

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 495/2018

Date of Institution ... 09.04.2018

Date of Decision ... 29.06.2021

Momin Khan S/O Banaras (Ex-Constable No. 2535 Elite Police Force KPK) R/O Village New Qazian, K.T.S, Tehsil & District Haripur.

... (Appellant)

Versus

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and three other.

... (Respondents)

MR. MOHAMMAD ASLAM TANOLI,
Advocate

... For appellant.

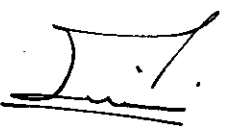
MR. KABEERULLAH KHATTAK,
Additional Advocate General

... For respondents.

MR. SALAH-UD-DIN,
MS. ROZINA REHMAN,
MR. ATIQ-UR-REHMAN WAZIR,

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

JUDGMENT


SALAH-UD-DIN, MEMBER:- The appellant has filed the instant Service Appeal against the impugned order dated 08.02.2018, passed by Additional Inspector General of Police Elite Force Khyber Pakhtunkhwa Peshawar, whereby the departmental appeal filed by the appellant was rejected and the order dated 30.05.2016, passed by the Deputy Commandant RRF Khyber Pakhtunkhwa Peshawar regarding the dismissal of the appellant from service was upheld.

2. Precise facts are that the appellant was serving as Constable in RRF Unit No. 14, when disciplinary action was initiated against him on

the ground that he was charged in case FIR No. 30 dated 18.01.2016 under section 17 (3) Harraba registered at Police Station Oghi District Mansehra. On conclusion of inquiry, the appellant was dismissed from service vide order dated 30.05.2016 passed by Deputy Commandant RRF Khyber Pakhtunkhwa Peshawar. The departmental appeal filed by the appellant was also rejected vide order dated 08.02.2018, hence the instant Service Appeal.

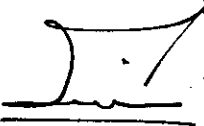
3. Respondents submitted their reply, wherein it was mainly alleged that as the appellant was charged in a criminal case and the charges against him stood proved in a proper inquiry, therefore, he has been rightly dismissed from service.

4. The instant Service Appeal was decided by a Division Bench of this Tribunal on 22.08.2019 by rendering dissenting judgments, therefore, the appeal was referred to Larger Bench for its decision.

5. Mr. Muhammad Aslam Tanoli, Advocate, representing the appellant has argued that the appellant was falsely implicated in the criminal case and has been acquitted by a competent court. He further contended that the appellant was proceeded against on the ground of his involvement in the criminal case, however the acquittal of the appellant has vanished the very ground, which provided base for disciplinary action against the appellant. He next argued that after arrest of the appellant in criminal case, the respondents were required to have suspended the appellant and should have waited for conclusion of trial of the appellant, however the respondents dismissed the appellant in a hasty manner, without complying the relevant provisions of inquiry as prescribed in Police Rules, 1975. He further contended that after acquittal of the appellant in the criminal case on 17.10.2017, he applied for obtaining attested copy of the judgment, which was delivered to him on 27.10.2017 and he filed departmental appeal on 17.11.2017, which is well within time. He next contended that departmental appeal of the appellant was dismissed vide impugned order dated 08.02.2018 but no copy of the same was communicated to the appellant, therefore, he submitted an application for obtaining copy of the said order, which was allowed and the appellant was handed over the copy of the order on 02.04.2018, while he filed the instant appeal on 09.04.2018, which is within time. In the last he contended that the

impugned order of dismissal of the appellant is wrong and illegal, hence liable to be set-aside. Reliance was placed on PLD 2010 Supreme Court 695, 2013 SCMR 752, 2019 PLC (C.S) 255, 1998 SCMR 1993, 2003 PLC (C.S) 514, 2001 PLC (C.S) 667, PLJ 2015 Tr.C (Services) 152, PLJ 2015 Tr.C (Services) 154, PLJ 2015 Tr.C (Services) 197, PLJ 2015 Tr.C (Services) 208, PLJ 2015 Tr.C (Services) 211, 2009 PLC (C.S) 471 and 2009 PLC (C.S) 477.

6. Conversely, learned Additional Advocate General has contended that the appellant was involved in a criminal case of Harraba, therefore, disciplinary action was taken against him in accordance with Police Rules, 1975 and after conducting of proper inquiry, he was rightly dismissed from service. He next contended that the acquittal of the appellant in criminal case cannot entitle him to be exonerated in disciplinary action taken against him by the competent Authority. He further argued that the departmental as well as service appeal of the appellant were badly time barred, therefore, on this score alone, the appeal in hand is liable to be dismissed. Reliance was placed on 2006 SCMR 554, 2010 SCMR 1982, 2012 SCMR 195, 2006 SCMR 453, 2013 SCMR 911 and 2013 PLC (C.S) 1071.

 7. Arguments heard and record perused.

8. A perusal of record would show that the appellant was serving as Constable in Elite Police Force Khyber Pakhtunkhwa, when he was charged and arrested in criminal case bearing FIR No. 30 dated 18.01.2016 under section 17(3) Harraba registered at Police Station Oghi District Mansehra, therefore, disciplinary action was taken against the appellant and he was dismissed from service by the competent Authority vide order dated 30.05.2016. According to Article No. 194 of Civil Service Regulations, if a civil servant or employee has been charged for a criminal offence, he is to be considered under suspension from the date of his arrest and cannot be dismissed from service. CSR 194 is reproduced as below:-

"A Government Servant who has been charged for a criminal offence or debt and is committed to prison shall be considered as under suspension from the date of his arrest. In case such a

Government servant is not arrested or is released on bail, the competent Authority may suspend him, by specific order, if the charge against him is connected with his position as government servant or is likely to embarrass him in the discharge of his duties or involves moral turpitude. During suspension period the Government servant shall be entitled to the subsistence grant as admissible under F.R-53".

In the instant case, the respondents, without waiting for the outcome of the criminal case, have dismissed the appellant by ignoring Article 194 of CSR, therefore, the action taken by the department is not in consonance with Article 194 of Civil Service Regulations.

09. The disciplinary action was taken against the appellant on the ground that he was charged in Case FIR No. 30 dated 18.01.2016 under section 17(3) Harraba registered at Police Station Oghi, however the appellant has been admittedly acquitted in the said criminal case by learned Sessions Judge Torghar (at Oghi) vide judgment dated 17.10.2017. Nothing is available on the record, which could show that the acquittal of the appellant has been challenged by the department through filing of appeal before the higher forum. In this situation, the acquittal order of the appellant has attained finality. It is settled law that acquittal of an accused in a criminal case even if based on benefits of doubt would be considered as honourable. In case of dismissal of civil servant/employee on charges of registration of a criminal case, if the civil servant/employee is later on acquitted, then the dismissal cannot remain in field.

10. So far as the question of limitation is concerned, the appellant was acquitted in the criminal case vide order/judgment dated 17.10.2017 and after obtaining copy of the judgment on 27.10.2017, the appellant filed departmental appeal on 17.11.2017, which is within time. August Supreme Court of Pakistan in its judgment reported as PLD 2010 Supreme Court 695 has held as below:-

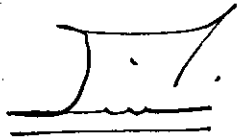
"We may also observe in this context that the respondent had been acquitted in the criminal


5
case on 22.09.1998 and he had filed his departmental appeal on 12.10.1998, i.e within three weeks of his acquittal in the relevant criminal case. It would have been a futile attempt on the part of the respondent to challenge his removal from service before earning acquittal in the relevant criminal case and, thus, in the peculiar circumstances of this case we have found it to be unjust and oppressive to penalize the respondents for not filing his departmental appeal before earning his acquittal in the criminal case which had formed the foundation for his removal from service"

11. In light of the above discussion, the appeal in hand is accepted by setting-aside the impugned order of dismissal of the appellant and he is reinstated into service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
29.06.2021


(ROZINA REHMAN)
MEMBER (JUDICIAL)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

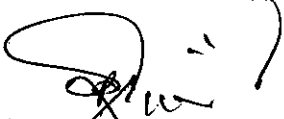

(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)

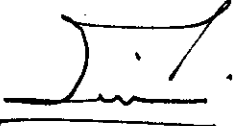
O R D E R
29.06.2021


Appellant alongwith Mr. Mohammad Aslam Tanoli, Advocate, present. Mian Niaz Muhammad, DSP (Legal) alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is accepted by setting-aside the impugned order of dismissal of the appellant and he is reinstated into service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
29.06.2021


(ROZINA REHMAN)
MEMBER (JUDICIAL)

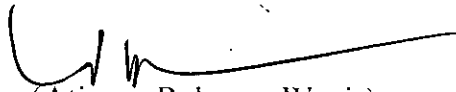

(SALAH-UD-DIN)
MEMBER (JUDICIAL)


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

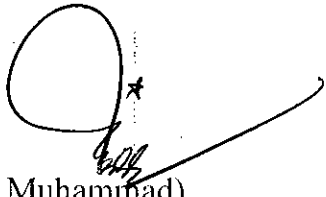
09.03.2021

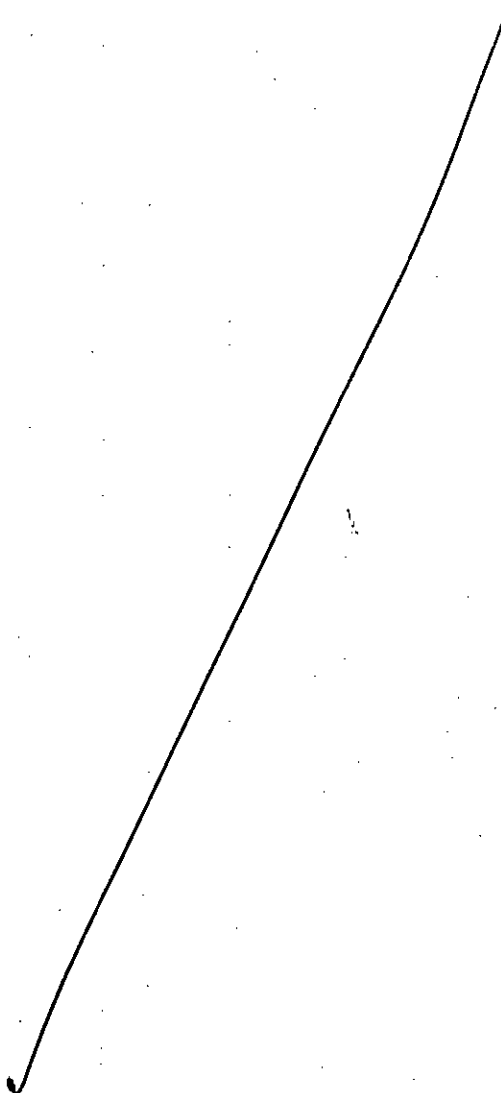
Appellant with counsel and Mr. Kabirullah Khattak, learned Addl. AG. alongwith Mian Niaz Muhammad DSP legal for official respondents present.

It is already 03.15 P.M and arguments may not conclude once started. It is, therefore, adjourned to 29.06.2021 for arguments before the Larger Bench.


(Atiq-ur-Rehman Wazir)
Member(E)


Chairman


(Mian Muhammad)
Member(E)

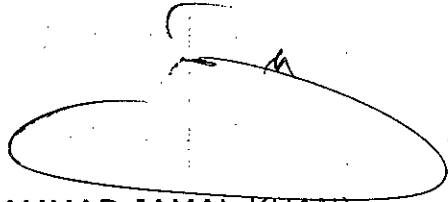


03.12.2020

Appellant is present in person. Mr. Riaz Ahmad Paindakheil, Assistant Advocate General, for the respondents is also present.

Appellant submitted that his respective counsel Mr. Muhammad Aslam Tanoli is indisposed of today and requested for adjournment. Request is accepted. The appeal is adjourned to 11.02.2021 on which date file to come up for arguments before Larger Bench.


(MIAN MUHAMMAD)
(MEMBER EXECUTIVE)



(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)


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

11.02.2021

Counsel for the appellant and Noor Zaman Khattak, District Attorney alongwith Sheraz H.C for the respondents present.

Adjourned to 09.03.2021 for hearing before the Larger Bench due to paucity of time today.


(Rozina Rehman)
Member(J)



Chairman


(Atiq-ur-Rehman Wazir)
Member(E)

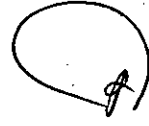
10.11.2020

Appellant is present in person. Mr. Kabirullah Khattak, Additional Advocate General for the respondents is also present.

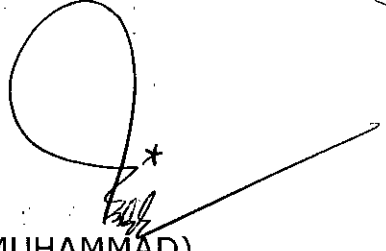
Since the Members of the High Court as well as of the District Bar Associations, Peshawar, are observing strike today, therefore, learned counsel for appellant is not available today. Adjourned to 03.12.2020 on which date to come up for arguments before the Larger Bench.



(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)



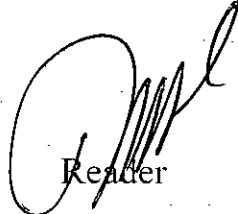
(ROZINA REHMAN)
MEMBER (JUDICIAL)



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)

14.04.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 14.07.2020 before Larger Bench.



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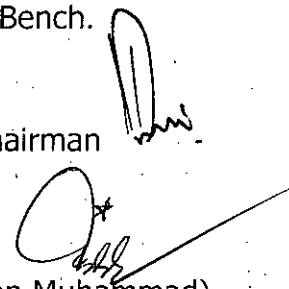
14.07.2020

Nemo for the appellant. Mr. Usman Ghani District Attorney for the respondents present.

Notice be issued to appellant/learned counsel for arguments on 02.09.2020 before the Larger Bench.



(Rozina Rehman)
Member



Chairman
(Mian Muhammad)
Member

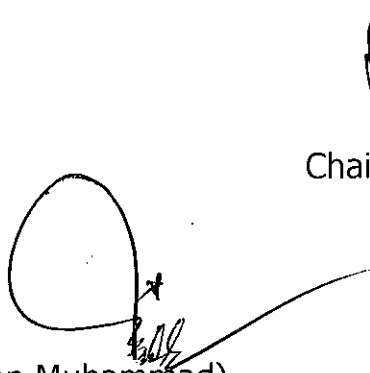
02.09.2020

Counsel for the appellant and Mr. Muhammad Jan, DDA for the respondents present.

Upon request of learned counsel for the appellant instant appeal is adjourned to 10.11.2020 for hearing before the Larger Bench.



(Rozina Rehman)
Member(J)



Chairman
(Mian Muhammad)
Member(E)

12.12.2019

Appellant in person and Mr. Riaz Paindakhel learned Assistant Advocate General alongwith Mr. Shiraz Head Constable for the respondents present.

Vide our detailed order of even date in service appeal No. 474/17, the objection regarding constitution of Bench is over ruled and the appeal is posted before a Bench already constituted.

A request for adjournment is made due to non availability of learned counsel for the appellant, owing to general strike of the bar. Adjourned to 06.02.2020 before Larger Bench.



(M. Hamid Mughal)
Member



CHAIRMAN



(Hussain Shah)
Member

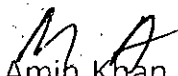
06.02.2020

Appellant with counsel and Addl. AG alongwith Mian Niaz Muhammad, DSP (Legal) for the respondents present.

The Worthy Chairman is on leave, therefore, the matter is adjourned to 14.04.2020 for arguments before the Larger Bench.



(Hussain Shah)
Member



(M. Amin Khan Kundi)
Member

01/09/2019

Be laid before a larger bench minus the hon'ble members having the difference of opinion. To come up for further proceeding/arguments on 08/11/2019.


Notices to the parties be issued accordingly.


Chairman


08.11.2019

Counsel for the appellant and Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present.

To come up alongwith Appeal No.474/2017 for orders regarding application for formation of Bench comprising all the Members and Chairman of the Tribunal, on 12.12.2019 before Larger Bench.


(Mr. Hamid Mughal)
Member

CHAIRMAN


(Hussain Shah)
Member

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
CAMP COURT ABBOTTABAD.

Service Appeal No. 495/2018

Date of Institution ... 09.04.2018

Date of Decision ... 22.08.2019

Momin Khan S/O Banaras (Ex-Constable No.2535 Elite Police Force Khyber
Pakhtunkhwa R/O Village New Qazian K.T.S, Tehsil and District Haripur.

... (Appellant)

VERSUS

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

... (Respondents)

MR. MUHAMMAD ASLAM TANOLI,
Advocate

--- For appellant.

MR. MUHAMMAD BILAL,
Deputy District Attorney

--- For respondents

MR. AHMAD HASSAN

--- MEMBER(Executive)

JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the
parties heard and record perused.

ARGUMENTS:

2. As my learned colleague has exhaustively highlighted facts of the case, therefore, I deem it appropriate not to repeat the same. I would like to highlight facts that if properly appreciated can give relief to the appellant. The appellant has rendered more than ten years service before dismissal vide order dated 30.05.2016. Perusal of enquiry report revealed that it was not conducted in accordance with the procedure laid down in Police Rules 1975. Having gone through the said report, it was observed that the charge was not established against the appellant. Neither statements of witnesses were recorded in the presence of the appellant nor opportunity of cross examination was afforded to him. It

was the right of the appellant to cross examine those who had deposed against him but this role was assumed by the enquiry officer in utter violation of the laid down procedure.

He was ^{also} not afforded opportunity of personal hearing.

3. Moreover, show cause notice being a mandatory requirement was not served on the appellant before passing the impugned order. As show cause notice was not served on him as such copy of enquiry report was also not provided to him. It deprived the appellant of his fundamental right to offer proper defense, as enshrined in Article-4 and 10(A) of the Constitution. In these circumstances, it could be concluded that he was condemned unheard. This illegality alone is sufficient to vitiate the entire disciplinary proceedings, as held by the superior courts in numerous judgments, which were subsequently followed by this Tribunal. Finally, vide judgment dated 17.10.2017, he was acquitted by Sessions Judge, Torghar, as the prosecution ^{failed} to establish their case through incriminating evidence. The only charge on the basis of which the appellant was penalized is no more in the field. Has the respondents showed some restraint this awkward situation would have been averted. The illegalities committed by the respondents could not be condoned on the simple ground that he failed to file the departmental appeal in time thus the present service appeal was not maintainable/incompetent being barred by time. A police official now carrying no stigma should not be deprived of his due right by taking shelter under technicalities. Blunders committed by the respondents outweigh deficiencies on the part of the appellant. There is enough justification to consider this case on merit for upholding the proposition of substantial justice.

4. As a sequel to the above, the instant appeal is accepted, the impugned order dated 30.05.2016 and 08.02.2018 are set aside and the appellant is reinstated in service. Parties are left to bear their own costs. File be consigned to the record room.



(AHMAD HASSAN)
Member
Camp Court Abbottabad

ANNOUNCED
22.08.2019

Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	22.08.2019	<p align="center"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u> <u>AT CAMP COURT, ABBOTTABAD.</u> Service Appeal No. 495/2018</p> <p>Date of Institution 09.04.2018 Date of Decision 22.08.2019</p> <p>Momin Khan S/O Banaras (Ex-Constable No.2535 Elite Police Force Khyber Pakhtunkhwa R/O Village New Qazian K.T.S, Tehsil & District Haripur.</p> <p align="right">Appellant</p> <p align="center">Versus</p> <ol style="list-style-type: none"> 1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar. 2. Additional Inspector General Police/Commandant Elite Force, Khyber Pakhtunkhwa, Peshawar. 3. Deputy Commandant/RRF, Khyber Pakhtunkhwa, Peshawar. 4. Sr. Superintendent of Police Elite Force/RRF Hazara Region, Abbottabad. <p align="right">Respondents</p> <p>Mr. Muhammad Hamid Mughal-----Member(J)</p> <p align="center"><u>JUDGMENT</u> <u>MUHAMMAD HAMID MUGHAL, MEMBER:</u> Appellant present. Learned counsel for the appellant present. Mr. Muhammad Bilal learned Deputy District Attorney present.</p> <p>2. The appellant (Ex-Constable) has filed the present service appeal against the order dated 30.05.2016 whereby major penalty of dismissal from service was imposed upon him and against the order dated 08.02.2018 through which his departmental appeal for</p>

22.8.2019

reinstatement in service was rejected on the ground of limitation (time barred by One (01) year, Seven (07) months and Eleven (11) days).

3. Learned counsel for the appellant argued that the appellant was enrolled as Constable in the Police Department in the year 2006; that on 18.01.2016 one Badri Zaman son of Juma Khan got registered FIR No.30 dated 18.01.2016 u/s 17 (3) Haraba Police Station Oghi District Mansehra and subsequently he (complainant) through a supplementary statement falsely implicated the appellant in the above criminal case due to personal grudges and vendetta; that the appellant earned his acquittal in the above mentioned criminal case vide judgment dated 17.10.2017; that during the pendency of trial, the appellant was dismissed from service vide impugned order dated 30.05.2016. Learned counsel for the appellant while referring to various judgments of the superior courts, argued that the departmental authority without waiting for the decision of the trial court dismissed the appellant from service in hasty manner and that neither any charge sheet was served upon the appellant nor inquiry report was handed over to him, similarly no final Show Cause Notice was issued. Next contended that the departmental appeal dated 17.11.2017 of the appellant was dismissed vide order dated 08.02.2018 for no good grounds and copy of the same was given to the appellant on 02.04.2018. Next contended that the impugned orders are illegal, unlawful and contrary to the facts and norms of justice and were passed without adhering to the legal

22.8.2018

requirements.

4. As against that learned Deputy District Attorney argued that the departmental appeal filed by the appellant against the punishment order as well as the present service appeal are time barred/incompetent; that upon implication of the appellant in criminal case u/s 17 (3) Haraba, departmental action was initiated against him; that charge sheet was issued to the appellant, inquiry officer was appointed who during the inquiry proceeding recorded the statements of all the concerned including the complainant/victim and eye witnesses; that the presence of the appellant on the place of occurrence was established during the inquiry proceedings; that the inquiry officer came to the conclusion that the appellant was present on the place of occurrence at the time of commission of offence and recommended major penalty against him.

5. Arguments heard. File perused.

6. The appellant was arrested soon after registration of FIR dated 08.01.2016 and was bailed out after two months of his arrest. Hence when the impugned punishment order dated 30.05.2016 was issued the appellant was already on bail. However the appellant preferred the departmental appeal against the punishment order on 17.11.2017 i.e. after a period of more than one year and five months of the issuance of the same and resultantly the departmental appeal of the appellant was rejected being time barred. In the given circumstances, the present service appeal is found incompetent.

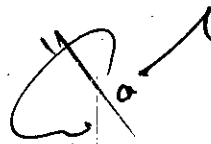
7. Perusal of record of inquiry shows that the appellant joined

22.8.2019

inquiry proceeding wherein his statement was also recorded and he also put cross questions. The inquiry officer also recorded the stance of the complainant, eye witnesses and recommended major punishment against the appellant while holding that presence of the appellant is established on the spot.

8. The impugned major penalty was awarded on the recommendation of inquiry officer. Nothing material is available on record to suggest that the inquiry officer was biased or otherwise interested to condemn the appellant. The Police personnel are regarded as protectors of life and property of citizens and it is the prime obligation of the police authorities to keep their house in order.

9. In the light of above, the appellant has not been able to seek indulgence of this Tribunal on technical grounds. Consequently the present service appeal is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.



(Muhammad Hamid Mughal)
Member

ANNOUNCED
22.08.2019

22.08.2019

Appellant present. Learned counsel for the appellant present. Mr. Muhammad Bilal learned Deputy District Attorney present. Due to difference of opinion, dissenting judgments of the members of this Bench, are placed on file. As such the present case file is submitted to the Chairman Khyber Pakhtunkhwa Service Tribunal for further appropriate order.



(Ahmad Hassan)
Member
(Camp Court, A/Abad)




(Muhammad Hamid Mughal)
Member
(Camp Court, A/Abad)

17.06.2019

Counsel for the appellant and Mr. Bilal Ahmad, DDA alongwith Mian Zahid Yar Muhammad S.I and Sheraz Ali, H.C for the respondents present.


Learned counsel for the appellant requests for adjournment in order to further prepare the brief. Adjourned to 09.07.2019 for arguments before the D.B at camp court, Abbottabad.



Member


Chairman
Camp court, A/Abad

09.07.2019

Counsel for the appellant and Mr. Muhammad Bilal, Deputy District Attorney alongwith Mr. Muhammad Ayaz, ASI for the respondents present. Representative of the department submitted copy of inquiry report. Copy of the same is placed on record. Learned Deputy District Attorney for the respondents requested for adjournment. Adjourned to 22.08.2019 for arguments before D.B at Camp Court Abbottabad.

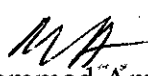

(Hussain Shah)
Member
Camp Court Abbottabad


(Muhammad Amin Khan Kundi)
Member
Camp Court Abbottabad

Service Appeal No. 495/2018

21.02.2019

Counsel for the appellant present. Mr. Sher Akbar, ASI alongwith Mr. Muhammad Bilal Khan, Deputy District Attorney for the respondents present. Written reply on behalf of respondents submitted. Adjourned to 15.04.2019 for rejoinder and arguments before D.B at Camp Court Abbottabad.


(Muhammad Amin Khan Kundi)
Member
Camp Court Abbottabad


15.04.2019

Counsel for the appellant and Mr. Muhammad Bilal, DDA alongwith Mr. Shah Wali Ullah, Computer Operator for respondents present.

Learned counsel for the appellant has submitted rejoinder to the parawise comments of respondents and requests for further time to argue the appeal.

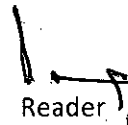
Adjourned to 17.06.2019 before D.B at camp court Abbottabad.


Member


Chairman
Camp Court A/Abad

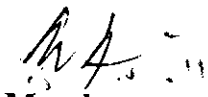
29.08.2018

Counsel for the Appellant and Zakeem Hussain DSP, for the respondents present. Due to summer vacations, the case is adjourned. To come up for the same on ~~17~~.10.2018 at camp court Abbottabad.


Reader,


16.10.2018

Counsel for the appellant present. Mr. Ashfaque Lodhi, ASI alongwith Mr. Usman Ghani, District Attorney for the respondents present. Written reply not submitted. Learned District Attorney requested for adjournment. Adjourned. To come up for written reply/comments on 18.12.2018 before S.B at camp court, Abbottabad.


Member
Camp Court, A/Abad

18.12.2018

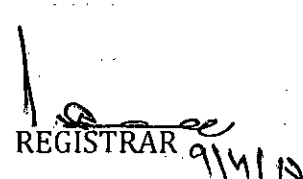


Counsel for the appellant and Sher Akbar, ASI alongwith Mr. Usman Ghani, District Attorney for the respondents present. Written reply not submitted. Requested for further adjournment. Last opportunity is granted. To come up for written reply/comments on 21.02.2019 before S.B at camp court, Abbottabad.


Member
Camp court A/Abad

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 495/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	09/04/2018 TM	<p>The appeal of Mr. Momin Khan presented today by Mr. Muhammad Aslam Tanoli 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 9/14/18</p>
2-	11-4-18	<p>This case is entrusted to Touring S. Bench at A.Abad for preliminary hearing to be put up there on <u>29-6-18</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
29.06.2018		<p>Mr. Mohamamd Aslam Tanoli, Advocate on behalf of the appellant present and heard.</p> <p>Contends that the appellant was dismissed from service after having charge in a criminal case. However, later on he was acquitted but his request for reinstatement was not considered by the respondents.</p> <p>The points raised need consideration. The appeal is admitted to full hearing subject to legal objections including time limitation if raised by the respondents. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 29.08.2018 before S.B at camp court, A/Abad.</p> <p style="text-align: right;"> Chairman</p>

Appellant Deposited
Security & Process Fee

Chairman
Camp court, Abbottabad

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 495/2018

Momin Khan S/O Banaras (Ex-Constable No.2535 Elite Police Force KPK) R/O Village New Qazian, K.T.S, Tehsil & District Haripur.

Appellant

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Addl. Inspector General Police/Commandant Elite Force, KPK, Peshawar.
3. Deputy Commandant/RRF, KPK, Peshawar.
4. Sr. Superintendent Police Elite Force/RRF Hazara Region, Abbottabad

Respondents.

SERVICE APPEAL

INDEX

S/No.	Description of Documents.	Annex	Page No.
1.	Appeal alongwith application for condonation of delay		01-12
2.	Copy of FIR dated 18-01-2016	"A"	13
3.	Copy of judgment/decision dated 17-10-2017 of the Honourable Court of Session Judge Torghar (at Oghi)	"B"	14-43
4.	Copy of order dated 3-05-2016 of Deputy Commandant, Elite Force KPK Peshawar.	"C"	44
5.	Copy of departmental appeal dated 17-11-2017.	"D"	45-49
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THROUGH

APPELLANT

M. Aslam Tanoli
(MOHAMMAD ASLAM TANOLI)
ADVOCATE HIGH COURT
AT HARIPUR

Dated: 09-04-2018

①

**BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 495/2018

Momin Khan S/O Banaras (Ex-Constable No.2535 Elite Police Force
KPK) R/O Village New Qazian, K.T.S, Tehsil & District Haripur.

Appellant
Khyber Pakhtunkhwa
Service Tribunal

VERSUS

Diary No. 517

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Addl. Inspector General Police/Commandant Elite Force, KPK, Peshawar.
3. Deputy Commandant/RRF, KPK, Peshawar.
4. Sr. Superintendent of Police Elite Force/RRF Hazara Region, Abbottabad

Respondents.

**SERVICE APPEAL UNDER SECTION-4 OF THE KPK SERVICE TRIBUNAL
ACT 1974 AGAINST ORDER DATED 30-05-2016 OF THE DEPUTY
COMMANDANT, RRF, KHYBER PAKHTUNKHWA PESHAWAR WHEREBY
APPELLANT HAS BEEN DISMISSED FROM SERVICE AND ORDER DATED
08-02-2018 OF THE ADDITIONAL INSPECTOR GENERAL OF POLICE
ELITE FORCE KPK PESHAWAR DELIVERED ON 02-04-2018 WHEREBY
APPELLANT'S DEPARTMENTAL APPEAL WAS REJECTED.**

**PRAYER: ON ACCEPTANCE OF INSTANT SERVICE APPEAL BOTH
IMPUGNED ORDERS DATED 30-05-2016 AND 08-02-2018 MAY
GRACIOUSLY BE SET ASIDE AND APPELLANT BE RE-INSTATED IN HIS
SERVICE FROM THE DATE OF DISMISSAL WITH ALL CONSEQUENTIAL
SERVICE BACK BENEFITS AND ANY OTHER RELIEF WHICH THIS
HONOURABLE TRIBUNAL DEEMS PROPER BE ALSO GRANTED.**

Respectfully Sheweth:

1. That appellant was enrolled as a Constable in the Police
Department in the year 2006 thus had rendered about
10 years service till 30-05-2016. Ever since his recruitment
the appellant always performed his assigned duties with

Filed to-day
Registrar
9/4/18

②

devotion, dedication and honesty and to the entire satisfaction of his superiors. Appellant always earned good/very good ACRs. On occasions appellant was awarded with the Commendation Certificates and Cash Rewards by Police High-Ups in recognition of his tremendous services in the Police Force. Appellant had meritorious service record at his credit.

2. That on 18-01-2016 one Badri Zaman S/O Juma Khan R/O Village Chakkal Pain, Tehsil Oghi, District Mansehra got registered an FIR No. 30 dated 18-01-2016 U/S-17(3) Haraba with the Police Station Oghi (District Mansehra) against 06 (Six) unknown persons. But subsequently in a supplementary statement dated 20-01-2016 recorded by the Investigation Officer of the case the complainant got falsely incorporated the name of appellant due to personal grudge and vendetta. **(Copy of FIR dated 18-01-2016 is attached as "A")**.
3. That the aforementioned case remained under trial for about 01 year and 09 months and ultimately the appellant being innocent was acquitted of the charge by the Honorable Court of Sessions Judge Torghar (at Oghi) through its judgment and decision dated 17-10-2017. **(Copy of the Judgment/Decision dated 17-10-2017 is attached as "B")**.

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4. That the Deputy Commandant, Rapid Response Force, Khyber Pakhtunkhawa Peshawar even during the trial of aforementioned case before the Honorable Court of Sessions Judge Torghar (at Oghi) and keeping aside all legal and procedural requirements and contrary to the norms of justice went on to dismiss the appellant through his order No. 633-37/RRF dated 30-05-2016 without any proof, reason and justification. **(Copy of impugned order dated 30-05-2016 is attached as "C")**.

5. That according to the law, departmental rules & regulations and principle of natural justice, the departmental authorities, before passing any order perverse to the service rights of appellant, were under legal obligations to have waited the decision of Honorable Court of Session Judge Torghar (at Oghi) where the criminal case against the appellant was under trial for adjudication as to whether appellant was innocence or otherwise. But contrary to the legal requirements the appellant has been dismissed from service in a hasty manner and that too mere due to registration of a false and fabricated case on the basis of complainant's personal grudge and vendetta.

6. That no proper departmental enquiry as envisaged by KPK Police (Efficiency & Disciplinary) Rules 1975 was conducted against the appellant. No Charge Sheet was issued to him. Neither Enquiry Report, if any, was not delivered to the appellant nor was any Final Show Cause Notice issued to him. Even the appellant was not afforded with the opportunity of personal hearing thus departmental rules & regulations and principles of natural justice have been seriously violated in the case of appellant.
7. That in view of the facts and circumstance explained here above, by stretch of no imagination the appellant could have been held responsible and penalized for the charge on account of which he was tried by the Honorable Court of Sessions Judge Torghar (at Oghi) and had been ultimately honorably acquitted.
8. That appellant was acquitted in the criminal case by the Honorable Court of Session Judge Torghar (at Oghi) on 17-11-2017. That by adducing all facts and circumstances of the case, a departmental appeal dated 17-11-2017 against order of the Deputy Commandant, RRF KPK, Peshawar dated 30-05-2016 was filed before the Additional Inspector General Elite Force

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KPK Peshawar by the appellant. **(Copy of the Departmental appeal dated 17-11-2017 is attached as Annex-"D").**

9. That the Additional Inspector General, Elite Force KPK Peshawar without giving any heed to the appellant's departmental appeal dismissed the same vide its impugned order 28-02-2018 but copy of the order was never communicated to the appellant. **(Copy of the order dated 28-02-2018 is attached as Annex-"D").**

10. That appellant had to approach the office of the Additional Inspector General, Elite Force KPK Peshawar for obtaining copy of appeal rejection order but he was told that the same had been sent to him through the Reader of S.P. Elite Force Hazara Region Abbottabad.

11. That on 02-04-2018, the appellant approached the Superintendent of Police, Elite Force Hazara Region Abbottabad for issuing of a copy order dated 28-02-2018 passed by the Additional Inspector General, Elite Force KPK Peshawar and submitted an application (Copy of the application dated 02-04-2018 is attached as Annex-"E") which was allowed and then on 02-04-2018 the appellant was given the copy of impugned

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order dated 28-02-2018 (Copy of the order dated 28-02-2018 is attached as Annex-"F") hence instant service appeal, inter alia, on the following:-

GROUND:

- a) That impugned order dated 30-05-2016 of the Deputy Commandant, Elite Police Force, Peshawar whereby the appellant has been awarded extreme punishment of dismissal from service and order dated 28-02-2018 of the Additional Inspector General of Police, Elite Force, KPK whereby appellant's departmental appeal has been rejected are void ab-initio, illegal, unlawful, without lawful authority, passed in a slipshod and cursory manner and contrary to facts, record and law thus are liable to be set aside.
- b) That departmental authorities without waiting the decision of criminal charge against the appellant from the Honourable Court of Session Judge Torghar (at Oghi) have passed the impugned order detrimental to the service rights of appellant and against the law, departmental rules & regulations and principle of natural justice thus liable to be set aside on this score along.
- c) That the appellant in the criminal case on account of which the Deputy Commandant, RRF Elite Force Khyber Pakhtunkhwa Peshawar awarded major penalty of dismissal has been acquitted by the Honorable Court of Sessions Judge Torghar (at Oghi). Award of punishment of dismissal from service to the appellant on the same

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charge is, therefore, perverse and in flagrant violation of law, departmental rules and regulations and principle of natural of justice. Hence the impugned order needs to be set aside.

- d) That impugned orders have been passed by the authorities without adhering to the inquiry procedure set forth by law for the dispensation of justice at preliminary stages during the course of departmental inquiries.
- e) That no proper departmental inquiry was ever conducted against the appellant to prove the guilt or to declare him innocent which was mandatory under the law. Appellant is innocent and has been penalized without any proof or reason.
- f) That no place, date and time was ever fixed for conducting departmental inquiry, even the appellant was never issued with a single explanation, charge sheet, enquiry findings if any and final show cause notice before awarding the major punishment of dismissal from service.
- g) That even the appellant was not provided with the opportunity of personal hearing and has been awarded extreme major penalty without any proof and violating the principle of natural justice.
- h) That ever since his dismissal from service the appellant remained jobless and without any gainful business thus facing high financial problem due to dismissal from service by the departmental authorities.

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PRAYER:

It is, therefore, humbly prayed that on acceptance of instant service appeal, the impugned order dated 30-05-2016 passed by the Deputy Commandant, Elite Force, Khyber Pakhtunkhwa Peshawar whereby the appellant has been dismissed from service as well as order dated 28-02-2018 of the Additional Inspector General, Elite Police Force, KPK, Peshawar whereby appellant's departmental appeal has been rejected may graciously be set aside and the appellant be re-instated in his service from the date of dismissal with all consequential service back benefits.

Any other relief which this Honourable Tribunal deems fit in the circumstance of the case may also graciously be awarded.

THROUGH

Mankh
APPELLANT

M Aslam
(MOHAMMAD ASLAM TANOLI)
ADVOCATE HIGH COURT
AT HARIPUR

Dated: *09*-04-2018

Verification

It is verified that the contents of instant appeal are true and correct to the best of my knowledge and nothing has been concealed therefrom.

Dated: *09*-04-2018

Mankh
Appellant

9

**BEFORE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Momin Khan S/O Banaras (Ex-Constable No.2535 Elite Police Force
KPK) R/O Village New Qazian, K.T.S, Tehsil & District Haripur.

VERSUS

Appellant

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Addl. Inspector General Police/Commandant Elite Force, KPK, Peshawar.
3. Deputy Commandant/RRF, KPK, Peshawar.
4. Sr. Superintendent of Police Elite Force/RRF Hazara Region, Abbottabad.

Respondents.

SERVICE APPEAL

AFFIDAVIT:

I, Momin Khan S/O Banaras do hereby solemnly declare and affirm on oath that the contents of the instant Service Appeal are true and correct to the best of my knowledge and belief and nothing has been suppressed from this Honourable Service Tribunal.

Momin Khan
Deponent/Appellant

Dated: 09-04-2018

Identified By:

M. Aslam

Mohammad Aslam Tanoli
Advocate High Court
At Haripur,



Momin Khan
Appellant

10

**BEFORE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Momin Khan S/O Banaras (Ex-Constable No.2535 Elite Police Force
KPK) R/O Village New Qazian, K.T.S, Tehsil & District Haripur.

Appellant

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Addl. Inspector General Police/Commandant Elite Force, KPK, Peshawar.
3. Deputy Commandant/RRF, KPK, Peshawar.
4. Sr. Superintendent of Police Elite Force/RRF Hazara Region, Abbottabad.

Respondents.

SERVICE APPEAL

CERTIFICATE

It is certified that no such Appeal on the subject has ever been
filed in this or any other court prior to the instant one.

Momin Khan
APPELLANT

Dated: 09-04-2018



**BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Service Appeal No.....

Momin Khan S/O Banaras (Ex-Constable No.2535 Elite Police Force KPK) R/O Village New Qazian, K.T.S, Tehsil & District Haripur.

Appellant

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Addl. Inspector General Police/Commandant Elite Force, KPK, Peshawar.
3. Deputy Commandant/RRF, KPK, Peshawar.
4. Sr. Superintendent of Police Elite Force/RRF Hazara Region, Abbottabad.

Respondents.

APPLICATION FOR CONDONATION OF DELAY.

Respectfully Sheweth:

1. That the above captioned appeal is being filed today before this Honourable Tribunal, wherein no date for hearing has been fixed as yet.
2. That the facts and grounds in the accompanying memo of appeal may please be treated as an integral part of the appeal, so preferred, today.
3. That the appellant is pursuing his grievance with due diligence for no commission or omission on his part towards the performance of his lawful duty with every honesty, sincerity and punctuality with bright previous service record.

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4. That the delay in filing instant appeal (if any) is neither deliberate nor intentional, as the appellant was delivered with the copy of the order of respondent No.2 on 02-04-2018 as such the appeal, so filed is within time. Apart, the valuable rights of the appellant are involved in the matter with far reaching repercussions on his family and children. Otherwise, also the law favors judgments delivered and justice done on the basis of proper adjudication of the issue in question rather than discarding the same on the grounds of technicalities.

It is, therefore, very humbly prayed that the delay (if any) may please be condoned in the high interest of justice.

Moin Khan
APPELLANT

THROUGH

M. Aslam
(MOHAMMAD ASLAM TANOLI)
ADVOCATE HIGH COURT
AT HARIPUR

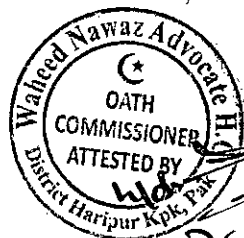
Dated: 09-04-2018

AFFIDAVIT:

I, Momin Khan S/O Banaras do hereby solemnly declare and affirm on oath that the contents of the instant application are true and correct to the best of my knowledge and belief and nothing has been suppressed from this Honourable Service Tribunal.

Moin Khan
Deponent/Appellant

Dated: 09-04-2018



Ann-A

13

ابتدائی اطلاع رپورٹ

Case No- 343-9494393

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ 154 مجرمینا بطور جرم

13504-8519124-1

اوی

پل درج کرو

27 مقدم عدالت 30

تاریخ حقیقت وقوع 17/16 اوقت خفتاں ویلم

ابتدائی وقت رپورٹ 18/16 اوقت 08:00 بج چاکیر گی پیرج 18/16 اوقت 10:00 بج

پولیس اطلاع دہندہ مستیث بدری زمان ولد ہم خان قوم تنوی بومقرب 63/63 سال سکند چکل پائیں
کریمنل جرم (مردانہ) حال اگر کچھ لیا گیا ہو۔ فریڈر رقم 17 ضمن (3) صراہ

تاریخ حقیقت وقوع 17/16 اوقت خفتاں ویلم

ابتدائی وقت رپورٹ 18/16 اوقت 08:00 بج چاکیر گی پیرج 18/16 اوقت 10:00 بج

بطور سینٹیل رپورٹ

ابتدائی اطلاع مجھے درج کرو۔ بوقت صدر بیگم فریڈر کی سرگرمی میں صدر بیگم فریڈر
 جاوید زمان SHO کمر بستہ حاصل 1321 اصول سوکڑیل ہے۔ MHC خان اوی امر وزیر دوران گفت
 ریڈر جن سیر سیر موجود تمام اطلاع ملی تم شب تشریحہ ریڈر چکل پائیں میں بدری زمان نامی
 شخص کے گھر میں ڈیوٹی کی واردات ہوئی ہے۔ اس اطلاع پر ہم تنوی پولیس کے ریڈر چکل
 خان بدری زمان پر پتہ چلا پیر زمان ولد ہم خان قوم تنوی بومقرب 63/63 سال سکند
 چکل پائیں شناختی کارڈ نمبر 3504-8519124-1 بمقام 343-9494393 اوقت 08:00
 بج مدداتی سوکڑیل رپورٹ ختم ہوا ہے۔ اس اطلاع پر ہم تنوی پولیس کے ریڈر چکل
 خان، حمار ولد عالم زبیر، علی انڈر ولد تاج محمد رشید دارا ام، داکٹر رانا خان کے گھر
 میں موجود تمام کارڈ شناختی رسم و مسلح نامعلوم جن میں سے دو شناختی باصلاح حد انتہائی
 اور 4 شناختی پیر ایویٹ پکڑوں میں جلوس تھے۔ پیر کے گھر میں داخل ہوئے اور حمار سے اوپر
 وادام تان کرنا کریم خانہ پولیس حوالہ میں۔ ہمیں گرفتار کرنے کے لیے آگے میں ہمارے
 ساتھ چلو تھے اور حمار ولد عالم زبیر، علی انڈر ولد تاج محمد رشید دستبرستی اسلامی نوٹ پر
 ہمارے پاس سے ہمارے تمام اوزاروں میں سے دو شناختی باصلاح حد انتہائی نوٹ پر
 ہمیں لے کر اور ہمیں دیکر باقیوں کے تدارکی جیب سے زبردستی تدارکی باصلاح حد انتہائی نوٹ پر
 وقوع تعیین چھوڑ کر دھکیاں دینے سے بچنے کے لیے ان سے کوئی رقم نہ لے لی۔ شناختی باصلاح
 کر کے میں ریڈر میں ریڈر راستہ میں دور اور ملتان کے فوق کا جو رقم
 مری سے میں اپنے گھر میں زبردستی باصلاح حد انتہائی نوٹ اور زبردستی دیکر اپنے
 رقم حقیقت کا برخلاف کارڈ شناختی باصلاح حد انتہائی نوٹ اور زبردستی دیکر اپنے
 رقم حقیقت کا برخلاف کارڈ شناختی باصلاح حد انتہائی نوٹ اور زبردستی دیکر اپنے

جوہر خلاف
 (1003) پٹیل
 ری شیٹ

Allested

ایورٹنگ کی حالت اور غور ہونے کے بعد کسٹم کے لئے رپورٹ درج ذیل بار بار
 کی گئی ہے۔ اس کی بجائے آئی۔ جن نے زبردستی خود دستخط کیے۔ معقول رپورٹ
 سے توجہ دیتے ہوئے جرم بار کی پائی جا کر اس کے لئے معقول ہدایت کی گئی ہے۔ معقول
 اسلام 2011 ارسال کیا گیا ہے۔ انٹرنیشنل مارا کو ریڈ اس کی ہے۔ معقول
 راجہ اس کے لئے پیرا 38 کے لئے معقول تفتیش کے لئے عالم الفوسی گیشن کیا جاوے
 ہے۔ اس کے لئے رپورٹنگ کے لئے دستخط اور گزشتہ سے 2011 ارسال کیا گیا ہے۔
 18/01/16 کا رد اس کے لئے آئندہ اس کے لئے پیرا 38 کے لئے پیرا 38 کے لئے
 تفتیش کے لئے عالم الفوسی گیشن کیا جاتا ہے۔ پیرا 38 کے لئے

Yolk
 ASHO-PS-Ogani
 18-01-2016

17 جنوری 2016	18-1-16	30
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Attested
 Yolk

14

Annex-B²

IN THE COURT OF ASHFAQUE TAL,
SESSIONS JUDGE, TORGHAR (AT Oghi)

Sessions Trial No.02/03 of 2016

Date of Institution: 24.06.2016

Date of Decision: 17.10.2017

The State.

Versus

- (1) Waqas Ahmed son of Bakhtiar, Caste Tanoli, resident of Gujran Parhina Tehsil & District Mansehra.
- (2) Lal Khan son of Ghulam Haider, caste Tanoli resident of Kali Dabi Tehsil & District Mansrhar.
- (3) Momin Khan son of Banaras, caste Tanoli, resident of Kaneer Darband presently Khalabat District Haripur.
- (4) Imran son of Khan Muhammad, caste Tanoli resident of Dana Dhamnala Tehsil & District Mansehra.
- (5) Ghulam Murtaza son of Ali Bahadar, caste Tanoli resident of Jabbar, Sherghar Tehsil Oghi District Mansehra.
- (6) Tariq son of Ghulam Haider, caste Tanoli resident of Chakkal Bala Tehsil Oghi District Mansehra.

..... (Accused Facing Trial)



Attested to be true

[Signature]

27-10-2017

CHARGED VIDE CASE F.I.R NO 30 DATED 18.01.2016
U/S 17(3) HARRABAH POLICE STATION Oghi DISTRICT
MANSEHRA.

JUDGMENT

The accused Waqas, Lal Khan, Momin, Imran, Ghulam Murtaza and Tariq faced trial in the above noted case.

Brief facts of the prosecution case as per contents of FIR are that on 18.01.2016 at about 08:00 hours, complainant Badri Zaman son of Juma Khan reported the matter to the local police in his house that on 17.01.2016

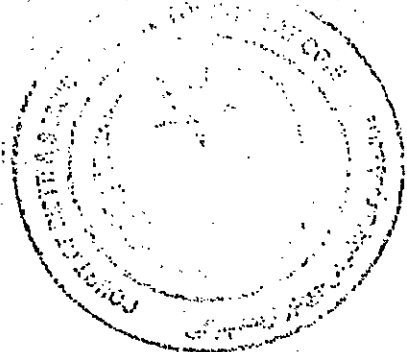
17.10.17

Attested
[Signature]

1-1994

(15)

at about Kuftan Wela that he alongwith his father Jumma Khan, Waqar son of Alamzeb, Ali Aksar son of Taj Muhammad, his relatives and his other housemates were present in his house; when six unknown persons entered their house. Out of them two persons were armed with Kalashnikov and other three were armed with firearm weapons and the sixth one was empty handed. Two persons were in uniform of Elite Force and other four were in civilian dress. They aimed their guns towards complainant as well as on his companions and told that they were Police Commandos and had come to arrest them and asked them to proceed with them and took complainant as well as Waqar son of Alamzeb and Aksar son of Taj Muhammad on gun point outside their home to accompany them. When they reached at a some distance from his house, they aimed their guns at complainant party and asked to handover whatever they had with them, however, complainant refused to do so upon which one of them snatched Rs.30,000/- from front pocket of his shirt. After commission of the offence the accused decamped from the spot while threatening the complainant alongwith his companions of dire consequences. Murasila was drafted and sent to police



Attested to be true

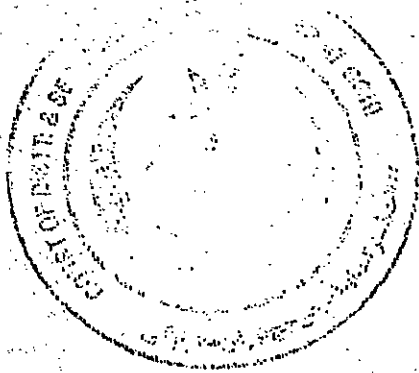
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civil clothes came in the veranda and three were standing in the lawn of the house. All the accused were armed while one of them was unarmed. Two accused were armed with Kalashnikov, three with 30 bore pistols and one was empty handed. At the gun point they all the three were picked up/abducted and accused asked them as they are having orders so come alongwith them. Thereafter accused took them away at the distance of about 350/400 paces and they searched them and they recovered Rs. 30,000/- from his pocket and told them go back otherwise they will be killed. Thereafter police was informed and on the following morning at 08.00 he lodged the report with the police. Thereafter police prepared site plan at the spot. Thereafter he got recorded supplementary statement. In that statement he named accused Lal Khan, Tariq, Waqas, Imran, Momin and Murtaza. he also told in that statement that as per his knowledge these were his culprits and he charged them and then there was regular identification parade conducted in Mansehra Jail by the Magistrate in which he identified all the accused in that identification parade. He charged all the accused for committing Harrabah. During the course the course of his cross-examination he



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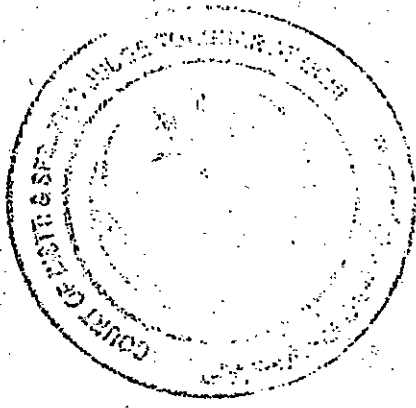
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admitted that Waqar was son of his paternal aunt whereas Ali Aksar was his nephew. He further admitted that his father Jumma Khan was present at home at said time. He further admitted that his house was consisted of four rooms. He further admitted that there was no boundary wall. He further admitted that they were sitting in the room while his father was in his own room. He further admitted that after the accused entered their room his father did not attract to that room. He further admitted that only three accused entered their room. He further admitted that womenfolk were living with them in the house who were also in the said room. He further admitted that his father and the other inmates did not come out of their rooms when they were taking them out of the house. He further admitted that there were other houses at the two sides of his house. He admitted it incorrect that at the relevant time he alongwith Waqar and Ali Aksar were sitting in the veranda, volunteered that on seeing the accused in the veranda they came out of the room to veranda and from there they were taken away. He further admitted that none of the accused were known to him previously. He admitted it correct that accused Tariq was living in their neighborhood and was



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Jumma Khan

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known to him. He further admitted that the accused were not muffled faces at the relevant time even then he did not recognize him, volunteered that he identified him in the Jail. He admitted it incorrect that a Jirga had taken place on 17.01.2016 in the evening time in respect of certain dispute with him and other party. He further admitted that there had been an incident of molesting a child some days before (about a month back) and a settlement was made in Police Station. however he accompanied but he did not executed in writing. He further admitted that nothing was recovered from the search of his other two companions. He further admitted that after they were left free they straight away went back to his house. He further admitted that the houses of Waqar and Aksar were situated at some distance from his house. He further admitted that the occurrence took place at Khuftan Wela and during those days Isha prayer used to pray on 07:00/07:30 hours. He further admitted that they offered their prayer after going back home. He further admitted that he did not inform the police however he did not know who informed the police. He further admitted that he did tell the people about the occurrence after going back but could not name any one



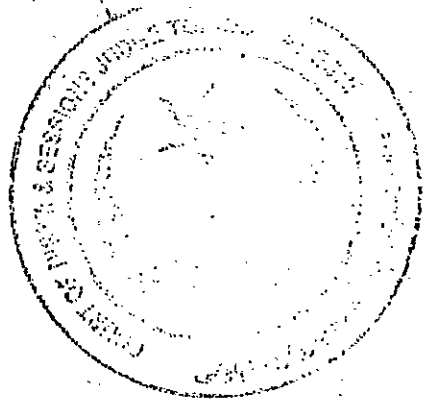
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of them. He further admitted that the Police Station would be at about 17/18 KM from his home. He further admitted that he did not know that when the accused were arrested by the police. He further admitted that he never visited the Police Station after registration of case and arrest of accused. He admitted it incorrect that he had seen the accused in the lock up of Police Station many times after their arrest. He further admitted it incorrect that he had also seen the accused while they were produced by the police before the Magistrate. He further admitted it incorrect that he was given indications and the number of standing of the each accused during the identification parade. He admitted it correct that Ali Akbar son of Ghulam Haider and Mohammad Sardar son of Mohammad Saleem were his relatives. He further admitted that he had charged all the accused after three days in his supplementary statement by name. He further admitted that he charged them by name after making inquiry from different people. He further admitted that as a year had already been lapsed that's why he could not tell the name of any person from whom he inquired. He admitted it incorrect that these names were told to him by police on the basis of which his supplementary statement



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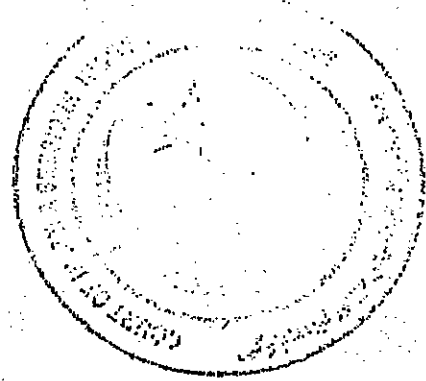
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was recorded by the police. He further admitted that the accused were arrested after his supplementary statement.

(ii) Ali Aksar son of Taj Muhammad appeared as PW-2 and stated that on the night/time of occurrence he alongwith complainant Badri Zaman and Waqar were present at the house of complainant. After taking their meal at about Khulfan time they three were about to had ablution. they came out in the veranda and saw three persons were standing in veranda out of three, two were wearing uniform of ELITE Force while third was in civil dress. The persons who were in uniforms were armed with machine while third one was armed with 30 bore pistol and rest of the three who were standing in the lawn, two, out of them were armed with pistol and third one was empty handed. They all the three were arrested/overpowered and brought out of the home, they took them away and after covering the distance of about 350 paces they made our personal search and recovered Rs.30,000/- from the pocket of complainant Badri Zaman and from their search they could not get anything. They left them and asked them to go away otherwise they would be killed. In the morning police came and Badri Zaman lodged the report and also prepared site plan. He



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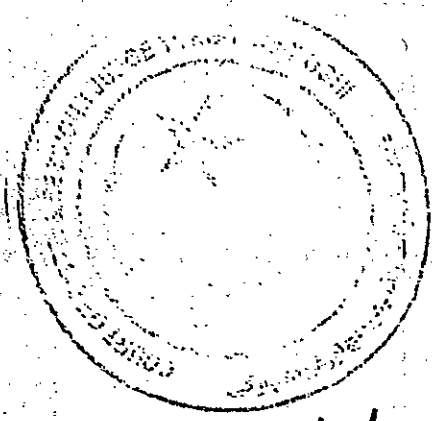
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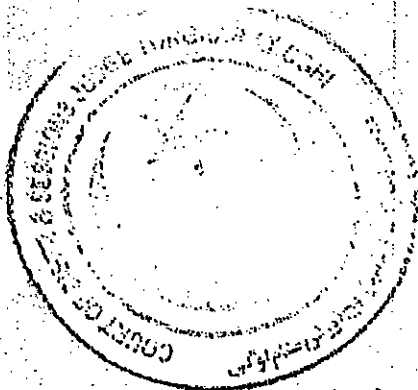
charged the accused for commission of the offence. He was also marginal witness to recovery memo dated 20.01.2016 alongwith other marginal witness Waqar s/o Alamzeb vide which Investigation Officer took into possession Kalashnikov bearing No.83062, loaded magazine having therein 19 live rounds of same bore. He had seen recovery memo which was correct and correctly bore his signature and was Ex.PW-2/1. Similarly he was also marginal witness of recovery memo dated 20.01.2016 alongwith other marginal witness vide which Investigation Officer took into possession 30 bore pistol alongwith 05 live rounds. He had seen the same which was correct and correctly bore his signature and was Ex.PW-2/2. He was also marginal witness of pointation memo dated 22.01.2016 vide which all the accused facing trial led the police party while in handcuffs and showed various places of the scene of occurrence. Memo was prepared at the spot which correctly bore his signature. Investigation Officer also recorded his statement. During the course of his cross-examination he admitted that he did not work anywhere and living at home again said he worked at Karachi and was on holidays. He further admitted that during the days of occurrence he was living



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in the village and was not working. He further admitted that complainant Badri Zaman was his maternal uncle. He further admitted that his house would be at a distance of 15 paces from the house of complainant. He further admitted that he had come to the house of complainant on the said day before Maghrib time and had his dinner there. He further admitted that Waqar came after him having had his dinner at complainant home. He further admitted that no Jirga had taken place in the village in those days in connection with allegation of molesting a child. He further admitted that his maternal grandfather and 4/5 womenfolk and 4/5 children were present in the house at the said time. He further admitted that they three were sitting in the room and after having their meal came out to the veranda. He further admitted that no one out of the females and his maternal grandfather came out of the house after the accused taken them away. He further admitted that it took about 45 minutes during which the accused took them out and searched them at a distance of 350 paces. He further admitted that he had not counted the paces. He further admitted that he came back to the house of complainant and then at 09:00/10:00 PM he went to his home. He further admitted that when they came back the



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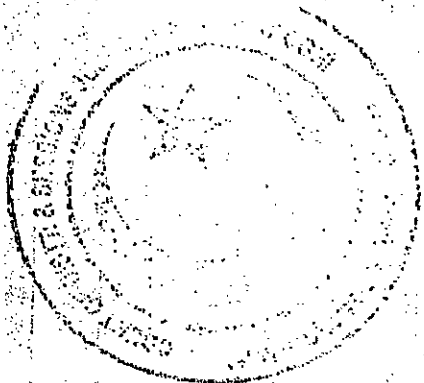
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Mamun Khan

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story was narrated to the inmates of the house. He further admitted that no one from the neighborhood had come to the house of complainant. He further admitted that the incident had come into the knowledge of one Ali Akbar thereafter the other people also came to know. He further admitted that the complainant had informed the police at night about the occurrence but due to non availability of vehicle the police came in the morning at 08:00 AM. He further admitted that the report was written by the police in the house of complainant in the veranda in presence of all the people who had gathered there. He further admitted that about 08/10 persons were present while Investigation Officer prepared site plan which included Ali Akbar, Jumma Khan, Badri Zaman, myself, Waqar, Ali Asghar, Abdul Rehman etc. He further admitted that the faces of the accused were open at the time of occurrence. He further admitted that none of the accused belonged to the village. He admitted it correct that accused Tariq was thier neighbor. He further admitted that none of the accused identified by him at the time of occurrence. He admitted that all the accused were arrested by



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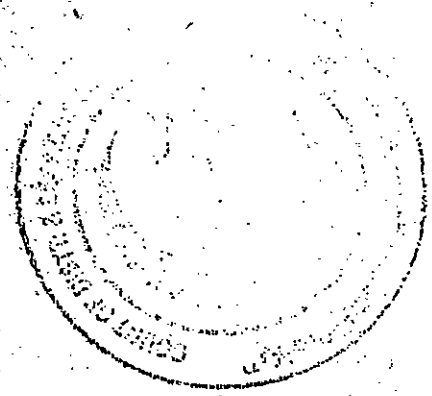
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however he came to know about the arrest of accused on the same day. He further admitted that he had not met any of the accused or seen any of them in police custody after their arrest.

(iii) Muhammad Altaf DSP appeared as PW-3 and stated that during the days of occurrence he was posted as Inspector/OII in Police Station Oghi. On the receipt of FIR he conducted investigation in this case, He rushed to the place of occurrence and prepared site plan Ex.PW-3/1 on the pointation of complainant and eyewitnesses. He searched the accused and S.H.O Police Station Oghi Mohammad Javed Khan arrested the accused on 20.01.2016. He accordingly also arrested them and issued their card of arrest which was Ex.PW-3/2. He produced the accused on 21.01.2016 through application Ex.PW-3/3 before the Illaqa Magistrate for police custody in order to recover case property and pointation of place of occurrence. Three days police custody was granted in favor of accused. On 22.01.2016 all the accused facing trial during interrogation disclosed about the place of occurrence and they led him while they were in handcuffs to the place of occurrence and pointed out the place where they committed Harrabah and he prepared



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pointation memo on their pointation in presence of marginal witnesses which was Ex.PW-3/4 prepared by him at the spot. He also annexed list of cases of accused Lal Khan in which he was involved previously which was handed over to him by the Muharrir of Police Station Phulra. He on 22.01.2016 after pointation of accused facing trial also added the notes with red ink in the site plan already exhibited as Ex.PW-3/1. During the course of investigation all accused facing trial disclosed that stolen property which they snatched from complainant Badri Zaman on gun point and later on the said money was distributed amongst all the accused, on their disclosure he searched accused Waqas and two notes of 5000 each were recovered from pocket of his shirt while one note of 5000 was recovered from the personal search of accused Lal Khan, one note was recovered by him from the personal search of accused Imran Khan and five notes of 1000 was recovered from the personal search of accused Momin. Besides this he also recovered one note of 5000 on conducting personal search of accused Ghulam Murtaza. He took into possession said 30,000/- rupees and prepared recovery memo Ex.PW-3/5. Case property was before the court and was Ex.P1. During

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Momin Khan

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course of investigation it was found that accused Momin was constable in ELITE Force Abbottabad and in this aspect he through docket Ex.PW-3/6 informed SP ELITE Force Abbottabad and later on SP Investigation vide letter No.440 dated 28.01.2016 also informed SP ELITE Force Abbottabad about involvement of police official in Harrabah case. He also recorded the statements of PWs u/s 161 Cr.P.C and on 24.01.2016 after expiry of custody he produced all the accused facing trial before the Magistrate separately for recording their confession through applications Ex.PW-3/7 to Ex.PW-3/12 but accused refused to confess their guilt and they were remanded to judicial lock-up. On 27.01.2016 he submitted an application before Senior Civil Judge Torghar at Oghi Ex.PW-3/13 for conducting identification parade of all the accused involved in commission of the case. The application was allowed and on 29.01.2016 identification parade was conducted in supervision of Judicial Magistrate Oghi in District Jail Mansehra after observing all the codal formalities. Recovery of weapon of offence was effected by the preventive staff from all the accused and separate challan u/s15-AA against each were submitted accordingly.

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After completion of investigation handed over the case file to S.H.O Javed who on the basis of available evidence submitted complete challan against accused facing trial and sent it to the court for trial. During the course of his cross-examination he admitted that he received the copy of FIR at 11:00 AM in his office situated inside Police Station Oghi. He further admitted that on receipt of copy of FIR he proceeded to the spot alongwith police party in a private vehicle i.e. Jeep. He further admitted that place of occurrence would be at a distance of 21/22 KM from the Police Station. He further admitted that he made the entry of his departure in the Daily Diary of Police Station however he did not remember the Madd number of my departure. He further admitted that he had not placed on file the copy of said entry in the Daily Diary. He further admitted that he reached the spot at about 02:00 PM. He further admitted that the S.H.O had already left the place of occurrence before his arrival however the complainant and the eye witnesses were present at the spot on whom pointation he prepared the site plan. He further admitted that the sketch was prepared by him in reverse shape as the place of occurrence was in the same direction because of hilly

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area. He further admitted that he came back to the Police Station from the spot after preparation of site plan, recording of statements of PWs etc and reached back to the Police Station at 11:00 PM. He admitted it correct that he had not arrested any of the accused, accused were arrested by preventive staff and he made the formal arrest of all the accused finding them locked in the lockup by preparing a joint card of arrest of all the six accused. He further admitted that he made the card of arrest in the Police Station on 20.01.2016 at 04:00 PM. He further admitted that he could not tell the actual date and time of arrest of any of the accused found by him in lock-up of Police Station. He further admitted that the amount of Rs. 30,000/- shown to be recovered through memo Ex.Pw-3/5 was recovered after going back from the court. He further admitted that he did not know the exact time however it was office time. He further admitted that the accused had not confessed their guilt in their statements u/s 161 Cr.P.C before me. He further admitted that the applications for recording confessional statements of all the accused were written by his subordinate ASI Mohammad Saleem on his dictation and he only signed the same. He admitted it incorrect that the site plan

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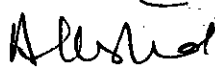
Ex.PW-3/1 was not in his handwriting. He further admitted that the card of arrest was in his own handwriting. He admitted it correct that the recovery memo Ex.PW-3/5 was written by ASI Saleem on his dictation and he signed the same which he had seen that day in the court which correctly bore his signature. He further admitted it correct that Saleem ASI was also witness of the recovery. He further admitted it correct that when an accused was arrested and before putting him in the lock up his personal search was conducted under the rules and if some illegal things were found it was taken into possession through memo however currency notes were not taken into possession. Court Observation, the cash amount Ex.P1 was produced in open condition.

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(iv) Mr. Arbab Sohail Hamid, Senior Civil Judge appeared as PW-4 and has stated that on 27.01.2016 Investigation Officer submitted an application already exhibited as Ex.Pw-3/13 for conducting identification of accused in jail. On receipt of application he passed his order dated 27.01.2016 directing the Jail Superintendent to make arrangement for conduction of identification parade of accused on 29.01.2016. Accordingly he


Yamin Khan

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the jail on that date and conducted identification parade of all the six accused facing trial through complainant vide his report consisting of seven pages with certificate on page 08 which was Ex.PW-4/1 after adopting all codal formalities. He had seen his report which was correct and correctly bore his signature. During the course of his cross-examination he admitted that he was Illaqa Magistrate. He admitted it correct that he had granted police custody of three days of the accused produced before him for the purpose of police remand on 21.01.2016. He admitted that the accused were produced with open faces at the time of police custody in court hours. He further admitted that at the time of conducting identification parade, Jail Superintendent was present with him while Investigation Officer after handing over record was not present there. He further admitted that he himself had not visited to confirm the fact that the accused were kept in separate cells as directed by him. He further admitted that he did mention the starting time of identification parade but not of its completion. He further admitted that the dummies were selected by keeping in view the height and features etc of the accused. He further admitted that the accused were produced to him from the

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cell prior to the identification parade to ascertain their identity with mannequin prisoners.

(v) Muhammad Javed Khan Inspector appeared as PW-5 and has stated that during the days of occurrence he was posted as SHO in Police Station Oghi. On 18.01.2016 he was on gusht when he received the information that an occurrence has taken place on which he reached Chakal Payeen and there complainant met him and reported that at Isha time complainant alongwith his father Jumma Khan, Waqar s/o Alamzeb, Ali Aksar s/o Taj Mohammad and other relatives were present with family members in their house when in the meanwhile six unknown persons out of whom two were armed with Kalashnikovs and three other armed with firearm and one empty hand and out of them two were wearing uniform of ELITE Force and four were in plain clothes entered complainant's house. Accused aimed their weapons at the complainant party and directed that they had raided their house to arrest them and directed to accompany them. Accused on gun point took the complainant, Ali Aksar s/o Taj Mohammad and Waqar s/o Alamzeb with them. When they covered some area from their house the accused directed them to hand over all the belongings to



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them. On refusal of complainant to hand over his belongings one of the accused forcibly snatched Rs. 30,000/- from his front pocket. They also searched his other companions but no amount was recovered from them. All the accused after the occurrence escaped from the scene of occurrence while hurling threats. Complainant could recognize them on appearance before him. He incorporated the above mentioned report in shape of Murasila which was in his own handwriting and bore his signature. The Murasila was Ex.PW-5/1. Subsequently on completion of investigation he submitted complete challan in the instant case which also bore his signature. It was correct that FIR was chalked out by ASHO Yousaf Khan. The same was Ex.PW-5/2. During the course of his cross-examination he admitted that When he received information he was at village Chansair at a distance of about 03/04 KM from the place of occurrence. He further admitted that he received information at about 0700 AM. He further admitted that a person had conveyed him the information. He further admitted that he had not recorded statement of that person. He further admitted that he could not tell the name of that person who conveyed information of

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aforementioned occurrence. He further admitted that the place where he received information would be at a distance of about 13/14 KM from Police Station Oghi. He further admitted that he did not recall exactly when he left Police Station for gusht but it might be 06/06:30 AM. He further admitted that it took them about 45 minutes to reach the place of occurrence from village Chansair. He further admitted that there was also some distance on foot which would be about ten minutes on foot. He further admitted that it was about 07:50 AM when he reached the spot. He further admitted that on reaching the spot first of all he entered the report of complainant in the shape of Murasila. He further admitted that Murasila was sent to Police Station through Fazal Islam constable who left the spot on foot who might had gone to the Police Station on any vehicle. He further admitted that the Investigating Officer had reached the spot in his presence. He further admitted that he left the spot for searching the accused after spending an hour or one and half hour on the spot. He further admitted that he was accompanied by a Head Constable from investigation wing who had preserved the spot till the arrival of IO Altaf Khan. He further admitted that Altaf Khan reached

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later on when he had already left the spot. He admitted it incorrect that the investigation including the Murasila was conducted by above mentioned Head Constable and later on papers prepared by him were signed by the witness and Altaf Khan IO.

(vi) Mohammad Gulzar IHC appeared as PW-6 and has stated that he was marginal witness to the recovery memo already exhibited Ex.PW-3/5 vide which the IO took into possession two currency notes of Rs. 5000 denomination from the front pocket of accused Waqas, one note of Rs. 1000 denomination from the right side pocket of accused Lal Khan, one note of Rs. 5000 denomination from the right side pocket of accused Imran, five notes of Rs. 1000 denomination from the front pocket of accused Momin and one note of Rs. 5000 denomination from the Bunyan wore under the shirt of accused Murtaza, total of Rs. 30,000/- were recovered from the possession of all the five accused. The memo had been seen by him which was correct and correctly bore his signature. During the course of his cross-examination he admitted that the recovery was made in the Police Station and the memo was also prepared in the Police Station by Inspector Altaf Khan. He further

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admitted that the memo was scribed by Saleem ASI on the dictation of Inspector Altaf Khan. He further admitted that the said Saleem ASI was also recovery witness of the said memo. He further admitted that the recovery was effected on 21.01.2016 at night time. He further admitted that he could not tell the exact time of recovery. He further admitted that all the accused were already in the lockup and the IO had call every one of them turn by turn to the investigation room and after interrogating them separately made the above recovery. He further admitted that the notes were not sealed into any parcel by the IO. He further admitted that the IO had not put any mark of identification on any of the notes recovered from the accused. He further admitted that he did not know when the accused were arrested. He further admitted that he did not accompany the IO or the SHO to the spot during the investigation.

After conclusion of the prosecution evidence statements of accused u/s 342 Cr.P.C were recorded, wherein they stated that neither they want to produce defence evidence nor they want to be examined u/s 340(2) Cr.P.C as their own witnesses nor they want to add any thing more in their statements.

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Learned A.P.P for the State argued that the case by submitting that the accused facing trial had been nominated by the complainant after due satisfaction, that recovery of Rs. 30000/ from five accused connected them with the commission of crime. That the accused had successfully been identified by learned Judicial Magistrate in identification parade after fulfilling all codal formalities. He was of the view that the offence was heinous in nature and the prosecution succeeded in bringing home the guilt of accused and requested that exemplary punishment might be awarded to all the accused facing trial.

On the contrary learned defense counsel argued the case that two private witnesses were examined and the remaining were abandoned. Complainant of the case Badri Zaman and Ali Aksar contradicted each other on material points. Likewise identification parade was full of deficiencies and in last recovery of exactly Rs.30,000 were shown against five accused which on the face of record appeared to be concocted story. Hence prosecution case is full of doubts and so benefit of doubts might be extended in favour of accused facing trial and they might be acquitted of the case.

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After going through the arguments and perusal of record, I would like to appreciate the evidence of parties in the following manner.

Complainant Badri Zaman stated in his examination-in-chief that on the night of occurrence he alongwith Waqar and Ali Aksar were present at his home while six persons entered their house. Two of them were in police uniform while rest of the four accused were in civil clothes. All of them were armed while one of them was unarmed. Two accused were armed with Kalashnikovs, three with 30 bore pistols and one was empty handed. He in his cross-examination admitted that his father was present in his own room at the time of occurrence. He further admitted that his father and other inmates did not come out of their rooms when they were taken by the accused party. He further admitted that none of the accused was known to him previously. He admitted it correct that accused Tariq was living in his neighborhood and was known to him. He also admitted that accused were not with muffled faces. He further admitted that there had been an incident of molesting



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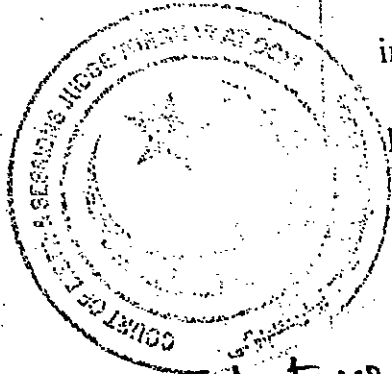
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child some days before (about a month back) and a settlement was made in police station. He further admitted that after the occurrence of snatching amount from him he returned to his house and that he did not inform the police about the occurrence however he did not know who informed the police. He admitted it incorrect that he had seen the accused in the lock up many times after their arrest. He further admitted it incorrect that he had seen the accused while they were produced by the police before the Magistrate. He further admitted it incorrect that he was given indications and the number of standing of each accused during the identification parade. He further admitted that he charged the accused by name after making inquiry from different people. He further admitted that as a year had already been lapsed that is why he could not tell the name of any person from whom he inquired.



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Ali Aksar son of Taj Muhammad is other PW. He in cross-examination stated that complainant had informed the police at night about the occurrence but due to non-availability of vehicle the police came on

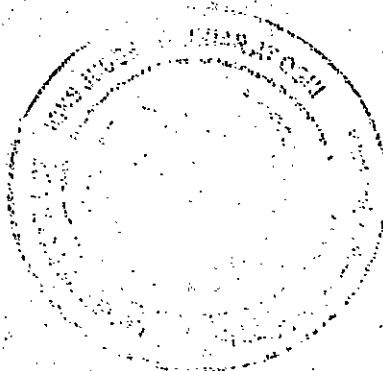
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morning. He admitted that faces of the accused were open at the time of occurrence. He admitted it correct that accused Tariq was living in their neighborhood.

From the statements of above mentioned two private witnesses of prosecution it appears that they contradicted on material points. The complainant of the case stated that he did not know who had informed the police about the occurrence. Ali Aksar stated complainant had informed the police. Both the witnesses agreed that accused who entered their house were with open faces and they also admitted that one Tariq was their neighbor. In case when the accused Tariq was identified by the complainant and his other witness then why he was not charged instantly and what was the need for identification parade. This creates serious doubt in prosecution version. This deposition of the complainant and the eye witness had badly shattered the prosecution case as they contradicted in about reporting of the case to police, they made the prosecution case doubtful while making admission that they knew one of the accused Tariq being their neighbor.

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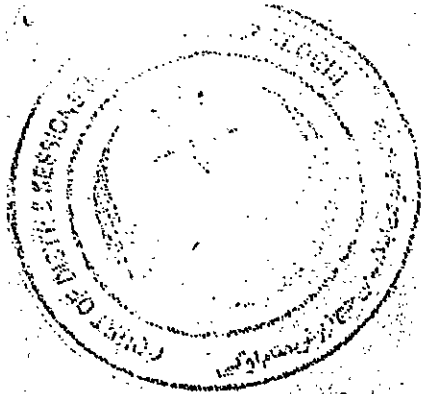
27-10-2017

Attested
[Signature]

41

Muhammad Altaf DSP as PW.03 gave the detail of the notes recovered from the five accused with different denominations. From accused Waqas two notes of Rs.5000 denomination, from accused Lal Khan one note of Rs.5000/- denomination, from accused Imran Khan one note of Rs.5000 denomination, from accused Momin five notes of Rs.1000/- denomination and from accused Ghulam Murtaza one note of Rs.5000/- denomination were recovered. This exactly turned out to be Rs.30,000/-.

He further admitted that he could not tell the actual date and time of arrest of any of the accused found by him in lock up of police station. He also admitted that the amount of Rs. 30000/- shown to be recovered through memo Ex.PW3/5 was recovered after going back from the court. Currency notes were produced in court in cash amount in open condition. Here appears serious doubt about the recovery that how come all the accused were carrying exactly Rs.30000/- with them after three days of the occurrence which was recovered by the police. This reveals that the case was concocted. The recovery has been shown to connect them with commission of crime. Recovery vide Ex. PW 3/5 was



Attested to be true

27-10-2017
17.10.17

Attested
Momin Khan

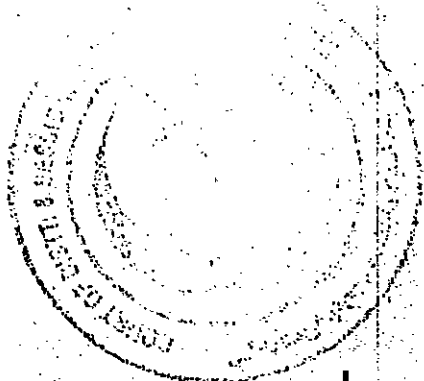
42

made on 21.01.2016, after three days of occurrence. None of the five accused have spent a single Rupee. Exactly Rs. 30,000/- was recovered. This story is hard to comprehend.

Mr. Arbab Sohail Hamid, Senior Civil Judge appeared as PW.04. He admitted identification parade in jail. He admitted it correct that he had granted police custody for three days against accused facing trial. He further admitted that accused were produced with open faces at the time of police custody in court hours. So, in the wake of the statements of complainant when is placed with the statement of Senior Civil Judge PW.04 that no pre-cautionary measures were adapted prior to identification parade. The accused were produced from Police station to court with open faces, the veracity of the identification parade becomes very shaky.

The crux of above mentioned detail discussion is that accused Tariq was known to complainant prior to the report, the identification parade was not conducted in accordance to law, the accused facing trial were exposed to complainant party. The prosecution case is full of dents and doubts. So, by extending benefit of all

Attested
Yamin Khan



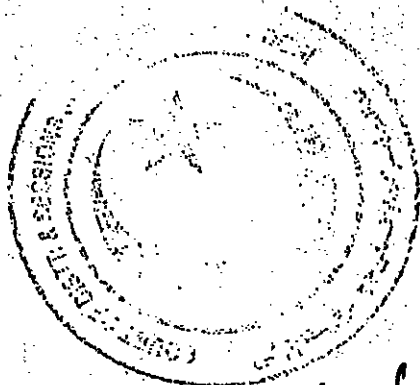
Attested to be true

27-10-2017
L.I. X. 17

43

doubts and contradictions, the accused facing trial are, hereby, acquitted from the charges. Accused Lal Khan is in custody. He be released forthwith if not required in any other case. While remaining accused are on bail. Their sureties are absolved from the liberties of bail bonds. Case property be kept intact till the period of appeal/revision. Case file be consigned to the Record Room after its completion and compilation.

Announced:
17.10.2017



Ashfaq Taj
[Ashfaq Taj]
Sessions Judge Torghar,
At Oghi.

CERTIFICATE

Certified that my this judgment consists upon thirty (30) sheets, each page has been read and corrected wherever it was necessary.

Ashfaq Taj
[Ashfaq Taj]
Sessions Judge Torghar,
At Oghi.

Attested to be true

SP
27-10-2017

Attested
Mojam Khan

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Annex-D

**BEFORE HONORABLE COMMANDANT/ADDITIONAL
INSPECTOR GENERAL ELITE FORCE KHYBER
PAKHTUNKHWA PESHAWA**

(Departmental appeal by Momin Khan Ex-Constable 2532, Elite Force RRF Unit No.14)

**DEPARTMENTAL APPEAL AGAINST ORDER NO. 633-37/RRF DATED
30-05-2016 PASSED BY THE DEPUTY COMMANDANT, RRF KHYBER
PAKHTUNKHWA PESHAWAR WHEREBY THE APPELLANT HAS BEEN
AWARDED WITH THE PENALTY OF DISMISSAL FROM SERVICE.**

**PRAYER: ON ACCEPTANCE OF INSTANT DEPARTMENTAL APPEAL
IMPUGNED ORDER DATED 30-05-2016 MAY KINDLY BE SET ASIDE AND
THE APPELLANT BE RE-INSTATED IN SERVICE FROM THE DATE OF
DISMISSAL WITH ALL CONSEQUENTIAL SERVICE BACK BENEFITS.**

Respected Sir,

1. That the appellant was enrolled in the police force as Constable in the year 2006 and thus has rendered about 10 years service. Ever since his appointment in the police department he always performed his assigned duties with zeal, zest, devotion, dedication, dexterity and honesty to the entire satisfaction of his superiors and never provided a chance of reprimand. Through out his entire service the appellant earned good, very good & excellent ACRs. Not only that at different occasions due to his meritorious services the appellant has been awarded with commendation certificates and cash rewards by his High-Ups.
2. That on 18-01-2016 one Badri Zaman S/O Juma Khan R/O Village Chakkal Pain, Tehsil Oghi, District Mansehra got registered an FIR NO. 30 dated 18-01-2016 U/S-17(3) Haraba with the Police Station Oghi (Mansehra) against 06 (Six) unknown persons and subsequently in a supplementary

Attched
Momin Khan

statement dated 02-01-2016 recorded by the Investigating Officer of the case, the complainant due to personal grudge and vendetta got falsely involved the appellant in the case resultantly the appellant was arrested by the police and put in the judicial lock-up of the Jail. **(Copy of FIR dated 18-01-2016 is attached as "A")**.

3. That after about 02 (two) months of his arrest the appellant was released on bail from the Jail. The case remained under trial for about 01 year and 09 months. Ultimately the appellant being innocent was acquitted of the charge by the Honorable Court of Sessions Judge (at Oghi) District Torghar vide judgment and decision dated 17-10-2017. **(Copy of the Judgment/Decision dated 17-10-2017 is attached as "B")**.
4. That the appellant has been dismissed from service by the Deputy Commandant, Rapid Response Force, Khyber Pakhtunkhawa Peshawar vide his letter No.633-37/RRF dated 30-05-2016 without any proof that too and contrary to the procedure set forth by the law for dispersion of justice at preliminary stages during the course of departmental inquiries. **(Copy of impugned order dated 30-05-2016 is attached as "C")**.
5. That according to the law, departmental rules & regulations and principle of natural justice the departmental authorities, before passing any order perverse to the service rights of appellant, were legal obligation to have waited the decision of Honorable Court of Session Judge (at Oghi) Torghar where the criminal case

Attested
M. J. Khan

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was being tried for adjudication to guilt or innocence of appellant. But contrary to the legal requirements the appellant has been dismissed from service without any fault on his part and that too mere registration of a false and fabricated case on the basis of complainant's personal grudge and vendetta.

6. That no proper departmental enquiry as envisaged by Kyber Pakhtunkhwa Police (Efficiency & Disciplinary) Rules 1975 was conducted against the appellant. No Charge Sheet was issued to him. Enquiry Report, if any, was also not served upon the appellant nor was any Final Show Cause Notice issued to him. Even the appellant was not provided with the opportunity of personal hearing thus departmental rules & regulations and principle of natural was seriously violated in the case of appellant.
7. That in view of the facts and circumstance explained here above, by stretch of no imagination the appellant could be held responsible and penalized for the charge on account of which he was tried by the Honorable Court of Sessions Judge (at Oghi) District Torghar and ultimately honorably acquitted in the case.
8. That the appellant is a young man with sound physique, stout, energetic, literate Police Officer, well equipped with the departmental courses and trainings. The appellant is the only bread earner of his large family consisting upon his aged parents and minor school going children.

Attested
Muzam Khan

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9. That the appellant shall be very grateful, if he is provided with an opportunity of personal hearing enabling him to bring the real picture of the matter into the knowledge of your Highness and to clear his position as well.

GROUND:

- a. That impugned order dated 30-05-2016 passed by the Deputy Commandant, RRF Elite Force Khyber Pakhtunkhwa Peshawar is illegal and unlawful against the facts and circumstances of the matter thus is liable to be set aside.
- b. That departmental authorities without waiting the decision of criminal charge for which the case of appellant remained under trial before the court of law have passed the impugned order detrimental to the service rights of appellant and against the law, departmental rules & regulations and principle of natural justice.
- c. That no proper departmental inquiry was conducted against the appellant as was required under Khyber Pakhtunkhwa Police (Efficiency and Disciplinary) Rules 1975 and the appellant has been awarded with major penalty of dismissal from service.
- d. That the appellant in the criminal case on account of which the Deputy Commandant, RRF Elite Force Khyber Pakhtunkhwa Peshawar awarded major penalty of dismissal has been acquitted of the charge by the Honorable Court of Sessions Judge (at Oghi) District Torghar. Award of punishment of dismissal from service to the appellant on

Attested
M. J. Khan

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the same charge is, therefore, perverse and in violation of law, departmental rules and regulations and principle of natural of justice. Hence the impugned order needs to be set aside.

- e. That no Charge Sheet, Enquiry Report and Final Show Cause Notice was issued to the appellant before awarding major penalty of dismissal from service of which issuance was mandatory under prevailing law.
- f. That the appellant was also not provided with an opportunity of personal hearing before awarding the penalty which is also necessary and mandatory thus he has been condemned unheard.

PRAYER:

Sir, in view of the facts and circumstances narrated here above, it is earnestly requested that impugned order dated 30-05-2016 passed by the Deputy Commandant RRF Elite Force KPK Peshawar may kindly be set aside and appellant be reinstated in his service from the date of his dismissal with all consequential service back benefits. Thanking you sir in anticipation.

Yours Obediently

Momin Khan

(Momin Khan S/O Banaras)
Ex-Constable 2532, RRF Unit No.14
Elite Force

Address: New Qazian, K.T.S.,
Teh & Distt: Haripur
Cell No. 0344-9432227

Dated: 17-11-2017

Advt
Momin Khan

ذریعہ - ایس پی کا ایلیٹ فورس ایب آباد

Allowed
2-04-2018

عنوان :- درجہ ایب آباد عطا شدی ایس پی فورس

ضابطہ عالی - تشریح ذیل

1- یہ کہ ایب آباد فورس 11/17 اور ایس ایب فورس 16/17
فورس 30/16 کاڈیوٹ / 18/19 فورس کیوں فراہم
کے لئے درجہ دیا گیا ہے۔

2- یہ کہ ایب آباد فورس کے ایلیٹ فورس کاڈیوٹ
ایب آباد فورس کاڈیوٹ کے دفتر میں ہے۔ جس سے ایب آباد
کہ اس کے ایب آباد فورس کے ایلیٹ فورس
ایب آباد کے دفتر میں ہے۔ وہ اس کے دفتر میں ہے۔

اس کے علاوہ ایب آباد فورس کے
نقل و حرکت کے لئے ایب آباد فورس کے دفتر میں ہے۔

02/04/2018

ایب آباد

مورن خان کا ڈیوٹ 2532 ایلیٹ فورس
ایب آباد

Moin Khan

Attested
Moin Khan



(51)

Annex-F



Office of the Addl. Inspector General of Police
Elite Force Khyber Pakhtunkhwa Peshawar

No. _____ /EF

Dated 08/02/2018

ORDER

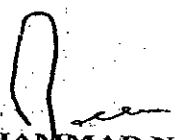
This order will dispose of the appeal submitted by Ex-Constable Momin Khan No. 2532 of this unit against punishment of his dismissal from service awarded to him by Deputy Commandant RRF vide order No. 633-37/EF, dated 30.05.2016.

Brief of the facts are that he was involved in case FIR No. 30, dated 18.01.2016, under Sections Under Sections 17 (3) Harrabah, Police Station Oghri District Mansehra. Consequently, he was issued Charge Sheet along with Summary of Allegations and SSP Elite Force Hazara region was appointed as enquiry officer. The enquiry officer reported that his presence at the time of commission of the offence was proved and recommended him for major punishment. Subsequently, a Final Show Cause Notice was issued to him but his reply was found unsatisfactory. Resultantly, the Deputy Commandant RRF Khyber Pakhtunkhwa Peshawar, imposed major penalty of dismissal from service upon him vide order quoted above.

Hence, he preferred the instant appeal for re-instatement in service before the competent authority. The instant appeal is badly time barred.

Therefore, the undersigned, being competent authority, uphold his dismissal from service order passed by the Deputy Commandant RRF Khyber Pakhtunkhwa Peshawar and reject his appeal for re-instatement in service on grounds of limitation (time-barred by 01 year, 07 months & 11 days).

Order announced!


(DR. MUHAMMAD NAEEM KHAN) PSP
Addl: Inspector General of Police
Elite Force Khyber Pakhtunkhwa Peshawar

No. 2181-98 /EF

Copy for information to the:-

1. Deputy Commandant, RRF, Khyber Pakhtunkhwa Peshawar.
2. Superintendent of Police, Elite Force Hazara Region.
3. Accountant/RI, Elite Force, Khyber Pakhtunkhwa, Peshawar.
4. SRC/OHC/FMC, Elite Force, Khyber Pakhtunkhwa, Peshawar.
5. Ex-Constable Momin Khan No. 2532 through Reader SP Elite Force Hazara Region.



Accepted
Momin Khan

DBA No: 206

S.No: 18814

BC No: [] [] [] [] [] [] [] [] [] []

Name of Advocate: محمد اسلم تنہا

وکالت نامہ

DISTRICT BAR ASSOCIATION HARIPUR



پیر کے من مہار خیر بخشون اور اکسری ٹریڈنگ اور
 موہن خان نام: پروڈنشل لوڈنگ آؤٹ اور
 اپیلینٹ موہن خان نوعیت مقدمہ: کسٹمز اور
 باعث تحریر آنکھ:

بالاعنوان میں اپنی طرف سے واسطے پیروی و جوابدہی برائے پیشی یا تصفیہ مقدمہ بمقام ٹریڈنگ اور
محمد اسلم تنہا کے لیے

پہلے شرائط پر وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص رو برو عدالت حاضر ہوتا رہوں گا اور بروقت
 نے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر عدالت کروں گا۔ اگر پیشی پر منظر حاضر نہ ہوا اور مقدمہ میری
 کی وجہ سے کسی طور پر میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طور پر ذمہ دار نہ ہوں گے نیز وکیل صاحب
 در مقام کچہری کے علاوہ کسی جگہ یا کچہری کے اوقات سے پہلے یا پیچھے یا بروز تعطیل پیروی کرنے کے ذمہ دار نہ
 ر مقدمہ کچہری کے علاوہ کسی اور جگہ سماعت ہونے پر یا بروز تعطیل یا کچہری کے اوقات کے آگے پیچھے پیش ہونے
 نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا محنتانہ کے واپس کرنے کے بھی صاحب
 نہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پر داختہ صاحب موصوف مثل کردہ ذات منظور و مقبول ہوگا اور صاحب موصوف کو
 یا جواب دعویٰ اور درخواست اجراء کے ڈگری و نظر ثانی اپیل نگرانی و ہر قسم درخواست پر دستخط و تصدیق کرنے کا بھی
 وراور کسی حکم یا ڈگری کرانے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور
 وراضی نامہ و فیصلہ برحلف کرنے اقبال دعویٰ دینے کا بھی اختیار ہوگا اور بصورت جانے میر و نجات از کچہری صدر
 کی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم امتناعی یا قرضی یا گرفتاری قبل از گرفتاری و اجراء ڈگری بھی صاحب
 بشرط ادا نیگی علیحدہ محنتانہ پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہوگا کہ مقدمہ
 کے کسی جزوی کاروائی کے یا بصورت اپیل کسی دوسرے وکیل کو اپنے بجائے یا اپنے ہمراہ مقرر کریں اور ایسے وکیل کو
 میں وہی اور ویسے اختیارات حاصل ہوں گے جیسے صاحب موصوف کو حاصل ہیں اور دوران مقدمہ جو کچھ ہر جانہ
 و صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب
 پورا اختیار ہوگا کہ وہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے
 سے ہوگا۔

Accepted by
 M. Aslam

نامہ لکھ دیا ہے کہ سندر ہے۔

ت نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔ مورخہ: 09 / 04 / 2018
 دن ماہ سال

(Momin Khan Appellant)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No. 495/2018

EX constable Momin khan No.2535 Elite Police Force KPK r/o village New Qaziam District Haripur.....Appellant.

VERSUS.

1. Provincial Police Officer Khyber Pakhtunkhawa Peshawar
2. Additional Inspector General of Police /Commandant Elite Force Khyber Pakhtunkhawa Peshawar.
3. Deputy Commandant RRF Khyber Pakhtunkhawa Peshawar
4. Superintendent Police Elite Force/RRF Hazara Region, Abbottabad

.....Respondents

PARA WISE REPLY ON BEHALF OF RESPONDENTS.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS:

1. That present service appeal is not maintainable in its Present form.
2. That the appellant has not come to this honorable Service Tribunal with clean hands.
3. That present Service appeal is badly time barred.
4. That honorable Service Tribunal has got no jurisdiction to entertain the present service appeal
5. That the appellant has suppressed the material facts from this honorable service tribunal

ON FACTS:

1. Pertains to record, hence needs no comments.
2. Correct to extent that initially, FIR was registered against the unknown Six accused, but later on the complainant properly charged the accused for Commission of offence. The accused made pointation of the place of occurrence and the snatched amount also recovered from their possession .The appellant name was rightly nominated in FIR as per circumstances, available evidence statement of complainant. Moreover the appellant presence at the place of occurrence was also proved in process of departmental enquiry officer. No personal grudge or vendetta was come on surface between appellant and complainant.

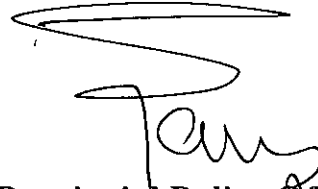
3. Pertains to record, how ever acquittal from criminal charges by a criminal Court has no effect on departmental proceedings
4. Incorrect the appellant being number of police found involved in case FIR NO. 30 dated 18.01.2018 u/s 17(3) Harba PS Ogi District Mansehra carrying a bad name for whole departmental and used official uniform during commission of offence. Proper charge sheet + statement of allegation have been issued against the appellant. The inquiry officer in his finding clarified the presence of appellant at the time of commission of offence. The competent authority after fulfillment of all legal and procedural requirements passed the dismissal order. (copies of charge sheet, statement of allegations and inquiry are attached as annexure A, B, and C.
5. Incorrect, every case has its own merits and facts. There are plethora of cases which ordained, that criminal proceeding + departmental proceeding may go side by side. So for as the departmental proceeding is concerned, it is distinct from criminal litigation. The respondents rightly dismissed the appellant.
6. Incorrect, proper departmental enquiry has been conducted under the rules and appellant has been informed about the order well in time. Charge sheet and final show Cause Notice issued to him accordingly and proper opportunity of personal hearing was given to appellant. No. violation of rules/regulation and principals of natural Justice has been committed by respondents.
7. Incorrect, as discussed above that the appellant was found involved in criminal case. The inquiry officer after through deliberation and collection of evidence found that appellant was present at the place of occurrence and the complainant charged him in his statement. Hence the respondent have no other option just to dismiss him, which is legal decision.
8. Incorrect, the department appeal filled by appellant was scrutinized properly and filed rightly by the competent authority on the grounds of limitation and merit.
9. Incorrect, the departmental appeal was thoroughly examined on every angles by keeping in view the fact and circumstances of the case as well appellant. Moreover copy of the same has been supplied on his request.
10. Subject to Proof.
11. Subject to proof.

ON GROUND


- (a) Incorrect, the orders of respondents are legal, lawful having validity in the eyes of law and passed after careful scrutiny of record, collecting all related supportive documents. Apart from the order are based on fact, law and in accordance with record.
- (b) Incorrect. As already discussed that each case has its own fact and merits. The departmental proceeding is distinct from criminal proceeding and the respondents rightly dismissed the appellant. No damage has been caused to the rights of appellant and the law, rules /regulation and principles of natural justice have been fully followed in whole process.
- (c) Incorrect, the appellant being member of disciplined for has committed misconduct by involving in heinous case , utilizing the official uniform and bring bad name for police department .The dismissal was rightly awarded and no violation of law, rule /regulation, principle of natural justice has been carried out with appellant.
- (d) Incorrect, the procedure laid down for inquiry process have been fully followed in accordance with law and miss carriage of justice has been carried out in process.
- (e) Incorrect, proper departmental enquiry has been conducted and the appellant was confirmed at place of occurrence and recovery of snatched amount, Elite Force uniform ,identification of accused along with appellant by complainant and witness are also very supportive version, which aspect is not condonable. These above are solid reason, which cannot be ignored.
- (f) Incorrect, specification of place, date and time have been conveyed to appellant and charge , sheet+ summary of allegation, final show cause notice issued and communicated to appellant before awarding punishment
- (g) Incorrect, proper opportunity has been given to appellant and the dismissal order was passed after examination/ scrutinizing all relevant recorded. No violation of principals of natural justices has been committed
- (h) Needs no comments

PRAYER:

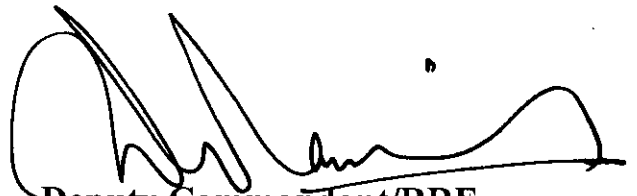
It is therefore humbly prayed that on acceptance of this Para-wise reply, the service appeal may graciously be dismissed with cost.



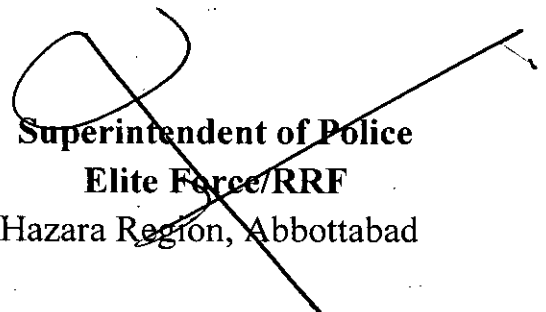
Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar



**Additional Inspector General of Police/
Commandant Elite Force Khyber
Pakhtunkhwa, Peshawar**



Deputy Commandant/RRF
Khyber Pakhtunkhwa, Peshawar



**Superintendent of Police
Elite Force/RRF**
Hazara Region, Abbottabad

4. ASHO Mohammad Yousif Khan supported the version of FIR and stated that he has arrested all the accused along with Constable Momen Khan No. 2532 with armed and also recovered the uniform of Elite Force. The constable also admitted his arrest during cross question.
5. Sher Dil Khan SI/ PC Unit No. 14 stated that the said constable was absent on the morning of 18-01-2016 due to which he recorded his absence report vide DD No. 19 dated 18-01-2016 Police Line Abbottabad.
6. Statement of accused constable Momen No. 2532 unit No. 14 Rapid Response Force was recorded who stated that on 17-01-2016 after evening roll call due to illness of his wife he left the station, on the way heavy strength of Police stopped him and arrested along with 30 Bor pistol and told him that he is involved in a dacoity case, although he is innocent. During the cross the constable admitted his arrest along with pistol, recovery of thirty thousand from the co-accused Waqar, also admitted that his co-accused Lal Khan is wanted in different criminal cases by the local Police, he also admitted his presence along with the other accused at the spot.

FINDING

From the perusal of FIR, recovery memo of arm, recovery of snatched amount and Elite Force uniform from the position of the constable Momen. Identification of all the accused along with constable by the complaint and eye witness in the court.

All the accused along with said constable and notorious criminal Lal Khan were arrested from an unjustified place with arm and Elite Force uniform.

From the police record and cross questions by the accused also proves his presence at the spot.

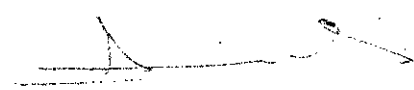
During enquiry, it was noticed that during said dacoity nothing was snatched from the house but later on thirty thousand were snatched from the complaint only away from the said house.

It was learned that there was also an unreported dispute of sodomy was also going on between the complaint and co-accused Tariq.

REMARKS

1. It was proved that the said constable was present at the time of commission of the case.
2. He is recommended for major punishment.
3. Constable is under suspension, on bail from the court and criminal case is under trial court.

Detail report is submitted along with relevant documents.


Sr. Superintendent of Police,

CHARGE SHEET

I, Dilawar Khan Bangash, Deputy Commandant Rapid Response force Khyber Pakhtunkhwa Peshawar as competent authority; hereby charge you Constable Momen No.2532 Unit No.14 of Rapid Response Force as follows;

1. You have been charged in case FIR No. 30 U/S 17 (3) Haraba dated 18-01-2016 Police Station Oghi District Mansehra.
2. Therefore you are charged with misconduct under the Police rules (amended vide NWFP gazette 27th January 1976) and have rendered yourself liable to the penalties specified in the said rules.
3. Your written defense, if any, should reach the undersigned within 07 days failing which, it shall be presumed that you have no defense to offer and in that case ex-parte action shall be initiated against you.
4. A statement of allegation is enclosed.



DEPUTY COMMANDANT
RRF, Khyber Pakhtunkhwa Peshawar.

Constable
R.R.F.
Momen Khan

SUMMARY OF ALLEGATIONS

I, Dilawar Khan Bangash, Deputy Commandant, Rapid Response Force, Khyber Pakhtunkhwa, Peshawar as competent authority, Serve you with the summary of allegation Constable Momen No.2532 Unit No.14 of Rapid Response Force has rendered yourself liable to be proceeded against as you have committed the following misconduct within the meaning of Police Rules (amended vide NWFP gazette, 27th January 1976).

SUMMARY OF ALLEGATIONS

1. You have been charged in case FIR No. 30 U/S 17 (3) Haraba dated 18-01-2016 Police Station Oghi District Mansehra. Explain your position and involvement in the said Case.



DEPUTY COMMANDANT
RRF, Khyber Pakhtunkhwa Peshawar.

No. 5559 /RRF, dated Peshawar the 26/01/2016.

Copy of the above is forwarded to the:-

1. SP Elite Force, Hazara Region Abbottabad.
2. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
3. Line Officer Headquarter RRF, Khyber Pakhtunkhwa Peshawar.
4. Momen No.2532 Unit No.14 of RRF, through reader SP Elite Force, Hazara Region.



DEPUTY COMMANDANT
RRF, Khyber Pakhtunkhwa Peshawar.

Reader/Elite

Informed to Constable do said

BF/Elite Haz
01/02/2016

Copy in RRF
Momen Khan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No. 495/2018

EX constable Momin khan No.2535 Elite Police Force KPK r/o village New Qaziam District Haripur.....Appellant.

VERSUS.

1. Provincial Police Officer Khyber Pakhtunkhawa Peshawar
2. Additional Inspector General of Police /Commandant Elite Force Khyber Pakhtunkhawa Peshawar.
3. Deputy Commandant RRF Khyber Pakhtunkhawa Peshawar
4. Superintendent Police Elite Force/RRF Hazara Region, Abbottabad

.....Respondents

PARA WISE REPLY ON BEHALF OF RESPONDENTS.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS:

1. That present service appeal is not maintainable in its Present form.
2. That the appellant has not come to this honorable Service Tribunal with clean hands.
3. That present Service appeal is badly time barred.
4. That honorable Service Tribunal has got no jurisdiction to entertain the present service appeal
5. That the appellant has suppressed the material facts from this honorable service tribunal

ON FACTS:

1. Pertains to record, hence needs no comments.
2. Correct to extent that initially, FIR was registered against the unknown Six accused, but later on the complainant properly charged the accused for Commission of offence. The accused made pointation of the place of occurrence and the snatched amount also recovered from their possession .The appellant name was rightly nominated in FIR as per circumstances, available evidence statement of complainant. Moreover the appellant presence at the place of occurrence was also proved in process of departmental enquiry officer. No personal grudge or vendetta was come on surface between appellant and complainant.

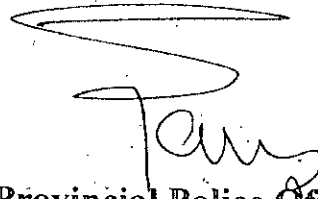
3. Pertains to record, how ever acquittal from criminal charges by a criminal Court has no effect on departmental proceedings
4. Incorrect the appellant being number of police found involved in case FIR NO. 30 dated 18.01.2018 u/s 17(3) Harba PS Ogi District Mansehra carrying a bad name for whole departmental and used official uniform during commission of offence. Proper charge sheet + statement of allegation have been issued against the appellant. The inquiry officer in his finding clarified the presence of appellant at the time of commission of offence. The competent authority after fulfillment of all legal and procedural requirements passed the dismissal order. (copies of charge sheet, statement of allegations and inquiry are attached as annexure A, B, and C.
5. Incorrect, every case has its own merits and facts. There are plethora of cases which ordained, that criminal proceeding + departmental proceeding may go side by side. So for as the departmental proceeding is concerned, it is distinct from criminal litigation. The respondents rightly dismissed the appellant.
6. Incorrect, proper departmental enquiry has been conducted under the rules and appellant has been informed about the order well in time. Charge sheet and final show Cause Notice issued to him accordingly and proper opportunity of personal hearing was given to appellant. No. violation of rules/regulation and principals of natural Justice has been committed by respondents.
7. Incorrect, as discussed above that the appellant was found involved in criminal case. The inquiry officer after through deliberation and collection of evidence found that appellant was present at the place of occurrence and the complainant charged him in his statement. Hence the respondent have no other option just to dismiss him, which is legal decision.
8. Incorrect, the department appeal filled by appellant was scrutinized properly and filed rightly by the competent authority on the grounds of limitation and merit.
9. Incorrect, the departmental appeal was thoroughly examined on every angles by keeping in view the fact and circumstances of the case as well appellant. Moreover copy of the same has been supplied on his request.
10. Subject to Proof.
11. Subject to proof.

ON GROUND

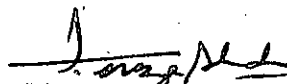
- (a) Incorrect, the orders of respondents are legal, lawful having validity in the eyes of law and passed after careful scrutiny of record, collecting all related supportive documents. Apart from the order are based on fact, law and in accordance with record.
- (b) Incorrect. As already discussed that each case has its own fact and merits. The departmental proceeding is distinct from criminal proceeding and the respondents rightly dismissed the appellant. No damage has been caused to the rights of appellant and the law, rules /regulation and principles of natural justice have been fully followed in whole process.
- (c) Incorrect, the appellant being member of disciplined force has committed misconduct by involving in heinous case , utilizing the official uniform and bring bad name for police department .The dismissal was rightly awarded and no violation of law, rule /regulation, principle of natural justice has been carried out with appellant.
- (d) Incorrect, the procedure laid down for inquiry process have been fully followed in accordance with law and miss carriage of justice has been carried out in process.
- (e) Incorrect, proper departmental enquiry has been conducted and the appellant was confirmed at place of occurrence and recovery of snatched amount, Elite Force uniform ,identification of accused along with appellant by complainant and witness are also very supportive version, which aspect is not condonable. These above are solid reason, which cannot be ignored.
- (f) Incorrect, specification of place, date and time have been conveyed to appellant and charge , sheet+ summary of allegation, final show cause notice issued and communicated to appellant before awarding punishment
- (g) Incorrect, proper opportunity has been given to appellant and the dismissal order was passed after examination/ scrutinizing all relevant recorded. No violation of principals of natural justices has been committed
- (h) Needs no comments

PRAYER:

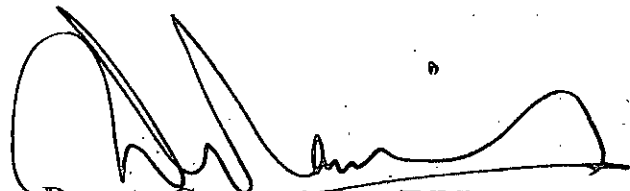
It is therefore humbly prayed that on acceptance of this Para-wise reply, the service appeal may graciously be dismissed with cost.



**Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar**



**Additional Inspector General of Police/
Commandant Elite Force Khyber
Pakhtunkhwa, Peshawar**



**Deputy Commandant/RRF
Khyber Pakhtunkhwa, Peshawar**



**Superintendent of Police
Elite Force/RRF
Hazara Region, Abbottabad**

4. ASHO Mohammad Yousif Khan supported the version of FIR and stated that he has arrested all the accused along with Constable Momen Khan No. 2532 with armed and also recovered the uniform of Elite Force. The constable also admitted his arrest during cross question.
5. Sher Dil Khan SI/ PC Unit No. 14 stated that the said constable was absent on the morning of 18-01-2016 due to which he recorded his absence report vide DD No. 19 dated 18-01-2016 Police Line Abbottabad.
6. Statement of accused constable Momen No. 2532 unit No. 14 Rapid Response Force was recorded who stated that on 17-01-2016 after evening roll call due to illness of his wife he left the station, on the way heavy strength of Police stopped him and arrested along with 30 Bor pistol and told him that he is involved in a dacoity case, although he is innocent. During the cross the constable admitted his arrest along with pistol, recovery of thirty thousand from the co-accused Waqar, also admitted that his co-accused Lal Khan is wanted in different criminal cases by the local Police, he also admitted his presence along with the other accused at the spot.

FINDING

From the perusal of FIR, recovery memo of arm, recovery of snatched amount and Elite Force uniform from the position of the constable Momen. Identification of all the accused along with constable by the complaint and eye witness in the court.

All the accused along with said constable and notorious criminal Lal Khan were arrested from an unjustified place with arm and Elite Force uniform.

From the police record and cross questions by the accused also proves his presence at the spot.

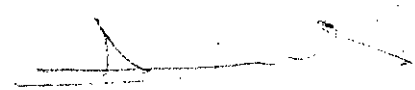
During enquiry it was noticed that during said dacoity nothing was snatched from the house but later on thirty thousand were snatched from the complaint only away from the said house.

It was learned that there was also an unreported dispute of sodomy was also going on between the complaint and co-accused Tariq.

REMARKS

1. It was proved that the said constable was present at the time of commission of the case.
2. He is recommended for major punishment.
3. Constable is under suspension, on bail from the court and criminal case is under trial court.


Detail report is submitted along with relevant documents.


Sr. Superintendent of Police,

CHARGE SHEET

I, Dilawar Khan Bangash, Deputy Commandant Rapid Response force Khyber Pakhtunkhwa Peshawar as competent authority; hereby charge you Constable Momen No.2532 Unit No.14 of Rapid Response Force as follows;

1. You have been charged in case FIR No. 30 U/S 17 (3) Haraba dated 18-01-2016 Police Station Oghi District Mansehra.
2. Therefore you are charged with misconduct under the Police rules (amended vide NWFP gazette 27th January 1976) and have rendered yourself liable to the penalties specified in the said rules.
3. Your written defense, if any, should reach the undersigned within 07 days failing which, it shall be presumed that you have no defense to offer and in that case ex-parte action shall be initiated against you.
4. A statement of allegation is enclosed.



DEPUTY COMMANDANT
RRF, Khyber Pakhtunkhwa Peshawar.

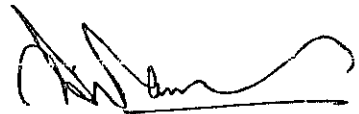
Constable Momen
R.R.F.
Dilawar Khan

SUMMARY OF ALLEGATIONS

I, Dilawar Khan Bangash, Deputy Commandant, Rapid Response Force, Khyber Pakhtunkhwa, Peshawar as competent authority, Serve you with the summary of allegation **Constable Momen No.2532 Unit No.14** of Rapid Response Force has rendered yourself liable to be proceeded against as you have committed the following misconduct within the meaning of Police Rules (amended vide NWFP gazette, 27th January 1976).

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1. You have been charged in case FIR No. 30 U/S 17 (3) Haraba dated 18-01-2016 Police Station Oghi District Mansehra. Explain your position and involvement in the said Case.



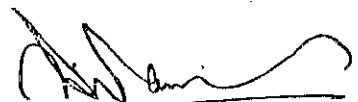
DEPUTY COMMANDANT
RRF, Khyber Pakhtunkhwa Peshawar.

No. 55-59 /RRF, dated Peshawar the 26/01/2016.

Copy of the above is forwarded to the:-

1. SP Elite Force, Hazara Region Abbottabad.
2. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
3. Line Officer Headquarter RRF, Khyber Pakhtunkhwa Peshawar.
4. Momen No.2532 Unit No.14 of RRF, through reader SP Elite Force, Hazara Region.

Reader/Elite
Informal do
Constable do
RRF/Elite
01/02/2016



DEPUTY COMMANDANT
RRF, Khyber Pakhtunkhwa Peshawar.

RRF
Dilawar Khan

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

In the matter of
Appeal No. 495/2018

Momin Khan.....V/S.....PPO/IGP KPK & Others
(Appellant) **(Respondents)**

REJOINDER ON BEHALF OF THE APPELLANT

Respectfully Sheweth:

The appellant submits his rejoinder as under:-

Preliminary Objections:

1. Contents incorrect and misleading; the instant service appeal has been formulated strictly in accordance with rules governing the terms and conditions of appellant's service; hence maintainable.
2. Contents incorrect and misleading; the appellant has been awarded the penalty against the departmental rules and regulations while appellant has committed no fault on his part, the appellant has filed instant appeal with clean hands according to law.
3. Contents incorrect and misleading; the appellant has filed the instant appeal according to manner, procedure, and period prescribed and stipulated by relevant law and rules thus is well within time.
4. Contents incorrect and misleading, the law and rules governing the terms and conditions provide the appellant to file the service appeal before this Honorable Tribunal which has got every jurisdiction to entertain and adjudicate upon the instant appeal.

5. Contents incorrect and misleading, all material facts relating to the appellant's have been incorporated in the body of titled appeal and nothing has been suppressed from this Honorable Service Tribunal.

ON FACTS:

Contents of para No.1 to 11 of the appeal are correct and the reply submitted to these paras by respondents in para-1 to 11 is incorrect and misleading hence denied.

GROUND:

All the grounds "A" to "H" taken in the memo of appeal are legal and will be substantiated at the time of hearing of appeal and reply submitted to these paras by respondents from "A" to "H" is incorrect and misleading hence vehemently denied.

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

THROUGH

Momin Khan
APPELLANT
M. Aslam
(MOHAMMAD ASLAM TANOLI)
ADVOCATE HIGH COURT
AT HARIPUR

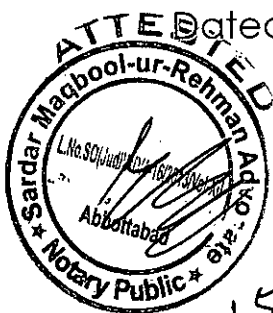
Dated: 15-04-2019

AFFIDAVIT:

I, Momin Khan S/O Banaras do hereby solemnly declare that contents of this rejoinder as well as that of titled appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.

Dated: 15-04-2019

Momin Khan
Deponent/Appellant



Office of the Sr. Superintendent of Police

Elite Force, Hazara Range

No. 594 /EF

Dated 11-05-16



To: **The Deputy Commandant,
Rapid Response Force Khyber Pakhtunkhwa.**

Subject: **ENQUIRY REPORT**

With reference to your letter No. 259-60/ RRF Peshawar dated 02-03-2016 departmental enquiry was conducted, details are as under.

Vide case FIR NO. 30 u/s 17(3) Haraba dated 18-01-2016 Police Station Oghi District Mansehra. The constable Momen No. 2532 of Rapid Response Force Unit No. 14 was involved and arrested on 20-01-2016 and confined at District Jail Mansehra.

Final show cause was received by the said constable on 04-04-2016 after his bail from the court.

Constable along with the investigation officer of the case, SHO, ASHO, PC of Unit, complainant of the case along with eye witness were called and proper enquiry was conducted, all the case file along with DD reports were perused and sufficient opportunity was given to the constable to defend his case.

1. According to FIR complainant Budri u Zaman reported that at the night of 17-01-2016 six armed persons in which two were wearing uniform of Elite Force entered his house and threatened his family and later on bring him along with his other two relatives Waqar and Ali Asgar from their house and at some distance snatched thirty thousand rupees from him and ran away.

The said complainant Badri u Zaman endorsed the FIR in his statement and also added that he has identified all the accused along with said constable during identification praid. During cross questions the constable admitted his presences at the time of incident.

2. Statement of said Waqar was recorded who also endorsed the FIR and eye witness of the case and supported the version of the complainant. The constable during cross also admitted his presences during the incident at spot.
3. The statement of Inspector/ SHO Muhammad Javed was recorded who admitted the version of FIR and submitted the complete Chalan against the six accused along with the said constable after proper investigation, recovery of Arms, recovery of snatched amount, and identification praid. The constable made no cross question.

4. ASHO Mohammad Yousif Khan supported the version of FIR and stated that he has arrested all the accused along with Constable Momen Khan No. 2532 with armed and also recovered the uniform of Elite Force. The constable also admitted his arrest during cross question.
5. Sher Dil Khan SI/ PC Unit No. 14 stated that the said constable was absent on the morning of 18-01-2016 due to which he recorded his absence report vide DD No. 19 dated 18-01-2016 Police Line Abbottabad.
6. Statement of accused constable Momen No. 2532 unit No. 14 Rapid Response Force was recorded who stated that on 17-01-2016 after evening roll call due to illness of his wife he left the station, on the way heavy strength of Police stopped him and arrested along with 30 Bor pistol and told him that he is involved in a dacoity case, although he is innocent. During the cross the constable admitted his arrest along with pistol, recovery of thirty thousand from the co-accused Waqar, also admitted that his co-accused Lal Khan is wanted in different criminal cases by the local Police, he also admitted his presence along with the other accused at the spot.

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From the police record and cross questions by the accused also proves his presence at the spot.

During enquiry it was noticed that during said dacoity nothing was snatched from the house but later on thirty thousand were snatched from the complaint only away from the said house.

It was learned that there was also an unreported dispute of sodomy was also going on between the complaint and co-accused Tariq.

REMARKS

1. It was proved that the said constable was present at the time of commission of the case.
2. He is recommended for major punishment.
3. Constable is under suspension, on bail from the court and criminal case is under trial court.

Detail report is submitted along with relevant documents.


Sr. Superintendent of Police,
Elite Force - Hazara Region

Office of the Sr. Superintendent of Police

40

No. 526 /EF

Elite Force, Hazara Range

Dated 26-04-16



To: The Superintendent of Police,
Investigation Mansehra.

Subject: ENQUIRY AGAINST CONSTABLE MOMEN NO. 2532.

With reference to the case FIR No. 30 dated 18-01-2016, u/s 17 (3) Harban Police Station Oghi Mansehra.

The Departmental enquiry against the accused Constable Momen No. 2532 Rapid Response Force Unit No. 14 Hazara is under way.

Please direct the i.o of the case to attend the enquiry proceeding along with the case file and the complainant as well on 27-04-2016 at 12:00 hours in the office of the undersigned.

Sr. Superintendent of Police,
Elite Force, Hazara Region
Abbottabad

No. ——— /EF dated Abbottabad the — / — /

Copy of above is submitted for favor of information to the:

1. The Deputy Commandant, Elite Force Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Commandant, RRF Khyber Pakhtunkhwa, Peshawar.

Sr. Superintendent of Police,
Elite Force, Hazara Region
Abbottabad

Sr Superintendent of Police

بیان اور بلدی دھان ولد حکم خان قوم تلوئی گھم 3/6 سال چیل

بادریافت بیان کیا کہ مورخ 17/01/16 کو وقت غنہ اور ویرا میں اپنے گھر میں نماز پڑھ رہا تھا

کہ فوجی کسی بچے بنا یا کہ سیرک کھائی سپرو پینڈے گھم میں 25 اشخاص پر کسی درون پر
04 اشخاص سفید باریجات میں گھس گئے ہیں۔ میں دروازے سے باہر نکلا تو

پہلوں سیرک دروازے کے سامنے کھڑے تھے جنہوں نے فوجی بکڑ لیا جبکہ سیرک پھسکا
اور اسٹیشن دار وقار اور علی امیر کو پہلے سے بکڑا ہوا تھا جو ہم سے کہ گھر میں بیوی بچوں کے

اصلی نام کہہ رہا تھا بنالیا اور کیا ہم کھانڈو ہیں تمہیں گھر وٹار کرنے آئے ہیں
کچھو پھر بعد ہم جنہوں کو سیرک گھر سے روانہ ہوئے اور کچھ فاصلے پر پھر اسلام آباد کہ کیا کہ جو

کچھ بے لگال دو اور بعد میں سیری تلاش کی کہ تیس ہزار روپے لگال
لے کھرا اور کسی سے کچھ سیر آسنے ہوا جنہوں نے ہمیں حضور دیا اور خود کھاگ

گئے۔ مذکورہ ان کو میں شکل سے پہچانتا تھا جنہوں نے بعد میں وقاص احمد کے محل خان
عسکران و غلام مرتضیٰ طارق اور ابراہیم کینٹل سون خان وکر بنا میں

کے ماہوں سے ہوئی بعد میں مذکورہ ان کو میں نے شناخت سیر پڑ میں بھی پہچان لیا ہے۔
بعد میں معلوم ہوا کہ ایلٹ فورس کی وردیاں اسلام آباد سسر وقت میں ہزار 30000

ہزار روپے کو گھس نے لے لیا ہے۔

سوال: کیا آپ ملزمان کو پہلے سے جانتے تھے؟
جواب: ملزمان میں سے صرف طارق کو جانتا تھا کیونکہ عمار کے گاؤں کے قریب دوسرے گاؤں کا ہے

سوال: اگر یہ وہی کی شخص سے آئے تھے تو گھر سے اور کچھ بھی لے لیا گئے ہیں یا نہیں؟
جواب: اور کچھ نہیں لے لیا ہے۔

Sr. Superintendent of Police
ELIET FORCE
HAZARA REGION ABBOTTABAD
27-04-16

Sr. Superintendent of Police
ELIET FORCE
HAZARA REGION ABBOTTABAD
27-04-16

بیان اذان و قاریوں کے نزدیک قوم ہندوئی کے 28/29 سال سن تک چکل ہائیں •
 25 لکھوں سے زائد لوگوں میں لہذا یہ قوم میں اپنے گھر کے پاس موجود تھا کہ اس خاص جن میں
 گھبر کو کسے ہے۔ میں مجبوراً ان کو جہم بنا کر گھر لے گیا۔ جہاں پر جہم اور علی احمد کے علاوہ
 گھبر کوگ موجود تھے۔ مذکورہ ان کے سب کو جمع کر لیا اور کہا کہ تمہارا اسلام کچھ ہے اور ملاشی
 شروع کر دی پھر ونگر کو چھوڑ کر مجھے علی احمد اور بدری زمان کو اپنے ساتھ کافی دور تک لے گئے
 پھر بدری زمان سے نہیں۔ 30,000 روپے لیکر ہم کو چھوڑ دیا۔ بعد میں لکھنؤ میں
 نے ان سب کو گرفتار کر لیا اور بدری زمان علی احمد اور بدری زمان سے ملنے جان کی
 شناخت لیرٹڈ بھی کروائی گئی ہے۔ الہ آباد و قار

Signature
 Sr Superintendent of Police
 ELIET FORCE
 HAZARA REGION ABBOTTABAD

سوال ملتزم :- کیا میں نے بدری زمان سے آپ کے ساتھ کوئی رقم وصول کی تھی؟
 جواب :- میں یہ نہیں جانتا کہ ان میں سے رقم بدری زمان سے کس نے لی تھی جو بدری زمان کو دیا گیا ہے۔
 سوال ملتزم :- کیا میں نے آپ کی تلاش کی تھی یا کچھ لیا تھا؟
 جواب :- آپ نے میری تلاش نہیں کی۔

سوال ملتزم :- میں نے آپ کی تلاش نہیں کی اور یہی کہ لیا ہے آپ سے اس وقت اور کس نے کچھ لیا ہے؟
 جواب :- مجھ سے کچھ نہیں لیا۔
 سوال I.O :- ملزمان نے آپ کی تلاش کیوں نہیں کی اور کیوں کچھ نہیں لیا؟
 جواب :- میرے پاس ایک نوٹا اور تاج تھی جو نہیں لی گئی اور نہ ہی تلاش ہوئی۔
 سوال I.O :- آپ ملزمان میں سے کسی کو ہیلے سے جانتے تھے؟
 جواب :- میں ملزمان کو طارقی کے علاوہ نہیں جانتا تھا۔ طارقی سہاگے گاؤں کا ہے جسے دیکھا
 ہوا تھا۔ الہ آباد و قار

Signature
 Sr Superintendent of Police
 ELIET FORCE
 HAZARA REGION ABBOTTABAD
 28-04-16

بیان آڈیو ریکارڈنگ 5110 نمٹانہ سے متعلقہ بیان میں ہے کہ قبل ازین میں ایچ آر
 5110 نمٹانہ اوگے کنسٹبل تھا۔ کہ فورم 18/16 کو لکھنا کہتے ہیں۔ ایچ آر ایچ
 ملی کہ وہ چکل پائیل میں بددی زبان نامی شخص کے گھر میں شب گزرتے ہوئے کنسٹبل
 واردات ہوئی ہے۔ اس اطلاع پر میں اسم تقرری پولیس کے وہ چکل پائیل خان
 بددی بددی زبان بنی۔ جہاں پر بددی عدم نے ملوث ہو کر وقوع بددی رپورٹ کی
 جسکی رپورٹ بشکل فراہم ضبط کریم میں لاکر واسم بفرضا نامی عدم بہ دست
 کنسٹبل فضل اللہ درام 221 ارسال کیا گیا۔ جس پر عدم ملوث 30 فورم 18/16
 جرم 17 ملوث 30 فورم نمٹانہ اوگے میں درج رجسٹر ہو کر کنسٹبل حوام INV نمٹانہ
 اوگے کی گئی۔ بعد میں دوران کنسٹبل محمد الطاف خان 105 نمٹانہ اوگے کو بددی
 عدم بددی زبان نے بعد کنسٹبل یحییٰ ربانی یونے پر ہر طرف ملوثان وارد حاصل
 دہ، ملوثان 13، 14، 15، 16، 17، 18، 19، 20، 21، 22، 23، 24، 25، 26، 27، 28، 29، 30، 31، 32، 33، 34، 35، 36، 37، 38، 39، 40، 41، 42، 43، 44، 45، 46، 47، 48، 49، 50، 51، 52، 53، 54، 55، 56، 57، 58، 59، 60، 61، 62، 63، 64، 65، 66، 67، 68، 69، 70، 71، 72، 73، 74، 75، 76، 77، 78، 79، 80، 81، 82، 83، 84، 85، 86، 87، 88، 89، 90، 91، 92، 93، 94، 95، 96، 97، 98، 99، 100، 101، 102، 103، 104، 105، 106، 107، 108، 109، 110، 111، 112، 113، 114، 115، 116، 117، 118، 119، 120، 121، 122، 123، 124، 125، 126، 127، 128، 129، 130، 131، 132، 133، 134، 135، 136، 137، 138، 139، 140، 141، 142، 143، 144، 145، 146، 147، 148، 149، 150، 151، 152، 153، 154، 155، 156، 157، 158، 159، 160، 161، 162، 163، 164، 165، 166، 167، 168، 169، 170، 171، 172، 173، 174، 175، 176، 177، 178، 179، 180، 181، 182، 183، 184، 185، 186، 187، 188، 189، 190، 191، 192، 193، 194، 195، 196، 197، 198، 199، 200، 201، 202، 203، 204، 205، 206، 207، 208، 209، 210، 211، 212، 213، 214، 215، 216، 217، 218، 219، 220، 221، 222، 223، 224، 225، 226، 227، 228، 229، 230، 231، 232، 233، 234، 235، 236، 237، 238، 239، 240، 241، 242، 243، 244، 245، 246، 247، 248، 249، 250، 251، 252، 253، 254، 255، 256، 257، 258، 259، 260، 261، 262، 263، 264، 265، 266، 267، 268، 269، 270، 271، 272، 273، 274، 275، 276، 277، 278، 279، 280، 281، 282، 283، 284، 285، 286، 287، 288، 289، 290، 291، 292، 293، 294، 295، 296، 297، 298، 299، 300، 301، 302، 303، 304، 305، 306، 307، 308، 309، 310، 311، 312، 313، 314، 315، 316، 317، 318، 319، 320، 321، 322، 323، 324، 325، 326، 327، 328، 329، 330، 331، 332، 333، 334، 335، 336، 337، 338، 339، 340، 341، 342، 343، 344، 345، 346، 347، 348، 349، 350، 351، 352، 353، 354، 355، 356، 357، 358، 359، 360، 361، 362، 363، 364، 365، 366، 367، 368، 369، 370، 371، 372، 373، 374، 375، 376، 377، 378، 379، 380، 381، 382، 383، 384، 385، 386، 387، 388، 389، 390، 391، 392، 393، 394، 395، 396، 397، 398، 399، 400، 401، 402، 403، 404، 405، 406، 407، 408، 409، 410، 411، 412، 413، 414، 415، 416، 417، 418، 419، 420، 421، 422، 423، 424، 425، 426، 427، 428، 429، 430، 431، 432، 433، 434، 435، 436، 437، 438، 439، 440، 441، 442، 443، 444، 445، 446، 447، 448، 449، 450، 451، 452، 453، 454، 455، 456، 457، 458، 459، 460، 461، 462، 463، 464، 465، 466، 467، 468، 469، 470، 471، 472، 473، 474، 475، 476، 477، 478، 479، 480، 481، 482، 483، 484، 485، 486، 487، 488، 489، 490، 491، 492، 493، 494، 495، 496، 497، 498، 499، 500، 501، 502، 503، 504، 505، 506، 507، 508، 509، 510، 511، 512، 513، 514، 515، 516، 517، 518، 519، 520، 521، 522، 523، 524، 525، 526، 527، 528، 529، 530، 531، 532، 533، 534، 535، 536، 537، 538، 539، 540، 541، 542، 543، 544، 545، 546، 547، 548، 549، 550، 551، 552، 553، 554، 555، 556، 557، 558، 559، 560، 561، 562، 563، 564، 565، 566، 567، 568، 569، 570، 571، 572، 573، 574، 575، 576، 577، 578، 579، 580، 581، 582، 583، 584، 585، 586، 587، 588، 589، 590، 591، 592، 593، 594، 595، 596، 597، 598، 599، 600، 601، 602، 603، 604، 605، 606، 607، 608، 609، 610، 611، 612، 613، 614، 615، 616، 617، 618، 619، 620، 621، 622، 623، 624، 625، 626، 627، 628، 629، 630، 631، 632، 633، 634، 635، 636، 637، 638، 639، 640، 641، 642، 643، 644، 645، 646، 647، 648، 649، 650، 651، 652، 653، 654، 655، 656، 657، 658، 659، 660، 661، 662، 663، 664، 665، 666، 667، 668، 669، 670، 671، 672، 673، 674، 675، 676، 677، 678، 679، 680، 681، 682، 683، 684، 685، 686، 687، 688، 689، 690، 691، 692، 693، 694، 695، 696، 697، 698، 699، 700، 701، 702، 703، 704، 705، 706، 707، 708، 709، 710، 711، 712، 713، 714، 715، 716، 717، 718، 719، 720، 721، 722، 723، 724، 725، 726، 727، 728، 729، 730، 731، 732، 733، 734، 735، 736، 737، 738، 739، 740، 741، 742، 743، 744، 745، 746، 747، 748، 749، 750، 751، 752، 753، 754، 755، 756، 757، 758، 759، 760، 761، 762، 763، 764، 765، 766، 767، 768، 769، 770، 771، 772، 773، 774، 775، 776، 777، 778، 779، 780، 781، 782، 783، 784، 785، 786، 787، 788، 789، 790، 791، 792، 793، 794، 795، 796، 797، 798، 799، 800، 801، 802، 803، 804، 805، 806، 807، 808، 809، 810، 811، 812، 813، 814، 815، 816، 817، 818، 819، 820، 821، 822، 823، 824، 825، 826، 827، 828، 829، 830، 831، 832، 833، 834، 835، 836، 837، 838، 839، 840، 841، 842، 843، 844، 845، 846، 847، 848، 849، 850، 851، 852، 853، 854، 855، 856، 857، 858، 859، 860، 861، 862، 863، 864، 865، 866، 867، 868، 869، 870، 871، 872، 873، 874، 875، 876، 877، 878، 879، 880، 881، 882، 883، 884، 885، 886، 887، 888، 889، 890، 891، 892، 893، 894، 895، 896، 897، 898، 899، 900، 901، 902، 903، 904، 905، 906، 907، 908، 909، 910، 911، 912، 913، 914، 915، 916، 917، 918، 919، 920، 921، 922، 923، 924، 925، 926، 927، 928، 929، 930، 931، 932، 933، 934، 935، 936، 937، 938، 939، 940، 941، 942، 943، 944، 945، 946، 947، 948، 949، 950، 951، 952، 953، 954، 955، 956، 957، 958، 959، 960، 961، 962، 963، 964، 965، 966، 967، 968، 969، 970، 971، 972، 973، 974، 975، 976، 977، 978، 979، 980، 981، 982، 983، 984، 985، 986، 987، 988، 989، 990، 991، 992، 993، 994، 995، 996، 997، 998، 999، 1000

M Ahmad

5110
 2/5/16

Sr Superintendent of Police
 ELIET FORCE
 HATTA REGION ABBOTTABAD
 02-05-16

سوال : Will

Sr Superintendent of Police
 ELIET FORCE
 HATTA REGION ABBOTTABAD
 02-05-16

بیان ادران سید علی خان ایکٹو نمبر 14 صفحہ 1 کسٹم سٹیشن ایبٹ آباد

بار بار پتہ بیان کیا گیا ہے جس میں معمول 17/05 اپنی کورنٹ نمبر 14 کی نیٹی کی کبھی کبھی پتہ پتہ

و سنہ حکم احکام افسران بالا کئی حکم کی و کسٹم سٹیشن ایبٹ آباد 8532 موجود تھا

اگلے صبح 18/05 کو کسٹم سٹیشن میں سے کوئی بھی شخص نہیں آیا اور کئی کئی دنوں میں کسٹم سٹیشن ایبٹ آباد

کو کئی حد درجہ میں سے کوئی بھی شخص نہیں آیا اور کئی کئی دنوں میں کسٹم سٹیشن ایبٹ آباد

کسٹم سٹیشن میں سے کوئی بھی شخص نہیں آیا اور کئی کئی دنوں میں کسٹم سٹیشن ایبٹ آباد

کسٹم سٹیشن میں سے کوئی بھی شخص نہیں آیا اور کئی کئی دنوں میں کسٹم سٹیشن ایبٹ آباد

Attested

Signature

- Nil -

Sr. Superintendent of Police
ELIET FORCE
HAZARA REGION ABBOTTABAD
10-05-16

Attested

Signature

Sr. Superintendent of Police
ELIET FORCE
HAZARA REGION ABBOTTABAD
10-05-16

تقریر عدد ۱۹ از مورخه ۱۸/۱۶/۵۱

۱۹ راجع به ...
۱۸/۱۶/۵۱
۱۱۵۵
۲۵۳۲
۱۴ R.R.P
۱۸/۱۶/۵۱

ضابطه
۱۸/۱۶/۵۱
۱۹-۱۰-۶۱

پولیس ٹیبل میں نمبر 2532 آر آر ایف ٹوٹ نمبر 14 مئی 1971ء کو پولیس ٹیبل میں بحال ڈسٹرکٹ پولیس ایجنسی میں
 جانی میں کہ مزاج 16/17 کو بعد از کئی ٹوٹ نمبر 14 گھر خود سے بند کر کے پہلی فون اطلاع وصول میں کہ
 مہر ایجنسی میں سندھ بھارت کے حکمی اللہ پانی ہی اور یہی میں گھر خود سے بند کرنا تھا۔ میں نے اس وقت
 گاڑی میں سوار ہو کر اوگی سے دربار چارہ بھانجے اور اسے میں کو کسین کو مال احمد خداری کوئی نہ تاکہ
 سندھ کی پولیس میں جیسے ہی وہ انٹرنیٹ گاڑی وہاں کو موقع پر خود کو کسین والوں نے مجھے گاڑی سے
 اتار لیا اور سرکاری حوالے گاڑی میں بندھا کر نکالا اور گئی۔ آگے۔ جہاں پر مہر ایجنسی جہاں ملداری میں بادوں
 روپ۔ مہر ایجنسی۔ کاغذات جو تھر سٹائل شناختی کارڈ مسکون کارڈ لبر آڈیٹ سے تھے وہاں
 اور سر اسٹراٹک اپر فوجی ہتھیاروں کے اور کسین کی درخواستوں سے۔ جو کہ خود اس مہر ایجنسی تھا۔

Attested

الو اسٹیشنر

Sr Superintendent of Police
 ELIET FORCE
 HAZARA REGION ABBOTTABAD
 09-05-16

- EO: آپ سے کسین کتنی رقم لے لی گئی ہے؟
- ب: کسین نے خود سے 10,000 روپے لے لئے ہیں۔
- EO: کیا یہ رقم آپ کی رقم تھی؟
- ب: نہیں مہر ایجنسی تھی۔
- EO: دیگر ملزمان سے کتنی رقم لے لی گئی ہے؟
- ب: مہر ایجنسی میں ملزمان سے کچھ لے آئے ہیں۔
- EO: آپ کے ساتھ اور کون کون ملزم گرفتار ہوا؟
- ب: صرف ساتھ اور کئی گرفتار نہیں ہوئے۔
- EO: ملزم وقاص سے 30,000 روپے لے آئے ہیں؟
- ب: پولیس کی ملداری کے دوران لے آئے ہیں۔
- EO: آج سے مدعی کو بیان کے دوران لے آئے ہیں یا خود وقاص کی مہر ایجنسی میں نہیں لے آئے؟

Attested

الو اسٹیشنر

Sr Superintendent of Police

وقاص کیا ہے کہ ہر ادا ہے؟

EO :- دیگر ملزمان کا آپ سے ساتھ کیا تعلق ہے ؟
:- اہل خانہ و ملزمان میں سے کسی کو ساتھ لایا نہیں گیا ہے یا

EO :- کیا یہ وہی اہل خانہ ہے جو کہ لوگس کو لے کر ورائوں میں مطلوب ہے ؟

باب :- جی ہاں /

EO :- اگر آپ دیگر ملزمان کے ہمراہ لڑائی کے لئے نہیں گئے تھے تو کھیر پوری واران کے گھر میں حاضر کیا گیا ہے ؟
:- پوری واران اور طارق وغیرہ کے ساتھ رشتہ داری ہے۔ اس لئے اس کے گھر گئے تھے /

EO :- اگر رشتہ داری ہے تو پورے واران کو ساتھ لے کر لاپٹ کی جوری میں کمر رشتہ داری بھان
کے لئے گئے تھے ؟

:- جوری میں نہیں پہنی ہوئی تھی /

EO :- آپ کو اگر وہ پہلے ہوئے تھے تو ہمارے کہنے پر آپ نے گفتگو سے سوال کیا تھا کہ ہم میں ملزمان کی
تفریقاری عمل کیلئے ہے نہ کہ اہل میں جیل لگنے سے تفریقاری کی ہی تھی ؟

:- کچھ تو روتے ہیں دور ہے /

EO :- جب آپ کو دیگر واران سے تو ان کے ہمراہ لوگس نے جیل لگایا ہے اس لئے ہم اہل واری و دیگر اسلام و قہ
تے گرفتار کیا ہے آپ نے باوجود وہ جو وہم پر جانا تسلیم ہی کر لیا ہے کہ وہ لوگس کو دیکھیں میں آپ نے
میں نے اس کو دیکھا ہے کہ وہ اس کے ساتھ اس کے ساتھ اس کے ساتھ اس کے ساتھ اس کے ساتھ اس کے ساتھ
آئی دیگر لوگوں کے علاوہ عدالتی شناختی پر مذہبی سرحد کی ہے ؟

Attested

سے خوف نہیں کیا - الد

Sr Superintendent of Police
ELIET FORCE
HAZARA REGION ABBOTTABAD

09-05-16

فانوار

فردیہ مکتبہ

مکتبہ

34

صالح علیہ السلام
صالح علیہ السلام 30
صالح علیہ السلام 18/16
صالح علیہ السلام 15/17
صالح علیہ السلام 15/17
صالح علیہ السلام 15/17

صالح علیہ السلام
صالح علیہ السلام
صالح علیہ السلام
صالح علیہ السلام
صالح علیہ السلام
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صالح علیہ السلام
صالح علیہ السلام
صالح علیہ السلام

صالح علیہ السلام
20/01/2016

صالح علیہ السلام
13504-2218476-1

صالح علیہ السلام
13504-5232370-5
0343-0927155

Attested

Superintendent of Police
SONO FORCE

فرد و قریبی
 صوم 35 صوم 35
 1876 م 17 م 3 و 17 م 3
 صوم 35 صوم 35
 2016 م 2016 م
 تمام یہ وہاں سے خریداری ہوئی ہے۔

صوم عمران بلا میں
 ملک کو جو جو ہے
 راکم - کورٹ کوئی 7721 - 1962 م
 7-62 م 7-62 م
 صوم عمران بلا میں
 فرد سے الحیات ہے

20/01/2016

گواہ سید علی اکبر ولد عظیم حسن
 13504-2218191-7
 0347-5202798
 گواہ سید محمد اسحاق ولد محمد
 13504-4756806-9
 0341-9398941

Attested
 Sr. Superintendent of Police
 ELIET FORCE
 HAZARA REGION ABBOTTABAD

فرد و خصوصاً

عملیات

36 فرم 20-01-2016
15AA
2016
تمام عملیات و سرکاری فرم سولہ سب سے تہہ و تہا
مردم ہر 30 جن 18/16 جن 17 جن رقبہ لایم کا لڑکا۔

فدح سعوزن بالہ میں رقبہ و فرم میں اس کے دوران گرفتاری مکمل
بالہ مختل کم ہے جو دیگر ملک کو ضمانت عدالت عالی سے مع دیگر
گفتاریوں کے جاؤں کے حکم سے رقبہ رقبہ رقبہ رقبہ
پہری 83062 نوٹس کے حکم میں 19 عدد کاروں میں 762
جو اس وقت اس وقت رقبہ میں اس وقت فرم میں
قبضہ میں اس وقت رقبہ میں اس وقت فرم میں
اسی طرح فرم بالہ میں اس وقت رقبہ میں اس وقت فرم میں
اس وقت رقبہ میں اس وقت رقبہ میں اس وقت فرم میں

20-04-2016

گورنر علی گڑھ و سرکار علی گڑھ سولہ سب سے تہہ و تہا
24 جن 25 جن

13504-99904110-1
0345-3083381

گورنر علی گڑھ و سرکار علی گڑھ سولہ سب سے تہہ و تہا
28 جن 29 جن
42501-6548920-3
0342-8906399

فرد و قوتی
جناب صاحب

38 حرقہ 20⁰¹ رقم 15AA قات لوگا
2016
بیمہ اصل قات و قوتی رقم 15AA قات لوگا
30 حرقہ 18⁰¹ رقم 17 حرقہ 30 قات لوگا
16

رہنما و قوتی کے حرقہ عنوان مالہ میں دوران دوران
بیمہ مالہ سے مالہ سے بلکہ۔ واقعہ 303 اور 303
حرقہ 303 کے حرقہ 303 اور واقعہ نمبر 733228 حرقہ
ہوئے ہیں اور حرقہ حرقہ حرقہ حرقہ حرقہ
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2016/01/20

67 حرقہ 68 حرقہ
13504-2518171-7
0347 520 2798
30 حرقہ 31 حرقہ
13504-4756806-9
0341-939894

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SUMMARY OF ALLEGATIONS

I, Dilawar Khan Bangash, Deputy Commandant, Rapid Response Force, Khyber Pakhtunkhwa, Peshawar as competent authority, Serve you with the summary of allegation **Constable Momen No.2532 Unit No.14** of Rapid Response Force has rendered yourself liable to be proceeded against as you have committed the following misconduct within the meaning of Police Rules (amended vide NWFP gazette, 27th January 1976).

SUMMARY OF ALLEGATIONS

1. You have been charged in case FIR No. 30 U/S 17 (3) Haraba dated 18-01-2016 Police Station Oghi District Mansehra. Explain your position and involvement in the said Case.



DEPUTY COMMANDANT
RRF, Khyber Pakhtunkhwa Peshawar.

No. 55-59 /RRF, dated Peshawar the 26/01/2016.

Copy of the above is forwarded to the:-

1. SP Elite Force, Hazara Region Abbottabad.
2. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
3. Line Officer Headquarter RRF, Khyber Pakhtunkhwa Peshawar.
4. Momen No.2532 Unit No.14 of RRF, through reader SP Elite Force, Hazara Region.



DEPUTY COMMANDANT
RRF, Khyber Pakhtunkhwa Peshawar.

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CHARGE SHEET

I, Dilawar Khan Bangash, Deputy Commandant Rapid Response force Khyber Pakhtunkhwa Peshawar as competent authority; hereby charge you Constable Momen No.2532 Unit No.14 of Rapid Response Force as follows;

1. You have been charged in case FIR No. 30 U/S 17 (3) Haraba dated 18-01-2016 Police Station Oghi District Mansehra.
2. Therefore you are charged with misconduct under the Police rules (amended vide NWFP gazette 27th January 1976) and have rendered yourself liable to the penalties specified in the said rules.
3. Your written defense, if any, should reach the undersigned within 07 days failing which, it shall be presumed that you have no defense to offer and in that case ex-parte action shall be initiated against you.
4. A statement of allegation is enclosed.



DEPUTY COMMANDANT
RRF, Khyber Pakhtunkhwa Peshawar.

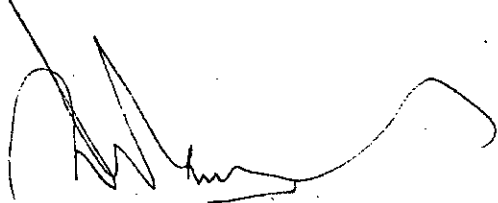
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بیان
بیان وقت
چھٹی انگریز
طلبی برائے انکوار
خ: 5-2016
کیم SHOI چارڈ
ی نمبری EF
KPF پولیس انچ
ASHC خانہ
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یونٹ نمبر 14

نمبر 14 (RF)

دیلوار خان بنگاش (ڈپٹی کمانڈنٹ ریف)

FINAL SHOW CAUSE NOTICE

1. You Constable Momin No.2532 Unit No.14 is served with the final Show cause notice. Your replied to the charge sheet is not satisfactory.
2. You have been charged in case FIR No.30 U/S 17(3) Haraba police station Oghi district Mangochra.
3. You should reply to this final show case notice within stipulated time period.
4. SSI Abdul Majeed khan afridi is nominated as inquiry officer.
5. He will conduct the departmental inquiry and submit his findings in stipulated time.



DEPUTY COMMANDANT
RRF Khyber Pakhtunkhwa, Peshawar

No. 257-58 /RRF, Dated Peshawar the 21/03/2016.
Copy

01. RIFGP Elite Force Khyber Pakhtunkhwa Peshawar.

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Case Law

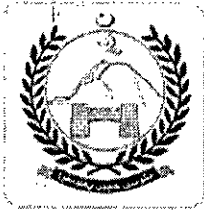
Nomin Khan v/s 19 P etc.

S/No.	Text
1.	<p>In the cases of imposing a Major penalty, a regular inquiry must be conducted. Case law is referred as under:-</p> <p>2019-PLC (CS) 224(b) Peshawar High Court (A/Abad Bench) 2019-PLC (CS) 255 Peshawar High Court 2012-PLC (CS) 1203(A) Lahore High Court PLJ-2014-Tr.C(Services)105 Federal Service Tribunal Islamabad</p>
2.	<p>Dismissal from service due to pendency of criminal case against police official- Validity- Unless such official was found guilty FIR would remain an unsubstantiated allegation and on its basis maximum penalty could not be imposed- After acquittal of such official from criminal case on the basis of compromise/payment of diyat/benefit of doubt, allegation in the show-cause notice remained unsubstantiated. Case law is referred as under:-</p> <p>2007-SCMR-192 (C) Supreme Court of Pakistan PLJ-2007-SC-496(A) Supreme Court of Pakistan PLJ-2015-Tr.C(Services)-197 Punjab Service Tribunal Lahore 2012-PLC(CS) 913 Supreme Court of Pakistan</p>
3.	<p>It is settled law that when an accused official is acquitted from criminal charge after trial by competent court of law, he cannot be ousted from service. Case law is referred as under:-</p> <p>2003-PLC(CS)514(A) Supreme Court of Pakistan 1991-SCMR-209(C) Supreme Court of Pakistan 2001-PLC(CS)316 (C&D) Supreme Court of Pakistan PLJ-2015-Tr.C(Services)-152(B) Punjab Service Tribunal Lahore 2005-PLC(CS) 450 Balochistan Service Tribunal</p> <p><i>and liable to be reinstated in service</i></p>

(A)

(B)

(C)



**KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

No. 1567 /ST

Dated: 09/08 /2021

All communications should be
addressed to the Registrar KPK Service
Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

To

The Deputy Commandant FRP,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: JUDGMENT IN APPEAL NO. 495/2018, MR. MOMIN KHAN.

I am directed to forward herewith a certified copy of Judgement dated
29.06.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR