<u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR</u>

SERVICE APPEAL NO. 751/2018

Date of institution ... 29.05.2018 Date of judgment ... 19.07.2019

Imran Ex-Constable No. 2621, District Police Mardan.

VERSUS

1. Regional Police Officer, Mardan.

2. District Police Officer, Mardan.

3. The Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.

(Respondents)

(Appellant)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 14.05.2018 PASSED BY RESPONDENT NO. 1 WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT FILED AGAINST THE ORDER DATED 20.03.2018 OF RESPONDENT NO. 2 HAS BEEN REJECTED.

Mr. Fazal Shah Mohmand, Advocate. Mr. Usman Ghani, District Attorney For appellant. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI MR. HUSSAIN SHAH MEMBER (JUDICIAL) MEMBER (EXECUTIVE)

JUDGMENT

<u>MUHAMMAD AMIN KHAN KUNDI, MEMBER:</u> Appellant alongwith his counsel present. Mr. Usman Ghani, District Attorney alongwith Mr. Atta-ur-Rehman, Inspector (Legal) for the respondents present. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant was serving in Police Department as Constable. He was imposed major penalty of dismissal from service vide order dated 04.07.2014 on the allegation of absence from duty due to involvement in criminal case. After availing the remedy of department appeal, the appellant filed service appeal which was partially accepted and the department was directed to hold de-novo inquiry in accordance with law within a period of 90 days failing which the appellant shall be reinstated in service vide judgment dated 11.12.2017. After conducting a de-novo inquiry, the major penalty of dismissal from service was converted into minor penalty of forfeiture of two years service with no back benefits with immediate effect vide order dated 20.03.2018. The appellant filed departmental appeal on 06.04.2018 which was rejected vide order dated 14.05.2018 hence, the present service appeal on 29.05.2018.

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

Learned counsel for the appellant contended that the appellant was 4. dismissed from service on the allegation of absence from duty vide order dated 04.07.2014. It was further contended that the appellant filed service appeal which was partially accepted and the department was directed to conduct denovo inquiry but neither the respondent-department has conducted de-novo inquiry in accordance with rules nor the appellant was reinstated with back benefits. It was further contended that in the de-novo inquiry, the inquiry officer has recorded the statement of witnesses but the appellant was not provided opportunity of cross examination on some of the witnesses. It was further contended that after inquiry, the competent authority was required to issue show-cause notice alongwith copy of inquiry but neither any show-cause notice was issued to the appellant by the competent authority nor a copy of inquiry was handed over to the appellant alongwith show-cause notice therefore, the appellant was deprived from the right of defence by not providing opportunity of cross examination on some witnesses and not issuing show-cause notice alongwith copy of inquiry. It was further contended that the respondent-

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department was required to reinstate the appellant with back benefits but the respondent-department has converted the major penalty into minor penalty of forfeiture of two years and reinstated the appellant without back benefits and prayed for acceptance of appeal.

5. On other hand, learned District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was dismissed from service due to his involvement in criminal case vide FIR No. 360 dated 05.05.2014 under section 452 PPC PS Takht Bahi. It was further contended that the appellant had affected compromise with the complainant therefore, Trial Court acquitted the appellant vide judgment dated 10.11.2014. It was further contended that departmental proceeding was initiated against the appellant as per rules, during de-novo proceeding, the appellant was found guilty in the de-novo proceeding but the competent authority had taken lenient view and converted the major penalty of dismissal from service into minor penalty of forfeiture of two years service without back benefits. It was further contended that the appellant was imposed aforesaid minor penalty after fulfilling all the codal formalities therefore, prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was dismissed from service by the competent authority vide order dated 04.07.2014. The appellant filed service appeal before this Tribunal which was partially accepted and the department was directed to hold de-novo inquiry in accordance with rule within a period of 90 days failing which the appellant shall be deemed reinstated in service vide judgment dated 11.12.2017. The respondent-department conducted de-novo inquiry and after conducting de-novo inquiry, the competent authority converted the major penalty of dismissal from service into minor penalty of forfeiture of two years service with no back benefits vide order dated 20.03.2018 but the record reveals that during de-novo inquiry, the inquiry

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officer has recorded the statement of the witnesses but the appellant was not provided opportunity of cross examination on some of the witnesses. Moreover, the competent authority was required to issue show-cause notice alongwith copy of inquiry report to the appellant but after submitting inquiry report by the inquiry officer, the competent authority has neither issued show-cause notice to the appellant nor has handed over copy of de-novo inquiry alongwith copy of show-cause notice therefore, the appellant was condemned unheard which has rendered the whole proceeding illegal. As such, we partially accept the appeal, set-aside the impugned order, the appellant has already been reinstated in service therefore, no need to order for reinstatement. However, the respondentdepartment is directed to conduct de-novo inquiry in the mode and manners prescribed under Police Rule, 1975 within a period of 90 days from the date of copy of receipt of this judgment. The respondent-department is further directed to provide opportunity of cross-examination to the appellant on the witnesses as well as issuing of show-cause notice alongwith copy of inquiry report and thereafter pass an appropriate order. The issue of back benefits will be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED 19.07.2019

N SHAH) MEMBER

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(MUHAMMAD AMIN KHAN KUNDI) MEMBER 19.07.2019

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

Vide our detailed judgment of today consisting of four pages placed on file, we partially accept the appeal, set-aside the impugned order, the appellant has already been reinstated in service therefore, no need to order for reinstatement. However, the respondent-department is directed to conduct de-novo inquiry in the mode and manners prescribed under Police Rule, 1975 within a period of 90 days from the date of copy of receipt of this judgment. The respondent-department is further directed to provide opportunity of cross-examination to the appellant on the witnesses as well as issuing of show-cause notice alongwith copy of inquiry report and thereafter pass an appropriate order. The issue of back benefits will be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED 19.07.2019

MEMBER

Cahammad A mus (MUHAMMAD AMIN KHAN KUNDI)

(MUHAMMAD AMIN KHAN KUNDI) MEMBER

- حما معالى ! بحواله حارج شيط مشموله مفروض خدمت سول كم مقد -10-مورخه 14 0 2 - 20 - 20 - 20 452 PPC 4 52 PPC 05- 20 14 تحنت عاتى م لقائ لئے الزام میں کوئ صداقت نہیں ہے خص ایک دستان السائديد. تقال مع المرام ناحق ب انت شناخت السان ی بنا نیر وع ن حاکر داقعات رمما مونے میں مخالف فرین حقیقت جان کر کون ر مخش باتی نیس رہی ۔ راخی نا سر کے جل كاغذات وسطامي لعن في سالقة انكوا تترى أسرب إولي فورس کے بدنای کے ماعیت جھے قصور وار کھیر ساتھا۔ حالان ایم میرا ایک ذاتی مطافلہ تھا نہ سی اس وقت میں طلق کی لیج اور نہ میں باوردی مقال کیو نکہ اس وقت میں سرخاری دولی سے باز عسر حاضر رع عس ی ذکر مرغس کا در در ناطیه ۱۹۶ - ۵۶ الم کس لا یں درج دور ناطبہ موجود ہے بر معامله ذاتی نوست ما اور لاخی نام بعی اس کس س مواید. عدا ای فيصله مين لف حفزايه. شارى شرق بول بلكر بال جم دار على سول. غرمت سے دوجوار مرول، کھرمار در دیں معاش کا ولار کونل موں حرج بالاحالات کے بیش نظر سمائل کے خلاف جاری کردی انلالائری مرا میں کاروائی فائل دامل فرمائی جائے. CTCالعارم) ال کاتا دجرار کنشیل عمران خان غیر 1222 جامع الی 19-1-10-19 a p 5 - 10/4 / y law ~~

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_16-آ ہے مزن ای تحص فرقوس میں نیے ہے 80.661 رس رس بنتی جرمی سرن رسم کام کام ارم از بار من د حل برانه ما المراخي حس م مس رہے، ارس سران کرتے ہے۔ سب الرائے آریکا کھا جس مران کرتے ہے۔ سب الرائے آریکا کھا جس مران کر رور رائے برا مرة زهر تركي - من كل تنه كال المراكين . نے آ مرح کال نیم (لامک) روز مر اناع کمری نیم) د میں میں کالک نے رام) کا ہوری نے کونل کی کالکا م بچے میں ان میں اناع جرفی کی کئی ہیں . عرن المحر عافة وفي تدليا في عام . 60- ili 63 il - 03 مرت المن من سب من مركم طفل الله الله ق سابق من من المروبي من مرابع در الى المرجع مرا عالى الرم من المرابع wali Unit CT2 E.S.

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14.02.2019

Appellant in person and Addl. AG alongwith Attaur Rahman, Inspector (Legal) for the respondents present.

Due to general strike on the call of Khyber Pakhtunkhwa Bar Council, instant matter is adjourned to 02.05.2019 before the D.B.

Member

Chairman

02.05.2019

Appellant in person and Mr. Kabirullah Khattak learned Additional Advocate General alongwith Mr. Atta Ur Rehman SI for the respondents present. Appellant requested for adjournment as his counsel is not in attendance. Adjourn. To come up for arguments on 17.07.2019 before D.B.

Member.

Member

17.07.2019

Appellant alongwith his counsel and Mr. Usman Ghani, District Attorney alongwith Mr. Atta-ur-Rehman, Inspector (Legal) for the respondents present. Arguments heard. To come up for order on

Vajilia.

19.07.2019 before D.B. (HUSSAIN SHAH) MEMBER

(M. AMIN KHAN KUNDI) MEMBER 04.09.2018 Learned counsel for the appellant and Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Atta Ur Rehman SI for the official respondents present. Written reply submitted by the respondents. To come up for rejoinder and arguments on 29.10.2018 before D.B

29.10.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 14.12.2018.

Member

14.12.2018

Atto

Appellant in person and Mr. Muhammad Riaz Painda Khel, Asstt. AG for the respondents present.

The former has submitted rejoinder/replication to the reply of respondents.

To come up for arguments on 14.02.2019 for arguments before the D.B.



Counsel for the appellant present. Preliminary arguments heard and case file perused. Learned counsel for the appellant argued that he was previously dismissed from service by respondent no.2. On acceptance of service appeal no. 1202/14 vide judgment dated 11.12.2017, directions were given to the respondents to conduct de-novo enquiry. After conducting de-novo enquiry punishment of forfeiture of two years service with no back benefits was imposed on him vide impugned order dated 20.03.2018. Feeling aggrieved he filed departmental appeal on 06.04.2018 which was rejected on 14.05.2018, hence, the instant service appeal on 29.05.2018. De-novo enquiry was conducted in a slipshod manner and ends of justice were not met in the case in hand.

Points urged need consideration. Admit subject to deposit of security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments for 19.07.2018 before S.B.

(AHMAD HASSAN) MEMBER

19.07.2017

08.06.2018

Appellant Reposited Security & Tracess Fee

> Appellant in a person and Mr. Muhammad Jan, DDA for the respondents present. Written reply not submitted on behalf of official respondents. Request for adjournment. Adjourned: To come for written reply / comments on 04.09.2018 before S.B.

Member

Form-A

FORMOF ORDERSHEET

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	Case No.	
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	29/05/2018	The appeal of Mr. Imran Ex-Constable presented today by
	·	Mr. Fazal Shah Mohmand Advocate may be entered in the Institution Register and put up to the Worthy Chairman for
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passed by Judicial Magistrate whereby he has been acquitted in case FIR No. 36 dated 05.05.2014 u/s 452 PPC PS Takht Bhai, Mardan.

After going through the record and statements of PWs, it came to surface that on 05.05.2014 the defaulter official namely Imran No. 2621 committed trespass into the house of one Mst: Rokhana r/o Habib Gul Kali, Takht Bhai, which was retaliated by firing of one Abdul Malik at the default official resulting into registration of cross cases mentioned above. Both the parties effected compromise in the cases on the basis of which the accused have been acquitted by the Court.

Keeping in view of what has been stated above, the undersigned came to the conclusion, though the defaulter official and the other party have patched up the matter through compromise and the accused of both the cases got acquitted in their relevant cases by the Court but not on merit. The partment ince would pave recommended for Ma, recommended for Ma, recommended for Ma, Superintendent of Police, Investigation Mardan. NUMAR With the OR town of the OR defaulter official caused adverse affect on the image of Police Department in

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16-آ ہے مزن ای تحق جرارس میں تب ہے 80. 6.6 2 رس رس بنت عاجی سر الرم کو کی دارد کر ا المار من دخل برانه ما المراخي حسائل میں راہے، ارس سر میں مرا کا کرتم سر سنی کا کے میں میرا سے آریکی کا حتال میں مران کر مرفی کا کم مرة زهر تركم - من كل تنه عالم را عمر) . نے آ مرح علی شہر (عامل) رمور مر اناع کم ر) نبی د میں سب دی آیک فران کا سوری نے موجد جس علی م جمع میں ان سے انکار کی کا کی بنی . عرن المحر بالوكل للها في الم . 60- 26 ED UN :- 03. مرن اون ای ست سم از مرطول از که ۱ في ملا بنى من ما ما مرور عن مرابى در الى را كى لا جارى مرا عالى لا مرس لا كى . with this CT2

17-10, 161029079286 N635 6 12 Cop Vistorio Je July 2 July Elig 260 b - 2402 (15:05:05:204) 200 voces 11 5 c emil 200 100 50 50 1- Haw 10 6. 5. 10 50 50 50 100 50 50 1- Haw 10 5 Joven En v. E. W. J. - In J. J. 1 2 juij 2 king a leiter alven IN alven IN ~ Two Cistowood Z Cinder 83 A. Malily JE11'10 JANIA 18 02 2086

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BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 751 /2018

Imran.....Appellant

VERSUS

RPO and Others......Respondents

INDEX

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7.	Wakalat Nama	Λ	35
		Appella	nt

Dated-:21-05-2018

Through Fazal Shah Mohmand

Advocate, Peshawar

OFFICE:- Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell# 0301 8804841

Email:-fazalshahmohmand@gmail.com

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 757 /2018

Khyber Pakhtukhwa Service Tritanal

Diary No. 1007

Imran Ex Constable No 2621, District Police Mardan.

..Appellant

VERSUS

- 1. Regional Police Officer, Mardan.
- 2. District Police Officer, Mardan.
- 3. Provincial Police Officer, KPK Peshawar.

.....Respondents

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 THE ORDER DATED 14-05-2018 PASSED BY AGAINST **RESPONDENT NO 1 WHERE BY DEPARTMENTAL APPEAL OF THE** APPELLANT FILED AGAINST THE ORDER DATED 20-03-2018 OF **REPSONDENT NO 2 HAS BEEN REJECTED.**

PRAYER:-

Â.

On acceptance of this appeal the impugned order dated 14-05-2018 of respondent No 1 and Order dated 20-03-2018 of respondent No 2 may kindly be set aside and the appellant may kindly be ordered to be given back benefits w.e.f 04-07-2014 to 13-02-2018 by setting aside the punishment of forfeiture of two edto-dayears of service.

gistrar

∫√∫ I Respectfully Submitted:-

1. That earlier the appellant was dismissed from service by respondent No 2 against which he availed departmental remedy and then filed service Appeal No 1202/2014 which was accepted vide Order and Judgment dated 11-12-2017 with direction to the respondents to hold denovo proceedings in accordance with law within a period of ninety days. (Copy of Judgment dated 11-12-2017 is enclosed as Annexure A).

2. That accordingly the appellant was reinstated in service vide daily diary No 26 dated 14-02-2018 and illegal denovo inquiry was

conducted against him. (Copy of daily diary No 26 and denovo inquiry report is enclosed as Annexure B).

- 2 -

- 3. That the appellant was awarded the punishment of "Forfeiture of two years' service with no back benefits" by respondent No 1 vide Order dated 20-03-2018. (Copy of Order dated 20-03-2018 is enclosed as Annexure C).
- That the appellant preferred departmental appeal before respondent No 1 on 06-04-2018 which was rejected vide Order dated 14-05-2018. (Copy of appeal and order dated 14-05-2018 is enclosed as Annexure D & E).
- **5.** That the impugned Order dated 15-04-2018 of respondent No 1 and Order dated 20-03-3018 of respondent No 2 is against the law, facts and principles of justice on grounds inter-alia as follows:-

GROUNDS:-

A. That the impugned orders are illegal and void ab initio.

- **B.** That the appellant has not been treated according to law and rules and respondents have badly violated the procedure set forth by the law and rules.
- **C.** That no charge sheet and Show Cause notice were communicated to the appellant.
- **D.** That no proper inquiry was conducted in the matter to have found out the true facts and circumstances and even nothing adverse has been collected against the appellant.

E. That even otherwise the appellant has been acquitted of the charges by the court of law and as such he cannot be punished on this ground again. (Copy of Order dated 10-11-2014 is enclosed as Annexure F).

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- **F.** That exparte action has been taken against the appellant and he has been condemned unheard in violation of the principles of natural justice.
- **G.** That the appellant was not afforded opportunity of personal hearing nor ever it was tried to find out the true facts and circumstances, the impugned orders are as such liable to be struck down.
- H. That the appellant did nothing that would amount to misconduct and he has been awarded major penalty in violation of law, rules and dictums of the superior Courts.
- I. That the appellant was jobless since his illegal dismissal from service.
- **J.** That the appellant seeks the permission of this honorable Tribunal for additional grounds at the time of arguments.

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

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

ppellant

Through Fazal Shah Mohmand

Advocate, Peshawar.

Dated-:21-05-2018

AFFIDAVIT

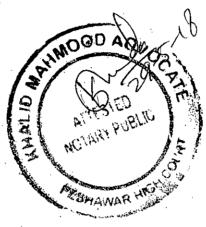
I, Imran Ex Constable No 2621, District Police Mardan, do hereby solemnly affirm and declare on oath that the contents of this <u>Appeal</u> are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Identified by

ONENT P

L Fazal Shah Mohmand

Advocate Peshawar.



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	<i>,</i> .	BEFORE THE KHYBER PAKHTUNKHWA SERVIC	E TRIBUAL.
	t	PESHAWAR	
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		Appeal No. 1201/2014	
		Date of Institution 30.09.2014	
		Data of Desision 11 12 2017	
		Date of Decision 11.12.2017	i share
		Imran Ex Constable No. 2621, District Police, Mardan.	. (Appellant)
•			i ita
		VERSUS	. n. . 2
		1 Deputy Inspector General of Police, Mardan Region-I, 1	Mardan and two others.
			(Respondents)
		MD FAZAL CULAUN CONTANTS	
		MR. FAZAL SHAH MOMAND,	For appellant
			j' 'r
		MR. MUHAMMAD JAN,	
	-	Deputy District Attorney,	For respondents.
			у у.
		MR. NIAZ MUHAMMAD KHAN,	CHAIRMAN
		MR. MUHAMMAD AMIN KHAN KUNDI,	MEMBER
		JUDGMENT	
			次 第二
		<u>NIAZ MUIHAMMAD KHAN, CHAIRMAN -</u> A	$i_{\rm g}$
			rguments of the learned
	ATT	counsel for the parties heard and record perused.	
	$\left(\right)$		
		FACTS	
<u>К</u> [57 - 2 - 4
	Personal	$\frac{2}{3}$ The appellant was dismissed on 04.07.2014 a	gainst which he filed
•		departmental appeal on 10.07.2014 which was rejected on	15.09.2014. Thereafter
	•	he filed the present service appeal on 30.09.2014. The char	The against the annellant
			e agamer me appenant
		was his involved in criminal case under Section 452-PPC.	ी तीन दे ग
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ARGUMENTS.

3. The learned counsel for the appellant argued that the appellant was acquitted by the Court of law on 10.11.2014. That acquittal itself is sufficient for exoneration from disciplinary proceedings. That no proper enquiry was conducted That no right of cross examination was afforded to the appellant. That no right of defence was given to the appellant. That no final show cause notice was given to the appellant. That no final show cause notice was given to the appellant.

4. On the other hand, the learned Deputy District Attorney argued that the appellant was properly charge sheeted alongwith statement of allegations. That an enquiry was properly conducted. That he was given the right of cross examination and right of defence. That the appellant himself admitted his guilt in reply to the charge sheet. That though the appellant was acquitted but it was on the basis of compromise. That the complainant of the criminal case while giving the statement to the enquiry officer did not own the compromise and rather termed that comprise a league of the elders of his family and appellant. That the case is one of moral turpitude.

CONCLUSION.

It is settled position of law that acquittal in criminal case even on merits has got no linkage with the departmental proceedings. In this regard this Tribunal has delivered so many judgments including service appeal No. 742/2016 entitled "Aziz Ahmad Vs. Provincial Police Officer and others", decided on 06.11.2017. However, the elements of due processes in the departmental proceedings have not been fully complied with. Going through the reply of the appellant one cannot presume that the appellant confessed his guilt. The enquiry officer has not given opportunity of cross examination to the appellant nor it can be presumed that any right of defenc

2

was afforded to the appellant. The objection of the learned Députy District Attorney that grounds of attack mentioned above and argued by the learned counsel for the appellant were not taken in the departmental appeal and now he was estopped to agitate before this Tribunal. This Tribunal is not in agreement with the learned Deputy District Attorney for the reason that there is no estoppel in the statute. Legal right and legal issues can be raised at any time. Not only that the appellant was not given opportunity of cross examining the witnesses but no final show cause was given to the appellant alongwith copy of the enquiry report. This Tribunal in a service appeal No. 1014/2012, entitled "Saqib Gul Versus District Police Officer, Mansehra and others" decided on 23.11.2017 has already decided that even under the Khyber Pakhtunkhwa Police Rules, 1975 show cause notice alongwith copy of the enquiry report is sine qua non before imposing any penalty.

6. As a sequel to the above discussion, this appeal is accepted and the department is directed to hold denove proceedings in accordance with law within a period of ninety days failing which the appellant shall be reinstated in service. Parties are left to bear their own costs. File be consigned to the record room.

(NIĄZ MUIHAMMAD KHAN) CHAIRMAN

(MUHAMMAD AMIN KHAN KUNDI) MEMBER

<u>ANNOUNCED</u> 11.12.2017

Cerry

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No 2668 1ST

Dated 13 /12/2017

То

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

Subject: JUDGEMENT/ ORDER IN APPEAL NO. 1201/14, MR. IMRAN.

I am directed to forward herewith a certified copy of Judgment/order dz 11/12/2017 passed by this Tribunal on the above subject for strict compliance.

<u>Encl: As above</u>

0. NO. 1161.

REGISTRAR KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

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يد دور الا دن - ۲ July -14/02 36, 26 is ور 2- , حاصر المر المر المر المراد المراجل ما 15 و - 31:15 مر المراجل . درج معدار اس قف آند فريرال بولى از در مرضا - اده ماه مردان سي واول 262/2012 Jintex OB, 325/13/02 (15) 150 (25) كخ بوباره تورا بركالم عادم مود ابح دددا زه مراله لا في علم بند الما العال بن به المرام دج المراح مور وزواله مشر و معنولا دی روزه دی و دار دو. تار دو. تار NE 10 Molet and the Local المراجع المراجع M Most Plane me le c 14-02-18 R

10/10/10 بحواله جارج شيط مشموله مفروض خدمت سول كم مقد/ -10-Jor Glas in the 452 PPC P. 05-05-2014 200 05.05-2014 لقائے لئے الزام میں کوئ صداقت بین سے خص ایک دستان ال اس الذيع القائم عن الرام ما حق بي الك شداخت السران و کی بنا نیر وی ن حاکر واقعات روما مونے میں مالف فریق مقیقت جان کر کون ر مجنس باتی نیس رہی ۔ راخی نا یہ کے جلہ كاغذات وسطامب لعن بع. سالقة انكوا تترى أمسر في لولس فورس کے بدنای کے باعث جھے تصور وار کھیر ایا تھا۔ حالانکہ یہ سرا ایک ذاتی سط فلہ تھا نہ یہ اس وقت میں دلو ٹی ہے تھا اور نہ میں باوردی دقیا کیو نکہ اس وقت میں سرخاری دو ہو کی سے باقاء فسرحاضر رع مس ی ذکر حرطنر ۲۵ دوز ناطیه۱۱۰۶-۵۰ و لس دانی الم معا عله ذاتى توعيت ع اور واخى زام بعى اس ليس س سوايد عدائى فتصل مع لف مفرايع. شارى شرح بول بلك بال جم دار على يول. غیر مت سے حوجار موں، کھر بار در رمعہ معاش کا طرحہ کذمیل موں حراج بالاحالات مح بیش نظر سائل کے خلاف جاری کردہ انلوائئری بلا مسی خارجانی فائل حاص فرمانی حائے. A العارم) Ce (D اب کا تا بعرار نسبل عرون خان غیر 1260 هادر او جان 17 Our.



OFFICE OF THE SUPERINTENDENT OF POLICE INVESTIGATION MARDAN Phone No. 0937-9230121 Fax No. 0937-9230321

No. 463/PA / Inv:

Dated <u>\\$</u> /Mar/ 2018.

To: The District Police Officer, Mardan.

Subject: <u>DE-NOVO DEPARTMENTAL ENQUIRY AGAINST EX-</u> CONSTABLE IMRAN NO. 2621, DISTRICT MARDAN.

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Memo:

Kindly refer to your office letter No. 425/GB dated 12.01.2018,

on the subject noted above.

It is submitted that detailed de-novo departmental enquiry duly conducted by the undersigned in respect of Constable Imran No. 2621, being charged in case FIR No. 360 dated 05.05.2014 u/s 452 PPC PS Takht Bhai, is sent herewith for further action please.

(Enclosure: <u>33</u> pages).

Superintendent of Police, Investigation Mardan.

No.____/PA / Inv:

Copy of above is submitted for favor of information to the Deputy Inspector General of Police Enquiry & Inspection, CPO Peshawar w/r his Office letter No. 26/E&I dated 08.01.2018, please.

Superintendent of Police, Investigation Mardan.

FINDINGS.

This is de-novo departmental inquiry against Constable Imran No. 2621 initiated in light of Para (06) of judgment dated 11.12.2017 passed by the Honorable Khyber Pakhtunkhwa, Service Tribunal in appeal No. 1201/2014 filed by above named official. It was entrusted to me by the Worthy District Police Officer Mardan vide Diary No. 425/GB dated 12.01.2018, in the light of letter No. 26-28/ E&I dated 08.01.2018 of Worthy DIG, E&I KPK, Peshawar. In response to the Charge Sheet the defaulter official named above submitted his written explanation which was found not satisfactory. Therefore, formal departmental inquiry against him initiated by the undersigned. The charges against him are as under:-

I)

Id

"That Constable Imran No. 2621 while posted at Police lines (Guard DPO Office) is involved in case FIR No. 360 dated 05.05.2014 u/s 452 PPC PS Takht Bhai".

During the course of inquiry the undersigned summoned the PWs namely HC Mohammad Anwar No.1388, Abdul Malik, Haji Mohammad Bashir, Mohammad Amin, Mst: Rokhana, and the defaulter official Imran No.2621. I heard them in detail and recorded their statements which are available on inquiry file for kind perusal. However, brief of statements are given below:-

1. PW HC Muhammad Anwar No.1388, then I/C Guard at W/ DPO Office, Mardan, stated that on 05.05.2014 Constable Imran No. 2621 after his duty from 04:00 hrs to 08:00 hrs, left for resting in the barrack. The DPO enquired from him about whereabouts of the said Constable. He searched for him in the barrack but he was found absent. He made his absence report vide DD No. 45 dated 05.05.2014. Later on he came to know about his involvement in case FIR No. 360 dated 05.05.2014 u/s 452 PPC PS Takht Bhai, Mardan.

2. PW Abdul Malik s/o Noor Zamir r/o Habib Gul Killi, Takht Bhai, Mardan stated that on his complaint a case FIR No. 360 dated 05.05.2014 was registered against Constable Imran for entering into the house of his sister namely Rokhana. Similarly, a cross case vide FIR No. 359 dated 05.05.2014 u/s 324 PPC was also got registered against him on complaint of the above named Constable at PS Takht Bhai. He added that due to intervention of local elders he effected compromise with him and since then he has no grievances against him.

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During cross question he stated that compromise was not based on coercion and pressure of the rival party and he willingly did it. Motive for the offence was reported to be a trespass by the accused into the house of his sister named above.

3. Haji Mohammad Bashir r/o Habib Gul Killi, Takht Bhai, Mardan and Mohammad Amin r/o Sangao, Katlang, Mardan deposed in their statements that they were Jerga members alongwith other elders of the area in which they made compromise between the parties which was reduced into writing vide stamp papers No. 1462 dated 03.09.214 & No. 1463 dated 03.09.2014 which bear correct signatures. They further added that Mst: Rokhana admitted in their presence regarding innocence of the constable in the issue.

4. Mst: Rokhana d/o Noor Zamir r/o Habib Gul Killi, Takht Bhai, Mardan, stated that case FIR No.360 dated 05.05.214 u/s 452 PPC was registered against Constable Imran on complaint of his brother namely Abdul Malik at PS Takht Bhai while a cross case vide FIR No.359 dated 05.05.2014 u/s 324 PPC PS was registered against her brother on complaint of Constable Imran. She added that the matter has been patched up between them on intervention of Jirga/local elders having no grievances against each other.

5. The defaulter Constable Imran No. 2621 stated that he has
falsely been implicated in case FIR No. 360 dated 05.05.2014 u/s 452 PPG
falsely been implicated in case FIR No. 360 dated 05.05.2014 u/s 452 PPG
falsely been implicated that be complainant Abdul Malik. He stated that when
Abdul Malik came to know the realty, he made unconditional compromise
Abdul Malik came to know the realty, he made unconditional compromise
with him. He produced compromise deeds which are placed on enquiry file.
further added that the previous enquiry officer unjustly held him
sible for damaging the image of Police Department. He requested for
ment in service. He produced a copy of judgment dated 10.11.2014

passed by Judicial Magistrate whereby he has been acquitted in case FIR No. 36 dated 05.05.2014 u/s 452 PPC PS Takht Bhai, Mardan.

After going through the record and statements of PWs, it came to surface that on 05.05.2014 the defaulter official namely Imran No. 2621 committed trespass into the house of one Mst: Rokhana r/o Habib Gul Kali, Takht Bhai, which was retaliated by firing of one Abdul Malik at the default official resulting into registration of cross cases mentioned above. Both the parties effected compromise in the cases on the basis of which the accused have been acquitted by the Court.

Keeping in view of what has been stated above, the undersigned came to the conclusion, though the defaulter official and the other party have patched up the matter through compromise and the accused of both the cases got acquitted in their relevant cases by the Court but not on merit. The defaulter official caused adverse affect on the image of Police Department in the eyes of general public and his further retention in service would pave the way for other police officials. Therefore, he is recommended for Major Punishment please. Hord two when the sur onverted to on account was power wind account was power withed on a official power power out abritished a power power out abrible to power power out abrible to power was

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16 آ ہے۔ مزن ای تخص فرقوس میں نیے ہے 80%, 8-61 رس رس بن عربی سرن اس کامی کامچ کر اخت المار من دخل برانه ما المراجل حد الم میں ورہے، ارس سرمرا کا کرنے سرسی کا ترب میں اسراعے آرتیک کی جس تران کر فران کر فرائم برایش مرة زم مرويك - من كان المنه عالم المرين ال ے آ مرح علی سر المامل رور مر ان کم دی تھی جن میں میں دیالے والی کا ہوری نے موند جس علی مور جے میں ہے کہ آب ی ان ہوتی کی جن عرن المحري المكانية . 60- Willing 30 - 03 مرت ان من سب من مركم طفل الله ا في سر بن كرنا مرور عن مراب در الى الم طبر عن مرا حال الرس من 1 تماكا. . 1. C. D. L. CT-E

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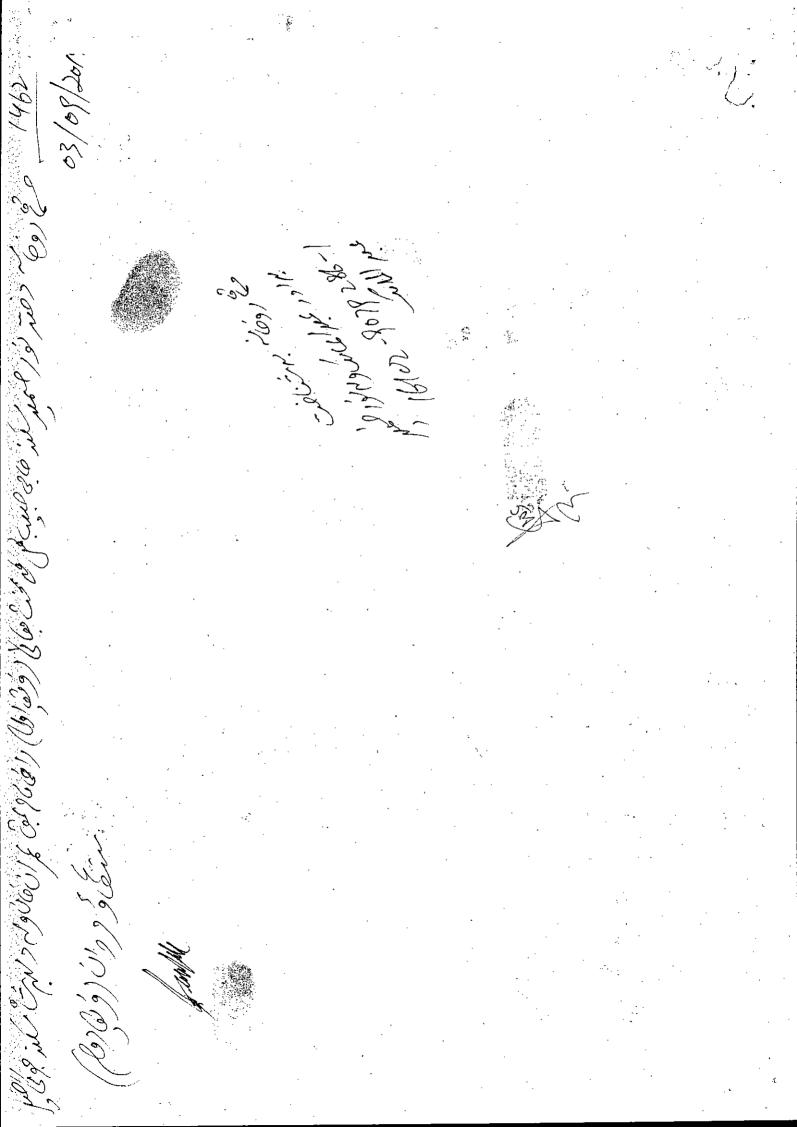
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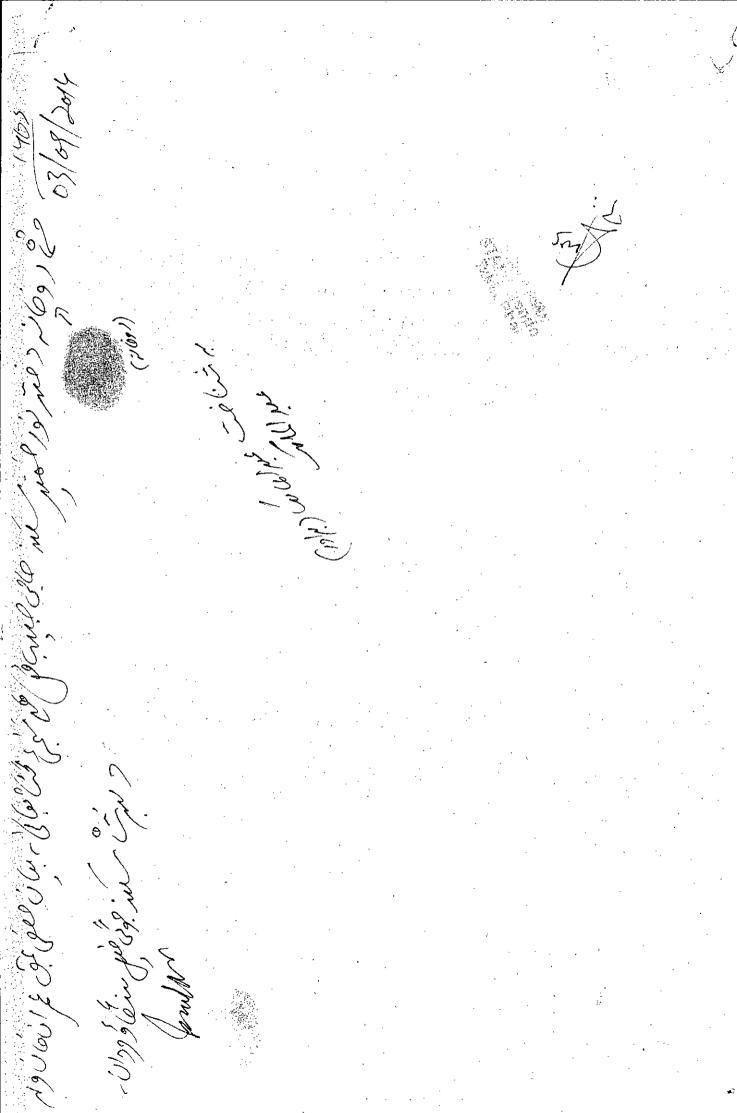
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2 B Rupees 30 g او رادن / راحین ف قادان: - محاة روفانه دفته نور منه من عامي مس فراف فنا مال علو مران و فی دوم: - عران کا وم در میران مر می جلم جوی سفاو تعیم و من مردان-عمران زمنه معوطاته رورم ورقع منارون مامر وراي مامر مور المعن وفق علم مرمو فاتن مر مجروف ورفر ورفق اول نامرا در ان عن عمد المام الم مما مي ان نور المعد وفر في دول في عران عامة مزر بعد ان جر معلي موالور دون و في مار رو م عن فاعد ماند مان عدار عدار من عدار الحت جامى غرر وارد من مرمو جور مع - مردمى عران فان ونى روم عادان عارز كرواتى تروران مكروى مع جوبيان رى دخ موما جوه و فقادل في وى ک مان بین سے جوت علی میں دور میان رسو مرک مسائل فی اول کا وی تعلق دانسط من من برم متران الأب يونام 2014 13 في المارون في ارزان رور و تی دهاع ما بین جو داعی نام/ محمد می اور بدا می در می ای ای دو ا R ی مفی میں اندلی کے بی میں اس سے من فر (م) میں رفان کی انفان \mathcal{S} ف من دهم عران کان بر نناه مح کندا عران کا کا ساتو از مناف کا کان ورون و منی و مناور بر مناه بر نناه مح کندا عران کا کا ساتو از مناف کا کان در اور در دارد در دارد در مناب بر مناب می در در در در در در ماز در می کا مناب می در در مارد بر می کا - چرو*خا*نه E. 2 2 284 23-08-2014 . Per (فرنى الحرف) ير ان 60 ¢ مسرميب عرفي من حاكي Clard ma Gines o E Lyn بمتنافت عبرا ماسر بمرادم & le cid fainer paul. 16102-8078286-1 Miche Jurd une 86-22 25



ببان ملفي منعماة وفانه دفتر فر فمر بن المحمس في في في في تحت بالعنع مردن كا مع معن أقرر في عول معنى عران كان والم دسبن و سفول سفاوردن عداف میں عمان زواد میں جو جان رہے رک دو میں جو وہ بیان عمد اپنی ہے اور بیان سے مر الكوى تعلق وواسط من مع- اور مر برارزان مي سر لان . رسم) عمل مران نور المريخ عنه عن عران ما وسرد سرت م سانو مورا في تا) در ا نا سے وہ مجمع منفور و فیوں سے ۔ رور میں میں کارن کا فراف سے منع موی در اعد است کریں میں مرح کر میں میں دی ہے۔ میں روسرون میں تیر بی میں کریں میں مور فن کر ان کان میں دی ہے - میں روسرون رمارد روار) مع - جمه داری کارات مرعم و احتی عبر کا در سین و من می می ا امر منی کار منیں (یک سے- در و زندی کی صورتی میں میں فوہ میرات فر در در تون برت الم منظروخانه (بوه) يبرا عام والرورج No (528, 16102 -9079286 white m





OFFICE OF THE DISTRICT POLICE OFFICER MARDAN

Tel: 0937-9230109

Fax: 0937-9230111

Email: <u>dpomardan650@gmail.co</u> Facebook: District Police Mardan Twitter: @dpomardan

No._____ Dated_____

<u>order</u>

/R,

/2018.

This order will dispose-off departmental (De-novo) inquiry, which has been conducted against **Constable Imran** No. 2621, on the allegation that he while posted at Police Lines Mardan (Gaurd DPO office) was involved in case FIR No. 360 dated 05.05.2014 u/s 452 PPC PS Takht Bhai. Later on, he was Charge sheeted vide No. 599/R, dated 21.05.2014, and deputed Mian Naseeb Jan, DSP HQrs as enquiry officer. The same was delivered to him on but he failed to defend the charges leveled against him so that the enquiry officer recommended him for major punishment vide office Memo: No. 463/HQ dated 01.07.2014, so that he was awarded major punishment of "Dismissal form Service" vide OB No. 1556, dated 04.07.2014. Then he approached to the Service Tribunal, Khyber Pakhtunkhwa, Peshawar wherein he issued orders for his reinstatement in service / De-novo departmental proceedings vide Judgment dated 11.12.2017. He was recommended for de-nove departmental proceeding by the Deputy Inspector General Police, E&I. Khyber Pakhtunkhwa. Peshawar vide his office letter No. 26/E&I, dated 08.01.2018. Therefore, the alleged Constable was liable to proceed against departmentally for above allegations leveled against him.

In this connection, he was proceeded against departmentally through Mr. Janas Khan, SP/Investigations Mardan, who after fulfilling necessary process, submitted his findings to the undersigned vide his office Memo: No. 463/PA, hv, dated 08.03.2018. The allegations have been established against him and the Enquiry Officer recommended him for major punishment.

After going through enquiry papers and also heard him in Orderly Room on 16.03.2018, the undersigned reached to the conclusion that the alleged Constable Imran No. 2621, is hereby awarded minor punishment of "Forfeiture of two years Service", with no back benefit, with immediate effect in exercise of the power vested in me under the above quoted rules.

Order announced O.B No. <u>625</u> Dated <u>26</u> / <u>63</u> /2018.

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

No. <u>2867-73</u>/R, dated Mardan the <u>201</u>

Copy for information co:-

- 1. The Deputy Inspector General Police, E&I, Khyber Pakhtunkhwa, Peshawar w.r.t his office letter No. 26/E&I, dated 08:01.2018.
- 2. The Deputy Inspector General of Police Mardan Region-1. Mardan.
- 3. The S.P Operations, Mardan.
- 4. The SP/Investigation, Mardan.
- 5. The Pay Officer (DPO) Mardan.
- 6. The E.C (DPO) Mardan.
- 7. The OSI (DPO) Mardan.

CR W

BEFORE THE DEPUTY INSPECTOR GENERAL OF POLICE MARDAN, REGION-1 MARDAN

Subject: APPEAL AGAINST THE ORDER OF DPO MARDAN ISSUED, VIDE HIS OFFICE OB NO.625 DATED 20-03-2018, WHEREBY THE APPELLANT WAS AWARDED MINOR PUNISHMENT OF "Forfeiture of two years service" AFTER DE NOVO INQUIRY.

Respected Sir,

The DPO Mardan had issued to the appellant charge sheet cum Statement of allegations No.599/R dated 21-5-2014 with the following allegations.

"You constable Imran No.2621, while posted at Police Lines Mardan (Guard DPO Office) was involved in case FIR no.360 dated 05-05-2014 u/s 452 PPC P.S.Takk Bhai."

1. That in the light of the above charge sheet, a departmental inquiry was initiated against the appellant. Mian Naseeb Jan DSP HQrs was appointed as a enquiry officer. The appellant produced a detailed and comprehensive reply regarding his innocence before the enquiry officer. The version of the appellant was not considered and the EO recommended him for major punishment. In the light of the enquiry findings the DPO Mardan awarded him major punishment of "Dismissal from Service" vide OB No.1556 dated 4-7-2014.

2. The appellant filed an appeal against the order of DPO Mardan issued vide OB No.1556 dated 4-7-2014 before the DIG Mardan but his appeal was rejected.

3. That being aggrieved from the orders of DPO Mardan/DIG Mardan, The appellant filed an appeal No.1201/2014 before the KPK Service Tribunal , Peshawar. The honourable court vide his judgment dated 11-12-2017 accepted the appeal by re-instating the appellant in service followed by further direction to hold de novo proceedings in accordance with the law. (Copy of court judgment date 11-12-2017 is enclosed).

4. That in the light of court judgement,on 13-2-2018 the appellant made his arrival for duty at Police Lines Mardan and was allotted a new constabulary no.1247.De novo inquiry was initiated against him and **Mr. Janas Khan SP Investigation** was appointed as EO. The appellant again produced a detailed reply before the EO.In the light of enquiry findings the DPO Mardan awarded minor Punishment "Forfeiture of Two years Service" to the appellant vide OB No.625 dated 20-3-2018 and hence the present **Appeal.** (Copy of OB NO.625 dated 20-3-2018 is enclosed).

GROUNDS OF APPEAL:

A. The allegations leveled against the appellant are false, baseless and based on personnel grudges with malafide intentions.

B. There is no iota of evidence to connect the Petitioner with the allegations. Hence, the allegations are of superficial nature.

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- C. The enquiry officer has made certain irregularity while conducting De novo Enquiry.The appellant was not given opportunity of cross examining the alleged lady.
- D. The DPO Mardan had not issued "Final Show Cause Notice" to the appellant before imposing his order of punishment.
- E. It is against the norms of justice that when someone is got exempted from the allegations by the honourable court than how he is awarded punishment by the department.
- F. The appellant is having shining Official record and prior to this, the Petitioner was not treated departmentally during his whole service.
- G. That the appellant wishes to get further promotion in the service and by the punishment so awarded to the appellant will badly affect the service career of the appellant.
- Keeping in view of the facts and circumstances mentioned above, it is humbly requested that the appeal of the appellant may kindly be accepted with all back benefits and the impugned order passed by DPO Mardan be set aside, please.

Yours Obediently,

(han) 8493188,16 (These Constable(Imran Khan) 5362 -

No.1247 District Police Mardan

April,2018 Dated: 6

<u>ORDER.</u>

This order will dispose-off the appeal preferred by Constable Imran No. 2621/1247 of Mardan District Police against the order of the District Police Officer, Mardan whereby he was awarded Minor Punishment of forfeiture of two years approved service with no back benefit, - vide District Police Officer, Mardan OB No. 625 dated 20.03.2018.

.33 - F

Brief facts of the case are that he while posted at Police Lines Mardan (Guard DPO/Office) was involved in case FIR No. 360 dated 05.05.2014 u/s 452 PPC PS Takht Bhai. Later on, he was Charge sheeted vide No. 599/R, dated 21.05.2014, and appointed Mian Naseeb Jan the then DSP HQrs as enquiry officer. The same was delivered to him but he failed to defend the charges leveled against him so that the enquiry officer recommended him for major punishment vide office Memo: No. 463/HQ dated 01.07.2014, so that he was awarded major punishment of "Dismissal form Service" vide OB No. 1556, dated 04.07.2014. Then he approached to the Service Tribunal, Khyber Pakhtunkhwa, Peshawar wherein, the Honourable Court issued order for his reinstatement in service/De-novo departmental proceedings vide Judgment dated 11.12.2017. He was recommended for de-nove departmental proceeding by the Deputy Inspector General Police, E&I, Khyber Pakhtunkhwa, Peshawar vide his office letter No. 26/E&I, dated 08.01.2018. Therefore, the alleged Constable was liable to proceed against departmentally for above allegations leveled against him. In this connection, he was proceeded against departmentally through Mr. Janas Khan, SP/Investigations Mardan, who after fulfilling necessary process, submitted his findings to the District Police Officer, Mardan vide office Memo: No. 463/PA, Inv, dated 08.03.2018, The allegations have been established against him and the Enquiry Officer recommended him for major punishment. After going through enquiry papers and also heard him in Orderly Room on 16.03.2018, the District Police Officer, Mardan reached to the conclusion & the alleged Constable Imran No. 2621/1247, was awarded minor punishment of "Forfeiture of two years Service", with no back benefit, with immediate effect vide OB No. 625 dated 20.03.2018

He was called in orderly room held in this office on 10.05.2018 and heard him in person, but he did not produce any substantial evidence about his absence. Therefore, I find no grounds to intervene the order passed by the District Police Officer, Mardan in exercise of the powers conferred upon me reject the appeal and do not interfere in the order passed by the competent authority. Hence Appeal is rejected.

O/ (Muhammad Alam Shinwari)PSP Regional Police Officer, Mardan

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 366/ LB dated 30.04.2018. The Service Record is returned herewith.

Dated Mardan the

No. 3220

/ES.

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full of or being $\frac{1}{2} = \frac{1}{2} = \frac{1}$ m Mazz Estar advorado ad an comita in Periodate N n of VI-94524 Mag Awan) VI-94524 Mag Awan) VI-94524 Mag Awan) 41-C-TB aol besuche end nommul resister transformer off other and the sector of 41-9-81 apoug appao pated MAL uotabas sorthe 753 5/n 31-5-5 paren 098 20N UII g as no ripop. State.... \mathbb{Z}^{V} ALE CULT OF TAXA CONTRACTION ON CONTRACT OF THE WITH THE COURT OF ANY CONTRACTOR OF ANY OF A COURT OF THE OF A COURT OF A

Or-----03 10.11.2014.

APP for the state present. Accused on bail present.

Perusal of record reveals that compromise has been arrived between the parties at bail stage, wherein complainant state that he has got no objection if the accused is released on bail.

In the circumstances, as the complainant has affected compromise with the accused and do not want further proceedings against the him, therefore accused is discharged from the charges of the instant case. Bail bonds stands cancelled. His sureties absolved from the liabilities of bail bonds.

File be consigned to record room after its necessary completion and compilation.

Natic

Announced 10.11.2014.

(Hamid Kamal) Judicial Magistrate, Takht Bhai. -

HAMID KAMAL Civil Judge-IV / Judicial Magistrato, Takht Bhai

Mame

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Dete:

Cont_or-2 15.2.2013

Cerfiged

MUSO DO Rand 1 5 3 COURT IN THE ران قال State Dated 5-5-14 260 TRu ice Station Order Sheet Dated 18-6-14 Case file received from the prosecution entered into the relevant register. Summon the accused for 18 T N 21.7-14 Ijaz-Ul-Hag Awan) 10 ty N Judicial Magistrate-IV Takht Bhai سر بر المرونيز مارس معرفات مامر ماري مامر مع ر موم <u>لم</u>حدث 4/cin عدم بر مانتظام - نولات دی گئی - شر باز ماند بر م 26.9.14 مرجم محت بال ما در بستی سج - کر ا entited to be Tra

لي الم مر مر مرك ك ران عراب عرار ال عر (^ن بنام ۲۹ و المره وزخه متمارمه دعوكى ج.م بإعث تحريرا نكبه مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے داسطے بیروی دجواب دہی دکل کا روائی متعلقہ ل مسرح کو رسے آن مقام میں میں میں میں میں میں میں میں میں الکر میں الکر میں الکر ہے۔ مقررکر کے اقر ارکیا جاتا ہے۔ کہ بسا حب موصوف کو مقد مسک کل کا روائی کا کامل اختسار ، وُکا۔ نیز وکیل مها حب کورامنی نامه کرنے دنقر رثالت ہ نیصلہ برحلف دیتے جواب دہی ا درا قبال دعویٰ ا در المسورت دم کر کر نے اجراءا درصولی چیک در دیپیار عرضی دعوی ادر درخواست ہر شم کی تصدیق . ⁽ زرایس پردستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈ^کر ی کیطر نہ یا پیل کی براید گی ادرمنسوخی نیز دائر کرنے ابتیل تکرانی دنظر ثانی دبیروی کرنے کا نفتیار ہوگا۔از بصورت ضرورت مقد مہ ندکور کے کل پاچر دی کا روائی کے داسطے اور دکیل پایختار قانونی کواپنے ہمراہ پاا پنے بچائے تقرر کا اختیار **ہوگا ۔اورمیا حد ب**مفررشدہ کوبھی وہی جملیہ ندکورہ بااختیا رات حاصل ہوں میں اوراس کا ساختہ مرداختة منظور قبول موگا- دوران مقدمه ميں جوخر چدد مرجا نه التوائے مقدمہ <u>ک</u>سبب سے دہوگا۔ کوئی تاریخ بیش مقام دورہ پر ہویا حد ہے باہر ہوتو دکیل صاحب پابند ہوں مے کہ بیروی مکور کریں۔ لہدا وکالت نامہ کھدیا کہ سندر ہے۔ المرتوم _____ · 20/ _ ____ ,1 کے لئے منظور ہے۔ بمقام Affected, Acopta

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR.

Service Appeal No. 751/2018.

Imran Ali Constable 2621 District Police Mardan......Appellant.

VERSUS.

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

Respectfully Sheweth:

PRELIMINARY OBJECTIONS:-

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

REPLY ON FACTS.

- 1. Correct, hence, no comments.
- 2. Correct to the extent of re-instatement, however, denovo inquiry was properly conducted and all codal formalities has been complied with. Hence, denied. (Copy of Inquiry is attached as Annexure-A).
- 3. Correct, hence, no comments.
- 4. Correct, hence, no comments.
- 5. Incorrect. The Impugned orders are legal and in accordance with rules/law. Hence, the instant appeal holds no grounds, legal or moral, to stand here on in this Honourable Tribunal.

REPLY ON GROUNDS:-

- A. Incorrect as the impugned orders are legal and maintainable in the eyes of law.
- B. Incorrect. The appellant has been treated as per rules/law, hence, denied.
- C. Incorrect. Proper denovo inquiry has been conducted and all codal formalities has been complied with.
- D. Incorrect. The appellant was found guilty of misconduct but the penalty of "forfeiture of two years service" is awarded due to his acquittal on compromise. His acquittal in the said criminal case was not on merit and he has been held guilty of misconduct even during denovo inquiry. Hence, denied.
- E. Incorrect as the appellant was acquitted on the grounds of acquittal and not merits in the criminal case. However, during departmental inquiry (denovo) the appellant is held guilty, hence, punished.
- F. Incorrect and baseless, hence, denied.
- G. Incorrect as all codal formalities has been fulfilled.
- H. Incorrect. The appellant has been awarded minor penalty which he deserve for misconduct he committed.
- I. No comments.
- J. The respondents also seek permission to raise additional grounds, if any, at the time of arguments.

PRAYER:-

The prayer of the appellant, being baseless & devoid of merits, is liable to be dismissed with costs.

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar. (Respondent No. 03)

Deputy Inspector General of Police,

Mardan Region-I, Mardan (Respondent No. 01)

District Police Officer, Mardan (Respondent No. 02)

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR.

Service Appeal No. 751/2018.

Imran Ali Constable 2621 District Police Mardan......Appellant.

VERSUS.

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

COUNTER AFFIDAVIT.

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

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar. (Respondent No. 03)

Deputy Inspector Concrat of

Mardan Region-I, Mardan (Respondent No. 01)

> District Police Officer, Mardan (Respondent No. 02)

OFFICE OF THE SUPERINTENDENT OF POLICE INVESTIGATION MARDAN Phone No. 0937-9230121 Fax No. 0937-9230321

Dated 08 /Mar/ 2018.

No. 463/PA / Inv:

, To: The District Police Officer, Mardan.

Subject:

DE-NOVO DEPARTMENTAL ENQUIRY AGAINST EX-CONSTABLE IMRAN NO. 2621, DISTRICT MARDAN.

Memo: Kindly refer to your office letter No. 425/GB dated 12.01.2018,

on the subject noted above.

It is submitted that detailed de-novo departmental enquiry duly conducted by the undersigned in respect of Constable Imran No. 2621, being charged in case FIR No. 360 dated 05.05.2014 u/s 452 PPC PS Takht Bhai, is sent herewith for further action please.

(Enclosure: <u>33</u> pages)

Superintendent of Police, Investigation Mardan.

j.

No.____/PA / Inv:

Copy of above is submitted for favor of information to the Deputy Inspector General of Police Enquiry & Inspection, CPO Peshawar w/r his Office letter No. 26/E&I dated 08.01.2018, please.

Superintendent of Police, Investigation Mardan.

FINDINGS.

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This is de-novo departmental inquiry against Constable Imran No. 2621 initiated in light of Para (06) of judgment dated 11.12.2017 passed by the Honorable Khyber Pakhtunkhwa, Service Tribunal in appeal No. 1201/2014 filed by above named official. It was entrusted to me by the Worthy District Police Officer Mardan vide Diary No. 425/GB dated 12.01.2018, in the light of letter No. 26-28/ E&I dated 08.01.2018 of Worthy DIG, E&I KPK, Peshawar. In response to the Charge Sheet the defaulter official named above submitted his written explanation which was found not satisfactory. Therefore, formal departmental inquiry against him initiated by the undersigned. The charges against him are as under:-

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"That Constable Imran No. 2621 while posted at Police lines (Guard DPO Office) is involved in case FIR No. 360 dated 05.05.2014 u/s 452 PPC PS Takht Bhai".

During the course of inquiry the undersigned summoned the PWs namely HC Mohammad Anwar No.1388, Abdul Malik, Haji Mohammad Bashir, Mohammad Amin, Mst: Rokhana, and the defaulter official Imran No.2621. I heard them in detail and recorded their statements which are available on inquiry file for kind perusal. However, brief of statements are given below:-

1. PW HC Muhammad Anwar No.1388, then I/C Guard at W/ DPO Office, Mardan, stated that on 05.05.2014 Constable Imran No. 2621 after his duty from 04:00 hrs to 08:00 hrs, left for resting in the barrack. The DPO enquired from him about whereabouts of the said Constable. He searched for him in the barrack but he was found absent. He made his absence report vide DD No. 45 dated 05.05.2014. Later on he came to know about his involvement in case FIR No. 360 dated 05.05.2014 u/s 452 PPC PS Takht Bhai, Mardan.

2. PW Abdul Malik s/o Noor Zamir r/o Habib Gul Killi, Takht Bhai, Mardan stated that on his complaint a case FIR No. 360 dated 05.05.2014 was registered against Constable Imran for entering into the house of his sister namely Rokhana. Similarly, a cross case vide FIR No. 359 dated 05.05.2014 u/s 324 PPC was also got registered against him on complaint of the above named Constable at PS Takht Bhai. He added that due to intervention of local elders he effected compromise with him and since then he has no grievances against him.

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During cross question he stated that compromise was not based on coercion and pressure of the rival party and he willingly did it. Motive for the offence was reported to be a trespass by the accused into the house of his sister named above.

3. Haji Mohammad Bashir r/o Habib Gul Killi, Takht Bhai, Mardan and Mohammad Amin r/o Sangao, Katlang, Mardan deposed in their statements that they were Jerga members alongwith other elders of the area in which they made compromise between the parties which was reduced into writing vide stamp papers No. 1462 dated 03.09.214 & No. 1463 dated 03.09.2014 which bear correct signatures. They further added that Mst: Rokhana admitted in their presence regarding innocence of the constable in the issue.

4. Mst: Rokhana d/o Noor Zamir r/o Habib Gul Killi, Takht Bhai, Mardan, stated that case FIR No.360 dated 05.05.214 u/s 452 PPC was registered against Constable Imran on complaint of his brother namely Abdul Malik at PS Takht Bhai while a cross case vide FIR No.359 dated 05.05.2014 u/s 324 PPC PS was registered against her brother on complaint of Constable Imran. She added that the matter has been patched up between them on intervention of Jirga/local elders having no grievances against each other.

5. The defaulter Constable Imran No. 2621 stated that he has falsely been implicated in case FIR No. 360 dated 05.05.2014 u/s 452 PPC PS Takht Bhai, Mardan by the complainant Abdul Malik. He stated that when Abdul Malik came to know the realty, he made unconditional compromise with him. He produced compromise deeds which are placed on enquiry file. He further added that the previous enquiry officer unjustly held him responsible for damaging the image of Police Department. He requested for re-instatement in service. He produced a copy of judgment dated 10.11.2014

<u>ORDER.</u>

This order will dispose-off the appeal preferred by Constable Imran No. 2621/1247 of Mardan District Police against the order of the District Police Officer, Mardan whereby he was awarded Minor Punishment of forfeiture of two years approved service with no back benefit, vide District Police Officer, Mardan OB No. 625 dated 20.03.2018.

.33 - E

Brief facts of the case are that he while posted at Police Lines Mardan (Guard DPO/Office) was involved in case FIR No. 360 dated 05.05.2014 u/s 452 PPC PS Takht Bhai. Later on, he was Charge sheeted vide No. 599/R, dated 21.05.2014, and appointed Mian Naseeb Jan the then DSP HQrs as enquiry officer. The same was delivered to him but he failed to defend the charges leveled against him so that the enquiry officer recommended him for major, punishment vide office Memo: No. 463/HQ dated 01.07.2014, so that he was awarded major punishment of "Dismissal form Service" vide OB No. 1556, dated 04.07.2014. Then he approached to the Service Tribunal, Khyber Pakhtunkhwa, Peshawar wherein, the Honourable Court issued order for his reinstatement in service/De-novo departmental proceedings vide Judgment dated 11.12.2017. He was recommended for de-nove departmental proceeding by the Deputy Inspector General Police, E&I, Khyber Pakhtunkhwa, eshawar vide his office letter No. 26/E&I, dated 08.01.2018. Therefore, the alleged Constable was iable to proceed against departmentally for above allegations leveled against him. In this connection, he was proceeded against departmentally through Mr. Janas Khan, SP/Investigations Mardan, who after fulfilling necessary process, submitted his findings to the District Police Officer, Mardan vide office Memo: No. 463/PA, Inv, dated 08.03.2018, The allegations have been established against him and the Enquiry Officer recommended him for major punishment. After going through enquiry papers and also heard him in Orderly Room on 16.03.2018, the District Police Officer, Mardan reached to the ephclusion & the alleged Constable Imran No. 2621/1247, was awarded minor punishment of "Forfeiture of two years Service", with no back benefit, with immediate effect vide OB No. 625 dated 20.03.2018

He was called in orderly room held in this office on 10.05.2018 and heard him in person, but he did not produce any substantial evidence about his absence. Therefore, I find no grounds to intervene the order passed by the District Police Officer, Mardan in exercise of the powers conferred upon me reject the appeal and do not interfere in the order passed by the competent authority. Hence Appeal is rejected.

O/ (Muhammad Alam Shinwari)PSP Regional Police Officer, Mardan Dated Mardan the <u>32</u> 14 - 5 - /2018.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 366/ LB dated 30.04.2018. The Service Record is returned herewith.

No. 3220

/ES,

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR.

Service Appeal No. 751/2018.

Imran Ali Constable 2621 District Police Mardan...... Appellant.

VERSUS.

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

AUTHORITY LETTER.

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

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar. (Respondent No. 03)

Deputy Inspector General of Police, Mardan Region-I, Mardan (Respondent No. 01)

District P dik dOfficer, Mardan (Respondent No. 02)

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 751/2018

Imran.....Appellant

VERSUS

DPO & Others......Respondents

REPLICATION ON BEHALF OF THE APPELLANT

REPLY TO PRELIMINARY OBJECTIONS.

All the preliminary objections raised by the respondents are incorrect and as such denied. The appellant has got a valid cause of action, he is not estopped by his conduct to file instant appeal and instant appeal is not bad in law and is maintainable in its present from. The appellant has come to this honorable Tribunal with clean , hands, have concealed nothing from this honorable tribunal and in instant appeal necessary parties have been impleaded.

REPLY TO FACTS/GROUNDS.

Comments of the respondents are full of contradictions and are based on malafide. Respondents have failed to show that the claim of the appellant is incorrect. The comments amount to admissions on part of the respondents, as they have failed to deny the plea of cogent the appellant through and convincing reasoning. Respondents have tried to mislead this honorable tribunal by twisting the facts and misinterpreting the law on the subject. No Charge sheet and Show Cause Notice was ever communicated to the appellant nor was any proper inquiry conducted in the matter, which fact is substantiated by the contradictory version of the respondents. Even otherwise the appellant has been acquitted by the Court of competent jurisdiction and there is no other type of acquittal as per the dictums of Apex Court, thus the appellant is entitled to the all back benefits.

In the circumstances the appellant is denied treatment according to law and rules which is his fundamental right guaranteed in Constitution of the land. The impugned orders are also not speaking orders which are not based on any reasoning. Respondents have failed to substantiate their version and bring anything on record in support of their version; the impugned orders are as such liable to be struck down. It has also been established that the appellant was illegally dismissed from service in which eventuality the appellant is entitled to the back benfits.

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

Dated:-<u>14</u>-<u>12</u>-2018

Appellant

Through

Fazal Shah Mohmand

Advocate Peshawar

<u>AFFIDAVIT</u>

I, Imran Constable No 2621, District Police Mardan, (The Appellant), do hereby solemnly affirm and declare on oath that the contents of this **<u>Replication</u>** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

DEPONENT



KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1416 /ST

Dated 16-8- / 2019

The District Police Officer, Government of Khyber Pakhtunkhwa, Mardan

Subject: -

То

JUDGMENT IN APPEAL NO. 751/2018, MR. IMRAN.

I am directed to forward herewith a certified copy of Judgement dated 19.07.2019 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

REGISTRAR KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.