

Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	31.07.2019	<p style="text-align: center;"><u>BEFORE THE KYBER PAKHTUNKHWA SERVICE TRIBUNAL</u> Service Appeal No. 1399/2018</p> <p style="text-align: center;">Date of Institution 06.11.2018 Date of Decision 31.07.2019</p> <p>Nasir Ali S/o Jehangir Shah R/o Toru Nawan Killi Tehsil & District Mardan. Ex-Constable Police Department Khyber Pakhtunkhwa, District Mardan.</p> <p style="text-align: right;">Appellant</p> <p style="text-align: center;">Versus</p> <ol style="list-style-type: none"> 1. Inspector General of police Khyber Pakhtunkhwa, Peshawar. 2. Deputy Inspector General of Police, Mardan Region-I, Mardan. 3. District Police Officer District Mardan. <p style="text-align: center;">Respondents</p> <p>Mr. Muhammad Hamid Mughal-----Member(J) Mr. Ahmad Hassan -----Member(E)</p> <p style="text-align: center;"><u>JUDGMENT</u> <u>MUHAMMAD HAMID MUGHAL, MEMBER:</u> Learned counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney present.</p> <ol style="list-style-type: none"> 2. The appellant (Ex-Constable) has filed the present service appeal being aggrieved against the order dated 20.08.2018 whereby he was dismissed from service and against the order dated 10.10.2018 through which his departmental appeal against the above mentioned order dated 20.08.2018, was rejected. 3. Learned counsel for the appellant argued that the appellant

31.7.2019

while posted at Police Station City as FC was proceeded against departmentally on the allegation that he in drunk position unnecessarily beat two (02) person namely Abdur Rehman and Muhammad Rizwan who were working in under construction building. Further argued that the departmental inquiry was carried out ex-parte; that the appellant was neither served any charge sheet with summary of allegation nor any Show Cause Notice was issued to him; that the appellant is innocent and was not provided opportunity to defend the charges leveled against him; that the inquiry officer has not collected any evidence in proof of accusation/charge.

4. On the other hand learned Deputy District Attorney while resisting the present service appeal, argued that the appellant misbehaved with the poor workers to the extent of torturing them and during departmental inquiry he was found guilty of misconduct; that the appellant deliberately absented himself and avoided appearance before the inquiry officer.

5. Arguments heard. File perused.

6. Charge against the appellant is that he in a drunk condition unnecessarily harassed/beat two (02) workers namely Abdur Rehman and Muhammad Rizwan who were working in an under construction building. The alleged incident was reported vide DD No.21 dated 17.02.2018 and the appellant was proceeded departmentally. In his inquiry/finding report, the inquiry officer recommended ex-parte action against the appellant for the reason

31.7.2019

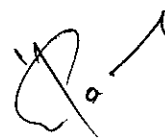
that the appellant willfully/deliberately avoided the service of charge sheet/statement of allegation upon him and did not appear before the inquiry officer to attend his case. Be that as it may be, the inquiry officer has not troubled himself to collect any evidence/proof in support of the charge leveled against the appellant. Inquiry officer did not bother to even record the statements of the victims.

7. In view of above, the punishment/impugned orders are set aside and the appellant is reinstated in service for the purpose of de-novo inquiry strictly in accordance with law/rules. The issue of back benefits shall be subject to the outcome of de-novo inquiry. The present service appeal is accepted in the above noted terms. Parties are left to bear their own costs. File be consigned to the record room.



(Ahmad Hassan)
Member

ANNOUNCED
31.07.2019



(Muhammad Hamid Mughal)
Member

12.03.2019

Clerk to counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Atta ur Rehman SI present. Written reply submitted. To come up for rejoinder/arguments on 28.05.2019 before D.B



Member

28.05.2019

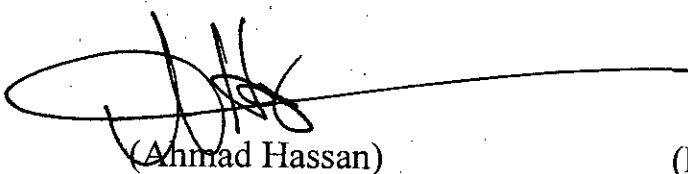
Appellant in person present. Mr. Muhammad Jan, DDA alongwith Mr. Atta Ur Rehman, SI for respondents present. Appellant submitted rejoinder which is placed on file. Adjourned. Case to come up for arguments on 31.07.2019 before D.B.


Member

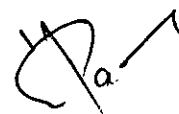
Member

31.07.2019

Learned counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney present. Vide separate judgment of today of this Tribunal placed on file, the punishment/impugned orders are set aside and the appellant is reinstated in service for the purpose of de-novo inquiry strictly in accordance with law/rules. The issue of back benefits shall be subject to the outcome of de-novo inquiry. The present service appeal is accepted in the above noted terms. Parties are left to bear their own costs. File be consigned to the record room.



(Ahmad Hassan)
Member



(Muhammad Hamid Mughal)
Member

ANNOUNCED
31.07.2019

05.12.2018

Counsel for the appellant present.

Contends that through the impugned order dated 20.08.2018 it was manifest that the departmental proceedings were taken at the back of appellant which resulted in award of major punishment of dismissal from service.

Further contends that the enquiry proceedings were not taken in accordance with law and the appellant was not provided with opportunity to defend himself or to cross-examine the witnesses produced before the enquiry officer.

In view of the above, the instant appeal is admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days. Notices be issued to the respondents. Adjourned to 28.01.2019 for submission of written reply/comments before S.B.

Appellant Deposited
Security & Process Fee


Chairman

28.01.2019

Clerk of counsel for the appellant present. Mr. Kabirullah Khattak,

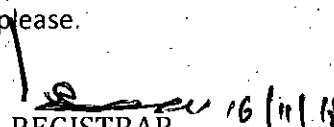

Additional AG alongwith Mr. Atta-ur-Rehman, S.I (Legal) for the respondents present. Written reply on behalf of respondents not submitted. Learned Additional AG requested for adjournment. Adjourned. To come up for written reply/comments on 12.03.2019 before S.B.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1399/2018


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	16/11/2018 19-11-2018	<p>The appeal of Mr. Nasir Ali resubmitted today by Mr. Javed Iqbal Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 16/11/18</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>5-12-2018</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Nasar Ali son Jehangir Shah r/o Toru Nawan Killi ex-constable police Departmental Mardan received today i.e. on 06.11.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.
- 2- Copy of departmental appeal mentioned in the memo of appeal is not attached with the appeal which may be placed on it.
- 3- Copy of order dated 26.08.2018 is illegible which may be replaced by legible/better one.
- 4- Annexures of the appeal may be attested.
- 5- Five more copies sets of the appeal along annexures i.e. complete in all respect may also be submitted with the appeal.

No. 2197 /S.T,

Dt. 6-11 /2018.



REGISTRAR —
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Javed Iqbal Adv. Mardan.

Respected Sir,

Resubmitted with the following submission.

- ① That no charge-sheet, statement allegations, show cause notice were issued to the appellant, Enquiry was conducted exparte. yet the copy of the report is not supplied to appellant. There is no reply thereto.
- ② Copy of departmental appeal is attached as annexure 1.
- ③ Better copy of order dated 20.8.2018 is attached which is wrongly mentioned as 26.8.2018.
- ④ Annexures appeal are attested.
- ⑤ Five extra copies are attached herewith.


*Javed Iqbal Advocate (R.P.U.)
BC-104438
15/11/18
Distt. Kachheri Mardan 2018

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.

CM NO. /2018

IN

Service appeal NO. 1399/2018

Nasir Ali.

....Appellant.

VERSUS.

1. Inspector General of Police K.P.K, Peshawar.
2. Dy:Inspector General of Police, Mardan Region-I
Mardan.
3. District Police Officer, Mardan.

....Respondents.

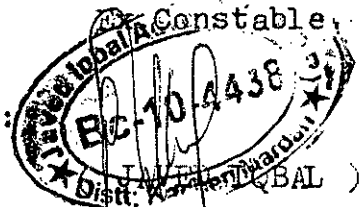
I N D E X.

S.NO.	DESCRIPTION OF DOCUMENTS.	ANNEXURE.	PAGE FROM TO:
1.	Memo of appeal with affidavit.	-	1 06
2.	D.D. NO. 21 dated 17.02.2018	A	- 07
3.	Distt:Police Officer dated 20.08.2018	B	- 08
4.	Departmental appeal.	C	09 09
5.	Dy:Inspector General of Police, Mardan Region-I, Mardan order dated 10.10.2018	D	13
6.	WAKALAT NAMA.		

Dated: 05.11.2018

Appellant Nasir Ali
(NASIR ALI)
Constable, NO. 1879

Through:



Advocate Distt: Courts,
Mardan.

BEFORE THE HONOURABLE COURT SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR.

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal NO. 1399/2018

Diary No. 1609

Nasar Ali s/o Jehangir Shah r/o Toru Nawan

Dated 06-11-2018

Killi Tehsil and District, Mardan.

Ex. Constable Police Department KFK Distt:Mardan

....Appellant.

VERSUS.

1. Inspector General of Police Khyber Pakhtunkhwa
Peshawar.

2. Deputy Inspector General of Police, Mardan
Region-I, Mardan.

3. District Police Officer District, Mardan.

....Respondents.

Filed to-day

Registrar
06/11/18.

SERVICE APPEAL U/S 4 OF SERVICE TRIBUNAL ACT

1974 FINAL APPELLATE ORDER DATED 10.10.2018

PASSED BY RESPONDENT NO. 2 ON APPEAL AGAINST

THE ORDER OF RESPONDENT NO. 3 ON 26.08.2018

WHEREBY THE APPELLANT WAS DISMISSED FROM

SERVICE, WHICH IS LEGALLY AGAINST THE LAW

AND FACTS.

Re-submitted to-day
and filed.

Registrar
16/11/18.

PRAYER.

On acceptance of this appeal order dated 10.10.2018 and order dated 26.08.2018 may kindly 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.

Respected Sheweth:

Sir,

Appellant humbly submits as under:-

1. That appellant was appointed as constable in Police Department and during the occurrence was serving as F.C. in Police Station City Mardan District, Mardan.
2. That the appellant while posted at Police Station City as F.C. was proceeded against departmentally through Mr. Saifullah Khan DSP/Sheikh Maltoon on the allegation that the appellant in drunk position unnecessary beat up two persons namely Sawar and muhammad Rizwan who were working in under construction building vide DD report NO. 21 dated 17.02.2018 Police Station City as Annexure "A"

...3...

3. That after departmental enquiry which was carried out ex parte the appellant was awarded the punishment of dismissal from service by respondent NO. 3 vide the attached order as Annexure "B" .
4. That the appellant moved an appeal to respondent NO.2 against the order of dismissal under rule 11.A of K.P.K Police Rules 1974 which was rejected. (Copy attached as Annexure "B").
5. That both the order dated 10.10.2018 and 20.08.2018 by respondent NO.1 and 2 are not maintainable under the law inter-alia with following and other grounds which with the permission of the learned Court may be advanced at the time of Court proceeding.

GROUNDS.

1. That the order dated 10.10.2018 and 20.08.2018 by respondent NO. 2 and 3 are unlawful, non judicial and arbitrary in the eyes of law.
2. That the appellant has neither served any Show-Cause Notice nor charge/sheeted with summary of allegations.
3. That the appellant has not associated in any way

with any enquiry prior to dismissal.

4. That the appellant has not been provided any opportunity to defend the charges levelled against him.
5. That no evidence has been brought during the enquiry to sustain the charges.
6. That during the enquiry the appellant was posted as F.C. in Police Station Lund Khwar but the appellant was never summoned for appearance before the enquiry officer.
7. That the appellant has never drunk wine in his whole life and the allegations were fabricated and baseless and was not supported by any type evidence.
8. That actually, the said two persons was asked by the police party to remove building material from the road upon which they annoyed and mis-behave with the appellant and other Police constables.
9. That the matter was patched up on the next dated but unfortunately the appellant along with his fellow was put in quarter guard and released after fifteen days from the quarter guard.

...5...

10. That according to the law no one can be punished twice for the same act.
11. That no final show cause notice has been given about the dismissal to the appellant which is mandatory under the law.

It is therefore, humbly prayed that on acceptance of this appeal order, dated 10.10.2018 and 20.08.2018 may kindly be set aside and the appellant may please be reinstated in service with all back benefit. Any other relief deemed fit may also be graciously granted.

Dated: 05.11.2018


You

Appellant Nasar Ali

(NASAR ALI)

Ex. Constable NO. 1879

Through:


Advocate (R.P.)
JAVED IQBAL)
Advocate District Mardan
Distt: Kachehi Mardan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.

C.M. NO. _ /2018

IN

Service appeal NO. /2018

NASAR ALI. APPELLANT.

VERSUS.

1. Inspector General of Police KPK Peshawar.
2. Deputy Inspector General of Police, Mardan
Region-I, Mardan.
3. District Police Officer, Mardan.

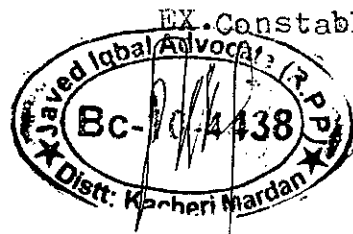
AFFIDAVIT.

I, Mr. Basar Ali s/o Jehangir Shah r/o Nawan Killi Toru
Tehsil and District, Mardan (Appellant) do hereby
solemnly affirm and declare on Oath that the contents
of the application are true and correct and nothing has
been concealed therein.

Dated: 05.11.2018

Deponent Nasar Ali
(NASAR ALI)

EX. Constable. 1879



قلمی

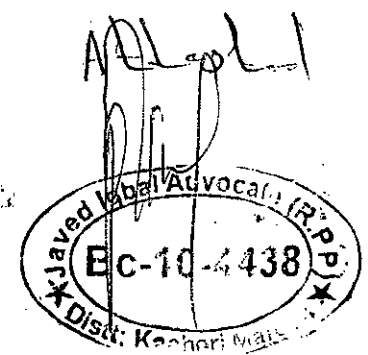
⑦ نقل = 21 (فرنا 3/18) 17

صلاح وصال

21 = N راجوٹ
ردنگار

حال اللہ اکبر تحت 13:30 دوپہ 17² (18) درخت حبیبہ محمد اسمعیل جمال حسین
 ولد محمد حسین خان بٹ ۴۴ سید راجوٹ وصال ملائمتی قلمی از ایک ٹریڈ پرو
 درخواست برخلاف عبدالان ناصر = 1879 ایماز = 3067 ہمراہ از ہر دو کی طر
 نے حسین عبدالرحمن ولد خیر علی۔ ہمارے خوالا ولد ہر سرور جو کہ شہید منہ دو
 زیر تعمیر بلڈنگ میں کام کر رہے ہیں۔ ہر دو کی طر ان کے مار پیٹا اور بیچے اٹھایا
 اور دونوں منہ دونوں کو زرد کو ب زرد کو ب کیا اور یہ بھی ظاہر کیا کہ ہر دو کی طر ان
 لئے کی حالت میں تھے اور دونوں کی طر ان کے خلاف قانونی کارروائی سے دستبرداشتی
 سہ ماہی حد ضمانت جناب DSP سٹی ایچ ایچ اور جناب SP ایچ ایچ ایچ کے نوٹس
 میں لایا۔ ہر دو کی طر ان کے عدالت کی نہ سہ ماہی حد ضمانت سے ہر دو کی طر ان
 کو کوٹاڑ گارڈ میں بند کیا گیا۔ جس کے بعد انھیں جناب SP ایچ ایچ ایچ کے نوٹس
 کی طر ان کو سہ ماہی حد ضمانت سے ہر دو کی طر ان کے عدالت کی نہ سہ ماہی حد ضمانت سے ہر دو کی طر ان
 وصال راجوٹ کے پاس ہے۔

عبدال
 جناب
 نقل بھٹائی ایچ ایچ
 17/2/18

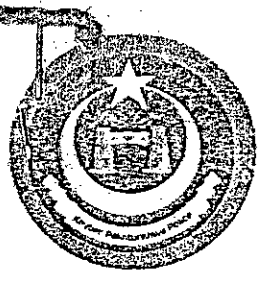


6 (8)

**OFFICE OF THE
DISTRICT POLICE OFFICER,
MARDAN**

2018

Tel No. 0937-9230109 & Fax No. 0937-9230111
Email: dpo_mardan@yahoo.com



No. 5016-19/PA

Dated 24/8/2018

ORDER ON ENQUIRY OF CONSTABLE NASIR NO.1879

This order will dispose-off a departmental enquiry under Police Rules 1975, initiated against the subject official, under the allegations that while posted at Police Station City, (Now PS Lund Khwar), Proceeded against departmentally through Mr. Saifullah Khan DSP/Sheikh Maltoon vide this office Disciplinary Action No.106/R/D.A-P.R-1975 dated 26.02.2018, complaining therein that Constable Nasir in drunk position, unnecessary harassed/beaten two workers namely Muhammad Rizwan & Muhammad Sarwar, who were working in under construction building vide DD report No. 21 dated 17.02.2018 PS City, lodged by SI Jamalullah Khan, who after fulfilling necessary process, submitted his Finding Report to this office vide his office letter No.148/SMT dated, 02.04.2018, recommending the alleged official for ex-parte action in the shape of Major Punishment, in the light of his non-appearance before him (Enquiry Officer), despite of repeated information.

Final Order

From the perusal of Finding Report of Enquiry Officer, I am of the considered opinion that non-appearance of Constable Nasir before the Enquiry Officer manifests that he was nothing to offer in his defense, which is a gross misconduct on his part, therefore, awarded him Major Punishment of Dismissal from Service with immediate effect, in exercise of the power vested in me under Police Rules 1975.

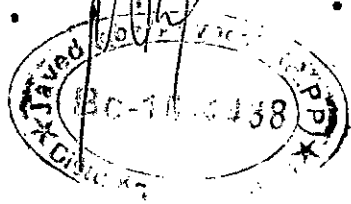
OB No. 1593

Dated 20/8 2018.

District Police Officer,
Mardan.

Copy forwarded for information n/action to-

1. The SDPO Takht-Bhai.
2. The RI Police Lines Mardan.
3. The P O + E.C (Police Office) Mardan.
4. The OSI (Police Office) Mardan with 01 Sheets.



9

BEFORE THE HONOURABLE,
DEPUTY INSPECTOR GENERAL OF POLICE,
MARDAN REGION-I, MARDAN.

Subject: APPEAL AGAINST THE ORDER OF DISTRICT
POLICE OFFICER, MARDAN ISSUED VIDE
OB NO. 2553/ DATED 20.08.2018 WHEREBY
THE APPELLANT HAS BEEN AWARDED MAJOR
PUNISHMENT OF DISMISSAL FROM SERVICE.

Respected Sir,

My detail Submission as under:-

1. During the month of March 2018 the appellant remained posted at Police Station City, Mardan on 17.02.2018 the appellant alongwith Constable Ayaz was on Squad mobile post in the illaqa. On reaching near Bicket Gunj Bazar, , two young boys whose name were later on disclosed to be Muhammad Rizwan and Muhammad Sarwar found present. Being in suspicious condition, they were checked but no illegal material was recovered from their possession. Both the boys misbehaved and felt on Action.
2. On the same day after one house of the above mentioned occurrence, both the boys visited Police Station City and reported to Sub Inspector Jamallullah that they were beaten by the appellant. The Sub Inspector entered report vide DD NO. 21 dated 17.02.2018 Police Station City, Mardan .In the light of the above report

Attested

Sc-10-4135
Distt: Kachera

the appellant alongwith this fellow Constable Ayaz were kept in Quarter Guard for 12 days.

3. That after release from the Quarter Guard the appeallant was transferred from Police Station City Mardan to Police Station Lund Khwar and the appellant made his arrival at his new place of posting.
4. The appellant continued to perform his duty at Police Station Lund Khwar. During this period the appellant was not issued against any charge sheet/show cause notice. Similarly the appellant was not informed from any departmental proceedings. On 24.08.2018 the appellant was informed that some departmental enquiry in the light of report entered vide DD NO. 21 dated 17.02.2018 has been conducted against him and has been dismissed from service vide OB NO. 2553 dated 20.08.2018 .
(Copy of OB NO. 2553 dated 20.08.2018 is enclosed).
5. The appellant recived the said order and hence the present appeal.

GROUNDS OF APPEAL.

1. The alleged departmental enquiry was conducted one sided and the appellant was not informed from the

...3...

enquiry proceedings which is against the norm of justice.

2. The appellant was not given any Charge sheet/Show cause notice and ex.parte action was taken against him .
3. The appellant was not examined during the course of the alleged enquiry and hence deprived from the right of self defence.
4. The appellant was not issued(Final Show Cause Notice) Similarly the appellant was not heard in person which is contrary to the fundamental Principle that no one can be condemned unheard.
5. The Enquiry officer has made irregularities during the alleged enquiry and has recommended the appellant for the award of major punishment.
6. That the matter/ issue relating to DD report NO. 21 dated 17.02.2018 Police Station City Maréan was patched imicably on the following day of the report and the appellant does not know that how this issue was raised up later on all this shows malafidely on the lend of enquiry officer.

...4...

7. That the order of dismissal indicate the appellant was in drunk position, which is against the facts. The appellant has never used wine etc in his hole life.

8. That the appellant has been enlisted as Constable in Police department on 24.09.2011 and since then performed his duty with zeal and effency. The appellant was not dealt departmentally prior to this.

9. The appellant has old parents. The livelihood of the entire family is depend upon the police service of the appellant.

Keeping invew, the above facts and circumstance mentioned above it is humbly requested that the order of Distt:Police Officer,Mardan may kindly be set aside by reinstating the appellant in service from the date of dismissal Please.

Dated: 30.08.2018

Yours Obediently

Nasir Ali
(NASIR ALI)
Ex.Constable NO. 1879
Police Distt:Mardan.

13

19

ORDER

This order will dispose-off the departmental appeal preferred by Ex-Constable Nasir Ali No. 1879 of Mardan District Police against the order of District Police Officer, Mardan, wherein he was awarded Major punishment of dismissal from service vide District Police Officer, Mardan OB No. 1593 dated 20.08.2018.

Brief facts of the case are that the appellant while posted to Police Station City, Mardan was in drunk position, unnecessarily harassed/beaten two workers namely Abdur Rehman & Muhammad Rizwan, who working in an under construction building reported vide DD No. 21 dated 17.02.2018 Police Station City lodged by SI Jamal Ullah was proceeded departmentally. Mr. Saif Ullah Khan DSP/Sheikh Maltoon, Mardan was deputed as Enquiry Officer who after fulfilling necessary process submitted his finding report and recommended him for ex-parte action for Major Punishment as he failed to appear before the Enquiry Officer despite repeated summons. Therefore, the District Police Officer, Mardan awarded him Major punishment of dismissal from service vide his office OB: No. 1593 dated 20.08.2018.

He was called in orderly room held in this office on 03.10.2018 and heard him in person. The appellant did not produce any cogent reason for his innocence. Besides, the appellant was also dismissed from service due to his absence from duty in the year 2014. Therefore, I find no grounds to intervene into the order passed by District Police Officer, Mardan. Appeal is rejected.

ORIGINAL UNCRIP.

Muhammad Ali Khan

(MUHAMMAD ALI KHAN) PSP
Regional Police Officer,
Mardan.

No. 6286 /ES, Dated Mardan the 10/10 /2018.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 733/LB dated 25.09.2018. The Service Record is returned herewith:

(****)

Attested

[Signature]
Bc-104438
Dist: Kachheri Mall

مورخہ 18-10-2018ء منجانب: ام علی
 مقدمہ بعنوان سروس ٹرسٹریٹ بنام ام علی
 مقدمہ نمبر _____ رجوعہ _____
 نوعیت مقدمہ _____
 مقدمہ علت نمبر _____ مورخہ _____
 جرم _____ تھانہ _____



باعث تحریر آنکہ



مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام ام علی کیلئے ام علی کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل مقررہ کو راضی نامہ کرنے و تقرر ی ثالث و فیصلہ برحلف دینے عرضی دعویٰ، جواب دعویٰ، اقبال دعویٰ، جواب الجواب، عذر داری، درخواست زبردفعہ (2) 12 ض د، درخواست بمراد برآمدگی و سرسبزی مقدمہ، درخواست بمراد منسوخی کاروائی و ڈگری یکطرفہ دائر کرنے جواب، جواب الجواب وغیرہ درخواست کاروائی اجراء دائر کرنے و وصولی چیک و رقم اور درخواست از ہر قسم کی تصدیق زرا اس پر دستخط وغیرہ کرنے کا اختیار ہوگا۔ اپیل، اپیل دراپیل، نگرانی، نظر ثانی، رٹ و عذر داری وغیرہ دائر کرنے کا بھی اختیار ہوگا۔ اور بصورت ضرورت مذکورہ کے عمل یا جزوی کاروائی کے واسطے وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اس کا ساختہ برداشت منظور و قبول ہوگا اور دوران مقدمہ میں جو خرچہ دہر جانے التوائے مقدمہ کے سبب سے ہوگا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا و خرچہ کی وصولی کا بھی اختیار ہوگا۔ اگر کوئی تاریخ پیشی پر وکیل موصوف مقام دورہ پر ہونا حد سے باہر ہو یا بیمار ہو یا کوئی ضروری کام ہو۔ تو وکیل صاحب پابند نہ ہونگے کہ پیروی مقدمہ مذکورہ کریں لہذا وکالت نامہ لکھ دیا تاکہ سند رہے۔

المقوم: 18-10-2018

مقام _____ کے لئے منظور ہے۔

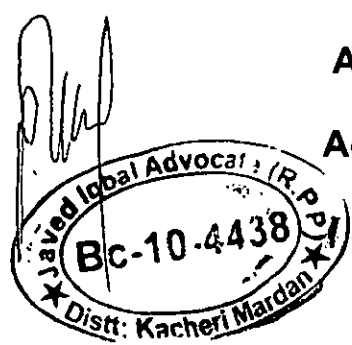
نوٹ: اس وکالت نامہ کو نوکالی، قابل قبول ہوگی۔

Advocate I.D: Bc. 10 4438

Bar Council KPK

Bar Association Mardan

Contact #: 033,9224274



Attested & Accepted

ام علی ولد جہانگیر خان آف یونان کل طور و تحصیل گلبرگان

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.

Service Appeal No. 1399/2018.

Nasir AliAppellant.

VERSUS.

District Police Officer, Mardan
& others.....Respondents.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS:-

1. That the appellant has not come to this Honourable Tribunal with clean hands.
2. That the appellant has got no cause of action.
3. That the appellant has concealed material facts from this Honourable Tribunal.
4. That the appellant is estopped by his own conduct, by law to bring the instant appeal.
5. That the present appeal is bad in its present form hence not maintainable and liable to be dismissed.
6. That the appeal is bad due to non-joinder of necessary parties and mis-joinder of unnecessary parties.
7. That the instant appeal is barred by law & limitation.

REPLY ON FACTS.

1. Correct, hence, no comments.
2. Correct, hence, no comments.
3. Correct, hence, no comments.
4. Correct, hence, no comments.
5. Incorrect. Both the impugned orders are maintainable on legal and moral grounds as well. The appellant being a member of disciplined force has committed misconduct and held liable under the rules/law.

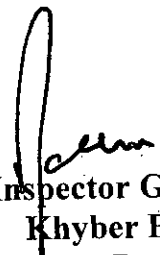
REPLY ON GROUNDS:-

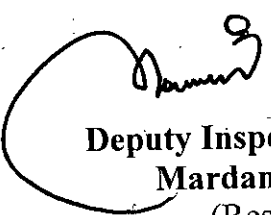
1. Incorrect. Both the impugned orders are lawful, judicial and in accordance with rules/law, hence, denied.
2. Incorrect. The appellant was dealt under rules/law by issuing him charge-sheet/disciplinary action No. 106/R/D.A.P /R-1975 dated 26.02.2018 and all codal formalities has been done with. **(Copy of Charge-Sheet/Disciplinary Action is attached as Annexure-A)**
3. Correct as the appellant was summoned time and again through control room, telephone and letters but he did not turn even a deaf ear. He was, therefore, punished as deserved in Ex-Parte. **(Copy of inquiry is attached as Annexure-B)**
4. Incorrect. The appellant deliberately absented and avoided appearance before the inquiry officer. Besides, he was also called in orderly room on 03.10.2018 and heard in person by respondent No. 02 in his office but he could not defend plausibly. **(Copy of order of DIG Mardan is attached as Annexure-C)**
5. Incorrect. Report of the incident is marked in the daily diary No. 21 dated 17.02.2018, however, later on the appellant deliberately absented and did not appear before the inquiry officer. **(Copy of DD No. 21 dated 17.02.2018 is attached as Annexure-D)**
6. Incorrect, hence, denied.


7. Incorrect. A person namely: Noman Hussain had reported the incident which was reproduced vide DD No. 21 dated above.
8. Incorrect as the appellant might have misbehaved with the poor-workers and then to the extent of torturing them.
9. Incorrect. The appellant had infact misbehaved in a manner and thereby violated the rules. He was found guilty of misconduct, hence, punished as deserved under rules/law.
10. Incorrect. Hence, denied.
11. Incorrect. The appellant is dealt under rules/law and all codal formalities has been done with.

PRAYER:-

It is, therefore, requested that the prayer of the appellant, being baseless & devoid of merits, is liable to be dismissed with costs.


**Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.**
(Respondent No. 01)


**Deputy Inspector General of Police,
Mardan Region-I, Mardan**
(Respondent No. 02)


**District Police Officer,
Mardan**
(Respondent No. 03)

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

Service Appeal No. 1399/2018.

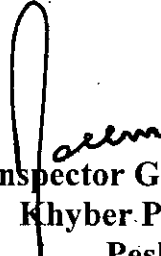
Nasir AliAppellant.

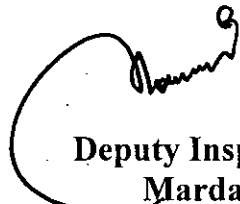
VERSUS.

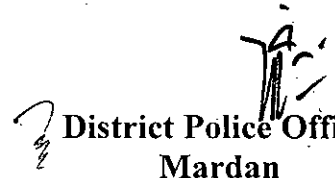
District Police Officer, Mardan
& othersRespondents.

COUNTER AFFIDAVIT.

We, the respondents do hereby declare and solemnly affirm on oath that the contents of the Para-wise comments in the service appeal cited as subject are true and correct to the best of our knowledge and belief and nothing has been concealed from this Honourable Tribunal.


**Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.**
(Respondent No. 01)


**Deputy Inspector General of Police,
Mardan Region-I, Mardan**
(Respondent No. 02)


**District Police Officer,
Mardan**
(Respondent No. 03)

CHARGE SHEET UNDER KPK POLICE RULES 1975

I, Dr. Mian Saeed Ahmed District Police Officer, Mardan as competent ~~by~~ hereby charge you **Constable Nasir No. 1879**, as follows.

That you **Constable Nasir No. 1879**, while posted at Police Station City.

An application submitted by one Numan Hussain and Muhammad Hussain w/o Bicket that on 17.02.2018 two workers namely Muhammad Rizwan and Muhammad Sarwar were ~~working~~ in under construction building. You (Constable Nasir) was came in drunken beaten them and unnecessary harassed them. The same situation was entered By SI Jamalullah Khan of PS City vide DD No. 21 dated 17.02.2018. and you are recommended to proceed against departmentally by the undersigned.

This amounts to grave misconduct on your part, warranting departmental action against you, as defined in section - 6 (1) (a) of the KPK Police Rules 1975.

1. By reason of the above, you appear to be guilty of misconduct under section - 02 (iii) of the KPK Police Rules 1975 and has rendered yourself liable to all or any of the penalties as specified in section - 04 (i) a & b of the said Rules.
2. You are therefore, directed to submit your written defense **within seven days** of the receipt of this charge sheet to the enquiry officer.
3. Your written defence 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, an ex-parte action shall follow against you.
4. Intimate whether you desired to be heard in person.

(Dr. Mian Saeed Ahmed) PSP
District Police Officer,
Mardan

**OFFICE OF THE
DISTRICT POLICE OFFICER
MARDAN**

Tel: 0937-9230109
Fax: 0937-9230111
Email: dpomardan650@gmail.com
Facebook: District Police Mardan
Twitter: @dpomardan

106 /R/D.A-P.R-1975.
dated 26.02.2018

DISCIPLINARY ACTION UNDER KPK POLICE RULES – 1975

I, **Dr. Mian Saeed Ahmed** District Police Officer, Mardan as competent authority am of the opinion that **Constable Nasir No. 1879**, rendered himself liable to be proceeded against as he committed the following acts/omission within the meaning of section-02 (iii) of KPK Police Rules 1975.

STATEMENT OF ALLEGATIONS

That **Constable Nasir No. 1879**, while posted at Police Station City, Mardan. An application submitted by one Numan Hussain and Muhammad Hussain r/o Bicket Gunj, that on 17.02.2018 two workers namely Muhammad Rizwan and Muhammad Sarwar were working in under construction building. He (Constable Nasir) was came in drunken beaten them and unnecessary harassed them. The same situation was entered By SI Jamalullah Khan of PS City vide DD No. 21 dated 17.02.2018, and he (Constable Nasir) is recommended to proceed against departmentally by the undersigned.

2. For the purpose of scrutinizing the conduct of the said official with reference to the above allegations _____ is appointed as Enquiry Officer.

3. The enquiry officer shall conduct proceedings in accordance with provisions of Police Rules 1975 and shall provide reasonable opportunity of defense and hearing to the accused official, record its findings and make within twenty five (25) days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused officer.

4. The accused officer shall join the proceedings on the date, time and place fixed by the Enquiry Officer.

(Dr. Mian Saeed Ahmed) PSP
District Police Officer,
Mardan

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

No. _____ /R, dated Mardan the _____ /2017.

Copy of above is forwarded to the:

1. _____ for initiating proceedings against the accused official / Officer namely **Constable Nasir No. 1879**, under Police Rules, 1975.
2. **Constable Nasir No. 1879**, with the directions to appear before the Enquiry Officer on the date, time and place fixed by the enquiry officer for the purpose of enquiry proceedings.

Memo:

Kindly refer to your office diary No.106/R, dated 26.02.2018.

FINDING REPORT:-

It was alleged that Constable Nasir No. 1879, while posted at Police Station City, Mardan, an application submitted by one Numan Hussain and Muhammad Hussain r/o Bicket Gunj, that on 17.02.2018 two workers namely Muhammad Rizwan and Muhammad Sarwar were working in under construction building. He (constable Nasir) was came in drunken beaten them and unnecessary harassed them. The same situation was entered by SI Jamal Ullah khan of PS City vide DD No.21 dated 17.02.2018 and he (constable Nasir) is recommended to proceed against departmentally by the undersigned.

Charge sheet with statement of allegations was issued to the alleged official and the inquiry was entrusted to the undersigned for proper probe.

Initiating the Inquiry proceedings Muharrar of Police station City Mardan, Incharg Control room Mardan contacted through telephonic calls, parwana's and certain letters for summoning the defaulter official who in return informed that the official is still absent from his official duties. The MASI further informed that the defaulter official could not be contacted on his given phone numbers. Besides, The official was lastly informed vide letter No.133/SMT dated 29.03.2018 through concerned posting place and incharge control room mardan but he failed to appear before undersigned until now.

All this means that the official is willfully/deliberately concealing himself from serving charge sheet plus statement of allegation upon him and did not appear into this office to defend his case by showing plausible/solid reason for his absence which shows that the official is no more interested in his service/job as his negligence.

Keeping in view the above facts and circumstances, it is recommended that an ex-parte action may be taken against the defaulter Constable Nasir No.1879 and give him **Major punishment**, if agreed.

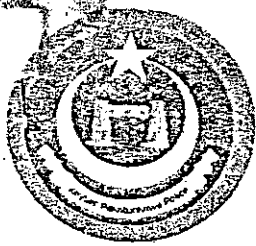
No. 148 /SMT

Dated. 02/04 /2018.

Deputy Superintendent of Police,
S.M.T-Circle.

*Commercial from
Service
to proceed
to punishment
DPG/MON*

LKR



OFFICE OF THE
DISTRICT POLICE OFFICER,
MARDAN

Tel No. 0937-9230109 & Fax No. 0937-9230111
Email: dpo_mardan@yahoo.com

2018

No. 5016-19/PA

Dated 23/18 2018

ORDER ON ENQUIRY OF CONSTABLE NASIR NO.1879


This order will dispose-off a departmental enquiry under Police Rules 1975, initiated against the subject official, under the allegations that while posted at Police Station City, (Now PS Lund Khwar), Proceeded against departmentally through Mr. Saifullah Khan DSP/Sheikh Maltoon vide this office Disciplinary Action No.106/R/D.A-P.R-1975 dated 26.02.2018, complaining therein that Constable Nasir in drunk position, unnecessary harassed/beaten two workers namely Muhammad Rizwan & Muhammad Sarwar, who were working in under construction building vide DD report No. 21 dated 17.02.2018 PS City, lodged by SI Jamalullah Khan, who after fulfilling necessary process, submitted his Finding Report to this office vide his office letter No.148/SMT dated 02.04.2018, recommending the alleged official for ex-parte action in the shape of Major Punishment, in the light of his non-appearance before him (Enquiry Officer), despite of repeated information.

Final Order

From the perusal of Finding Report of Enquiry Officer, I am of the considered opinion that non-appearance of Constable Nasir before the Enquiry Officer manifests that he was nothing to offer in his defense, which is a gross misconduct on his part, therefore, awarded him Major Punishment of Dismissal from Service with immediate effect, in exercise of the power vested in me under Police Rules 1975.

OB No. 1553

Dated 20/8 2018.


District Police Officer,
Mardan.

Copy forwarded for information n/action to-

1. The SDPO Takht-Bhai.
2. The RI Police Lines Mardan.
3. The P.O + E.C (Police Office) Mardan.
4. The OSI (Police Office) Mardan with 9 Sheets.

ORDER

This order will dispose-off the departmental appeal preferred by Ex-Constable Nasir Ali No. 1879 of Mardan District Police against the order of District Police Officer, Mardan, wherein he was awarded Major punishment of dismissal from service vide District Police Officer, Mardan OB No. 1593 dated 20.08.2018.

Brief facts of the case are that the appellant while posted to Police Station City, Mardan was in drunk position, unnecessarily harassed/beaten two workers namely Abdur Rehman & Muhammad Rizwan, who working in an under construction building reported vide DD No. 21 dated 17.02.2018 Police Station City lodged by SI Jamal Ullah was proceeded departmentally. Mr. Saif Ullah Khan DSP/Sheikh Maltoon, Mardan was deputed as Enquiry Officer who after fulfilling necessary process submitted his finding report and recommended him for ex-parte action for Major Punishment as he failed to appear before the Enquiry Officer despite repeated summons. Therefore, the District Police Officer, Mardan awarded him Major punishment of dismissal from service vide his office OB: No. 1593 dated 20.08.2018.

He was called in orderly room held in this office on 03.10.2018 and heard him in person. The appellant did not produce any cogent reason for his innocence. Besides, the appellant was also dismissed from service due to his absence from duty in the year 2014. Therefore, I find no grounds to intervene into the order passed by District Police Officer, Mardan. Appeal is rejected.

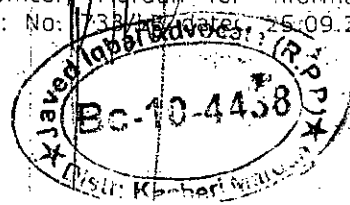
ORDER ANNOUNCED

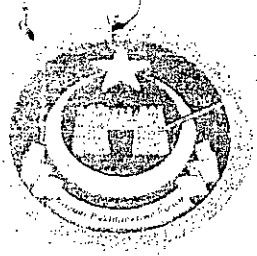
Muhammad Ali Khan
(MUHAMMAD ALI KHAN) PSP
Regional Police Officer
Mardan.

No. 6296 /ES, Dated Mardan the 10/10 /2018.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 1234/ES dated 25.09.2018. The Service Record is returned herewith.

(*****)





182
15-1-19
No. 872

1

OR
03/12/19

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

/19, dated Peshawar the 11/01/2019.

To: The Regional Police Officer,
Mardan.

Subject: REVISION PETITION (EX-FC NASIR ALI NO. 1879).

Memo:

Please refer to your office Memo: No. 8473/ES, dated 24.12.2018.

The Competent Authority has examined and filed the revision petition submitted by Ex-Constable Nasir Ali No. 1879 of Mardan District Police against the punishment of dismissal from service awarded by District Police Officer, Mardan vide OB No. 1593, dated 20.08.2018 as his service appeal No. 1399/2018 is sub-judice in Service Tribunal Khyber Pakhtunkhwa, Peshawar.

His Service Roll alongwith Fauji Missal received vide above quoted reference is returned herewith for your office record, please.

The applicant may please be informed accordingly.

Attached
R/FC

(SADIQ BALOCH) PSP
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

14/1/19

No. S/ /19.

Copy of above is forwarded for information to the DSP/PAS, CPO Peshawar w/r to his office Memo: No. 6667/PAS, dated 06.11.2018.

NO. 457/ES

DTs 15/01/19

EC/DPO, Mardan

For n/ action.

RPO/Mardan
14/1/19

14/1/19

بھادری

نقل و حرکت دوسری 17-2-18

پہلے دوران

21 رپورٹ
دوائے

وقتاً 13:30 بجے 17/2 درج ذیل مہتمم مسماں نے حیات و اولاد محمد حسین لکنہ ٹیٹ کے
 بیٹا دودھ مورڈ کے خلاف مقدمہ آئیے کر کے دد فو اسٹا م کے مانیٹلنگ
 ٹائم 1879 آئیڈ 3067 مہتمم کا دت دودھ و مانیٹلنگ کے لیے سیٹ عبدالرحمن ولد
 میرد علی، محمد رفیق و لا محمد سرور جو تخت دودھ زبیر مہتمم والد کے بیٹا
 کا کرتے ہیں۔ دودھ و مانیٹلنگ نے مادا اسپ کے اود پر پھر آٹھایا۔ اود دودھ و دودھ
 کو زرو کو ہے کیا اود یہ بھی ظاہر کیا کہ دودھ و مانیٹلنگ نے نہ کہ حالت میں جو
 اود دودھ کا ٹیلنگ کے خلاف قانونی کارروائی کے لیے اسٹیم کیا ہے۔ سرپرست
 علیہ حالات کا ڈی اسپ مہتمم اور صاحب اسپ مہتمم اپریٹا کے نوٹس میں لایا
 مادیٹلنگ اسپ مہتمم اپریٹا نے برائیاں کی کہ سرپرست دودھ و مانیٹلنگ کو توڑ دیا
 میں بند کیا جائے ہے جب الحکم صاحب اسپ اپریٹا مہتمم دودھ و مانیٹلنگ کو دسوا
 سرکار کے جو مالک لافٹ کے سرکار کے جو مالک لافٹ کے جو مالک لافٹ کے جو مالک
 نقل و حرکت دوسری کے لیے مناسب کارروائی کے لیے مالک کے جو مالک لافٹ کے جو مالک
 کا ہے

بھادری عالی

نقل و حرکت دوسری

MM-PS-City

17-2-18

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.

Service Appeal No. 1399/2018.


Nasir AliAppellant.

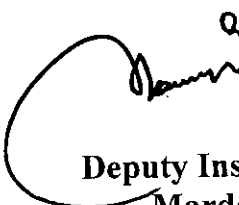
VERSUS.


District Police Officer, Mardan
& others.....Respondents.

AUTHORITY LETTER.

Mr. Atta-ur-Rahman Inspector Legal, (Police) Mardan is hereby authorized to appear before the Honourable Service Tribunal, Khyber Pakhtunkhwa, Peshawar in the above captioned service appeal on behalf of the respondents. He is also authorized to submit all required documents and replies etc. as representative of the respondents through the Addl: Advocate General/Govt. Pleader, Khyber Pakhtunkhwa Service Tribunal, Peshawar.


Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 01)


Deputy Inspector General of Police,
Mardan Region-I, Mardan
(Respondent No. 02)


District Police Officer,
Mardan
(Respondent No. 03)

G R O U N D S:-

1. Para 1, Incorrect. Both the impugned orders are illegal and are not based on any sound legal grounds, hence denied .
2. Para 2 is false and untrue. The Charge-Sheet / disciplinary action and other legal formalities are not done in the manner as specified by the law.
3. Para 3 incorrect. The appellant was never summoned according to the law. No signature of the appellant or other proof is available on the enquiry report to presume that these were served upon the appellant.
4. Para Incorrect: The appellant has not absented from duty rather was performing his duty in Police Station Land Khwar.
5. Para 5 Incorrect: Nothing is brought during the Ex-parte enquiry proceeding to either establish the charges of absence or the so called allegations contain in the said Daily Diary NO.21 dated 17.02.2018.
6. Para Incorrect: false untrue and contrary to the facts.
7. Para 7 of appeal is correct while the reply there to is incorrect, false, denied.

- 8. Para 8 Incorrect, false , hence denied .
- 9. Para 9 Incorrect, there is no legal material to prove the misbehaviour or mis-conduct on part of the appellant.
- 10. Para NO. 10 of appeal is correct while reply to the same is not true.
- 11. Para NO. 11 is not true and is contrary to the facts on record.

It is, therefore, prayed that on acceptance of this appeal, this Honourable tribunal may graciously be pleased to set aside the impugned order and the appellant may be exonerated from the charges levelled against him with cost in greater interest of justice.

Dated: 22.05.2019

Appellant _____

(NASIR ALI)

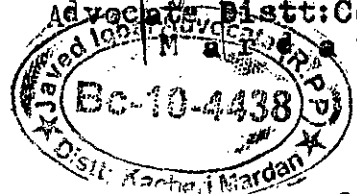
Through:-

[Signature]

(JAVED IQBAL)

Advocate Distt: Courts
Mardan

A F F I D A V I T.

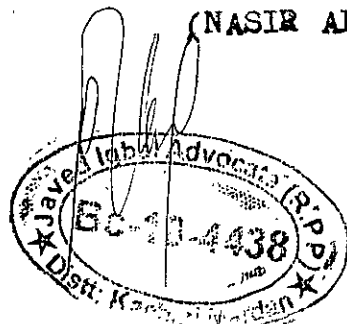


I, Nasir Ali, the appellant do hereby state on solemnly affirm and declare that contents of the appeal and this rejoinder are true and correct, while the objection raised in written statement are incorrect and false.

Appellant _____

[Signature]
(NASIR ALI)

Oath Commissioner
Fazal Ghaffar
Advocate
Distt: Courts Mardan



27/5/19

record constitute prima facie case for enquiry he shall proceed as in rule 16.24 post. The record referred to above shall be, attached to the record of the enquiry and may be used as the basis of the charge, but the statements recorded shall not be regarded as evidence; the persons making such statement shall ordinarily be called as witnesses and examined in the presence of, and be tendered for cross-examination by, the accused police officer.

16.24. Procedure in departmental enquiries.— (1) The following procedure shall be followed in departmental enquiries:-

- (i) The police officer accused of misconduct shall be brought before an officer empowered to punish him, or such superior officer as the Superintendent may direct to conduct the enquiry. That officer shall record and read out to the accused officer a statement summarizing the alleged misconduct in such a way as to give full notice of the circumstances in regard to which evidence is to be recorded. A copy of the statement will also be supplied to the accused officer free of charge.
- (ii) If the accused police officer at this stage admits the misconduct alleged against him, the officer conducting the enquiry may proceed forthwith to frame a charge, record the accused officer's plea and any statement he may wish to make in extenuation and to record a final order, if it is within his power to do so, or a finding to be forwarded to an officer empowered to decide the case. When the allegations are such as can form the basis of a criminal charge the Superintendent shall decide at this stage, or before a departmental charge is framed under clause (iv) below, whether the accused shall be tried judicially or departmentally.
- (iii) If the accused police officer does not admit the misconduct, the officer conducting the enquiry shall proceed to record such evidence, oral and documentary, in proof of the accusation, as is available and necessary to support the charge. Whenever possible, witnesses shall be examined direct, and in the presence of the accused, who shall be given opportunity to take notes of their statements and cross-examine them. The officer conducting the enquiry is empowered, however, to bring on to the record the statement of any witness whose presence cannot, in the opinion of such officer, be procured without undue delay and expense or inconvenience, if he considers such statement necessary, and provided that it has been recorded and attested by a police officer superior in rank to the accused officer or by a Magistrate, and is signed by the person making it. This statement shall also be read out to the accused officer and he shall be given an opportunity to take notes. The accused shall be bound to answer any questions which the enquiring officer may see fit to put to him with a view to elucidating the facts referred to in statement or documents brought on the records as herein provided.
- (iv) When the evidence in support of the allegations has been recorded the enquiring officer shall, (a) if he considers that such allegations are not substantiated, either discharge the accused himself, if he is empowered to punish him, or recommend

his discharge to the Superintendent, or other officer, who may be say empowered, or (b) proceed to frame a so formal charge or charges in writing, explain them to the accused officer and call upon him to answer them. A copy of the charge framed will also be supplied to the accused police officer free of charge.

- (v) The accused officer shall be required to state the defense witnesses whom he wishes to Cal and may be given time, in no case exceeding forty-eight hours, to prepare a list of such witnesses, together with a summary of the facts as to which they will testify. The enquiring officer shall be empowered to refuse to hear any witnesses whose evidence he considers will be irrelevant or unnecessary in regard to the specific charge framed. He shall record the statements of those defense witnesses whom he decides to admit in the presence of the accused, who shall be allowed to address questions to them, the answers to which shall be recorded; provided that the enquiring officer may cause to be recorded any other police officer superior in rank to the accused the statement of any such witness whose presence cannot be secured without undue delay or inconvenience, and may bring such statement on to the record. The accused may file documentary evidence and may for this purpose be allowed access to such files and papers, except such as form part of the report of the confidential office of the Superintendent of Police, as the enquiring officer deems fit. The supply of copies of documents to the accused shall be subject to the ordinary rules regarding copying fees.
- (vi) At the conclusion of the defense evidence or, if the enquiring officer so directs, at any earlier stage following the framing of a charge, the accused shall be required to state his own answer to the charge. He may be permitted to file a written statement and may be given time, not exceeding one week, for its preparation, but shall be bound to make an oral statement in answer to all questions which the enquiring officer may see fit to put to him, arising out of the charge, the recorded evidence, or his own written statement.
- (vii) The enquiring officer shall then proceed to pass orders of acquittal or punishment, if empowered to do so, or to forward the case with his finding and recommendations to an officer having the necessary powers.
- (viii) Nothing in the foregoing rule, shall debar a Superintendent of Police from making or causing to be made a preliminary investigation into the account of a suspected officer. Such an enquiry is not infrequently necessary to ascertain the nature and degree of misconduct which it so be formally required into. The suspected police officer may not be present at such preliminary enquiry, as ordered by the Superintendent of Police or other gazetted officer initiating the investigation, but shall not cross examine witnesses. The file of such a preliminary investigation shall form no part of the formal departmental record, but statements therefrom may be brought on to the formal record when the witnesses are no longer available in the circumstances detailed in clause (iii) above. All statements

- recorded during the preliminary investigation should be signed by the person making them and attested by the officer recording them.

- (ix) No order of dismissal or reduction in rank shall be passed by an officer empowered to dismiss a police officer or reduce him in rank until that officer has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him, provided that this shall be apply:—
- (a) where a police officer is dismiss or reduced in rank on the ground of conduct which led to his conviction on a criminal charge; or
 - (b) where the officer empowered to dismiss him or reduce him in rank is satisfied that for some reason to be recorded by that officer in writing, it is not reasonably practicable to give to that police officer an opportunity showing cause.

Before an order of dismissal or reduction in rank is passed, the officer to be punished shall be produced before the officer empowered to punish him, and shall be informed of the charges proved against him, and called upon to show cause why an order of dismissal or reduction in rank should not be passed. Any representation that he may make shall be recorded, shall form part of the record of the case, and shall be taken into consideration by the officer empowered to punish him before the final order is passed.

Provided that if, owing to the complicated nature of the case or other sufficient reason to be recorded, the officer empowered to impose the punishment considers his procedure inappropriate, he may inform the officer to be punished in writing of the charges proved against him, and call upon him to show cause in writing why an order of dismissal or reduction in rank should not be passed. Any written representation received shall be placed on the record of the case and taken into consideration before the final order is passed.

(2) (i) Notwithstanding anything contained in sub-rule (1) a Superintendent of Police, or any officer of rank higher than Superintendent, may institute, or cause to be *instituted*, ex-parte proceedings in any case in which he is satisfied that the defaulter cannot be found, or that in spite of notice to attend the defaulter is deliberately evading service or refusing to attend without due cause.

- (ii) The procedure in such ex-parte proceedings shall, as far as possible, conform to the procedure laid down in sub-rule (1);

Provided that the defaulter shall be deemed:—

- (a) not to have admitted the allegation contained in the summary of misconduct, and
- (b) to have entered a plea of not guilty to the charge;

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1544 /ST

Dated 2-9- / 2019


To

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

Subject: - JUDGMENT IN APPEAL NO. 1399/2018, MR. NASIR ALI.

I am directed to forward herewith a certified copy of Judgement dated 31.07.2019 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.