant alongwith his counsel Mr. Amjid Ali, Advocate, present. Mr. Gulzad Khan, S.I (CTD) and Mr. Wajid, ASI alongwith Mr. Riaz Ahmad Paindakheil, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the impugned order of dismissal of the appellant stands set-aside. The appellant is re-instated into service and the matter is remanded back to the department for de-novo inquiry against the appellant in accordance with law. It is directed that the de-novo inquiry proceeding shall be completed within a period of one month from the date of receipt of copy of this judgment. The appeal in hand stands disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room.


(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)

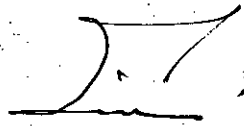

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

ANNOUNCED
04.06.2021

19.03.2021

Appellant in person and Mr. Muhammad Rasheed, Deputy District Attorney alongwith Mr. Wajid Ali, ASI for the respondents present.

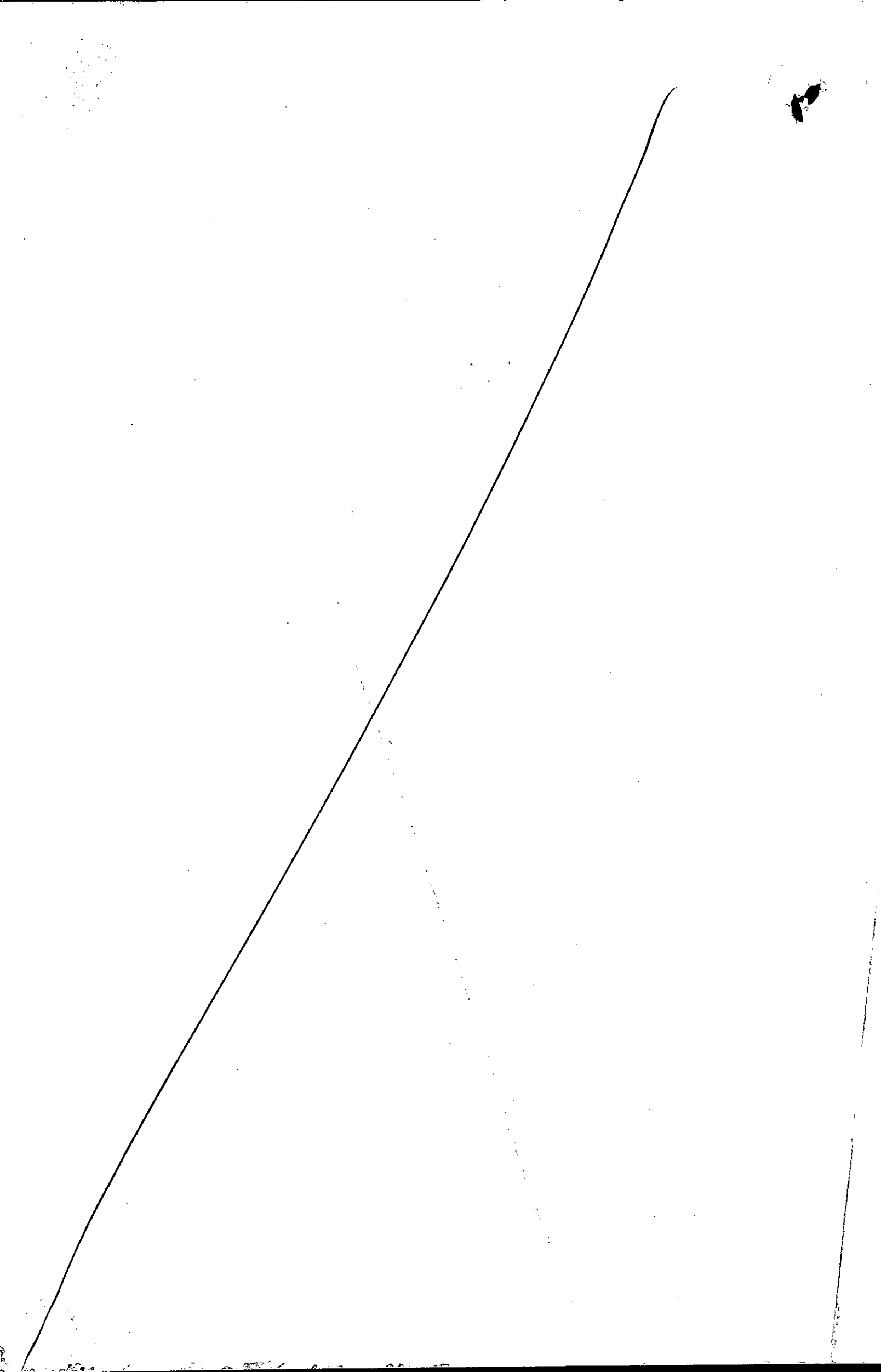
Former requests for adjournment due to non-availability of his learned counsel who is ~~for~~ ill today. Adjourned to 04.06.2021 for arguments before D.B.



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

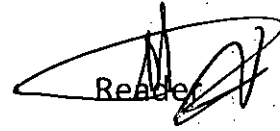


CHAIRMAN



27.08.2020

Due to summer vacation, the case is adjourned to
04.11.2020 for the same as before.


Reader

04.11.2020

Junior to counsel for the appellant and Addl. AG for
the respondents present.

The Bar is observing general strike, therefore, the
matter is adjourned to 12.01.2021 for hearing before the
D.B.


(Mian Muhammad)
Member


Chairman

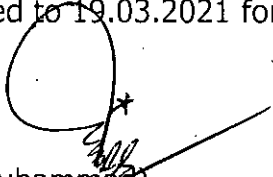
12.01.2021

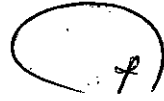
Junior counsel for appellant present.

Muhammad Rasheed learned Deputy District Attorney for
respondents present .

Former made a request for adjournment as senior
counsel for appellant is busy before August Supreme Court
of Pakistan.

Adjourned to 19.03.2021 for arguments, before D.B.


(Mian Muhammad)
Member (E)


(Rozina Rehman)
Member (J)

13.12.2019

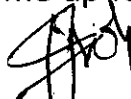
Lawyers are on strike as per the decision of All Pakistan Joint Lawyers Action Committee. Adjourn. To come up for further proceedings/arguments on 19.02.2020 before D.B


Member


Member

19.02.2020

Appellant in person present. Mr. Kabirullah Khattak learned Additional AG alongwith Mr. Gul Zad ASI for the respondents present. Appellant requested for adjournment on the ground that his counsel is not available today. Adjourned. To come up for arguments on 07.04.2020 before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

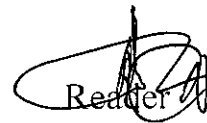
7.4.2020

Due to COVID 19, The case is adjourned to 2.7.2020 for same as before.



02.07.2020

Due to Covid-19, the case is adjourned. To come up for the same on 27.08.2020 before D.B.


Reader

04.07.2019


Junior to counsel for the appellant present. Mr. Muhammad Jan learned Deputy District Attorney along with Mr. Gul Zad ASI for the respondents present. Junior to counsel for the appellant submitted rejoinder and seeks adjournment. Adjourned. To come up for arguments on 30.08.2019 before D.B.



(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

30.08.2019

Appellant in person present. Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Appellant requested for adjournment as his counsel is not in attendance. Adjourned. To come up for arguments on 16.10.2019 before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

16.10.2019

Appellant absent. Mr. Usman Ghani learned District Attorney present. Adjourn. To come up for arguments on 13.12.2019 before D.B. Appellant be put to notice for the date fixed.


Member



Member

~~I learned counsel for the appellant present. Mr. Usman Ghani learned District Attorney present. Adjourn. To come up for arguments on 13.12.2019 before D.B. Appellant be put to notice for the date fixed.~~
~~Appellant in person present. Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Appellant requested for adjournment as his counsel is not in attendance. Adjourned. To come up for arguments on 16.10.2019 before D.B.~~
~~Junior to counsel for the appellant present. Mr. Muhammad Jan learned Deputy District Attorney along with Mr. Gul Zad ASI for the respondents present. Junior to counsel for the appellant submitted rejoinder and seeks adjournment. Adjourned. To come up for arguments on 30.08.2019 before D.B.~~

Service Appeal No. 975/2018

30.01.2019

Clerk of counsel for appellant present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Atta-ur-Rehman, S.I (Legal) for the respondents present and requested for further adjournment for filing of written reply. Adjourned to 26.03.2019 for written reply/comments before S.B.


(Muhammad Amin Khan Kundi)
Member

26.03.2019

Clerk to counsel for the appellant present. Written reply not submitted. Atta ur Rehman SI legal representative of the respondent department present and requested for time to furnish written reply/comments. Granted by way of last chance. To come up for written reply/comments on 25.04.2019 before S.B.


Member

25.04.2019

Junior counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Wajid Ali, ASI (Legal) for the respondents present and submitted written reply. Adjourned to 04.07.2019 for rejoinder and arguments before D.B-II.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

18.09.2018

Counsel for the appellant present. Preliminary arguments heard and case file perused. Learned counsel for the appellant argued that on winding up the enquiry proceedings major penalty of dismissal from service was imposed on him vide impugned order dated 09.11.2017. He filed departmental appeal on 20.11.2017 which was rejected on 16.07.2018; hence the instant service appeal. The charges on which the appellant was proceeded could not be proved during the enquiry proceedings and was also acquitted by the Addl: Seccession Judge-II Takht Bhai in the criminal case lodged against him. He has not been treated according to law and rules.

Appellant Deposited
Security & Process Fee

Points urged need consideration. Admit, subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 08.11.2018 before S.B.


(AHMAD HASSAN)
MEMBER

08.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 26.12.2018. Written reply not received.


READER

26.12.2018

None present on behalf of appellant. Written reply not submitted. Respondents also absent. Notice be issued to the respondent department with direction to furnish written reply. Adjourn. To come up for written reply/comments on 30.01.2019 before S.B.


Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 975/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	07/08/2018 9-8-2018	The appeal of Mr. Ashfaq Ali presented today by Mr. Amjid Ali Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please. REGISTRAR 7/8/18
2-		This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>18-9-2018</u> . CHAIRMAN

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

Service Appeal No. 975 /2018

Ashfaq Ali,.....Appellant

VERSUS

Inspector General of Police/ Provincial Police
Officer, KP Peshawar. & othersRespondents

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5.	Copy of charge sheet dated 01.08.2017	C	10-11
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8.	Copy of reply to show cause	F	15
9.	Copy of dismissal order	G	16
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Ashfaq
Appellant

Through

Amjad Ali (Mardan)
Advocate

Supreme Court of Pakistan

Cell: 0321-9882434

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1244

Dated 07-8-2018

Service Appeal No. 975 /2018

Ashfaq Ali No.182, Ex-Constable
S/o Mir Ali Khan R/o Ako Dheri, P/o Lund Khwar,
Tehsil Takht Bhai, District Mardan

.....Appellant

VERSUS

1. Inspector General of Police/ Provincial Police Officer, KP Peshawar.
2. Deputy Inspector General of Police, Mardan
3. District Police Officer, Mardan
4. Board of Review through A.I.G, KP Peshawar.

....Respondents

**SERVICE APPEAL U/S 4 OF SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
ORDER OF RESPONDENT NO.1 DATED
16.07.2018, WHEREBY DEPARTMENTAL
APPEAL OF APPELLANT DATED
20.11.2017 HAS BEEN REJECTED AND
ORDER OF DISMISSAL DATED
09.11.2017, WHICH ARE ILLEGAL
AGAINST LAW AND FACTS.**

PRAYER

On acceptance of this appeal, order dated
09.11.2017 passed by respondent No.2
and order dated 16.07.2018 passed by

Filed to-day
Registrar
7/8/18.

(2)

respondent No.1 may please be set-aside and appellant may please be reinstated in service with all back benefits. Any other relief deemed fit may also be graciously granted.

Respectfully Sheweth:-

Appellant humbly submits as under:-

- 1) That appellant was appointed as Constable No.182
- 2) That appellant performed service to the entire satisfaction of his superiors and there is no complaint against appellant.
- 3) That an FIR No.492 u/s 419, 420, 468, 471, 171 PPC 15-AA dated 29.07.2017, P.S Lund Khwar, Mardan has been lodged against appellant and Inspector Niaz Hussain. (Copy of FIR is Annex "A")
- 4) That appellant has been granted bail in aforementioned case. (Copy of bail order dated 07.08.2017 is Annex "B")
- 5) That accused is presumed to be innocent unless proved guilty by competent Court of criminal jurisdiction.
- 6) That criminal trial is under progress and yet not completed.
- 7) That the prosecutor in criminal case is DIG and AIG have become Judge in the case of appellant, which is against the principle of natural justice i.e. "NEMO DEBIT ESEE JUDEX IN PROPRIA CAUSA" **NO MAN CAN BE A JUDGE IN HIS OWN CAUSE.**

- (3)
- 8) That appellant has been charge sheeted by incompetent authority i.e. D.I.G on 01.08.2017. (Copy of charge sheet dated 01.08.2017 is Annex "C"), which appellant properly replied. (Copy of reply is Annex "D")
 - 9) That show cause notice (Annex "E") is properly replied (Annex "F")
 - 10) That appellant is dismissed from service vide order dated 9-11-2017, which is illegal, against law and facts. (Copy of dismissal order is Annex "G")
 - 11) That Departmental Appeal dated 20.11.2017 has been rejected vide order dated 16.07.2018, which is illegal, against law and facts. (Copy of departmental appeal is Annex "H" and rejection order of appeal is Annex "I")
 - 12) That the impugned orders are illegal, against law and facts on the following grounds:-

GROUND.

- A. Because as per order dated 22.11.2017 of Additional Session Judge-II, Takht Bhai, Rifle has been returned to its lawful owner Mukhtaram Shah and finding of I.C are incorrect, conflicting with order of Court. (Copy of order dated 22.11.2017 is Annex "J")
- B. Because appellant has been condemned unheard.
- C. Because the very foundation of case is illegal as charge sheet has been issued by D.I.G, whereas competent authority of appellant is SP/ DPO, thus the same is void.
- D. Because similarly, show cause notice is also issued by incompetent authority.

- (4)
- E. Because appellant has rightly explained that he took lift and was unaware of Rifle/ NCP as he was going from place of duty at Mardan to his house at Lund Khwar.
 - F. Because appellant has not been associated with Inquiry proceedings.
 - G. Because neither any witness has been examined in presence of appellant nor any opportunity of cross examination has been given to appellant.
 - H. Because DIG/ AIG being prosecutor can't, because a Judge in his own cause.
 - I. Because the police officials can't be termed as Neutral/ Impartial in instant case as they consider FIR as gospel truth.
 - J. Because even the Inquiry proceedings have not been provided to appellant, which has prejudiced case of appellant.
 - K. Because appellant has not held office of profit since dismissal and is entitled for back benefits.
 - L. Because KP Police Rules, 1975 are ultravires.
 - M. Because Police Order, 2002 was included in Schedule-VI of Constitution for six years and six years has lapsed.
 - N. Because the order has been done away with 18th amendment.
 - O. Because Police Act, 1968 has not been adopted by Khyber Pakhtunkhwa.
 - P. Because Police Rules, 1934 has been adopted by Khyber Pakhtunkhwa and Police rules, 1975 has not been adopted by Khyber Pakhtunkhwa.
 - Q. Because there is no schedule of authority with KP Rules, 1975, so entire process has been carried not by incompetent authority.
 - R. Because appellant has been condemned unheard

It is therefore, humbly prayed that on acceptance of this appeal, order dated 09.11.2017 passed by respondent No.2 and order dated 16.07.2018 passed by respondent No.1 may please be set-aside and appellant may please be reinstated in service with all back benefits. Any other relief deemed fit may also be graciously granted.

(5)

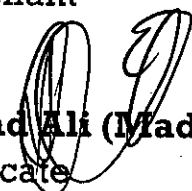
Any other relief which this hon'ble court deems appropriate in the circumstances of the case though not specifically asked for may kindly also be granted.

Dated:



Appellant

Through



Amjad Ali (Madan)

Advocate

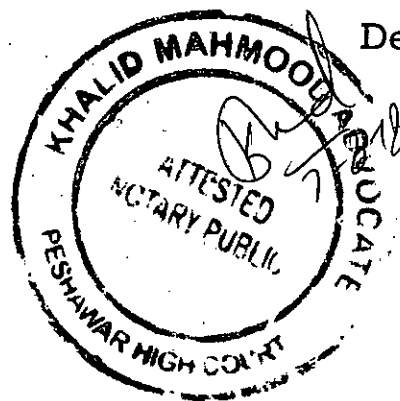
Supreme Court of Pakistan

AFFIDAVIT

I, do hereby affirm and declare on oath that the contents of the appeal are true and correct to the best of my knowledge and belief and nothing material has been concealed from this hon'ble Tribunal.



Deponent



(6)

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

Service Appeal No. _____/2018

Ashfaq Ali,Appellant

VERSUS

Inspector General of Police/ Provincial Police
Officer, KP Peshawar. & othersRespondents

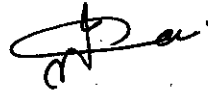
ADDRESSES OF PARTIES

APPELLANT

Ashfaq Ali No.182, Ex-Constable
S/o Mir Ali Khan R/o Ako Dheri, P/o Lund Khwar,
Tehsil Takht Bhai, District Mardan

RESPONDENTS

1. Inspector General of Police/ Provincial Police
Officer, KP Peshawar.
2. Deputy Inspector General of Police, Mardan
3. District Police Officer, Mardan
Board of Revenue through A.I.G, KP Peshawar.



Appellant

Through


Amjad Ali (Mardan)

Advocate

Supreme Court of Pakistan

OR.....03.
07.08.2017.

(32)

ATTESTED
Ishfaq Ali

Aux-B

(8)

Counsel for the accused/petitioner and APP for the state present. Arguments have already been heard and case file perused.

Through present petition petitioner Niaz Hussan s/o Shahz Ali r/o Nawan Killi Mardan is seeking released on bail in case FIR No.482 dated 29.7.2017 under section 419/420/468/471-PPC registered at Police Station ^{Land khula} Shergarh. My this order is also dispose of bail petition No.448/BA titled Ishfaq versus the state as both the petitions are outcome of same FIR.

hd
The brief facts as per the contents of FIR are that the complainant Zakir Khan SI alongwith other police officials during gusht/nakabandi were present at Jewar road near Jranda. In the meanwhile a Land crozier bearing registration UB 001-ICT Islamabad white colour was coming from Umar Abad side. The driver was signaled to stop but he enhanced the speed. The said vehicle was chased and with the help of police of PP Hatyan the same was apprehended. Two persons were found. The driver having pistol in his hand and shown him as capton in Pak Army. He also produced the service card. The other person armed with M-4 rifle disclosed named Ishfaq Ali s/o Mir Ali r/o Ako Dheri an constable in CTD Mardan and also shown him to the Gun Man of Inspector Niaz Hussain CTD Mardan. He further stated that the vehicle was being taken to capton Adnan at Malakand Agency. After verification it came to knowledge that the vehicle was been taken on rent Rs.60,000/- and it was disclosed that previously to 17/18 vehicles of different types were shifted to Malakand Agency by both the accused and handed over to a person known as Aftab. It was further reported that official number plate of CTD Mardan was being fixed on vehicles in the bang low of Niaz Hussain Inspector CTD and then the same was taken to Malakand Agency by both the said accused at the instant of accused Niaz Hussain. On this occurrence present case was registered.

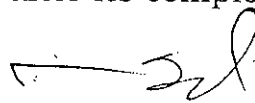
Perusal of the record shows that though the petitioners are named in the FIR but petitioner Niaz Hussain was not accompanying the other accused when the vehicle was taken into possession. Petitioner Niaz Hussain has been involved on the disclosure of co-accused at the time of their arrest. Petitioner Ishfaq Ali was accompanying main accused Adnan at the time of apprehension and taking into possession of the vehicle. There is nothing on the record to show that

2 (9)

both the petitioners have ever involved in any criminal case previously. Punishment provided for the offence does not fall within the ambit of prohibitory clause of Section 497 Cr.P.C. The bail petition of accused/petitioners is arguable for the purposes of bail, hence both the petitioners are admitted to bail on furnishing bail bonds in the sum of Rs.100,000/- with two sureties each in the like amount to the satisfaction of Illaqa/Duty Magistrate individually.

Record alongwith copy of this order be returned and this file be consigned to record room after its completion.

Announced
07.08.2017.



(LIAQAT ALI)

Addl: Sessions Judge-II,
Takht Bhai.



OFFICE OF THE,
DY: INSPECTOR GENERAL OF POLICE,
COUNTER TERRORISM DEPARTMENT,
KHYBER PAKHTUNKHWA, PESHAWAR
Ph # 091-9218093-94 Fax # 091-9218031.

No. _____/PA

Dated 01/08/2017.

Ann - e
10

CHARGE SHEET

1) I Mubarak Zeb PSP, Deputy Inspector General of Police, CTD, Khyber Pakhtunkhwa, Peshawar as a Competent Authority, hereby charge you Constable Ishfaq Ali No. 182 of CTD Mardan Region, now under suspension as follows.


- i) That you are reportedly involved in the transportation and smuggling of Non Custom Paid (NCP) Vehicles, vide FIR No. 492 u/s 419.420.468.471.171PPC/15AA, dated 29-07-2017, PS Lund Khwar District Mardan.
- ii) On the direction of Inspector Niaz Hussain you received the NCP Vehicle from one Haji Hayat Khan r/o Bara Khyber Agency for transportation to Sakhakot.
- iii) On the spot 1x M4 Rifle, No. W472538, 2 No. Magazines and 60 rounds were also recovered from your possession, which indicate you are also involved in transportation of illegal weapons.

By reason of the above, you appear to be guilty of misconduct under Police Disciplinary Rules, 1975 with amendments 2014 and have rendered yourself liable to all or any of the penalties specified in the Rules:-

- 2) You are, therefore required to submit your written defense within 7 days of the receipt of this Charge Sheet to the Enquiry Officer as the case may be.
- 3) Your written defense, if any, should reach to the Enquiry Officer within the specified period failing which it shall be presumed that you have no defense to put in and in that case, exparte action will be taken against you.
- 4) You are also at liberty, if you wish to be heard in person.
- 5) Statement of allegation is enclosed.

1016-CTD-MR

01-8-2016


(MUBARAK ZEB) SP
Deputy Inspector General of Police
CTD Khyber Pakhtunkhwa,
Peshawar

ATTESTED




11

SUMMARY OF ALLEGATIONS

1). I, MUBARAK ZEB, DEPUTY INSPECTOR GENERAL OF POLICE, CTD KHYBER PAKHTUNKHWA, PESHAWAR, am of the opinion that Constable Ishfaq Ali No. 182 of this Unit has rendered himself liable to be proceeded against as he committed the following acts/omissions within the meaning of Police Disciplinary Rules, 1975 read with Amendments 2014.

STATEMENT OF ALLEGATIONS.

- i) That he is reportedly involved in the transportation and smuggling of Non Custom Paid (NCP) Vehicles, vide FIR No. 492 u/s 419.420.468.471.171PPC/15AA, dated 29-07-2017, PS Lund Khwar District Mardan.
- ii) On the direction of Inspector Niaz Hussain he received the NCP Vehicle from one Haji Hayat Khan r/o Bara Khyber Agency for transportation to Sakhakot.
- iii) On the spot 1x M4 Rifle, No. W472538, 2 No. Magazines and 60 rounds were also recovered from his possession, which indicate that he is also involved in transportation of illegal weapons.

2). For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations, Mr. Fazal-i-Hamid SSP, Int: & Surv: and Mr. Quid Kamal Khan DSP, HOs of CTD, Khyber Pakhtunkhwa, Peshawar are appointed as Enquiry Officers, to conduct enquiry under the Rules.

3). The Enquiry Officers, shall, in accordance with the provision of the Police Disciplinary Rules, 1975 read with Amendments 2014 provide reasonable opportunity of hearing to the accused, record its findings and make within 15 days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused.

(MUBARAK ZEB) DSP
Deputy Inspector General of Police,
CTD, Khyber Pakhtunkhwa,
Peshawar.

No 8714 7PA/CTD

Dated Peshawar the 01/08/2017.

Copy of above is forwarded to the:-

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar for information.
2. Regional Police Officer Mardan Region.
3. Enquiry Officers of this Unit are directed to initiate departmental proceedings against the accused under the Police Disciplinary Rules, 1975 read with amendments - 2014.
4. SP CTD Mardan.
5. Constable Muhammad Ishfaq No 182 to appear before the Enquiry Officer on the date time and place fixed by the Enquiry Officer for the purpose of enquiry proceedings.

ALL
ARRESTED

1017-CTD-MR
01-8-2017

1 بحوالہ شوکا ز نوٹس نمبری 23PA.8720 من کنشیل اشفاق علی کو معطل کیا گیا اور علیحدہ طور پر چارج شیٹ مورخہ 11/08/2017 ارسال کیا گیا جو کہ من کنشیل نے مورخہ 19/08/2017 کو وصول کیا معطلی ارڈر چارج شیٹ متذکرہ بالہ بے بنیاد غلط منگھڑت ہے ہرگز قابل پزیرائی نہ ہے۔

2 من کنشیل اشفاق علی ہرگز NCP گاڑی کی سگنگ و ترسیل میں ملوس نہیں ہے اور FIR/492 زیر دفعات 15AA.419.420.468.471.171 مورخہ 29/07/2017 تھانہ لوند خوڑ غلط طور پر من کنشیل کے خلاف درج کر دیا ہے مبینہ فائل مندرجہ FIR میں من کنشیل اشفاق علی ہرگز شامل وقوعہ نہ تھا جبکہ من کنشیل اشفاق علی سکنہ اکوڈھیری لوند خوڑ کارہائش پزیر ہونے کے ناطے مردان سے گاؤں خود جارہا تھا اور مناسب سواری کی انتظار میں کالج چوک میں کھڑا تھا اسی دوران ایک گاڑی جانب مردان سے آرہی تھی اور من کنشیل نے اشارہ کر کے گاڑی رکوائی اور ڈریور سے لوند خوڑ تک جانے کی لفٹ مانگی اور من کنشیل اشفاق علی گاڑی میں بیٹھ گیا من کنشیل گاڑی میں موجود شخص کی بجرمانہ نیت و اس امر کے کہ مزکورہ شخص پاک آرمی میں تعینات نہ ہے اور اس نے غلط طریقے سے پاک آرمی کی وردی زیب تن کی ہے یا اسکی گاڑی NCP ہے یا دیگر مقدمات میں ملوس ہے کیونکہ من کنشیل نے محض اس سے لفٹ مانگی تھی اور وہ خاموشی سے سیٹ پر بیٹھ گیا اس دوران مقامی پولیس سے آمناسا منا ہوا اور غیر قانونی طور پر من کنشیل کو FIR میں نامزد کیا جو غلط اور خلاف قانون ہے۔

3 مزید براں عرض ہے کہ من کنشیل بروز مبینہ وقوعہ اس سے قبل انسپکٹر نیاز حسین کا گنر ہرگز نہ تھا نہ ہی من کنشیل NCP گاڑیوں کی سگنگ و ترسیل میں کبھی ملوس رہا ہے اور نہ ہی انسپکٹر نیاز حسین کی طرف سے کسی قسم کی غیر قانونی NCP گاڑیوں کی سگنگ و ترسیل کے بارے میں کوئی حکم یا ہدایت نہیں ہوئی ہے چارج شیٹ و FIR میں درج شدہ الزامات بے بنیاد و خلاف حقائق ہیں یہ کہ بروز مبینہ وقوعہ من کنشیل جواب دہندہ سے کسی قسم کی بھی غیر قانونی شے برآمد نہ ہوئی ہے۔ مبینہ رائفل میگزین و کار تو س غلط طریقے سے من کنشیل سے وصول شدہ لکھتے گئے ہیں من کنشیل نے ہمیشہ اپنی ڈیوٹی پوری ایمانداری فرض شناسی سے سرانجام دی ہے کبھی بھی غیر قانونی افعال میں ملوس نہیں رہا ہے چارج شیٹ میں درج شدہ الزامات بے بنیاد ہیں حقیقت اس کے برعکس ہے من کنشیل بے گناہ ہے غریب گھرانے سے تعلق رکھتا ہے اور والدین من کانیشیل کا ضعیف العمر ہے اور من کنشیل گھرانے کا واحد کفیل ہیں۔

لہذا استدعا ہے کہ مندرجہ بالا حقائق کو مدنظر رکھتے ہوئے چارج شیٹ میں درج شدہ الزامات کو بے بنیاد قرار دے کر من کنشیل کو بحال کرنے اور چارج شیٹ داخل دفتر کے احکامات صادر فرمادیں۔

المرقوم 21/08/2017

ATTESTED

Pa

کنشیل اشفاق علی نمبر 182



OFFICE OF THE,
DY: INSPECTOR GENERAL OF POLICE,
COUNTER TERRORISM DEPARTMENT,
KHYBER PAKHTUNKHWA, PESHAWAR
Ph # 091-9218093-94 Fax # 091-9218031.

Anx - E

(13)

No. 11831 /PA Dated 06/10 /2017.

FINAL SHOW CAUSE NOTICE.

1. WHEREAS, You Constable Ashfaq Ali No. 182 of this Unit while posted in CTD Mardan rendered yourself for disciplinary proceedings by committing gross misconduct and negligence in duty. A Charge Sheet based on the following allegations was issued to you and enquiry committee comprising by Fazal-i-Hamid SSP/Int&Sur CTD and Quaid Kamal DSP HQrs:/CTD was constituted for scrutinizing your conduct reference to charges leveled against you.

- i) That you reportedly involved in the transportation and smuggling of Non Custom Paid (NCP) Vehicles, vide FIR No. 492 u/s 419.420.468. 471.171PPC/15AA, dated 29-07-2017, PS Lund Khwar District Mardan..
- ii) On the direction of Inspector Niaz Hussain you received the NCP Vehicle from one Haji Hayat Khan r/o Bara Khyber Agency for transportation to Sakhakot.
- iii) On the spot 1x M4 Rifle, No. W472538, 2 No. Magazines and 60 rounds were also recovered from your possession, which indicate that you also involved in transportation of illegal weapons.

2. WHEREAS, the enquiry committee carried out proper departmental proceedings against you. Opportunity of personal hearing and production of defense was provided to you. Committee also examined your reply submitted in response to Charge Sheet. The committee found you guilty for the charges leveled against you, made recommendations for award of Major Punishment i.e "Dismissal from Service".

3. AND WHEREAS, on going through the finding and recommendation of enquiry committee, material placed on record and other connected papers including your defense placed on file, I satisfied that you have committed gross mis-conduct and are guilty of charges leveled against you as per Charge Sheet/Statement of allegations conveyed to you vide 8714-19/PA/CTD dated 01-08-2017, which stands proved and recommended to be awarded Major Punishment under the said Rules.

ATTESTED
[Signature]

(14)

4. **NOW THEREFORE, I Mubarak Zeb PSP, Deputy Inspector General of Police, CTD, Khyber Pakhtunkhwa as competent authority have tentatively decided to impose upon you, any one or more penalties including the penalty of "Dismissal from Service" under Police Rules 1975 (amended in 2014).**

You are therefore, issued Final Show Cause Notice to explain within seven (07) days of the receipt of the notice as to why the aforesaid penalty should be imposed upon you. If your reply was not received within stipulated period than it shall be presumed that you have no defense to offer and ex-parte action shall be taken against you and also intimate whether you wish to be heard in person or not.

Copy of enquiry report is enclosed.

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

6/10/17

Constable Ashfaq Ali No. 182,
Now Closed to CTD HQrs:

ATTACHED

Amx. F

جناب عالی!

بجوالہ فائل شوکاژ نوٹس نمبری PA/11831 مورخہ 06/10/2017 مجاریہ جناب DIG صاحب CTD پشاور معروضی

(15)

خدمت ہوں کہ

1 من کنسٹیبل اشفاق علی ہرگز NCP گاڑی کی سمگلنگ و ترسیل میں ملوس نہیں ہے اور FIR/492 زیر دفعات

15AA.419.420.468.471.171 مورخہ 29/07/2017 تھانہ لونڈخوڑ غلط طور پر من کنسٹیبل کے خلاف درج کر دیا ہے مبینہ فائل مندرجہ FIR میں من کنسٹیبل اشفاق علی ہرگز شامل وقوعہ تھا۔ جبکہ من کنسٹیبل اشفاق علی سکنہ اکوڈھیری لونڈخوڑ کارہائش پزیر ہونے کے ناطے مردان سے گاؤں خود جارہا تھا اور مناسب سواری کی انتظار میں کالج چوک میں کھڑا تھا اسی دوران ایک گاڑی جانب مردان سے آرہی تھی اور من کنسٹیبل نے اشارہ کر کے گاڑی رکوائی اور ڈرائیور سے لونڈخوڑ تک جانے کی لفٹ مانگی اور من کنسٹیبل اشفاق علی گاڑی میں بیٹھ گیا من کنسٹیبل گاڑی میں موجود شخص کی مجرمانہ نیت اس امر کے کہ مذکورہ شخص پاک آرمی میں تعینات نہ ہے اور اس نے غلط طریقے سے پاک آرمی کی وردی زیب تن کی ہے یا اسکی گاڑی NCP ہے یا دیگر مقدمات میں ملوس ہے کیونکہ من کنسٹیبل نے محض اس سے لفٹ مانگی تھی اور وہ خاموشی سے سیٹ پر بیٹھ گیا اس دوران مقامی پولیس سے آسانا منا ہوا اور غیر قانونی طور پر من کنسٹیبل کو FIR میں نامزد کیا جو غلط اور خلاف قانون ہے۔

مزید براں عرض ہے کہ من کنسٹیبل بروز مبینہ وقوعہ اس سے قبل انسپکٹر نیاز حسین کا گٹر ہرگز نہ تھا نہ ہی من کنسٹیبل NCP گاڑیوں کی سمگلنگ و ترسیل میں کبھی ملوس رہا ہے اور نہ ہی انسپکٹر نیاز حسین کی طرف سے کسی قسم کی غیر قانونی NCP گاڑیوں کی سمگلنگ و ترسیل کے بارے میں کوئی حکم یا ہدایت نہیں ہوئی ہے چارج شیٹ و FIR میں درج شدہ الزامات بے بنیاد و خلاف حقائق ہیں۔

2 یہ کہ بروز مبینہ وقوعہ من کنسٹیبل جواب دہندہ سے کسی قسم کی بھی غیر قانونی شے برآمد نہ ہوئی ہے۔ مبینہ رائل میگزین و کارٹوس غلط طریقے سے من کنسٹیبل سے وصول شدہ لکھتے گئے ہیں من کنسٹیبل نے ہمیشہ اپنی ڈیوٹی پوری ایمانداری فرض شناسی سے سرانجام دی ہے کبھی بھی غیر قانونی افعال میں ملوس نہیں رہا ہے چارج شیٹ میں درج شدہ الزامات بے بنیاد ہیں حقیقت اس کے برعکس ہے من کنسٹیبل بے گناہ ہے غریب گھرانے سے تعلق رکھتا ہے اور والدین من کنسٹیبل کا ضعیف العمر ہے اور من کنسٹیبل گھرانے کا واحد کفیل ہیں۔

لہذا استدعا ہے کہ مندرجہ بالا حقائق کو مد نظر رکھتے ہوئے چارج شیٹ میں درج شدہ الزامات کو بے بنیاد قرار دے کر من کنسٹیبل کو بحال کرنے اور فائل چارج شیٹ داخل دفتر کے احکامات صادر فرمادیں۔

المرقوم:- 12/10/2017

العارض

13/10/2017
کنسٹیبل اشفاق علی نمبر 182

Handwritten signature and stamp.



OFFICE OF THE,
DY: INSPECTOR GENERAL OF POLICE,
COUNTER TERRORISM DEPARTMENT,
KHYBER PAKHTUNKHWA, PESHAWAR
Ph # 091-9218093-94 Fax # 091-9218031.
No. 13154-61/PA Dated 09/11/2017.

Ann-6
(16)

ORDER

This order is passed today on 08-11-2017 to dispose of departmental proceedings initiated against Constable Ashfaq Ali No. 182/CTD (under suspension) while posted as gunman with SHO PS CTD Mardan Region.

Constable Ashfaq Ali No. 182 presently under suspension and closed to CTD HQs: Peshawar was charge sheeted under the Khyber Pakhtunkhwa Police Rules 1975 (amended 2014) on the score of the following allegations:-

- i) That you are reportedly involved in the transportation and smuggling of Non Custom Paid (NCP) Vehicles, vide FIR No. 492 u/s 419.420.468.471.171PPC/15AA, dated 29-07-2017, PS Lund Khwar District Mardan.
- ii) On the direction of Inspector Niaz Hussain you received the NCP Vehicle from one Haji Hayat Khan r/o Bara Khyber Agency for transportation to Sakhakot.
- iii) On the spot 1x M4 Rifle, No. W472538, 2 No. Magazines and 60 rounds were also recovered from your possession, which indicate you are also involved in transportation of illegal weapons.

For conducting probe into the allegations leveled against Constable Ashfaq Ali No. 182/CTD, an Enquiry Committee consisting of Mr. Fazl-e-Hamid SSP/Int & Sur CTD and Mr. Quaid Kamal DSP HQs: CTD Khyber Pakhtunkhwa was constituted. The enquiry committee found him guilty as Constable Ashfaq Ali No. 182/CTD has close ties with criminal/PO Munawar @ Adnan Ali and smuggle NCP vehicles on mutual understanding/partnership with Munawar @ Adnan Ali, the enquiry committee recommended him for major punishment as dismissal from service.

Constable Ashfaq Ali No. 182/CTD was called and heard in person. His verbal and written reply was perused.

Enquiry papers were also perused in detail. The enquiry committee has found him guilty of the charges of transportation and smuggling of Non Custom Paid Vehicle, thereby bringing bad name to the department. He is guilty of gross misconduct.

In the light of findings/recommendations of the Enquiry Committee and available record on file against Constable Ashfaq Ali No. 182/CTD I, **Mubarak Zeb, Deputy Inspector General of Police, CTD, Khyber Pakhtunkhwa** being competent authority, hereby imposes the major punishment "Dismissal from service" with immediate effect.

Order announced.

O.B No. 205/CTD
Date: 09/11/2017

ATTESTED

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

Endst: No. & date even.

Copy of the above is forwarded to the:-

1. The Inspector General of Police, Khyber Pakhtunkhwa.
2. All Addl IGP/Khyber Pakhtunkhwa.
3. Deputy Inspector General of Police, HQs: Khyber Pakhtunkhwa.
4. Regional Police Officer, Mardan.
5. Senior Superintendent of Police/Ops CTD Central Zone.
6. Superintendent of Police. CTD Mardan.
7. Superintendent of Police/HQs: CTD.

0312714



تہذیب و تمدن

- (1) ...
- (2) ...
- (3) ...
- (4) ...
- (5) ...
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- (7) ...
- (8) ...
- (9) ...
- (10) ...

ABIR

ABIR

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نکات اور جوبات

- (i) یہ کہ حکم محررہ 09/11/2017 خلاف قانون، خلاف اور پولیس رولز کے منافی ہے لہذا قابل منسوخی ہے
- (ii) یہ کہ انکوائری ایفسر نے سرسری و کاغذی انکوائری کر کے سائل کو مرد و الزام ٹھرایا گیا حالانکہ انکوائری کمیٹی کوئی بھی ٹھوس شہادت، چشمہ دید گواہ قلمبند نہیں کیا ہے اور انکوائری کے متعلق قانون و مردہ اصول کو بالائے طاق رکھتے ہوئے انکوائری کی ہے جو کہ غلط و غیر قانونی ہونے کے ناطے سے قابل منسوخی ہے
- (iii) یہ کہ انکوائری ایفسر نے الزام کے من سائل سے ایک عدد رائل نقل جسکی تفصیل اوپر دی گئی ہے سے برآمد ہو کر جس طرح کہ FIR میں درج ہے کی کسی قسم کی بھی چان بین نہیں کی ہے کیونکہ متذکرہ رائل نقل نہ تو من سائل سے برآمد ہوئی ہے اور نہ ہی من سائل کی ملکیت ہے۔ کیونکہ متذکرہ رائل نقل حاجی محترم خان نامی شخص کی ملکیت ہے۔ اور اسکے نام پر لائسنس بھی جاری شدہ ہے اور اس نے عدالت میں رائل نقل کی واپسی کی درخواست بھی دائر کی ہے جس سے یہ امر روز روشن کی طرح عیاں ہے کہ رائل نقل متذکرہ نہ تو سائل کی ملکیت ہے اور نہ ہی غیر قانونی ہے۔ سائل چونکہ لونڈ خوڑ کار ہائشی ہے اور روز وقوعہ مردان سے لونڈ خوڑ جا رہا تھا اور لفٹ مانگنے کی غرض سے گاڑی کو اشارہ کیا اور گاڑی میں بیٹھ کر لونڈ خوڑ جا رہا تھا کہ پولیس نے ڈرائیور کو گاڑی روکنے کا اشارہ کیا اور بد نتیجے سے من سائل کو بھی غیر قانونی طور پر شامل وقوعہ کیا گیا۔
- (iv) یہ کہ چارٹ شیٹ میں جو الزامات لگائے گئے تھے ان میں دوران انکوائری ایک الزام بھی من سائل کے خلاف ثابت نہ ہوئی ہیں اور نہ ہی الزامات کے متعلق کوئی ثبوت یا شہادت انکوائری ایفسر نے اکٹھی نہیں کی ہے۔ یہ معاملہ ابھی فوجداری عدالت میں بھی زیر تجویز ہے لہذا انکوائری غلط پر مبنی عدم ثبوت ہے قابل منسوخی ہے۔
- (v) انکوائری ایفسر نے یک طرفہ کارروائی کرتے ہوئے من سائل کو درست طور پر شنوائی کا موقع نہیں دیا ہے۔ وجہ حکم مذکورہ قابل اخراج و منسوخی ہے۔
- (vi) یہ کہ سائل غریب گھرانے کا واحد کفیل ہے اور سائل کے والدین عمر رسیدہ ہیں اور سائل اپنی نوکری کی ابتدائی مراحل میں ہے اور پولیس محکمہ میں ترقی پانے کا خواہش مند ہے اور سائل نے Lower Course کے لیے تحریری ٹیسٹ پاس کیا ہے اور سائل جنوری 2018 میں Lower Course کے لیے جانے والا تھا کہ حکم چیلنج شدہ آڑھے آگئی۔
- (vii) یہ کہ دیگر نکات بہ اجازت بہ وقت پیشی پر پیش کئے جائیں گے۔
- لہذا استدعا ہے کہ بمظوری محکمانہ اپیل حکم محررہ 29/11/2017 کو خارج و قاعدہ قرار دیکر سائل کو نوکری پر بحال کرنے کا حکم صادر فرمائیں

المرقوم:- 20/11/2017

اپیلانٹ / سائل

اشفاق علی نمبر CTD/182 ولد میر علی خان سکند لونڈ خوڑ تحصیل تخت بھائی ضلع مردان

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مفتاح ترميز في علم الحاسوب

المفتاح الترميزي هو مجموعة من الرموز التي تستخدم لتمثيل البيانات في الحاسوب. وتختلف هذه الرموز باختلاف النظام الترميزي المستخدم.

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الرمز

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البيانات التي تم تمثيلها بالرمز

بخدمت جناب انسپکٹر جنرل آف پولیس خیبر پختونخواہ

Annex - H

عنوان!

محکمہ اپیل منجانب کانٹینیل اشفاق علی نمبر 182/CTD/مردان ریجن بر خلاف حکم محررہ 09/11/2017 صادر کردہ CTD-DiG

پشاور جس کی رو سے سائل کو نوکری سے برخاست کیا گیا۔

17

استدعا اپیل

بمظوری محکمہ اپیل ہذا فیصلہ محررہ 09/11/2017 کو کالعدم قرار دیکر سائل کو باعزت طور پر نوکری بمعہ back benefits کے ساتھ بحال کرنے کے احکامات صادر فرمائیں۔

جناب عالی!

سائل حسب ذیل عرض کرتا ہیں۔

- 1- یہ کہ سائل تھانہ سی ٹی ڈی مردان ریجن میں بطور کانٹینیل تعینات تھا۔ اور اپنی ڈیوٹی نہایت ایمانداری، ذمہ داری و فرض شناسی کیساتھ ادا کرتا رہا اور کبھی بھی کسی قسم کی غیر قانونی سرگرمی میں ملوث نہیں رہا ہے اور سائل کے خلاف کسی قسم کی کوئی شکایت موصول ہوئی ہے۔
- 2- یہ کہ مورخہ 29/07/2017 کو ذاکر خان SI کی مدعیت میں FIR علت 492 مورخہ 29/11/2017 زیر دفعات PPC 419,420,468,471,171,15AA تھانہ لونڈ خورڈ میں درج ہوا جس میں الزام عائد کیا گیا کہ من سائل FIR میں دوسرے ملزم عدنان علی کیساتھ شامل وقوع ہو کر انسپکٹر نیاز حسین کی ہدایات کے مطابق NCP گاڑیوں کو Settled Area سے ایجنسی تک ترسیل کرے ہے۔ (نقل FIR لف ہے)
- 3- یہ کہ من سائل بعد از نامزدگی عدالت سے ضمانت پر رہا ہو چکا ہے۔
- 4- یہ کہ بر بنائے الزام عائد کردہ سائل کو معطل کر کے جارج شیٹ موصول ہوئی جس میں تین الزامات لگائے گئے ہیں۔
 - (i) کہ سائل NCP گاڑیوں کی سمگلنگ میں ملوث ہے جسکی نسبت FIR متذکرہ بالا درج رجسٹرڈ ہے۔
 - (ii) کہ انسپکٹر نیاز حسین کی ہدایات کے مطابق سائل حاجی حیات خان سکنہ باڑہ ایجنسی سے گاڑی وصول کر کے سخا کوٹ (ملاکنڈ ایجنسی) کو ترسیل کرتے ہے۔
 - (iii) کہ موقع پر ہی ایک عدد درانقل بشمول میگزین اور 60 عدد کارتوس سائل کے قبضہ سے برآمد ہوئی جس سے یہ عیاں ہوتا ہے کہ سائل غیر قانونی اسلحہ کہ سمگلنگ میں بھی ملوث ہے۔
- 5- یہ کہ DIG موصوف نے SSP فضل حامد خان و ڈی ایس پی قائد کمال خان کو انکوائری ایفیرز مقرر کر کے معاملہ کی تفتیش انکوائری کر کے رپورٹ جمع کرنے کی ہدایت کی۔ متعلقہ دستاویزات لف ہیں۔
- 6- یہ کہ انکوائری ایفیرز نے انکوائری کر کے CTD DIG پشاور کے حوالہ کی جس کے بعد من سائل کو فائل شوکا ز نوٹس جاری کیا گیا جس کا جواب من سائل نے جمع کیا۔ متعلقہ دستاویزات لف ہیں۔
- 7- یہ کہ CTD DIG نے بروئے حکم محررہ 09/11/2017 من سائل کو نوکری سے برخاست کیا۔ جو کہ بوجوہات ذیل خلاف قانون، اور پولیس رولز کے منافی ہونے کی وجہ سے کالعدم و منسوخ قرار دینے کے قابل ہے۔ نقل حکم برخاست لف ہے۔

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OFFICE OF THE *Ann - I*
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
PESHAWAR.

No. S/ *2940* /18, dated Peshawar the *16/07/2018*. 19

ORDER

This order is hereby passed to dispose of departmental appeal under Rule 11-A of Khy Pakhtunkhwa Police Rule-1975 submitted by **Ex-Constable Ashfaq Ali No. 182**. The petitioner is dismissed from service by DIG/CTD Khyber Pakhtunkhwa vide OB No. 265, dated 09.11.2017 on following allegations:-

(i) That he was reportedly involved in the transportation and smuggling of Non Custom P. (NCP) vehicles vide FIR No. 492 u/s 419.420.468.471.171 PPC/15AA, dated 29.07.2017 Police Station Lund Khwar District Mardan.

(ii) On the direction of Inspector Niaz Hussain he received the NCP vehicle from one Haji Hay Khan r/o Bara Khyber Agency for transportation to Sakhakot.

(iii) On the spot 1xM4 Rifle No. W472538, 2 No. Magazines and 60 rounds were also recovered from his possession, which indicate that he was also involved in transportation of illegal weapons.

Meeting of Appellate Board was held on 05.07.2018 wherein petitioner was heard in person. During hearing petitioner denied the allegations leveled against him.

Ex-Constable Ashfaq Ali No. 182 was dismissed from service vide order dated 09.11.2017 passed by DIG/CTD, KP on the following allegations:-

(i) That he was reportedly involved in the transportation and smuggling of Non Custom Paid (NCP) vehicles vide FIR No. 492 u/s 419.420.468.471.171 PPC/15AA, dated 29.07.2017 Police Station Lund Khwar District Mardan.

(ii) On the direction of Inspector Niaz Hussain he received the NCP vehicle from one Haji Hay Khan r/o Bara Khyber Agency for transportation to Sakhakot.

(iii) On the spot 1xM4 Rifle No. W472538, 2 No. Magazines and 60 rounds were also recovered from his possession, which indicate that he was also involved in transportation of illegal weapons.

Petitioner failed to advance any plausible explanation in rebuttal of the charges.

Perusal of enquiry papers reveals that the petitioner has been found guilty of the charges of transportation and smuggling of Non Custom Paid vehicles.

The Board see no ground and reasons for acceptance of his petition. Therefore, the Board decided that his petition is hereby rejected.

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

(IRFAN ULLAH KHAN)
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

No. S/ *2941-47* /18,

Copy of the above is forwarded to the:

1. DIG/CTD Khyber Pakhtunkhwa. Service Record, Fauji Missal (Containing 41 pages) of the above named Constable received vide your office Memo: No. 1567/SRC/CTD, dated 20.02.2018 is returned herewith for your office record.
2. District Police Officer Banpu.
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.

ATTACHED
[Handwritten signature]

Mukhtaram Khan.....vs.....The state.

20

Annex-J

Order # 10
22.11.2017

Petitioner with counsel and APP for the state present. record received. Arguments heard and record perused.

Through this revision petition the petitioner Mukhtaram Khan s/o Alamgir Khan r/o Panerak Mohammad Nari Charsadda has challenged the order dated 02.10.2017 passed by the learned Judicial Magistrate whereby application filed by the petitioner for the return of Rifal No.W472538, 223 bore alongwith two magazines (charger) and sixty live rounds taken into possession by the local police in case FIR No. 492 dated 29.7.2017 under section 418/420/468/471-PPC read with section 15-AA of PS Lund Khwar was dismissed.

The brief facts as per the contents of FIR are that the complainant Zakir Khan SI alongwith other police officials during gusht/nakabandi were present at Jewar road near Jranda. In the meanwhile a Land crozier bearing registration UB 001-ICT Islamabad white colour was coming from Umar Abad side. The driver was signaled to stop but he enhanced the speed. The said vehicle was chased and with the help of police of PP Hatyan the same was apprehended. Two persons were found. The driver having pistol-9MM in his hand and shown him as capton in Pak Army. He also produced the service card. The other person armed with M-4 rifle No.W472538 alongwith two magazine and sixty rounds disclosed his name as Ishfaq Ali s/o Mir Ali r/o Ako Dheri a constable in CTD Mardan and also shown him to the Gun Man of Inspector Niaz Hussain CTD Mardan. He further stated that the vehicle was being taken to capton Adnan at Malakand Agency. After verification it came to knowledge that the vehicle was been taken to Malakand Sakhakot on rent Rs60,000/- and it was disclosed that previously to 17/18 vehicles of different types were shifted to Malakand Agency by both the accused and handed over to a person

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known as Aftab. It was further reported that official number plate of CTD Mardan was being fixed on vehicles in the bang low of Niaz Hussain Inspector CTD and then the same was taken to Malakand Agency by both the said accused at the instant of accused Niaz Hussain. On this occurrence present case was registered.

Perusal of file record and arguments shows that the rifle in question is licence in the name of petitioner. Copy of licence No.1046-1/87 dated 31.12.1987 issued from the Office of Deputy Commissioner Mardan is annexed with the revision petition and original licence copy produced today. The investigation of the case is complete and complete challan has been put in court before judicial Magistrate Takht Bhai which shows that the weapon in question is no more required for the purposes of investigation of the case. Since, the weapon in question is licence one in the name of petitioner, therefore, revision petition in hand is accepted. Rifle in question alongwith rounds be returned to petitioner by furnishing surety bonds in the sum of Rs.80,000/- with two sureties each in the like amount to the satisfaction of learned trial court with the condition that the petitioner shall produce the same during trial when required and shall not disposed of till conclusion of the trial.

Requisitioned record be returned to the quarter concerned with copy of this order while file of this court be consigned to the record room after its completion and compilation.

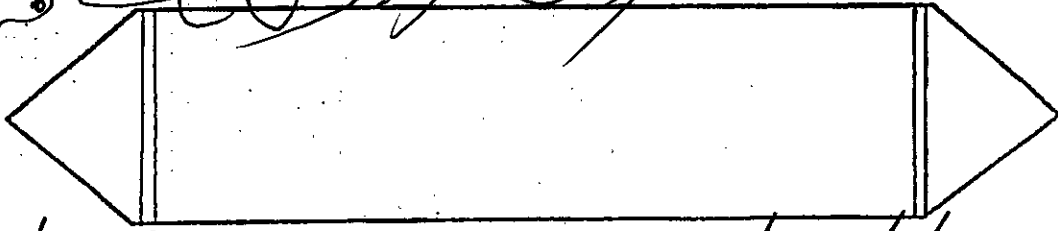
Announced.
22.11.2017

(LIAQAT ALI)
Additional Sessions Judge-II,
Takht Bhai.

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بعدالت لیسوی شریعتی لاہور



2 جناب ایس ایس ایم
بنام

7/8/18

موزخہ
مقدمہ
دعویٰ
جرم

ایس ایس ایم
بنام
IGP

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و کل کارروائی متعلقہ
آن مقام ~~لاہور~~ کیلئے ~~ایس ایس ایم~~ ~~لاہور~~ ~~دوران~~ ~~مقرر~~ ~~کر~~ ~~کے~~ ~~اقرار~~ ~~کیا~~ ~~جاتا~~ ~~ہے~~۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا مکمل اختیار ہوگا۔ نیز
وکیل صاحب کو رضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک دروپہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لایا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو کبھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ
پر داخستہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جائے التوائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھد یا کہ سند ہے۔

المرقوم 7
ماہ 2018

بمقام
Peshawar
Attested & Accepted
Amjad Ali Maroof
0321987017
ATTESTED

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 975/2018

Ashfaq Ali No. 182, Ex-Constable.....(Appellant)

Versus

1. Inspector General of Police/Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
2. Deputy Inspector General of Police, Mardan.
3. District Police Officer, Mardan.
4. Board of Revenue through A.I.G, KP, Peshawar.

.....(Respondents)

Subject:- COMMENTS ON BEHALF OF RESPONDENTS

Respectfully Sheweth!

Preliminary Objections:-

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

FACTS:-

1. Pertains to record, hence no comments.
2. Incorrect, appellant while posted in CTD Mardan Region as gunman with SHO PS CTD Mardan was charge sheeted under the following allegations:-
 - i. That he is reportedly involved in the transportation and smuggling of non-custom paid (NCP) vehicles, vide FIR No. 492 dated 29.07.2017 u/S 419-420-468-471-171PPC-15AA PS Lund Khwar district Mardan.
 - ii. On the direction of Inspector Niaz Hussain he received the NCP vehicle from one Haji Hayat Khan r/o Bara District Khyber for transportation to Skhakot.
 - iii. On the spot 1 M4 Rifle, No. W472538, 2No. Magazines and 60 rounds were also recovered from his possession which indicates that he is also involved in transportation of illegal weapons.Appellant was arrested by the local Police of PS Lund Khwar on spot along with his accomplice Adnan Ali during smuggling of NCP vehicles and accordingly the above mentioned FIR was registered.
3. Correct, detail reply has already been explained in previous para.

4. Incorrect, the reply submitted by appellant in response to show cause notice was found unsatisfactory.
5. Correct to the extent that appellant was dismissed from service as he committed gross misconduct and proper speaking order was passed into the departmental proceedings initiated against him.
6. Incorrect, the only defense of the appellant that he was granted bail is no ground for absolving him from the charges. Moreover, proper departmental enquiry of the appellant was carried out. He was given full chance by the enquiry committee to defend himself. He was also heard in person by the enquiry committee. During course of enquiry the statements of the following officials were got recorded. (The same are enclosed as Annexure "A").
 - i. Inspector Niaz Hussain (dismissed in the same case).
 - ii. SI Zakir Khan, Incharge Police Post Umar Abad PS Lund Khwar.
 - iii. ASI Mazhar Ali, I.O of the case FIR No. 492/2017.
 - iv. ASI Khan Muhammad, Moharrar PS CTD Mardan.
 - v. Constable Ashfaq Ali (Now the appellant).

As per the statement of investigation officer of case FIR No. 492/2017 and SI Zakir Khan incharge Police Post Umar Abad PS Lund Khwar that the said ex-constable, now the appellant is involved in the smuggling of NCP vehicles. It also transpired that ex-constable Ashfaq Ali now the appellant has close ties with criminal/PO Munawar @ Adnan Ali which has been proved by his presence and arrest on the spot along with the criminal/PO Munawar @ Adnan Ali in NCP vehicle which they were transporting to Skhakot on the day of occurrence.

The enquiry committee recommended him for dismissal from service. He was then served with final show cause notice. He was also heard in person by the then DIG CTD KP. His verbal and written reply was perused but found unsatisfactory and in the light of recommendation of enquiry committee he was dismissed from service.

5. Incorrect, department is at liberty to initiate departmental proceedings in criminal cases registered against official ex-constable, now appellant proved guilty in the course of enquiry and therefore awarded him major punishment.
6. Pertains to record, hence no comments.
7. Incorrect, proper enquiry committee was established to conduct enquiry. All the steps of departmental proceedings were followed. He was given full chance to defend himself. The appellant failed to convince his high-ups as he has no solid grounds to defend himself.
8. Incorrect, competent authority charge sheeted him as he was arrested on the spot and FIR was registered against him in district Police and involvement in smuggling and close ties with criminals brought bad name to the department. Therefore, he was charge sheeted and proper enquiry was conducted.

9. Correct to the extent that he submitted reply to show cause notice but the same was not found satisfactory.
10. Correct to the extent that appellant was dismissed from service on 09.11.2017 the same order is legal, lawful and as per the prevailing law.
11. Correct, his departmental appeal was rejected after personal hearing of the appellant. He failed to convince the members of the appellate board and therefore his appeal was rejected.
12. Incorrect, the order is legal, lawful and as per the prevailing law.

GROUND

- A. Incorrect. The rifle was recovered from the appellant on the spot. His plea that the same rifle was returned to someone is not a solid ground that he is innocent. He was arrested along with a criminal Munawar @ Adnan Ali on the spot along with a rifle mentioned above.
- B. Incorrect: The appellant was given full chance to defend himself. He was heard in person by enquiry committee, the then DIG CTD and finally by the appellate board.
- C. Incorrect: Detail reply to this Para has already been explained in previous Para's.
- D. Incorrect: Final show cause notice was issued by competent authority.
- E. Incorrect: Detail reply has already been explained in previous Para's.
- F. Incorrect: Proper departmental proceeding was carried out. He was properly associated with enquiry proceedings.
- G. Incorrect: As explained in facts of Para 4 the statements of five persons including the appellant were got recorded.
- H. Incorrect: Proper departmental proceedings were carried out against the appellant. He was given full chance to defend himself.
- I. Incorrect: The appellant was arrested on the spot and accordingly FIR No. 492/2017 PS Lund Khwar was registered therefore, the statements of Police Official have definitely weightage.
- J. Incorrect: All the documents of enquiry were provided to the appellant.
- K. Incorrect: Appellant was dismissed after proved guilty during enquiry therefore is not entitled to be reinstated.
- L. Incorrect: Police Rules 1975 is the prevailing law to deal the defaulter official in Police.
- M. The appellant was proceeded under police rule 1975 and Police Rule 1975 has been protected by Police Order 2002 vide article 185.
- N. Incorrect: No proof has been provided by the appellant to show that the order was done away with 18th amendment.

O. Incorrect: No Act of 1968 has been annexed/provided by the appellant.

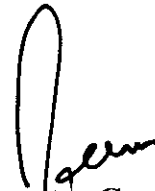
P. Incorrect: Police Rule 1975 has been framed under Police Act 1861 and the same were protected by Article 185 of Police Order 2002. Moreover, Police Rule 1934 and disciplinary rule 1975 have been adopted by Khyber Pakhtunkhwa.

Q. Incorrect: The entire process of the departmental proceeding was according to prevailing law and rules.

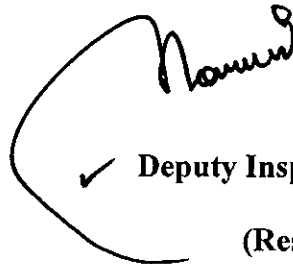
R. Incorrect: Proper chance was given to the appellant to defend himself. He was also personally heard by enquiry committee, the then DIG CTD KP and appellate board.

Prayer

It is therefore prayed that the appeal being baseless and untenable may be dismissed with Special costs.



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



Deputy Inspector General of Police,
Mardan.
(Respondent No.2)



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

District Police Officer
Mardan



Board of Review through AIG, KP
Peshawar.
(Respondent No.4)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Service Appeal No. 975/2018

Ashfaq Ali No. 182, Ex-Constable.....(Appellant)


Versus

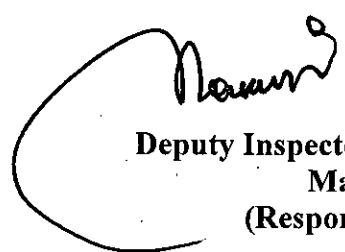
1. Inspector General of Police/Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
2. Deputy Inspector General of Police, Mardan.
3. District Police Officer, Mardan.
4. Board of Revenue through A.I.G, KP, Peshawar.


.....(Respondents)

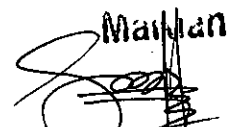
AFFIDAVIT

We the deponents in the above titled service appeal, do here by solemnly affirm and declare on oath that the contents of Para wise comments/reply are correct and true to the best of our knowledge and believe and nothing has been kept concealed from this honorable tribunal.


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


Deputy Inspector General of Police,
Mardan.
(Respondent No.2)


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


Board of Review through AIG,
KP Peshawar.
(Respondent No.4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Ashfaq Ali No. 182, Ex-Constable.....(Appellant)


Versus

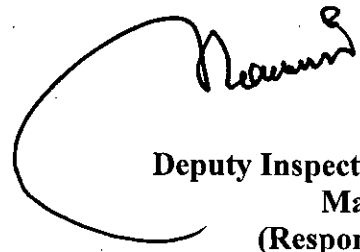
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2. Deputy Inspector General of Police, Mardan.
3. District Police Officer, Mardan.
4. Board of Revenue through A.I.G, KP, Peshawar.


.....(Respondents)

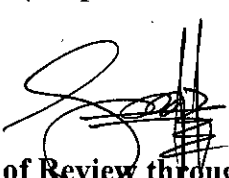
AUTHORITY LETTER

Gul Nawaz Khan s/o Mir Ahmad Khan, Sub-Inspector, CTD, Khyber Pakhtunkhwa Peshawar having CNIC No.17201-5440482-7 is hereby authorized to appear on behalf of the Respondents No.1, 2, 3 and 4 before the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar. He is also authorized to submit all required documents, comments and replies etc. pertaining to the appeal through the government pleader.


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


Deputy Inspector General of Police,
Mardan.
(Respondent No.2)


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


Board of Review through AIG, KP
Peshawar.
(Respondent No.4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

In re:

S.A.No.975/2018

Ashfaq Ali.....Appellant

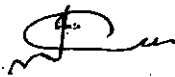
Versus

Inspector General of Police/ Provincial Police Officer,
KP Peshawar Malakand Agency and others

.....Respondents

INDEX

S.No.	Description of documents.	Annexure	Pages.
1	Rejoinder with affidavit		1-4
2	Attested copy of Court Judgment dated 03.05.2019	R-1	5-9



Appellant

Through



Amjad Ali (Mardan)

Advocate

Supreme Court of Pakistan

Cell: 0321-9882434

Dated: 4/7/2019

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

In re:

S.A.No.975/2018

Ashfaq Ali.....Appellant

Versus

Inspector General of Police/ Provincial Police Officer,
KP Peshawar Malakand Agency and others

.....Respondents

REPLICATION ON BEHALF OF APPELLANT

Sir,

Appellant humbly submits as under:-

PRELIMINARY OBJECTION

All preliminary objections are incorrect, misconceived. Denied.

ON FACTS

1. Respondent admit that appellant was appointed as Constable Ch. Sa. Khan
2. That Para-2 of appeal is correct, and that of comments is incorrect, hence denied.
3. That Para-5 of appeal is correct, and that of comments is incorrect, hence denied
4. That Para-4 of appeal is correct as not denied.
5. That Para-5 of appeal is correct, as not denied.

6. That Para-6 of appeal has not been denied, which means admission. The rest para of reply is incorrect, denied. Neither any witness has been examined in presence of appellant, nor appellant have been given opportunity of cross-examining any witness.
7. That Para-7 of appeal has not been denied to the extent that DIG/ AIG are prosecutor in Criminal case and then Judge/ Adjudicator in Departmental case, therefore, both role can't be assumed.
8. That Para-8 of appeal is correct and that of reply is incorrect, hence denied. DIG is not competent authority of appellant and DIG is issuing charge sheet/ statement of allegations as well as final show cause notice, as well as Dismissal order, which hare illegal and against all canons of law and justice.
9. That Para-9 of appeal is correct that of comments is incorrect, hence denied.
10. That Para-10 of appeal is correct and that of comments is incorrect, hence denied.
11. That Para-11 of appeal is correct and that of comments is incorrect, hence denied.
12. That Para-12 of appeal is correct and that of comments is incorrect, hence denied.

GROUNDS

- A. Because Ground "A" of appeal is correct and that of comments is incorrect, hence denied.
- B. Because Ground "B" of appeal is correct and that of comments is incorrect, hence denied.

- C. Because Ground "C" of appeal is correct and that of comments is incorrect, hence denied. Furthermore, Niaz has been reinstated by this hon'ble Tribunal and then Department vide judgment dated 03.05.2019. (Copy of judgment dated 03.05.2019 is Annex "R/1")
- D. Because Ground "D" of appeal is correct and that of comments is incorrect, hence denied.
- E. Because Ground "E" of appeal is correct and that of comments is incorrect, hence denied.
- F. Because Ground "F" of appeal is correct and that of comments is incorrect, hence denied.
- G. Because Ground "G" of appeal is correct and that of comments is incorrect, hence denied.
- H. Because Ground "H" of appeal is correct and that of comments is incorrect, hence denied.
- I. Because Ground "I" of appeal is correct and that of comments is incorrect, hence denied.
- J. Because Ground "J" of appeal is correct and that of comments is incorrect, hence denied.
- K. Because Ground "K" of appeal is correct and that of comments is incorrect, hence denied.
- L. Because Ground "L" of appeal is correct and that of comments is incorrect, hence denied.
- M. Because Ground "M" of appeal is correct and that of comments is incorrect, hence denied.
- N. Because Ground "N" of appeal is correct and that of comments is incorrect, hence denied.

O. Because Ground "O" of appeal is correct and that of comments is incorrect, hence denied.

P. Because Ground "P" of appeal is correct and that of comments is incorrect, hence denied. No adoption order of Rules, 1934 annexed.

Q. Because Ground "Q" of appeal is correct and that of comments is incorrect, hence denied, schedule is not attached.

R. Because Ground "R" of appeal is correct and that of comments is incorrect, hence denied.

PRAYER

It is, therefore, humbly requested that appeal may please be accepted.

[Handwritten signature]

Appellant
Through

[Handwritten signature]

Amjid Ali (Mardan)
Advocate

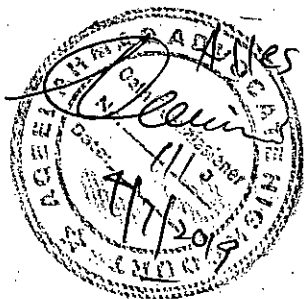
Supreme Court of Pakistan

AFFIDAVIT

I, do hereby affirm and declare as per information furnished by my client that the contents of the accompanying **Reply** are true and correct and nothing has been concealed from this Hon'ble Court.

[Handwritten signature]

Deponent



5

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 267/2018

Date of institution ... 26.02.2018

Date of judgment ... 03.05.2019



Niaz Hussain S/o Shah Zali Khan
R/o Rustam District Mardan

... (Appellant)

VERSUS

1. Inspector General of Khyber Pakhtunkhwa, Central Police Officer, Peshawar.
 2. Deputy Inspector General of Police CTD Khyber Pakhtunkhwa Peshawar.
- ... (Respondents)

APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER VIDE NO. 13146-53/PA DATED 09.11.2017 OF DEPUTY INSPECTOR GENERAL OF POLICE CTD KP PESHAWAR.

Mr. Rahman Ullah, Advocate.	..	For appellant.
Mr. Riaz Ahmad Paindakhel, Assistant Advocate General	..	For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI	..	MEMBER (JUDICIAL)
MR. AHMAD HASSAN	..	MEMBER (EXECUTIVE)

M. Amin
3.5.2019

DISSENTING JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Counsel for the appellant present. Mr. Riaz Ahmad Paindakhel, Assistant Advocate General alongwith Mr. Wajid Ali, ASI 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 Inspector. He was imposed major penalty of dismissal from service vide order dated 09.11.2017 by the Deputy Inspector General of Police on the allegation

Attested
August 10
Adil
Mardan

ATTESTED
[Signature]
EXAMINER
Khyber Pakhtunkhwa

(i) that he was reportedly involved in the transportation and smuggling of Non Custom Paid (NCP) vehicles vide FIR No. 492 under sections 419/420/468/471/171PPC/15AA dated 29.07.2017 PS Lund Khwar District Mardan.

(ii) That on his direction his gunman namely Ishfaq Ali No. 182 received the NCP vehicle from one Haji Hayat Khan r/o Bara Khyber Agency for transportation to Sakhakot.

(iii) That his performance as SHO CTD Mardan remained poor.

The appellant filed departmental appeal before the Inspector General of Khyber Pakhtunkhwa Peshawar on 15.11.2017 which was not responded within the stipulated period hence, the present service appeal on 26.02.2018.

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 as Inspector in Police Department. It was further contended that the appellant was imposed major penalty of dismissal from service vide order dated 09.11.2017 by the Deputy Inspector General of Police on the aforesaid allegations. It was further contended that the departmental proceeding against the appellant was initiated mainly on the grounds that he was involved in the aforesaid criminal case but the appellant was totally innocent in the said criminal case that is why that the prosecution submitted application for discharge of the appellant in the said criminal case before the competent court which was accepted and the appellant Naiz Hussain was discharged from the aforesaid criminal case vide detailed order dated 12.10.2017 passed by the

Judicial Magistrate Takht Bahi. It was further contended that the appellant was serving in Police Department since 2003 but there was not complaint against the appellant nor any criminal proceeding or any departmental proceeding was

M. Hussain
3.5.2019

ATTESTED

Attest 

initiated till the present departmental proceeding. It was further contended that as per schedule first Police Rules, 1975 the competent authority of Inspector was DPO/SSP but in the present departmental proceeding, charge sheet, statement of allegation and show-cause notice was issued to the appellant by the Deputy Inspector General of Police and the impugned order was also passed by the Deputy Inspector General of Police instead of DPO/SSP therefore, the impugned order is illegal and void. It was further contended that the allegations against the appellant are baseless and without any proof. It was further contended that neither proper inquiry was conducted nor the appellant was associated in the so-called inquiry nor opportunity of cross examination, personal hearing and defence was provided 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 Assistant Advocate General for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was serving in Police Department as Inspector. It was further contended that a proper departmental proceeding was initiated against the appellant on the aforesaid allegation. It was further contended that the criminal proceeding has no bearing/effect on the departmental proceeding therefore, the discharge of the appellant from criminal case does not help the appellant in departmental proceeding. It was further contended that proper regular department ^{al. m} proceeding was conducted and after fulfilling all the codal formalities the appellant was rightly imposed major penalty of dismissal from service on the recommendation of inquiry committee report. It was further contended that though charge sheet, statement of allegation and show-cause notice was issued by the Deputy Inspector General of Police and the major penalty was also imposed to the appellant by the Deputy Inspector General of

M. Hanuman
3.5.2019

[Signature]

[Signature] *[Signature]*

Police and as per schedule first of Police Rules, 1975 the competent authority of the inspector/appellant was DPO/SSP but the order of higher authority should always be maintained and the impugned order cannot be set-aside only on this ground and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was serving in Police Department as Inspector. The record further reveals that departmental proceeding was initiated against the appellant on the aforesaid allegation. The record further reveals that inquiry was conducted by the inquiry committee and the inquiry committee have recorded the statement of witnesses namely Zakir Khan S.I Incharge Chowki Umer Abad, Mazhar Ali ASI I.O case FIR No. 492 under sections 419/420/468/471/171PPC/15AA dated 29.07.2017 PS Lund Khwar District Mardan and Khan Muhammad ASI Muharrar PS CTD Mardan. Copy of the statement of the aforesaid witnesses were also furnished by the representative of the department at the time of arguments which shows that the statements of said witnesses were recorded by the inquiry committee during the inquiry proceeding on 09.08.2017 and 16.08.2017 but the appellant was neither provided opportunity of cross examination nor the statement of witnesses were recorded by the inquiry committee in the presence of the appellant therefore, the appellant was condemned unheard, as opportunity of cross examination to the appellant on the aforesaid witnesses was the fundamental right of the appellant therefore, the inquiry committee has violated the principle of natural justice and the appellant has been deprived from his defence through cross-examination 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, reinstate the appellant into service with the direction to the respondent-department to conduct de-novo inquiry in the mode and manner prescribed by rules.

ATTESTED

CHAIRMAN
Khyber Pakhtunkhwa
Service Tribunal.

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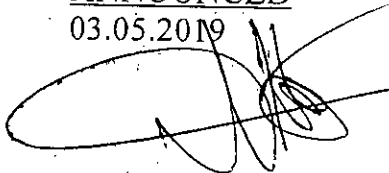
*M. Khan
3.5.2019*

(9)

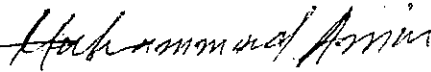
7. Before parting with the judgment it is observed that since the service appeal has been partially accepted and the department have been directed to conduct de-novo inquiry and as per Police Rules, 1975 first schedule the competent authority to the extent of rank of inspector is DPO/SSP therefore, it would be proper to direct concerned DPO/SSP to issue charge sheet, statement of allegation as well as final show-cause notice and pass order deem appropriate in de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

03.05.2019

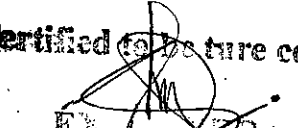


(AHMAD HASSAN)
MEMBER

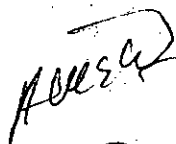


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

Certified to be true copy



**Khyber Pakhtunkhwa
Service Tribunal,
Peshawar**




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

SA.No.975/2018

Ashfaq Ali,.....Appellant

VERSUS

Inspector General of Police/ Provincial Police
Officer, KP Peshawar. & others Respondents

**APPLICATION FOR SINE-DIE ADJOURNMENT
TILL DECISION OF CRIMINAL CASE VIDE FIR
NO.492 DATED 29.07.2017 U/S 419/ 420/ 468/
471/ 171 PPC REGISTERED AT P.S LUWND
KHWAR. *Mardan***

Sir:

1. That aforementioned case is pending for hearing on 16.10.2019 today.
2. That on the same charge alleged in the FIR mentioned above, appellant is facing trial in competent Court of law.
3. That interest of justice demands that instant appeal may please be adjourned sine-die till decision of FIR case.

It is, therefore, humbly requested that appeal may please be adjourned Sine-die till decision of FIR. *Case.*

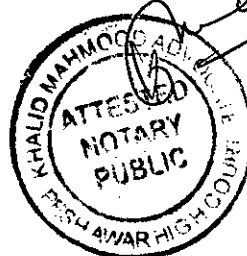
Appellant *W. Ashfaq*

Through *Amjid Ali*

Amjid Ali (Mardan)
Advocate, Supreme Court

AFFIDAVIT

I, do hereby affirm and declare on oath that the contents of the instant **Application** are true and correct and nothing has been concealed from this Hon'ble Court.



W. Ashfaq
Deponent

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

SA.No.975/2018

Ashfaq Ali.....Appellant

VERSUS

Inspector General of Police/ Provincial Police
Officer, KP Peshawar. & others Respondents

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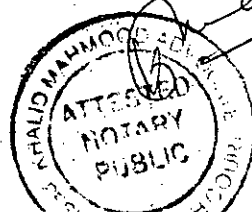
Appellant

Through

[Signature]
Amjid Ali (Mardan)
Advocate, Supreme Court

AFFIDAVIT

I, do hereby affirm and declare on oath that the contents of the instant **Application** are true and correct and nothing has been concealed from this Hon'ble Court.



KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1003 /ST

Dated 16/06 /2021

To


The Deputy Inspector General of Police CTD,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: -

JUDGMENT IN APPEAL NO. 975/2018, MR. ^{ASHFAQ} ~~ALL~~

I am directed to forward herewith a certified copy of Judgement dated 04.06.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.