


09.07.2019

Appellant alongwith his counsel present. Mr. Muhammad Bilal, Deputy District Attorney alongwith Mr. Ikhlaq Hussain, Inspector for the respondents present. Arguments heard. To come up for order on 10.07.2019 before D.B at Camp Court Abbottabad.



(Hussain Shah)
Member

Camp Court Abbottabad



(Muhammad Amin Khan Kundi)
Member

Camp Court Abbottabad

11.07.2019

Counsel for the appellant and Mr. Muhammad Bilal, Deputy District Attorney alongwith Mr. Haq Nawaz, ASI for the respondents present. Due to rush of work, order could not be announced. Case to come up for order on 17.09.2019 before D.B at Camp Court Abbottabad.



(Hussain Shah)
Member

Camp Court Abbottabad



(Muhammad Amin Khan Kundi)
Member

Camp Court Abbottabad

17.09.2019

Appellant alongwith his counsel and Mr. Muhammad Bilal, Deputy District Attorney alongwith Mr. Haq Nawaz, ASI for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of five pages placed on file, we partially accept the appeal, set-aside the impugned order and reinstate the appellant into service with the direction to respondent-department to conduct de-novo inquiry strictly in accordance with law within a period of 90 days from the date of receipt of copy of this judgment. 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.

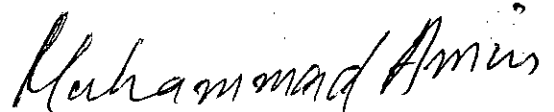
ANNOUNCED

17.09.2019



(HUSSAIN SHAH)
MEMBER

CAMP COURT ABBOTTABAD




(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

CAMP COURT ABBOTTABAD

Service Appeal No. 1221/2018

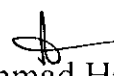
19.02.2019

Counsel for the appellant present. Mr. Muhammad Bilal Khan, Deputy District Attorney for the respondents present. Written reply on behalf of respondents not submitted. Learned Deputy District Attorney for the respondents requested for adjournment. Adjourned. To come up for written reply/comments on 17.04.2019 before S.B at Camp Court Abbottabad.


(Muhammad Amin/Khan Kundi)
Member
Camp Court Abbottabad

17.04.2019

Counsel for the appellant present. Mr. Muhammad Bilal, DDA alongwith Mr. Muhammad Nazir, H.C for respondents present. Written reply/comments submitted which is placed on file. Case to come up for rejoinder and arguments on 17.06.2019 before D.B at camp court Abbottabad.


(Ahmad Hassan)
Member
Camp Court A/Abad

17.06.2019

Counsel for the appellant and Mr. Bilal Ahmad, DDA for the respondents present.

Rejoinder on behalf of the appellant submitted which is placed on record. Learned Counsel for the appellant requests for adjournment. Adjourned to 09.07.2019 for arguments before the D.B at camp court, Abbottabad.


Member


Chairman
Camp court, A/Abad

21.12.2018


Mr. Muhammad Aslam Tanoli, Advocate for appellant present.

Learned counsel for the appellant contends, inter-alia, that the appellant was dismissed from service on 14.11.2010 while the matter ultimately was brought before the Tribunal in Service Appeal No. 521/2012. The said appeal was decided in terms that the appellant was reinstated in service, however, the respondent department was allowed to hold denovo proceedings in accordance with law. The departmental authority on the other hand did not care to regard the judgment of this Tribunal as without holding of enquiry the respondents imposed punishment of dismissal from service upon the appellant, hence this appeal.

It was also contended that the order of DPO Mansehra dated 04.05.2018 and of Regional Police Officer, Hazara Range dated 05.09.2018 were almost verbatim copies of each other which was not legally correct.

In view of the contentions of learned counsel the instant appeal merit admission for regular hearing. Admit. The appellant is directed to deposit security and process fee within 10 days. Notices be issued to the respondents for submission of written reply/comments on 19.02.2019 before S.B at camp court Abbottabad.



Appellant Deposited
Security & Process Fee


Chairman
Camp court, A/Abad

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1221 /2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	05/10/2018	<p>The appeal of Mr. Fasal Zaman presented today by Mr. Muhammad Aslam Khan 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</p>
2-	8/10/18	<p>This case is entrusted to touring S. Bench at A.Abad for preliminary hearing to be put up there on <u>21-12-2018</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

hearing on 21-12-2018
651-2018

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1221/2018

Faisal Zaman son of Shah Zaman, Caste Awan, R/o Village Malhoo Afzal Abad Tehsil & District Mansehra (Ex-Constable Old No. 544 and New No. 44 District Police Mansehra).

Appellant

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Mansehra.

Respondents

SERVICE APPEAL

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Through

Dated: 5-10-2018

Appellant
M. Aslam Tanoli
(Mohammad Aslam Tanoli)
Advocate High Court
at Haripur

①

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1221/2018

Faisal Zaman son of Shah Zaman, Caste Awan, R/o Village Malhoo Afzal Abad Tehsil & District Mansehra (Ex-Constable Old No. 544 and New No. 44 District Police Mansehra).

Khyber Pakhtunkhwa
Service Tribunal **Appellant**

Diary No. 1455

VERSUS

Dated 05/10/2018

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Mansehra.

Respondents

SERVICE APPEAL UNDER SECTION-4 OF KPK SERVICE TRIBUNAL ACT 1974 AGAINST ORDER OB NO. 85 DATED 04-05-2018 OF THE DISTRICT POLICE OFFICER MANSEHRA WHEREBY THE APPELLANT HAS BEEN AWARDED MAJOR PUNISHMENT OF DISMISSAL FROM SERVICE AND ORDER DATED 05-09-2018 (DELIVERED ON 17-09-2018) OF THE REGIONAL POLICE OFFICER HAZARA REGION ABBOTTABAD WHEREBY APPELLANT'S DEPARTMENTAL APPEAL HAS BEEN REJECTED.

PRAYER: ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL BOTH THE IMPUGNED ORDERS DATED 04-05-2018 AND 05-09-2018 OF RESPONDENTS MAY GRACIOUSLY BE SET ASIDE AND APPELLANT BE RE-INSTEATED IN SERVICE FROM THE DATE OF DISMISSAL WITH ALL CONSEQUENTIAL SERVICE BACK BENEFITS.

Filed to-day

Registrar
5/10/18.

Respectfully sheweth,

1. That earlier the appellant was dismissed from service by the District Police Officer Mansehra vide Order dated 14-04-2010 on the allegations that appellant

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got involved in a case FIR No. 435 dated 09-04-2009 U/S-9CNS, PS Cantt Abbottabad. **(Copy of the order dated 14-04-2010 of DPO is attached as Annex-"A")**.

2. That aforementioned order was appealed against before the Regional Police Officer, Hazara Range, Abbottabad which appeal was rejected vide order dated 24-04-2012. **(Copy of the RPO's order dated 24-04-2012 is attached as Annex-"B")**.
3. That thereafter the appellant filed a service appeal dated 08-05-2012 before this Honourable Service Tribunal. **(Copy of the service appeal dated 08-05-2012 is attached as Annex-"C")**.
4. That this Honourable Service Tribunal while accepting service appeal vide judgment/order dated 21-11-2017 held that whole proceedings were conducted by the enquiry officer at the back of the appellant much less opportunity of cross examination or right of defence to the appellant. The department is at liberty to hold de-novo proceedings in accordance with law within 90 days of the receipt of this judgment. **(Copy of the Judgment/Order dated 21-11-2017 of KPK ST is attached as Annex-"D")**.
5. That though the appellant was ordered to be reinstated in service by this Honourable Tribunal on 21-11-2017 yet he was not reinstated and taken on duty

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by the respondents till 29-01-2018 when an order under letter No.1524-26/OHC dated 30-01-2018 was passed by the District Police Officer Mansehra whereby Mr. Suleman Khan SP Investigation Mansehra was appointed as appellant's Inquiry Officer on the specific instructions by IGP KPK Peshawar. **(Copy of DPO order dated 30-01-18 is attached as Annex-"E")**.

6. That as submitted above the IGP KPK Peshawar vide his letter dated 29-01-2018 interfering the powers and jurisdiction of the District Police Officer Mansehra directed him to conduct De-novo Inquiry against the appellant through "Mohammad Suleman, SP/Investigation Mansehra" and final outcome communicate to him on or before 12-02-2018 which means that within 14 (fourteen) days of the issuance of his order. **(Copy of letter dated 29-01-2018 of the IGP is attached as Annex-"F")**.
7. That on 01-02-2018, the Inquiry Officer (Mr. Suleman Khan SP Investigation Mansehra) verbally asked the appellant to deposit his statement with him. The appellant requested that the reply he submitted to the Charge Sheet on 07-05-2009 be considered as his statement in the instant inquiry. **(Copies of appellant's request and reply dated 07-05-2009 is attached as Annex-"G & H")**.

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8. That upon appellant's aforementioned reply to the Inquiry Officer, the appellant was again dismissed from service by the District Police Officer Mansehra vide order OB No. 85 dated 04-05-2018. **(Copy of order dated 04-05-2018 is attached as Annex-"I")**.
9. That no proper departmental de-novo inquiry was conducted by the respondents as envisaged by the law, departmental rules and regulations. Neither Charge Sheet nor Show Cause Notice was issued to the appellant. Copy of Inquiry findings, if any, was also not provided to him. Even opportunity of personal hearing was not afforded to him by the DPO Mansehra.
10. That appellant aggrieved of his dismissal dated 04-05-2018 preferred a departmental appeal dated 21-05-2018 before the Regional Police Officer, Hazara Region, Abbottabad. **(Copy of departmental appeal dated 21-05-2018 is attached as Annex-"J")**.
11. That the Regional Police Officer, Hazara Region, Abbottabad did not considered the facts agitated by the appellant in his departmental appeal and rejected the same vide order dated 05-09-2018 but copy of the same was issued on 17-09-2018 and that too on the specific request of appellant. **(Copies of order dated 05-09-2018 of RPO & request dated 17-09-2018 of appellant are attached as Annex-"K & L")**.

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12. That in fact on 02-02-2008 while appellant posted as Maddad Moharrir Police Station **Phulra** District Mansehra on his spy information police arrested the notorious narcotics paddlers "Shamshair and Yasir" R/O Shaikh-ul-Bandi Abbottabad trafficking Charras in a Carry Suzuki. A case FIR No. 21 dated 02-02-2008 u/s-9C CNSA was registered against them in **PS Phulra** District Mansehra. These narcotics peddlers were very influential and forceful persons. They became inimical and started hostility against appellant. **(Copy of FIR dated 02-02-2008 is attached as Annex-~~M~~).**
13. That on 08-04-2009, when appellant with the permission of his officers vide Daily Dairy No.11 came to Abbottabad for taking medicines etc because of his illness and purchasing some necessary articles as he was about to move PTC Hungu for Lower Class Course. That due to enmity and as a matter of vengeance, these narcotics paddlers with the connivance of CIA staff at Abbottabad got falsely involved the appellant in a narcotics case u/s-9C CNSA by planting Charas on him. Otherwise appellant was innocent and had nothing to do with the contraband charas. But all this was due to personal enmity developed during discharge ~~of~~ official duties of the appellant with the influential narcotics paddlers. **(Copy of Daily Diary No.11 dated 08-04-2009 showing departure of appellant is attached as Annex-"M").**

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14. That the Honourable Peshawar High Abbottabad Bench in the year 2012, during the pendency of earlier departmental appeal before the RPO Abbottabad, acquitted the appellant vide its judgment and order dated 25-01-2012 of the charge leveled in case FIR No. 435 dated 09-04- 2009. **(Copy of Judgment and Order dated 25-01-2012 is attached as Annex-"0")**.
15. That respondents illegally and with unlawful authority even contrary to the facts and record have awarded the appellant with major punishment of dismissal from service; hence instant service appeal, inter alia, on the following:

GROUND:

- a) That both the impugned orders OB No. 85 dated 04-05-2018 and 4487/PA dated 05-09-2018 (delivered on 17-09-2018) of the District Police Officer Mansehra and the Regional Police Officer Hazara Region Abbottabad are void-ab-initio, illegal, unlawful, non-speaking without lawful authority and have been passed perfunctorily, arbitrarily, whimsical, and slipshod in manner, against the facts and circumstances of the case, without any reason and proof, hence are liable to be set aside.
- b) That no proper departmental de-novo inquiry was conducted by the District Police Officer Mansehra of which conduction was mandatory under law before

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awarding appellant with major penalty of dismissal from service.

- c) That neither any Charge Sheet nor Show Cause Notice was issued to the appellant. Nor copy of enquiry findings was supplied to the appellant. Even the appellant was not afforded with the opportunity of personal hearing which was mandatory under the law.
- d) That respondents have not treated the appellant in accordance with law, departmental rules & regulations and policy on the subject and have acted in violation of Article-4 of the constitution of Islamic Republic of Pakistan 1973 and unlawfully passed the impugned orders, which are illegal, unlawful, unjust, unfair, contrary to the facts and circumstances; hence not sustainable in the eyes of law.
- e) That the appellate authority has also failed to abide by the law and even did not take into consideration the grounds taken by appellant in the memo of appeal. Thus the impugned order of the appellate authority is contrary to the law as laid down in the KPK Police Rules 1934, other departmental rules regulations read with section 24-A of the General Clause Act 1897 read with Article 10A of the Constitution of Islamic Republic of Pakistan 1973.

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- f) That the Honourable Peshawar High Court Abbottabad Bench vide its judgment and order dated 25-01-2012 had acquitted the appellant of the charge for which the respondents have awarded him with extreme major punishment of dismissal from service. This point has also not been taken into consideration by respondents while passing the impugned orders.
- g) That appellant has suffered the agonies of protracted litigations and financial hardships due to unemployment stretched over the years together at the hands of respondents unnecessarily despite of his acquittal from the charge for which he had been dismissed from service.
- h) That the respondents 2 & 3 have passed the impugned orders under the influence and pressure of the IGP instructions while interfering in the sole power/jurisdiction of the competent authority by appointing Inquiry Officer (Mohammad Suleman, SP Investigation Mansehra).
- l) That appellant has rendered more than 08 years service in the police department but has been dismissed from service by the respondents without any reason, justification and proof in violation of law, departmental rules and regulations and principle of natural justice hence impugned orders need to be set aside.

PRAYER:

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It is therefore, humbly prayed that on acceptance of instant appeal the impugned orders dated 04-05-2018 of the District Police Officer Mansehra and 05-09-2018 (delivered on 17-09-2018) of the Regional Police Officer, Hazara Region, Abbottabad respectively may graciously be set aside and the appellant be reinstated in his service from the date of dismissal with all consequential service back benefits.

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

THROUGH

APPELLANT

M. Aslam

(MOHAMMAD ASLAM TANOLI)
ADVOCATE HIGH COURT
HARIPUR

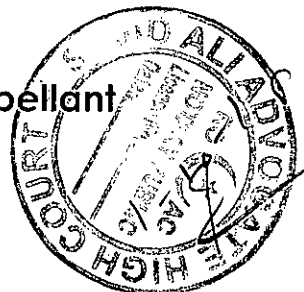
Dated: 5-10-2018

AFFIDAVIT

I, Faisal Zaman S/O Shah Zaman do hereby solemnly declare and affirm on oath that the contents of instant appeal are true and correct to the best of my knowledge and nothing has been concealed therefrom.

Dated: 5-10-2018

Deponent/Appellant



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BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Faisal Zaman son of Shah Zaman, Caste Awan, R/o Village Malhoo Afzal Abad Tehsil & District Mansehra (Ex-Constable Old No. 544 and New No. 44 District Police Mansehra).

Appellant

VERSUS

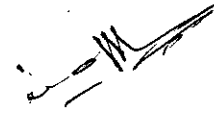
1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Mansehra.

Respondents

SERVICE APPEAL

AFFIDAVIT:

I, Faisal Zaman S/O Shah Zaman 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.



Deponent/Appellant

Dated: 5-10-2018

Identified By:



Mohammad Aslam Tanoli
Advocate High Court
At Haripur,



Appellant

11

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Faisal Zaman son of Shah Zaman, Caste Awan, R/o Village Malhoor Afzal Abad Tehsil & District Mansehra (Ex-Constable Old No. 544 and New No. 44 District Police Mansehra).

Appellant

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Mansehra.

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.


APPELLANT

Dated: 5-10-2018

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Faisal Zaman son of Shah Zaman, Caste Awan, R/o Village Malhoo Afzal Abad Tehsil & District Mansehra (Ex-Constable Old No. 544 and New No. 44 District Police Mansehra).

Appellant

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Mansehra.

Respondents

SERVICE APPEAL

APPLICATION FOR CONDONATION OF DELAY IN FILING THE
APPEAL BEFORE THIS HONOUR SERVICE TRIBUNAL.

Respectfully Sheweth:

1. That the Applicant/Appellant has today filed the Service Appeal, which may be considered as part and parcel of this application, against the order dated 04-05-2018 and order dated 05-09-2018 (Delivered on 17-09-2018) whereby appellant has been dismissed from service by the DPO Haripur and his departmental appeal has been turned down by the appellate authority illegally, unlawfully against the departmental rules and regulations and against the facts of the matter.
2. That impugned orders passed by the departmental authorities are illegal ab-initio, null & void, without jurisdiction, lawful authority, in sheer violation of mandatory statutory provisions of law thus are ineffective against the rights of Applicant/Appellant.
3. That Applicant/appellant for the review of the aforesaid illegal order submitted a departmental appeal to the Appellate Authority but the same has not been taken into consideration and turned down

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which causes tremendous loss in future of the appellant.

4. That as the orders of departmental authorities are void, being passed in sheer violation and derogation of the statutory provisions governing the terms and condition of service of the appellant, therefore the same are a nullity in the eyes of law and being a void and unlawful orders, causing a recurring cause of action to the Applicant/Appellant can be challenged and questioned irrespective of a time frame. That impugned order was passed on 05-09-2018 but a copy of the same was provided on 17-09-2018 and that too on the specific written request of the appellant perusing his case rigorously.
5. That the instant application is being filed as an abundant caution for the condonation of delay, if any.
6. That the impugned orders are illegal, void ab-initio, a nullity in the eyes of law thus liable to be set aside in the interest of justice.

It is therefore respectfully prayed that on acceptance of the instant application the delay, if any, in the filing of the above titled appeal may graciously be condoned.

Through:

Applicant/Appellant


(Mohammad Aslam Tanoli)
Advocate High Court
At District Bar Haripur


Dated: 5-10-2018

AFFIDAVIT:

I, Faisal Zaman S/O Shah Zaman do hereby solemnly declare and affirm on oath that the contents of the instant application/appeal are true and correct to the best of my knowledge and belief.

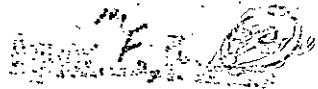
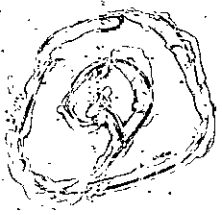
Dated: 5-10-2018




Applicant/Appellant


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Annex-A


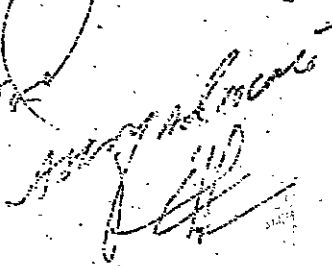


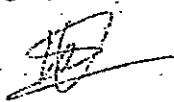
ORDER

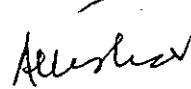
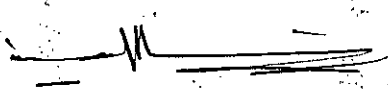
Constable Faisal Zaman No. 544 was proceeded against departmentally with the allegations that while posted as Madid Moharrar in PS Phairo he involved himself in case FIR No. 435 dated 09-04-2009 U/S 9 CNISA PS Cantt Abbottabad. The Enquiry Officer i.e. Mr. Rasool Shah DSP HQ after conducting proper departmental enquiry has submitted his report. The allegations of involvement in narcotics business in the above cited case have been proved. The learned Court of Additional Session Judge-Magistrate Special Court Abbottabad has also awarded sentenced of 67 years AI with a fine of Rs. 4000/- . As the constable has been proved guilty by the Enquiry Officer and the learned Court, therefore, I, the District Police Officer order dismissal of Constable Zaman No. 544 from police service with effect from 15-03-2010 the date of order of conviction of the competent court, under NWFP Removal from Service (Special Powers) Ordinance 2000.


 District Police Officer
 Manshara

56
 14-4-2010

Attested

 District Police Officer
 Manshara
 08-02-2012

Attested



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Annex 'A'

Better Copy

ORDER

Constable Faisal Zaman No. 544 was proceeded against departmentally with the allegation that while posted as Madid Moharrar in PS Phular he involved himself in case FIR No. 435 dated 09-04-2009 U/S 9 CNSA PS Cantt Abbottabad. The Enquiry Officer i.e. Mr. Rasool Shah DSP HQ after conducting proper departmental enquiry has submitted his report. The allegations of involvement in narcotics business in the above cited case have been proved. The Learned Court of Additional Session Judge-H-Judge Special Court Abbottabad has also awarded sentence of 07 years RI with a fine of Rs.4000/-. As the constable has been proved guilty by the Enquiry Officer and the Learned Court, therefore the District Police Officer order dismissal of Constable Zaman No.544 from police service with effect from 16-03-2010 the date of order of conviction of the competent court, under NWFP Removal from Service (Special Powers) Ordinance 2000.

OB 56
14-4-2010

Sd/-
District Police Officer
Mansehra

Aleesad

[Signature]

15

Annex - B

ORDER

This is an order on the representation of Ex Constable *Faisal Zaman No.544* of Mansehra District against the order of major punishment i.e. dismissal from service by the District Police Officer, Mansehra vide his OB No. 56 dated 14-04-2010.

Facts leading to his punishment are that while posted as Madad Moharrir PS Phulra Mansehra, he involved himself in case FIR No.435 dated 09-04-2009 U/S 9 CNSA PS Cantt Abbottabad.

Proper departmental enquiry was conducted by DSP Hqr Mansehra Rasool Shah. After conducting a detail enquiry, the EO proved him guilty. On the recommendation of EO, the District Police Officer Mansehra awarded him major punishment of dismissal from service under RSO 2000.

After receiving the appeal, the comments of DPO Mansehra were obtained. The enquiry file, appeal & the comments of the DPO were perused. The appellant was also heard in person in the orderly room who explained his version.

Keeping in view all the records, the appeal is rejected being grave allegations and also a badly time barred case.

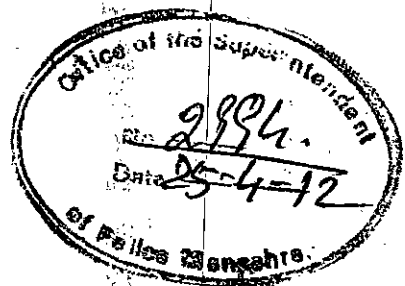
[Signature]
Deputy Inspector General of Police
Hazara Region Abbottabad

No. *2460* /PA Dated Abbottabad the *24-4* /2012.

Copy of above is forwarded to the District Police Officer, Mansehra for information and necessary action with reference to his Memo: No. 2950/PB dated 23-02-2012. The Service Roll and Fauji Missal containing Enquiry File of the appellant are returned herewith.

[Signature]
Deputy Inspector General of Police
Hazara Region Abbottabad
(C.O Khurram Hussain)

[Signature]
District Police Officer,
Mansehra



Attested

[Signature]

SRC/OTC

Por MR

MR

*DPO Man
29/4/12*

16

Annex - 'C'

BEFORE THE SERVICE TRIBUNAL, KPK,
PESHAWAR.

Faisal Zaman son of Shah Zaman, Caste Awan, R/o
Tehsil & District Mansehra, Ex-Constable,
No.544.....appellant

VERSUS

1. District Police Officer Mansehra.
2. Deputy Inspector General of Police, Hazara
Range, Abbottabad.....Respondents

APPEAL AGAINST THE ORDER OF
RESPONDENT NO.1 WHO PASSED AN ORDER
OF REMOVAL FROM SERVICE AND
RESPONDENT NO.2 ALSO REJECTED APPEAL
PREFERRED BY THE APPELLANT.

PRAYER:

On acceptance of Appeal, the impugned Order of
Respondents No.1 & No.2 may kindly be set-aside and
appellant may kindly be reinstated in service.

Respectfully Sheweth!

1. That, the appellant joined police Force and
was posted as "Mad Moharrir" at P.S Phulra.
2. That, the appellant was served with a charge
sheet containing allegations that appellant

Handwritten signature

got himself involved in Case FIR No.435 dated 09.04.2009, U/S 9CNS, P.S Cantt Abbottabad. The Appellant submitted a detailed reply refusing all the allegations leveled against the Appellant. (The copies of Charge Sheet, Statement of Allegation and Reply are attached as Annexure "A", "B" and "C" respectively).

3. That, Respondent No.1 was not satisfied with the reply submitted by the Appellant and an inquiry officer was appointed to probe into the matter. The Inquiry Officer conducted an inquiry at the back of Appellant and only once Inquiry Officer visited Jail and recorded the Statement of Appellant. The Inquiry Officer after conducting the inquiry at the back of appellant without affording him an opportunity formed his opinion and recommended the Appellant for major punishment. (The copy of finding of the inquiry officer is attached as Annexure "D").
4. That, the Appellant was served with a final Show Cause Notice and the Appellant gave a

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detail reply to the final show cause notice. The appellant was never summoned by Respondent No.1 for personal hearing before passing the impugned order. Respondent No.1 passed an Order vide which the Appellant was removed from service. The said order was never communicated to the Appellant nor he was appraised with regard to his fate.

5. That, the Appellant was convicted by the Trial Court who submitted an Appeal before Peshawar High Court, Bench, Abbottabad, and on acceptance of his Appeal, the Appellant was acquitted by the Honourable High Court. (The copy of Judgment is attached as Annexure "E").
6. That, after the acquittal of the appellant, the appellant came to know that he has been removed from service so the appellant submitted an application and the copy of Removal from Service was handed-over to the appellant on 08.02.2012. The appellant aggrieved by the order of Respondent No.1 submitted an appeal before Respondent No.2

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but his appeal was rejected. (The copy of Removal from Service, Copy of Appeal to DIG and order are attached as Annexure "F", "G" and "H" respectively).

7. That, the appellant seeks the indulgence of this Honourable Court on the following amongst other grounds;

GROUND:

- (i) That, the order of Removal from Service is against the facts and law and is not maintainable in the eye of law.
- (ii) That, the Appellant was deprived of all the opportunities laid down by Law and entire proceedings were conducted at the back of appellant.
- (iii) That, it was incumbent on the Inquiry Officer to have summoned him or the Inquiry would have been conducted inside the Jail in the presence of appellant by providing all the opportunities laid-down by Law.
- (iv) That, Respondent No.1 on receipt of recommendation by the Inquiry Officer

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without hearing the Appellant passed the impugned order.

(v) That, from the inquiry report even it is not clear as to who were examined and what evidence was produced against the appellant as all this proceedings were carried out in the absence of appellant.

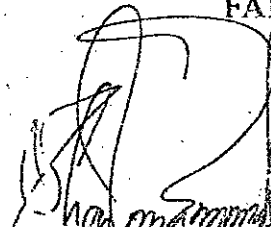
(vi) That, the appellant has been acquitted by the Honourable Court by giving him benefit of doubt and so the very foundation laid-down by the police stands vanished.

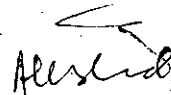
It is, therefore, most humbly prayed and requested that on acceptance of appeal the impugned order of Respondent No.1 and Respondent No.2 may kindly be set-aside and the appellant may kindly be reinstated in service.

Dated: 08.05.2012.

FAISAL ZAMAN
(APPELLANT)

THROUGH:

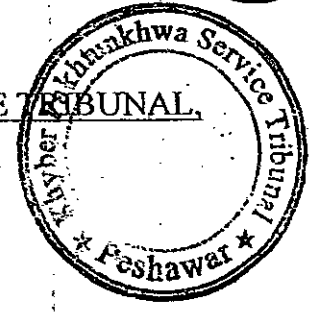

SYAD MUHAMMAD KHAN,
ADVOCATE, SUPREME COURT,
DISTRICT COURTS MANSEHRA.



21

Annex-D

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT ABBOTTABAD



Service Appeal No. 521/2012

Date of Institution... 08.05.2012.

Date of decision... 21.11.2017

Faisal Zaman son of Shah Zaman Caste Awan R/O Tehsil and District Mansehra
Ex-Constable No. 544. ... (Appellant)

Versus

1. District Police Officer, Mansehra and another. (Respondents)

MR. SHAD MUHAMMAD KHAN,
Advocate ... For appellant.

MR. KABEERULLAH KHATTAK,
Deputy District Attorney ... For respondents.

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. AHMAD HASSAN, ... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the learned
counsel for the parties heard and record perused.

FACTS

2. The appellant was dismissed from service on 14.11.2010 against which he
filed departmental appeal on 11.2.2012 which was rejected on 24.4.2012 being
time barred. Thereafter, the appellant filed the present appeal on 08.05.2012. The
appellant was charged due to his involvement in a narcotics case.

ARGUMENTS

3. The learned counsel for the appellant argued that the appellant was not
communicated his order of dismissal because he was in jail. That he was acquitted

ATTESTED
JUDGE
Khyber Pakhtunkhwa
Service Tribunal
Abbottabad

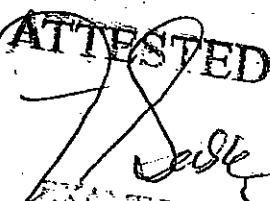
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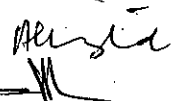
in the criminal case on 25.01.2012 and thereafter he obtained the copy of order on 08.02.2012 and then filed the departmental appeal on 11.2.2012. That his departmental appeal is within time for the reason that he was not informed and he was in jail as well. On merits he argued that the enquiry officer conducted the whole proceedings in the absence of the appellant much less the opportunity of cross examination to the appellant.

4. On the other hand, the learned Addl. Advocate General argued that the present appeal is time barred because the departmental appeal is also time barred. In support of his this arguments he referred to reply submitted by the appellant to the charge sheet. He further argued that while rejecting the departmental appeal the appellate authority did mention the appeal being time barred. He next conducted that the appellant was caught red handed. That the recovery was effected from his person. That it is a proved case against the appellant. That if the appeal of the appellant is accepted then it would open a Pandora box and would encourage the police officials to involve in such like activities.

CONCLUSION.

5. Admittedly, the appellant was in jail in the criminal case. His statement was recorded by the enquiry officer in jail. It is also an admitted position that he was released from jail on 25.1.2012. That the respondents have failed to show whether the impugned order was communicated to the appellant in jail. Secondly being behind the bar itself is sufficient cause for non running of limitation and if limitation runs against the appellant then incarceration is sufficient reason for condonation. This Tribunal is therefore, of the view that the departmental appeal was not time barred. The decision of the appellate authority in this regard is incorrect.

ATTESTED

 MANAGER
 Khyber Pakhtunkhwa
 Service Tribunal
 Camp Com Abbottabad



6. Coming to the merits of the appeal, admittedly the whole proceedings were conducted by the enquiry officer at the back of the appellant much less opportunity of cross examination or right of defence to the appellant. No law permits such proceedings to be valid proceedings. So far as the reservations of the learned AAG regarding Pandora box is concerned, this Tribunal has got no power to deviate from law under the fear of future violations by the civil servants. It is well known legal maxim "*Fiat Justitia ruat caelum*" (let justice be done though the heaven fall).

7. Consequently, this appeal is accepted and the appellant is reinstated in service. The department is at liberty to hold de-novo proceedings in accordance with the law within a period of 90 days of the receipt of this judgment. Parties are left to bear their own costs. File be consigned to the record room.

sd-
(Ahmad Hassan)
Member

sd-
(Niaz Muhammad Khan)
Chairman
Camp Court, A/Abad

ANNOUNCED
21.11.2017

Certified to be true copy

Saeed
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Camp Court, Abbottabad

Date of Presentation of Application 22-11-17
Number of Words 1200
Number of Pages 8-00
Fees 2-00
Stamp 10-00
FAZLE SUBHAN
Date of Delivery of Copy 22-11-17
22-11-17

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Annex-'E'

POLICE DEPARTMENT



DISTRICT MANSERHA

ORDER

In compliance with order of Honorable Service Tribunal Khyber Pakhtunkhwa, Peshawar vide Judgment/order dated 21.11.2017. Constable Faisal Zaman No. 544 is hereby reinstated in service with effect from 29.01.2018 and allotted constabulary No. 44.

The denovo enquiry proceeding is hereby remanded to Mr. Suleman Khan SP Investigation Mansehra to examine fresh whether any penalty can be awarded to Constable Faisal Zaman No. 544 in this regard report be submitted with in one month.

OB-19
30-1-18

District Police Officer
Mansehra

No. 1524-26/OHC dated Mansehra the 30/01 /2018

Copy to the:-

1. District Account Officer, Mansehra.
2. Pay Officer DPO Office Mansehra.
3. SRC/OHC DPO Office Mansehra.

Asst. Secy

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Annex-F

Phone: 091-9211947



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

No. 187 /E&I, dated Peshawar the 29 /01/2018

To: The District Police Officer,
Masehra.

Subject: **DENOVO DEPARTMENTAL ENQUIRY AGAINST
EX-FC FAISAL ZAMAN NO. 544**

Memo:

Office of the Superintendent
of Police
No. 1251
Date 2-2-18

Please refer to your office letter No.1271/GB dated 23.01.2018, on the subject cited above.

2. Denovo departmental enquiry against Ex-FC Faisal Zaman No. 544 may be conducted through, Muhammad Sulaiman, SP/Investigation Mansehra and final outcome be communicated to this office, on or before 12.02.2018, before issuance of formal order, for the perusal of Worthy IGP.

(SHAHAB MAZHAR BHALLI)PSP
DIG/Enquiry & Inspection
For Inspector General of Police
Khyber Pakhtunkhwa, Peshawar

No: /E&I,
Copy of above is forwarded for information to:-

1. The Regional Police Officer, Hazara.
2. Muhammad Sulaiman, SP/Investigation Mansehra.

(SHAHAB MAZHAR BHALLI)PSP
DIG/Enquiry & Inspection
For Inspector General of Police
Khyber Pakhtunkhwa, Peshawar

SP/Investigation
For MIA
DP/Mansehra
3/11

Revised

~~6/5/2018~~
~~8/10/5/18~~
6/6/2018

15 years
Remainder
15 years

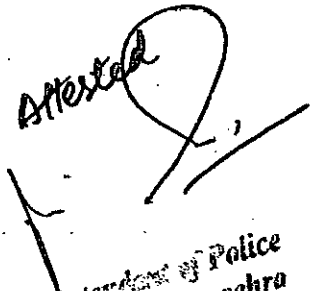
amended April 2018
Remainder 27.10.19
2010-07
25.1.12

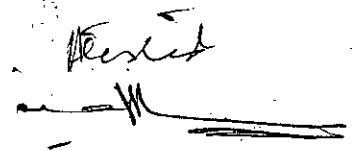
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بیان آردان فیصل زبانی نمبر 44 متبعہ حال پولیس لائن مالٹیرہ آجروخ 01-02-2018
 بسلسلہ انٹرنیٹ عام دفتر جناب S.P. صاحب مالٹیرہ عام آیا میرا وہی بیان ہے
 کہ جو میں نے جاری شدہ جواب جیل مالٹیرہ سے جو مداخلت جناب سپرنٹنڈنٹ
 صاحب ڈسٹرکٹ جیل مالٹیرہ بخوایا تھا۔ میرا وہی بیان ہے کہ جو کیفیت
 پر مبنی ہے۔ اور درست ہے۔

الذکر
 فیصل زبانی نمبر 44 حال پولیس لائن مالٹیرہ
 1-2-18

Attested

 Superintendent of Police
 Investigation, Miansehra



آمدہ پیمانی انٹرنیٹی بڑی 90-989 بجاریہ جناب DPO مائیسر حورم 4/30 فروری
جواب جاریہ شیٹ ذیل معروضات میں

جناب عالی :

1 = گزارش سے کہ مقدمت 435 فرم 90 تھانہ نیٹ ایبٹ آباد کے الزام میں گزرتا
ہو کر بند جیل مائیسر سے۔ سائل تھانہ چلڑہ میں مددگار لیٹا تھا اور لوہے کی سیڑھی
پر چڑھ کر 20/4 کو PTC نیٹو جانا تھا۔ سائل 3 دن بیار تھا۔ چلڑہ پر ایبٹ آباد
سٹورز سے علحدہ معالیم ڈرائیو لین گھت باب نہ ہوا۔ حورم 4/8 کو بوقت 8:30
بیماری کی روایتی حورم ڈوڑا پیم کی اور ایبٹ آباد روڑ پر ہوا۔ ہم رات ایبٹ آباد گزار کر 5 ڈوڑا
سے چیل اپ کروا کر اور بار بار سے خبر گیری کر کے واپس ہونا تھا۔

2 = ایبٹ آباد سے بن چوک حورم 4/8 کو بوقت قریب ساڑھے نو بجے رات دو اشخاص ملدنی تھے جنہوں
نے کہا کہ جہاں آپ کو نہیں دیکھا ہے دعا سلام ہوئی۔ میں نے کہا شاید دیکھا ہوگا۔ اور پھر میں
نے ان سے دائیں بائیں ہونے کی کوشش کی۔ اور خواہ چوک کی طرف جلا ہوئی سوزوئی میں
بیٹھ گیا۔ دیکھا تو وہ دو اشخاص بھی اسی سوزوئی میں ایک فرٹ پر دوسرا بیٹھ بیٹھ گئے۔
سوزوئی روڑ پر ہوئی۔ میں نے اترنا چاہا۔ دستک دی گئی مگر سوزوئی خواہ چوک جا
کر رکھی۔ تو 5 اشخاص یکدم سوار ہوئے۔ میں کسی کو نہیں جانتا تھا۔ جنہوں نے مجھ
مازنا پینٹا سے روک کر دیا۔ میں نے کہا مجھے یہوں مارتے ہو۔ میں نے آپ کا کیا بھارت
میں جنہوں نے کہا ہم CIA دفتر میں بتائیں گے۔ پھر مجھے مار پیٹ کر رات آپ
میں ڈال دیا۔ اور پھر لگے ہم جس گاڑی میں تھے اس سے پھر سب بڑا آمد ہوئی ہے
میں نے کہا میری نہیں ہے مجھے نہیں معلوم۔ میں بھی آپ کی طرح ملدنی ہوں اور تھانہ
چلڑہ میں مددگار ہوں۔ ایسے گندے کام کا تصویر بھی نہیں کر سکتا ہوں۔
گاڑی میں دو اشخاص اور بھی سوار تھے۔ وہ اور سوزوئی اور اس کا ڈرائیور یہاں ہیں۔
جن کے بارے میں CIA والوں نے کہا ہم وہ نیٹ تھانہ میں بند ہیں۔ مجھے ایک دن
اور دو رات لاک اپ میں دیکھنا پڑا۔ پھر وہ اور تھانہ نیٹ بھیج دیا۔

3 = تھانہ نیٹ میں میرے خلاف 90 کا مقدمہ درج ہوا ہے۔ اور تھانہ نیٹ سٹاف
سے سوزوئی اور تھانہ سبب اشخاص کے بارے میں پوچھا تو وہ اشخاص وہاں نہ
تھے اور وہ نیٹ تھانہ آئے۔ بعدہ نیٹ سٹاف سے مزید معلوم ہوا کہ وہ
اشخاص شمشیر وغیرہ المعروف دو دھ پتیاں تھے۔ پھر پھر قسطن میں
آیا کہ وہ لوگ مجھے جہان تھے جنکو میں نہیں جانتا تھا۔ جنہوں نے
CIA ایبٹ آباد سے ملتی بھلت کر کے انتقام لیا ہے۔

4 = سائل محمد سلیم خان HON'BLE کے ماتحت اور اوٹنگز سبب MHC کی زیر نگرانی تھانہ چلڑہ
سے ملتا ہے

..... میں مدد فرمائی دی گئی سرانجام دے رہا تھا کم حورم 28/08 کو حورم سٹاف تھا
 نے مختصر خاص کے ذریعہ شمشیر وغیرہ سے 5 کلوگرام پیرس سرانجام
 اور مقدم عدت 21/08 فیرم QCNSEA قحان پلٹہ درم حورم - جسکا ملکہ
 مذکورہ ان کو رخ تھا۔ بعد کے گنہگار مذکورہ قحان فون کرتے اور کہتے تھے تم
 لوگوں نے اچھا نہیں کیا ہے۔ اور دھکیاں دیتے تم ایسا انتقام
 لیں گے۔

جناب سائل کے ساتھ سرانجام زیادتی ہوئی ہے۔ سائل نے اہل حقیقت
 سے شکایتیں تحریر کر کے جناب کی خدمت میں پیش کی ہیں۔
 چونکہ اللہ تعالیٰ نے اس روئے زمین پر پروردگار اعلیٰ تعالیٰ تعالیٰ اور ان محدود
 سے توڑا ہے۔ جناب عرض ہے۔

سائل نیشنل نیصل زمان نمبر 544
 حاکم سندھ جیل مانسہرہ

7-5-2009

ATTESTED
 SUPERINTENDENT
 JAIL MANSEHRA

Attested
 DSP HCS
 4-6-09

Attested
 III

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Annex-9

P DEPARTMENT

DISTRICT MANSERHA

ORDER

This office order will dispose off denovo enquiry against Constable Faisal Zaman No. 44 of this district with the allegation that he was dismissed from service on the charges that he while posted as MM PS Phulra has involved himself in case FIR No. 435 dated 09.04.2009 u/s 9C-CNSA PS Cant Abbottabad vide OB No. 56, dated 14.04.2010. After dismissal from service the delinquent Constable Faisal Zaman No. 44 had preferred an appeal before the Regional Police Officer, Hazara Region Abbottabad and his appeal was filed by the Regional Police Chief. Later on he filed a service appeal before the Service Tribunal Khyber Pakhtunkhwa Abbottabad Bench Peshawar. The Service Tribunal Khyber Pakhtunkhwa accepted the appeal of Constable Faisal Zaman No. 44 and set-a-side the impugned order and re-instated the appellant in service and directed the respondent-department to conduct denovo enquiry. In compliance of the order of Service Tribunal Khyber Pakhtunkhwa & worthy Inspector General of Police Khyber Pakhtunkhwa Peshawar vide letter No. 187/E&I, dated 29.01.2018, a denovo enquiry was conducted through Mr. Muhammad Suleman Superintendent Police Investigation Mansehra. After conducting denovo enquiry the enquiry officer has submitted his report that the punishment of dismissal from service awarded earlier to the accused official was genuine and recommended him for major punishment. Similarly the case file of case FIR No. 435 dated 09.04.2009 u/s 9C-CNSA PS Cant Abbottabad has also been thoroughly perused and found that huge quantity of narcotics i.e 9500 grams was recovered from the possession of accused official and trial court convicted the accused for the term of 15 years imprisonment with fine of Rs. 100,000/- or in default of fine to further undergo one year simple imprisonment. The accused official preferred appeal against his conviction before the Peshawar High Court Abbottabad Bench. The honorable court vide order dated 25.01.2012 acquitted the accused by extending him benefit of doubt as to quantity of contraband chars. The Service Tribunal Abbottabad Bench reinstated the accused official on the ground of lacunas in the department proceedings i.e not giving the opportunity of cross examination to the accused official. The service Tribunal Abbottabad Bench reinstated the accused official without discussing the merits of the case as the acquittal of the accused in criminal case does not absolve the accused official from the act of moral turpitude. On 02 May, 2018, the delinquent Constable Faisal Zaman No. 44 was heard in person in orderly room but he could not convince the undersigned in his defense. Hence the punishment awarded earlier to the accused official was genuine, therefore the enquiry officer recommended for major punishment.

I, the District Police Officer, Mansehra, therefore award him major punishment of "Dismissal from service" to the delinquent Constable Faisal Zaman No. 44 under Khyber Pakhtunkhwa Police, Disciplinary Rules 1975 (amended in 2014). The period he remained out of service is to be treated as without pay.

Attest

 District Police Officer
 Mansehra

07-5-18

OB-85
 04-05-18

District Police Officer
 Mansehra

Attest

بخدمت جناب DIG صاحب ہزارہ رینج، ایبٹ آباد

عنوان: درخواست برائے بحالی سروس سابق کاٹھیل فیصل زمان نمبر 44 ضلع مانسہرہ۔

جناب عالی! گزارشات ذیل عرض ہے۔

- 1- یہ کہ سائل 28 جنوری 2002ء کا بھرتی ہے اور 14 اپریل 2010ء کو محکمہ سے ڈسمس ہوا تھا۔ بوقت ڈسمس سائل کی 8 سال سروس تھی۔ سائل کے خلاف 09 اپریل 2009ء ایبٹ آباد کینٹ تھانہ میں FIR نمبر 435 جرم 9C/CNSA درج ہوئی تھی۔
- 2- یہ کہ سائل فروری 2008ء میں تھانہ پھلورہ مد محرم تعینات تھا کہ سائل کے مخبر خاص کی اطلاع پر شمشیر، یاسر نامی اشخاص سکنان شیخ البانڈی، ایبٹ آباد سے کیری ڈبہ سے چس برآمد ہو کر تھانہ پھلورہ میں مقدمہ درج رجسٹر ہوا تھا۔ نقل FIR مارک A لف قبل ملاحظہ ہے۔
- 3- یہ کہ مسیان مذکور ان کورنچ تھا جو کہ جیل سے ضمانت پر رہا ہوئے جن کو معلوم کرنے پر معلوم ہوا کہ فیصل زمان کے ذریعہ کارروائی ہو کر مقدمہ درج رجسٹر ہوا ہے جنہوں نے سائل کو دھمکیاں دینی شروع کر دی کہ اپنا انتقام ضرور لیں گے۔
- 4- یہ کہ سائل کی اپریل 2009ء میں لوئر پولیس کورس کی سلیکشن ہوئی تھی 20 اپریل 2009ء برائے کورس PTC ہنگو جانا تھا۔ سائل بوجہ بیماری، بیماری کی روانگی درج روزنامہ کر کے مانسہرہ ایبٹ آباد علاج معالجہ و خریداری کے سلسلے میں آیا۔ نقل ریپٹ مارک B لف قابل ملاحظہ ہے۔
- 5- یہ کہ مسیان مذکور ان شمشیر وغیرہ نے CIA ایبٹ آباد کے ساتھ مل کر سائل کے لوئر کورس میں رکاوٹ ڈالنے، محکمہ اور معاشرے میں بدنام کرنے اور اپنی پرانی رنجش و چپکلش و انتقام لینے کی خاطر منشیات کے کیس میں پھنسا کر جیل بھجوا دیا۔ نقل جواب چارج شیٹ مارک C لف قابل ملاحظہ ہے۔

6- یہ کہ سائل کو ٹرائل کورٹ نے مورخہ 16/03/2010 کو 7 سال قید اور جرمانہ

محمد علی

مبلغ-40,000 روپے بعدم ادائے جرمانہ 2 ماہ قید محض کی سزا دی۔ جس پر محکمہ نے سائل کو مورخہ 14/04/2010 کو سروس سے ڈسمس کر دیا تھا۔ آرڈر ڈسمس مارک D لف قابل ملاحظہ ہے۔

7- یہ کہ پھر سائل نے جیل سے ہائی کورٹ میں اپیل کی، جو منظور ہو کر سزا Set aside ہو کر دوبارہ ٹرائل کورٹ کو کیس ریمانڈ ہوا۔ جس میں سائل کو مورخہ 27/10/2012 کو ٹرائل کورٹ ایڈیشنل سیشن جج-II، صاحب ایبٹ آباد نے 15 سال قید ایک لاکھ روپے جرمانہ بعدم ادائے جرمانہ ایک سال قید محض کی سزا دی۔

8- یہ کہ سائل نے دوبارہ ہائی کورٹ ہرکٹ پیچ ایبٹ آباد اپیل دائر کی جو کہ منظور ہو کر سائل مورخہ 25/01/2012 کو بری ہوا تھا۔ آرڈر ہائی کورٹ مارک E لف قابل ملاحظہ ہے۔

9- یہ کہ سائل نا کردہ گناہ کی پاداش میں تین سال جیل گزار کر مقدمہ میں بری ہو کر سنٹرل جیل ہری پور سے رہا ہوا۔ نقل رہائی سٹوکیٹ مارک F قابل ملاحظہ ہے۔

10- یہ کہ سائل محکمہ سے ڈسمس آرڈر دفتر جناب DPO صاحب مانسہرہ سے لے کر برائے بحالی سروس جناب DIG صاحب ہزارہ رینج ایبٹ آباد اپیل کی جو کہ ٹائم بارڈ کی وجہ سے مورخہ 24/04/2012 کو ریجسٹر ہوئی۔ نقل آرڈر جناب DIG صاحب مارک G لف قابل ملاحظہ ہے۔

11- یہ کہ سائل نے مورخہ 08/05/2012 کو پشاور سروس ٹریبونل کورٹ ایبٹ آباد پیچ میں اپیل دائر کی جو کہ مورخہ 21/11/2017 کو منظور ہو کر کورٹ نے سائل کو سروس پر بحال کیا۔ آرڈر کورٹ سروس ٹریبونل مارک H لف قابل ملاحظہ ہے۔

12- یہ کہ سائل کو محکمہ نے سروس پر مورخہ 30/01/2018 کو بحال کر کے لائن بھجوا کر بحکم کورٹ Denovo پراسس شروع کر دیا۔ نقل بحالی سروس مارک I قابل ملاحظہ ہے۔

13- یہ کہ سائل کے خلاف Denovo انکوائری ہوئی۔ جس میں انکوائری آفیسر نے سائل کی جرح پر غور نہیں کیا۔ یکطرفہ کارروائی کرتے ہوئے دوبارہ بڑی سزا کی سفارش کی۔ جس پر جناب

الحکمہ

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Annex 'K'

7971
11-9-18

ORDER

This order is hereby passed to dispose off departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rules 1975 submitted by Ex-Constable Faisal Zaman No: 44 of Mansehra District against the order of punishment i.e. Dismissal from service awarded by the DPO Mansehra vide his OB No.85 dated 04.05.2018.

Facts leading to his punishment are that he while posted as MM PS Phulra involved in case FIR No.435 dated 09/04/2009 u/s 9C-CNSA PS Cantt Abbottabad. He was dismissed from service vide OB No: 56 dated 14.04.2010. After dismissal from service he had preferred an appeal before the Regional Police Officer, Hazara Region, Abbottabad and his appeal was rejected being grave allegations and also a badly time barred case vide Endst: No: 2460/PA, dated 24.04.2012. Later on he filed a service appeal before the Service Tribunal Khyber Pakhtunkhwa Abbottabad Bench. The Service Tribunal accepted his appeal and set-aside the impugned order and re-instated the appellant into service and directed the respondent department to conduct de-novo enquiry. In compliance of the order of Service Tribunal Khyber Pakhtunkhwa & Worthy Inspector General of Police, Khyber Pakhtunkhwa vide letter No: 187/E&I, dated 29.01.2018, a de-novo enquiry was conducted through Mr. Muhammad Suleman, SP Investigation, Mansehra. After conducting de-novo enquiry the enquiry officer has submitted his findings that the punishment of dismissal from service awarded earlier to the accused official was genuine and recommended him for major punishment. Similarly the case file of case FIR No: 435/2009 u/s 9C-CNSA PS Cantt Abbottabad has also been thoroughly perused and found that huge quantity of contraband/Chars i.e 9500 gram was recovered from the possession of accused official and trial court convicted the accused to undergo 15 years imprisonment with fine of Rs: 100,000/- or in default of fine to further undergo one year simple imprisonment. The accused official preferred appeal against his conviction before the Peshawar High Court Abbottabad Bench. The honorable Court vide order dated 25.01.2012 acquitted the accused by extending him benefit of doubt. The Service Tribunal Abbottabad Bench re-instated the accused official on the ground of technicalities in the departmental proceedings i.e not giving the opportunity of cross examination to the accused official. The Service Tribunal Abbottabad Bench re-instated the accused official without discussing the merits of the case as the acquittal of the accused in criminal case does not absolve the accused official from the act of moral turpitude and violation of discipline. On 02 May, 2018 the delinquent constable Faisal Zaman No: 44 was heard in person in orderly room but he failed convince the DPO Mansehra. Hence the punishment awarded earlier to the accused official was genuine, therefore the enquiry officer recommended him for major punishment.

The appellant was awarded major punishment of Dismissal from service vide O.B No. 85 dated 04/05/2018 by DPO Mansehra.

After receiving his appeal, comments of DPO were obtained which were examined /perused. The undersigned called him in OR on 29.08.2018 and heard in person where he failed to furnish any plausible explanation in his defence. Therefore the punishment awarded to him by the DPO Mansehra i.e Dismissed from service seems to be genuine, hence his appeal is filed.

REGIONAL POLICE OFFICER
Hazara Region Abbottabad
/2018.

No. 4487 /PA Dated Abbottabad the 05/19

Copy of above is forwarded to the DPO Mansehra w/r to his Memo: No: 7838/GB, dated 20.06.2018 for information and necessary action.

Service Roll and Faisl missed are returned for per offi

SP/OTW
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REGIONAL POLICE OFFICER
Hazara Region Abbottabad

Atted

DPO Mansehra

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Annex-L

حرفت جناب - DPO - لاہور

درخواست برائے حصول نقل آرڈر کا ڈی ڈی نمبر

جناب عالی
گزارش کی ہے کہ سٹیشن سرورس بحالی
کے سلسلے میں جناب ڈی ڈی جناب نمبر 17/9
کی درخواست پر ترقی جو کہ نام نہ ہو چکی ہے۔
اسد جا کے آرڈر کی مقدمہ نقول دیکر مستور ہو جائیں۔

السلام

Ex 17/9 جناب نمبر 44
17-09-18

SRL
Provide as per
Rule.

Anal...
DPO Manshera
17/9
District Police Officer
Manshera

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قحان چیلڑہ
 کول پسا دے ۱۱ روز ناہ ۸^{۵۴}/_{۰۹}
 روز ۱۱ روز ناہ ۸^۴/_{۰۹} وقت ۱۸:۱۰ بج رپورٹ
 دیکھ میں دیکھ میں سوتا میں اور میں ہوں۔ دیکھ میں
 علاج میں کر دیا ہے۔ ماہر ڈاکٹر چیلڑہ میں ہے۔
 فرما ہے۔ میں کفر نما علاج میں ہوں۔
 انگریزی

میا علی

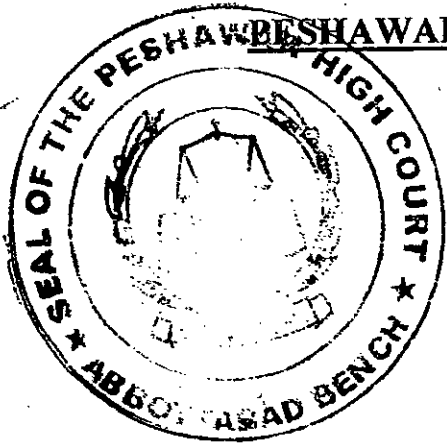
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37 Annex-9

JUDGMENT SHEET



PESHAWAR HIGH COURT ABBOTTABAD BENCH

JUDGMENT

Cr. A. No. 172 of 2010

Date of hearing:

Petitioner (Faisal Zaman) by Mr. Saad Rehtan Khan, A.C.W.
Respondents State by Mr. M. Nawaz Khan Swati, A.A.C.

KHALID MAHMOOD .J. Convict – appellant Faisal

Zaman was tried by learned Additional Sessions Judge-II /
Judge Special Court, Abbottabad under Section 9 (C) CNSA
and on conclusion of trial, he was convicted and sentenced to
suffer 15 years R.I. with a fine of Rs.1,00,000/- or in default of
fine to further undergo one year S.I. Benefit of section 382-B /
Cr.P.C. was, however, extended to him.

2- Briefly stated facts of prosecution case are that on
09.04.2009, Malik Ijaz, Inspector CIA Abbottabad alongwith
police personnel were present at Fawara Chowk near street
Kunj Jadeed in connection with nakabandi/ In the meantime, a
person holding a black colour bag in his hand came from Adda
side, he was moving fastly and was going towards street Kunj
Jadeed. On seeing police party he tried to decamp from the spot
but was chased and overpowered. He disclosed his name as
Faisal Zaman s/o Shah Zaman and on search ten slabs of chars

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Abbottabad Bench
Authorized Under Section 5-A of the Act

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were recovered from the bag. All the ten packets were opened and each packet was having 14/14 slabs of chars. Recovered chars was weighed and found to be 9500 grams.

3- In the instant case after completion of investigation challan was put in Court and trial commenced. At trial, charge was framed against the accused. The prosecution in support of its case examined six witnesses. Statement of accused under Section 342 Cr.P.C. was recorded wherein he refuted the charges leveled against them, however, he neither opted to be examined on Oath nor produced defence evidence. On assessment of evidence, in the first round of litigation, the appellant was found guilty and was convicted and sentenced to seven years R.I. and a fine of Rs.40,000/- vide judgment and order dated 16.03.2010. The convict - appellant preferred appeal in this Court against his abovesaid conviction and sentence and learned Division Bench of this Court on acceptance of appeal, set-aside the conviction and sentence of convict - appellant and remanded the case with the direction that learned trial court has not awarded an appropriate sentence according to law and necessary documents Ex.PK and Ex.PM were not produced in original before the trial Court.

4- After remand, the learned trial Court requisitioned the original inquiry file of Ex.PM and original of daily diary of Ex.PK and after hearing the parties the convict - appellant was found guilty of the offence and convicted and sentenced as mentioned in para-1 above. Hence, this appeal.

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Abbottabad Bench
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Punjab Courts Act, 1925

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5- Learned counsel for appellant contended that prosecution has failed to prove its case against appellant beyond any shadow of doubt and trial court did not consider contradictions in the statements of PWs. It was argued that convict – appellant was allegedly apprehended from a thickly populated area but no one from public was associated to witness the alleged recovery. It was argued that there is no recovery memo for 9.5 kg, which is the basis of case and police has prepared recovery of memo of 10 Kg, which is against facts on record. It was also contended that CIA staff is neither competent to conduct the investigation nor to arrest the accused or to seized the contraband. It was also argued that there is a delay in dispatching the alleged sample to FSL and, as such, possibility of tampering cannot be ruled out. It was further argued that the local police has falsely involved the accused in the instant case and that without bringing substantive evidence on record qua ownership of the contraband and positive report of FSL would not warrant conviction of appellant. Learned counsel while concluding his arguments submitted that appellant is entitled to be acquitted by giving him benefit of doubt.

6- On the contrary, learned State counsel while opposing arguments of appellant contended that it has been established on record that accused being peddler of narcotics was caught red handed with huge quantity of chars by the local police and trial court has considered the entire evidence in its

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true perspective where no material discrepancies or contradictions were noticed. The prosecution story is supported by statements of PWs. He concluded that accused has committed heinous crime of moral turpitude and deserves no leniency. He also argued that in the previous order of this Court, it has been held that the alleged chars has been recovered from the appellant. It was prayed that sentence awarded by the trial court meets the ends of justice, which may be maintained.

7- Arguments heard and record perused.

8- As per contents of Murasila and the FIR, it appears that 9500 grams chars was allegedly recovered from the bag, which the convict – appellant was carrying at the time of occurrence but it is clearly mentioned in the recovery memo, which was weighed by the complainant that chars recovered was 10 kg. There is overwriting on the dates of occurrence and report. There is no evidence as to how the whole recovered contraband was weighed and 5/5 grams samples were separated for the purpose of analysis when there is nothing on record to show as to type of weights and scales the police personnel had at the time of occurrence as it was odd hours of night and all the shops were reportedly closed. According to PW-1 Malik Ejaz Inspector CIA Abbottabad the convict – appellant holding a black colour bag in his hand came from Adda side and on seeing police party tried to go fastly towards street Kunj Jadeed, chased and overpowered and chars contraband was recovered whereas PW-3 Tariq Mehmood ASI in cross -examination

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Peshawar Court.
Abbottabad Bench
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stated that contraband chars was recovered from the convict – appellant at Lahore Laries Adda. In the instant case allegedly the samples were sent to Chemical Examiner for analysis on 11.4.2009 but due to objection these were returned and same were again submitted on 17.04.2009 but there is nothing on record as to why the samples submitted first were returned. Prosecution failed to produce the application dated 11.04.2009, on the basis of which, samples were sent to FSL. The trial Court also overlooked the important feature of the case that first challan was submitted on 09.05.2009 and after scrutiny by the Prosecutor, it was pointed out for the first time that entry of 10 Kg of Chars in the recovery memo and that of entry of 9500 grams in Murasila is fatal for the prosecution case, so the lacunae was asked to be filled up. After that case file was sent back to I.O., who on 27.06.2009 recorded the statement of PW-1 under Section 161 Cr.P.C. and only rectified the entry to the effect that the entry of 9500 grams of chars written in the Murasila is correct. But no where it has been brought on record that whether after preparation of recovery memo the chars was ever weighed before any one and to this effect other recovery memo has ever been prepared. It is also pertinent to note that prosecution during the trial has exhibited the same recovery memo and site plan as Ex.PW1/1 and Ex.PWB wherein recovery of 10 Kg chars has been shown.

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9- Similarly, the written objection dated 17.04.2009 vide which samples were sent back to the prosecution also has

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not been produced before the trial Court. The said important documentary record has been concealed by the prosecution, hence, adverse inference under Article 129(g) of Qanun-e-Shahadat can easily be drawn as the same record was against the prosecution that is why prosecution has not produced the same. There is also over writing on the recovery memo with different ink and different hand writing wherein, it is entered that as no public witness is available, hence, are not cited as marginal witness to the recovery. This addition clearly shows malafide, unfairness and guilty conscious of prosecution. It is admitted fact that it was pitch dark at the time of occurrence. Complainant has stated that he alongwith other police party was standing under the street light whereas appellant was present in dark from some distance of their nakabandi. The important questions arise from this story at the time of arrest and recovery from the accused, which have not been properly dealt by the trial Court. Those important points, which created doubt are :-

(i). *The light has not been mentioned in the site plan;*

(ii). *The source of light has not been taken into custody to ascertain its power of lightening whether same was tube light, bulb, flood light or was energy saver and that of what power.*

(iii). *Distance of appellant from complainant and other PWs have also not been mentioned.*

(iv). *When for the first time appellant was seen by the complainant and other PWs;;*

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Peshawar High Court
Abbottabad Bench
Authorized Under Sec 75 Acts Ord 1982

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(v). At what point appellant was overpowered.

PWs had admitted in their statements that appellant was present in the dark. How it is possible that he being present in the light was able to see the accused / appellant and differentiate the colour of alleged bag, which appellant was allegedly holding.

PW-2 Mushtaq Hussain Shah has admitted that recovery memo, site plan and murasila was prepared by the complainant. But he too could not detect the difference of 500 grams chars mentioned in the recovery memo, site plan and that of murasila.

10- PW-3 Tariq Mehmood has also stated that after scribing the murasila, he remained on the spot for about two hours. The site plan bears FIR number which was prepared by the complainant having same ink and handwriting. It has been admitted by the Investigating Officer (PW-2) that recovery memo, murasila and site plan were already prepared when after chalking of FIR investigation was handed over to him. Then question arises that before chalking of FIR, how number of FIR was inserted in the site plan by the complainant PW-1 Malik Ijaz. It can easily be gathered from the record produced before the Court that site plan was prepared after chalking of the FIR. As the place of recovery and preparing of recovery memo and site plan has been contradicted by PWs 1 and 3, hence, preparation of the said document in Police Station or some

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Abbottabad Bench
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where else cannot be ruled out.

9- There is no explanation forthcoming whatsoever on the record as to what quantity of contraband chars was allegedly recovered from the possession of convict – appellant. This creates doubt as to the quantity of contraband chars. In the facts and circumstances of the case, the prosecution has not been able to prove its case against appellant beyond any shadow of doubt and by extending such benefit the convict - appellant deserves acquittal from the charge.

10- Consequently, this appeal is allowed. Conviction and sentence of appellant recorded by the trial court is set-aside and he is acquitted of the charge. He shall be released forthwith if not required in any other case.

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Peshawar High Court
Abbottabad Bench
Authorized Under Section 5 Acts Ordms

Announced:
25.01.2012.

SD: YAHYA AFRIDI

SD: KHAJIB MEHMOOD

JUGES

Abdullah

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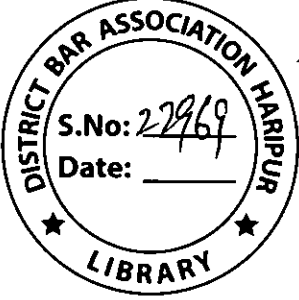
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S.No: 27969

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

Name of Advocate: محمد اسلم منیر

وکالت نامہ



بعدالت: ہذا ہے جس میں صاحب کمر بنجمن خان کسٹومرز سٹور ہارپور
عنوان: فصل زمان
منجانب: (فصل زمان) ایڈووکیٹ
نوعیت مقدمہ: سرواہ
باعث تحریر آئیکہ:

مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے واسطے پیروی و جوابدہی برائے پیشی یا تصدیقہ مقدمہ بمقام ایڈووکیٹ منیر کے لیے
تدارک کے طور پر محمد اسلم منیر

کو حسب ذیل 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
پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر عدالت کروں گا۔ اگر پیشی پر مظہر حاضر نہ ہو اور مقدمہ میری
غیر حاضری 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
موصوف صدر مقام پکھری کے علاوہ کسی جگہ یا پکھری کے اوقات سے پہلے یا پیچھے یا بروز تعطیل پیروی کرنے کے ذمہ دار نہ
ہوں گے اور مقدمہ پکھری کے علاوہ کسی اور جگہ سماعت ہونے پر یا بروز تعطیل یا پکھری کے اوقات کے آگے پیچھے پیش ہونے
پر مظہر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختانہ کے واپس کرنے کے بھی صاحب
موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل سہ ماہی پر داخستہ صاحب موصوف مش کردہ ذات منظور و مقبول ہوگا اور صاحب موصوف کو
عرض دعویٰ یا جواب دعویٰ اور درخواست اجراء کے ڈگری و نظر ثانی اپیل نگرانی و ہر قسم درخواست پر دستخط و تصدیق کرنے کا بھی
اختیار ہوگا اور اور کسی حکم یا ڈگری کرانے اور ہر قسم کارروائی وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور
اس کے ثالثی و راضی نامہ و فیصلہ بر حلف کرنے اقبال دعویٰ دینے کا بھی اختیار ہوگا اور بصورت جانے بیرونجات از پکھری صدر
اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم امتناعی یا ترقی یا گرفتاری قبل از گرفتاری و اجراء ڈگری بھی صاحب
موصوف کو بشرط ادائیگی علیحدہ مختانہ پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہوگا کہ مقدمہ
مذکور یا اس کے کسی جزوی کارروائی کے یا بصورت اپیل کسی دوسرے وکیل کو اپنے بجائے یا اپنے ہمراہ مقرر کریں اور ایسے وکیل کو
بھی ہر امر میں وہی اور ویسے اختیارات حاصل ہوں گے جیسے صاحب موصوف کو حاصل ہیں اور دوران مقدمہ جو کچھ ہر جانہ
التوا پڑے گا وہ صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب
موصوف کو پورا اختیار ہوگا کہ وہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ مقدمہ کا صاحب موصوف کے
برخلاف نہیں ہوگا۔

Acceptance
M. A. Zaman

لہذا وکالت نامہ لکھ دیا ہے کہ سندر ہے۔

مضمون وکالت نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔ مورخہ: 10 / 10 / 2018
دن ماہ سال

(Faizal Zaman)
Appellant

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

SERVICE APPEAL NO. 1221/2018

Date of institution ... 05.10.2018

Date of judgment ... 17.09.2019

Faisal Zaman Son of Shah Zaman, Caste Awan
R/o Village Malhoo Afzal Abad Tehsil & District Mansehra
(Ex-Constable Old No. 544 and New No. 44 District Police Mansehra).

... (Appellant)

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Mansehra.

... (Respondents)

SERVICE APPEAL UNDER SECTION-4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST
ORDER OB NO. 85 DATED 04.05.2018 OF THE DISTRICT POLICE
OFFICER MANSEHRA WHEREBY THE APPELLANT HAS BEEN
AWARDED MAJOR PUNISHMENT OF DISMISSAL FROM
SERVICE AND ORDER DATED 05.09.2018 (DELIVERED ON
17.09.2018) OF THE REGIONAL POLICE OFFICER HAZARA
REGION ABBOTTABAD WHEREBY APPELLANT
DEPARTMENTAL APPEAL HAS BEEN REJECTED.

Mr. Mohammad Aslam Tanoli, Advocate. ..

For appellant.

Mr. Muhammad Bilal Khan, Deputy District Attorney ..

For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI ..

MEMBER (JUDICIAL)

MR. HUSSAIN SHAH ..

MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Appellant

alongwith his counsel and Mr. Muhammad Bilal, Deputy District Attorney
alongwith Mr. Haq Nawaz, ASI for the respondents present. Arguments heard
and record perused.

2. Brief facts of the case as per present service appeal are that the appellant
was serving in Police Department. He was imposed major penalty of dismissal
from service vide order dated 14.04.2010 on the allegation that he was involved

M. Amin
17.9.2019

in Narcotic case vide FIR No. 435 dated 09.04.2009 under section 9CNS, PS Cantt Abbottabad. After availing of remedy of departmental appeal, the appellant filed service appeal in this Tribunal which was accepted, the appellant was reinstated in service and the Tribunal held that the inquiry proceeding was not conducted in accordance with law therefore, the department was held at liberty to hold de-novo inquiry in accordance with law within a period of 90 days of the receipt of copy of judgment vide detailed judgment dated 21.11.2017. On receipt of copy of judgment, the Inspector General of Police Khyber Pakhtunkhwa Peshawar issued direction to District Police Officer Mansehra for proceeding de-novo inquiry against the appellant through Muhammad Suleman SP Investigation Mansehra and it was also ordered that final outcome be communicated to the office on or before 12.02.2018 before issuance of final order for perusal of the worthy Inspector General of Police vide letter No. 187 dated 29.01.2018 and in compliance of the aforesaid order, the District Police Officer Mansehra directed Mr. Suleman SP Investigation Mansehra to conduct de-novo inquiry vide order dated 30.01.2018. The said SP Mr. Suleman summoned the appellant and asked him to submit reply of charge sheet already served in the previous inquiry and in this regard statement of the appellant was recorded by the said SP wherein he stated that he rely on the reply of charge sheet already submitted in the previous inquiry proceeding and on the basis of charge sheet, statement of allegation already framed and served on the appellant in the previous regular inquiry as well as the reply of the appellant to the charge sheet already submitted in the previous regular inquiry undated, the de-novo inquiry report was submitted by the inquiry committee namely Muhammad Suleman SP Mansehra, Ashiq Hussain DSP, Syed Ikhlq Hussain Inspector (Legal) Mansehra and ASI Muhammad Iqbal Reader SP Investigation and on the basis of said undated inquiry report, the competent authority again imposed major penalty of dismissal from service without any show-cause notice

M. Suleman
17.9.2019

after de-novo inquiry vide order dated 04.05.2018. The appellant filed departmental appeal on 21.05.2018 but the same was rejected on 05.09.2018 hence, the present service appeal on 05.10.2018.

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

4. Learned counsel for appellant contended that the appellant was imposed major penalty of dismissal from service vide order dated 14.04.2010 on the allegation that during inquiry proceeding he was proved guilty by the inquiry officer in the aforesaid narcotic case and he was also convicted by the Trial Court in the said criminal narcotic case. It was further contended that after availing remedy of departmental appeal, the appellant filed service appeal which was partially accepted, the appellant was reinstated in service and it was held by this Tribunal that the regular inquiry was not conducted in accordance with law therefore, the respondent-department was held at liberty to conduct de-novo inquiry strictly in accordance with law. It was further contended that on appeal, the worthy High Court has acquitted the appellant in the aforesaid narcotic case vide detailed judgment dated 25.01.2012. It was further contended that the respondent-department was required to conduct de-novo inquiry strictly in accordance with law as per direction of this Tribunal but the respondent-department has totally ignored the direction of this Tribunal, neither fresh charge sheet, statement of allegation was framed or served upon the appellant nor de-novo inquiry was conducted in accordance with law. It was further contended that during de-novo proceeding, the inquiry officer has recorded joint statement of Amjid Khan 702/HC, Zakir Rehman 336 and Riasat Khan 668 in two, three lines wherein they have stated that they rely on the statement already recorded by Shakoor Khan. It was further contended that this method of recording of joint statement of the witnesses by the inquiry officer to the effect that they rely on the previous statement recorded in the previous inquiry is not

M. Amin
17.9.2019

in accordance with law and the inquiry officer did not bother to record their separate statements and provide opportunity of cross examination to the appellant. It was further contended that after submitting de-novo inquiry report (undated), the competent authority was also required to issue ~~copy~~^{copy} of show-cause notice alongwith copy of inquiry report but the competent authority also did not bother to issue said show-cause notice therefore, it was vehemently contended that the de-novo inquiry was not conducted as per direction of this Tribunal which has rendered the whole proceeding illegal and liable to be set-aside and prayed for acceptance of appeal.

5. On the other hand, learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was involved for having in possession of huge quantity of narcotic/Chars and the Trial Court has also convicted the appellant in the aforesaid criminal case but later on the worthy High Court acquitted the appellant by giving benefits of doubt. It was further contended that a proper de-novo inquiry was conducted and the appellant was proved guilty in the de-novo inquiry proceeding therefore, the appellant was rightly dismissed from service on the basis of de-novo inquiry report and prayed for dismissal of appeal.

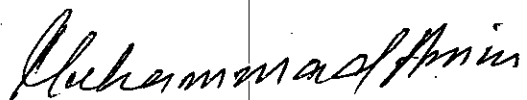
6. Perusal of the record reveals that the appellant was imposed major penalty of dismissal from service vide order dated 14.04.2010 on the allegation that he was convicted by the Trial Court in narcotic case and was also proved guilty by the inquiry officer in the regular inquiry vide order dated 14.04.2010. The record further reveals that after availing remedy of departmental appeal, the appellant filed service appeal which was accepted, the appellant was reinstated in service and it was held in the said judgment by this Tribunal that the regular inquiry was not conducted in accordance with law therefore, the respondent-department was held at liberty to conduct de-novo inquiry proceeding vide detailed judgment dated 21.11.2017. After the decision of the Tribunal, the

M. Prasad
17.9.2019

respondent-department was bound to conduct de-novo inquiry strictly in accordance with law and as per direction of this Tribunal but the record reveals that neither fresh charge sheet, statement of allegation was framed or served upon the appellant in de-novo inquiry proceeding nor the de-novo inquiry was conducted by the inquiry officer in accordance with law as the inquiry officer has recorded some joint statements of Amjid Khan 702/HC, Zakir Rehman 336 and Riasat Khan to the effect that they rely on the statement recorded by one Shoukat Khan No. 480 in two three lines which is not the mode and manners of recording statement of witnesses. Moreover, the appellant was also not provided opportunity of cross examination on the aforesaid witnesses as the inquiry officer had not bothered to record their separate statements in accordance with law. Furthermore, after de-novo inquiry report, the competent authority was also bound to issue show-cause notice alongwith copy of de-novo inquiry report but the competent authority also did not bother to issued fresh show-cause notice alongwith copy of inquiry therefore, the appellant was condemned unheard which has rendered the whole proceeding illegal and liable to be set-aside. As such, we partially accept the appeal, set-aside the impugned order and reinstate the appellant into service with the direction to respondent-department to conduct de-novo inquiry strictly in accordance with law within a period of 90 days from the date of receipt of copy of this judgment. 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
17.09.2019


(HUSSAIN SHAH)
MEMBER
CAMP COURT ABBOTTABAD


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER
CAMP COURT ABBOTTABAD

(Respondent No. 1)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA

PESHAWAR.

SERVICE APPEL NO. 1221/2018.

Faisal ZmanAppellant


VERSUS

- 1) Provincial Police officer KPK-Peshawar.
- 2) Regional Police officer, Hazara Region Abbottabad
- 3) District Police Officer, Mansehra.

..... Respondents

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Deponent

①

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA

PESHAWAR.

SERVICE APPEL NO. 1221/2018.

Faisal ZmanAppellant

VERSUS

- 1) Provincial Police Officer KPK Peshawar.
- 2) Regional Police officer, Hazara Region Abbottabad
- 3) District Police Officer, Mansehra.

..... Respondents

Parawise Comments On Behalf Of Respondents

RESPECTFULLY SHEWETH:-

PRELIMINARY OBJECTION:-

- a) The appeal is not based on facts and appellant has got no cause of action or locus standi.
- b) That appeal is not maintainable in the present form.
- c) The appeal is bad for non-joinder of necessary and mis-joinder of unnecessary parties.
- d) The appellant is estopped by his own conduct to file the appeal.
- e) The appeal is barred by the law and limitation.
- f) The appellant has not come to the Honorable Tribunal with clean hands.

FACTS:-

1. It is correct. The appellant while posted as Madad Moharir in PS Phulra had involved himself in case FIR No. 435 dated 09-04-2009 U/S 9C-CNSA PS Cant Abbottabad, hence he was served with charge sheet and departmental enquiry was initiated. The appellant after departmental enquiry proved guilty. The Additional District & Sessions Judge Abbottabad had also awarded sentence of seven years RI with a fine of Rs. 4000/-. As the constable had been proved guilty by the enquiry officer and learned Court, therefore, he was dismissed from service Vide OB No. 56 dated 14-04-2010.

2. The appellant after acquittal by the High Court Abbottabad Bench on 25-01-2012, submitted appeal against the order of Respondent No. 3 to respondent No. 2. But his appeal was rejected being grave allegation and also a badly time barred case.
3. Correct. The appellant was acquitted by the court by extending him benefit of doubt as to quantity of contraband.
4. The service appeal of the appellant was accepted by the service tribunal Abbottabad Bench Vide judgment dated 21-11-2017, and department was put at liberty to conduct Denovo proceedings in accordance with law.
5. In compliance of order of Service Tribunal, the appellant was reinstated in service on 30-01-2018 and Denovo enquiry proceedings were initiated through SP Investigation Mansehra. **(Copy of the order is enclosed is annexure A).**
6. The Denovo enquiry was conducted in accordance with service rules and full opportunity of cross examination and defense was awarded to the appellant. **(copies of charge sheet/reply and statements of witnesses are enclosed annexure B)**
7. During the Denovo enquiry proceedings, the appellant submitted that his reply to the charge sheet dated 07-05-2009, may be considered as his statement.
8. The enquiry officer in his finding report held that accused was actually found involved in narcotics case in which huge quantity of contraband was recovered (9500 GM) which is an Act of moral turpitude which does not absolve him despite acquittal from the Court. **(copy of the finding report is enclosed annexure C)**
9. Proper departmental enquiry was conducted in accordance with law & rules. The appellant properly joined the enquiry proceedings and cross examined the witnesses he was also afforded the opportunity of personal hearing.
10. Correct.

11. The departmental appeal was rejected on 05-09-2018, on the ground of punishment being genuine.
12. Incorrect. The appellant was arrested red handed by the CIA official at Abbottabad and recovered huge quantity of Chars from his possession.
13. On 09-04-2009, CIA officials were present near Fawara Chowk Abbottabad they saw appellant holding a black bag in his hand. When he saw the police party he tried to escape from the spot but police party over powered him and recovered ten packets of Chars (9500 GM) from his possession and a case was registered in police station cant Abbottabad. **(Copy of FIR is enclosed annexure D)**
14. The appellant was acquitted by the Honorable High Court Abbottabad Bench on the ground of doubt as to the quantity of chars.
15. The appeal is not maintainable on the following grounds:-

GROUND:-

- A. Incorrect. The orders of respondents are valid, legal, speaking and in accordance with facts and circumstances of the case.
- B. Incorrect. Proper departmental Denovo enquiry was initiated and all the requirements and lacunas highlighted by the Honorable Tribunal in its judgment dated 21-11-2017, have been fulfilled.
- C. Incorrect. All the legal formalities have been fulfilled and opportunity of personal hearing was afforded to the appellant.
- D. Incorrect. The appellant was treated in accordance with law and departmental rules.
- E. Incorrect.
- F. Incorrect. The acquittal from the Court does not absolve the appellant from the liability of misconduct and moral turpitude. The Honorable High Court never held in its order that the appellant was not involved in

the narcotics case rather the court held that there was doubt as to the quantity of contraband.

G. Incorrect. The appellant was guilty and involved in narcotics smuggling due to which dismissed from service.


H. Incorrect.


I. Incorrect.

PRAYER:

In view of the above mentioned facts, the appeal in hand may kindly be dismissed being devoid of any legal force.


District Police Officer
Mansehra
(Respondent No. 3)


Regional Police Officer
Hazara Region Abbottabad
(Respondent No. 2)
Regional Police Officer
Hazara Abbottabad


Inspector General of Police
KPK Peshawar
(Respondent No. 1)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA

PESHAWAR.

SERVICE APPEL NO. 1221/2018.

Faisal ZmanAppellant

VERSUS


- 1) Provincial Police Officer KPK Peshawar.
- 2) Regional Police officer, Hazara Region Abbottabad
- 3) District Police Officer, Mansehra.


..... Respondents

AFFIDAVIT

We respondents do solemnly affirm and declare that the contents of the reply/comments are true and correct to our knowledge and belief and that nothing has been concealed from this Honorable tribunal.


District Police Officer
Mansehra
(Respondent No. 3)


Regional Police Officer
Hazara Region Abbottabad
(Respondent No. 2)
Regional Police Officer
Hazara Abbottabad


Inspector General of Police
KPK Peshawar
(Respondent No. 1)



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

No. 187 /E&I, dated Peshawar the 29 /01/2018

To: The District Police Officer,
Masehra.

Subject: **DENOVO DEPARTMENTAL ENQUIRY AGAINST
EX-FC FAISAL ZAMAN NO. 544**

Memo:

Office of the Superintendent
of Police
No. 1251
Date 2-2-18

Please refer to your office letter No.1271/GB dated 23.01.2018, on the subject cited above.

2. Denovo departmental enquiry against Ex-FC Faisal Zaman No. 544 may be conducted through, Muhammad Sulaiman, SP/Investigation Mansehra and final outcome be communicated to this office, on or before 12.02.2018, before issuance of formal order, for the perusal of Worthy IGP.

(SHAHAB MAZHAR BHALLI)PSP
DIG/Enquiry & Inspection
For Inspector General of Police
Khyber Pakhtunkhwa, Peshawar

No: /E&I,
Copy of above is forwarded for information to:-

1. The Regional Police Officer, Hazara.
2. Muhammad Sulaiman, SP/Investigation Mansehra.

(SHAHAB MAZHAR BHALLI)PSP
DIG/Enquiry & Inspection
For Inspector General of Police
Khyber Pakhtunkhwa, Peshawar

SP/Investigation
For n/a
DPO Mansehra
3/11

ANNEX ⑦ B

CHARGE SHEET

I, Akhtar Hayat Khan, District Police Officer, Manshehra as competent authority hereby charge you FC Faisal Zaman No. 544 as follows.

You FC Faisal Zaman while posted as Madad Moharrir Police Station Phulra has involved yourself in case FIR No. 435 dated 9-4-2009 u/s 9CNSA police station Cant Abbottabad. Hence charge sheet/statement of allegation.

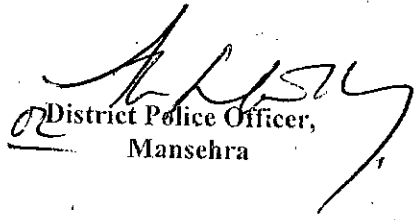
Due to reason stated above you appear to be guilty of misconduct under Section 3 of the North West Frontier Province Removal from service (Special Powers) Ordinance 2000 and has rendered yourself liable to all or any of the penalties specified in Section 3 of the ordinance.

Your are therefore, required to submit your written defense within 07 days of the receipt of this charge sheet to the Enquiry Officer.

Your written defense, if any should reach the Enquiry Officer within the specified period failing which it shall be presumed that you have no defense to put in hand and in the case exparte action shall follows against you.

Intimate whether you desires to be heard in person or otherwise.

A statement of allegation is enclosed.


District Police Officer,
Manshehra

⑧
B

DISCIPLINARY ACTION

I, Akhtar Hayat Khan, District Police Officer, Mansehra as competent authority of the opinion that FC Faisal Zaman No. 544 has rendered himself liable to be proceeded against as he committed the following act/omissions within the meaning of section 3 of the North West Frontier Province Removal from service (Special Powers) Ordinance, 2000.

STATEMENT OF ALLEGATION

FC Faisal Zaman while posted as Madad Moharrir Police Station Phulra has involved himself in case FIR No. 435 dated 9-4-2009 u/s 9CNSA Police Station Cantt Abbottabad.

For the purpose of scrutinizing the conduct of the said accused Officer with reference to the above allegations Kasim Shah is deputed to conduct formal department enquiry FC Faisal Zaman No. 544

The Enquiry Officer shall in accordance with the provisions of the ordinance, provide reasonable opportunity of hearing the accused, record findings and make within thirty days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

The accused and a well conversant representative of the department shall in the proceedings on the date, time and place fixed by the Enquiry Officer.

District Police Officer,
Mansehra.

No 989-90/PA dated Mansehra the 14-04-2009.

➤ A copy of the above is forwarded to: -

1. The Enquiry Officer for initiating proceedings against the accused under the provisions of the NWFP Removal from service (Special Powers) Ordinance 2000.
2. FC Faisal Zaman No. 544 with the direction to submit his written statement to the Enquiry Officer within 7 days of the receipt of this statement of allegations and also to appear before the Enquiry Officer on the date, time and place fixed for the purposes of departmental proceedings.


District Police Officer,
Mansehra.

آمدہ چھٹی انگریزی نبری 90-989 جاریہ جناب DPo مائسٹر حورم 4/30 کو ہوا
جواب چارج شیٹ ذیل معروضاتوں

جناب عالی:

1: گزارش ہے کہ مقدمہ عدت 435/09 فرم 90 تقاضہ نینٹ ایبٹ آباد کے الزام میں گرفتار
ہو کر بند جیل مائسٹر سے۔ اسٹل عقاب پٹلہ میں مدد فرمائیں تاکہ اور لوگوں کو سہولتیں
ہوئی تھی حورم 4/20 کو PTC نکلو جانا تھا۔ اسٹل 3/2 دن بیمار تھا۔ پٹلہ پیر ایبٹ آباد
شورز سے علاج معالجہ نہاتا رہا لیکن صحت یاب نہ ہوا۔ حورم 4/8 کو بوت 18-30
بیماری کی روانگی حورم ذرا پٹلہ کی اور ایبٹ آباد روئے ہوا۔ رات ایبٹ آباد نزار نزار فرزندہ ڈاکٹر
سے چیک اپ کروا کر اور بار بار سے خریداری کر کے واپس ہونا تھا۔

2: ایبٹ آباد سرین چوک حورم 4/8 کو بوت تریب سارھے نو بجے رات دو اشخاص ملحق ہوئے جنہوں
نے کہا تم جہاں آئے کو نہیں دیکھا ہے دعا سلام ہوئی۔ میں نے کہا شاید دیکھا ہوگا۔ اور پھر میں
نے ان سے دائیں بائیں ہونے کی کوشش کی۔ اور خواہ چوک کی طرف جالی ہوئی سوزوئی میں
بیٹھ گیا۔ دیکھا تو وہ دو اشخاص بھی اسی سوزوئی میں ایک فرنٹ پر دوسرا پیچھے بیٹھ گئے
سوزوئی روڑ پر ہوئی۔ میں نے اترنا چاہا۔ دستک دی گئی مگر سوزوئی خواہ چوک جا
کر رکھی۔ تو وہ اشخاص یکدم سوار ہوئے۔ میں کسی کو نہیں جانتا تھا۔ جنہوں نے مجھ
مارنا پشیمانہ شروع کر دیا۔ میں نے کہا مجھے یوں مارتے ہو۔ میں نے آپ کا کیا بھارت
میں جنھوں نے کہا تم CIA دفتر میں بتائیں گے۔ پھر مجھے مار پیٹ کر لاک اپ
میں ڈال دیا۔ اور یہی گئے تم جس گاڑی میں تھے اس سے پھر سب برآمد ہوئی ہے
میں نے کیا سیری نہیں ہے مجھے نہیں معلوم۔ میں بھی آپ کی طرح ملزم ہوں اور تقاضہ
پٹلہ میں مدد فرمائیں۔ ایسے گندے کام کا تصور بھی نہیں کر سکتا ہوں۔
گاڑی میں دو اشخاص اور بھی سوار تھے۔ وہ اور سوزوئی اور اس کا ڈرائیور کہاں ہیں۔
جن کے بارے میں CIA والوں نے کہا تم وہ نینٹ تقاضہ میں بند مائیں تھے ایک دن
اور دو رات لاک اپ میں رکھ کر مارتے پیتے رہے اور تقاضہ نینٹ بھیج دیا۔

3: تقاضہ نینٹ میں میرے خلاف 90 کا مقدمہ درج ہوا ہے۔ اور تقاضہ نینٹ سٹاف
سے سوزوئی اور انہی سے اشخاص کے بارے میں پوچھا تو وہ اشخاص وہاں نام
تھے اور تقاضہ نینٹ تقاضہ آئے۔ بعدہ نینٹ سٹاف سے مزید معلوم ہوا کہ وہ
اشخاص شمشیر وغیرہ المعروف دودھ پتیاں تھے۔ پھر سب ذمہ میں
آیا کہ وہ لوگ مجھے جانتے تھے جنکو میں نہیں جانتا تھا۔ جنہوں نے
CIA ایبٹ آباد سے ملتا بھلت کر کے انتقام لیا ہے۔

4: اسٹل محمد سلیم جیروں MHC کے ماتحت اور اوڈنگزیب MHC کی زیر نگرانی تقاضہ پٹلہ

..... میں مدد خیر کی دیوٹی سر انجام دے رہا تھا کہ فوراً 28 کو فوجی سٹاف مقام
 نے فحشہ خواہی کے ذریعہ شہسیر وغیرہ سے 5 کلوگرام چرسا سرانجام
 اور مقدم عدلت 28/08/08 فیرم QCNESA قلعہ پلٹہ درہم ہوا۔ جسکا ملزمان
 مذکوران کو رخ تھا۔ بعد ازاں ملزمان مذکوران قلعہ فون کسرتے اور کہتے کہ آپ
 لوگوں نے اچھا نہیں کیا ہے۔ اور دھکیاں دیتے ہیں اپنا انتقام ضرور
 لیں گے۔

جناب: سائل کے ساتھ سر اسر زیادتی ہوئی ہے۔ سائل نے اہل حقیقت
 سے شکایتیں تحریر کر کے جناب کی خدمت میں پیش کالی ہے۔
 چونکہ ایشیہ شمالی نے اس روئے زمین پر ایک اعلیٰ مقام اور الامور
 سے نوازا ہے۔ جناب عرض ہے۔

سائل فیصلہ فیصلہ زمانہ غیر 544
 حال سندھ جیل مانسہرہ

7-5-2009

Attested
 Dsp HCO
 4-6-09

ATTESTED
 SUPERINTENDENT
 JAIL MANGHEHRA

بیان اذان ملک اعجاز ایس پی ایلٹ فورس آر پیڈر سپانس فورس ہزارہ ریجن نے بدریافت بیان کیا کہ بدوران قلم میں بطور انسپکٹر CIA ایبٹ آباد تعینات تھا کہ مورخ 09-04-2009 کو میں معہ ہمراہ نفری CIA سٹاف کے بسلسلہ ناکہ بندی فوارہ چوک نزد کچ جدید گلی ناکہ بندی کی ہوئی تھی کہ اسی دوران اڈہ کی جانب سے ایک شخص ہاتھ میں سیاہ رنگ کا بیگ پکڑے ہوئے آ رہا تھا۔ جونہی اس نے پولیس پارٹی کو دیکھا تو فوراً پیچھے کی طرف مڑ کر بھاگنے کی کوشش کی جسکو ہمراہی نفری نے قابو کر لیا پڑتال بیگ بذریعہ طارق محمود ASI صاحب کرائی۔ دوران تلاشی بیگ سے چرس 10 پیکٹ برآمد ہوئی جو بر موقع وزن کرنے پر 9500/1 گرام نکلی۔ شمار کرنے پر پیکٹ سے 14 پٹیاں نکلیں۔ ہر پٹی سے 5/5 گرام چرس علیحدہ کر کے برائے تجربہ بر موقع بند پارسلز ٹوٹل 140 پارسلز سر بہر تیار کر کے FSL پشاور اور باقی ماندہ 8800 گرام چرس کا پارسل نمبر 141 سر بہر تیار کر کے برائے ریکارڈ وجہ ثبوت کر کے مذکورہ کے خلاف مراسلہ بغرض قائمی مقدمہ ارسال تھا نہ کیا۔ جس پر مقدمہ علت نمبر 435 مورخہ 09-04-2009 جرم CNSA 99 تھا نہ کنیٹ درج رجسٹر ہوا۔ ابتدائی تفتیش کے دوران اس نے اپنے آپ کو پولیس ملازم ظاہر کر کے تھا نہ پھلڑا ہا سہرہ میں بطور مددگار تعینات ہونا بیان کیا۔ مزید اس سے اس بارے میں بھی گفت و شنید ہوئی کہ تمہارے ساتھ دیگر کوئی ملوث ہو تو میری ابتدائی تفتیش کے دوران اس نے اپنے ساتھ کسی بھی پولیس افسر کا شامل ہونا نہ تلا یا میرا ہی بیان ہے۔

Attested

Superintendent of Police
ELITE FORCE
Hazara Range Abbottabad

Superintendent of Police
Investigation Manshro

ج. ح. صاحبان انعام علیہ

- س۔ نہ ملزم اور اس پارٹی کے درمیان کتنا فاصلہ تھا؟
- ج۔ گفتہ توجہ میں درج ہے۔
- س۔ آپ دیکھیں اعلیٰ طبقہ کے لوگوں میں آپ کو کس قسم کا رویہ دیکھا گیا ہے؟
- ج۔ واقف ہوں۔
- س۔ کیا یہ بات درست ہے کہ میری لمبی خدمت کے دوران میں نے کبھی کوئی دفعہ توجہ کے لئے آواز اور دروازہ کھولا ہے؟
- ج۔ جی ہاں میں مدعی ہوں۔ لیکن گفتہ میں نے کہا ہے۔
- س۔ کیا وہی شخص جسکو ہم نے ASI کے طور پر ناکہ بندی میں لیا تھا وہ آپ کی گاڑی استعمال کرتا ہے؟
- ج۔ ہاں گورنمنٹ گاڑی ہے۔
- س۔ کیا کچھ بدستور عمل میں آنے سے پہلے اس کا مدعی نے اسے جاننے کی کوشش کی؟
- ج۔ (املہ میں) کوئی دفعہ درج ہے وہی ہے۔

1۔ کیا یہ بات درست ہے کہ وہاں دیکھیں اور میں لکھتی اور یہ سچ ہے دال میں کاسٹری ہے
 اور معمول کا کاروبار جاری تھا؟
 2۔ نقدی ذریعہ میں جو ذریعہ ہے وہی ہے۔
 3۔ آپ نے اس بیان میں کہا ہے کہ اس سے روایتی دلیلی کا ذکر نہیں کیا؟
 4۔ وہ گزرتا ہے میں میری
 5۔ یہ سب سے پہلے ہمارے پاس ہے، کاہنوں؟
 6۔ میری نئی کاہنوں کا
 7۔ کیا یہ بات درست ہے کہ وہ ذریعہ رات 9 بجے کا تھا؟
 8۔ ورنہ میں (کوئی) کا نام ذریعہ سے
 9۔ اس میں کاربند کیا تھا۔ کیا اس میں 10 اسٹین ہے؟
 10۔ اس کا رقبہ اس کا نام۔ خود تفریق میں ہے اس کا نام کیا ہے؟
 11۔ یہ ذریعہ ہمیں ہمارے اور دیگر ملک کیسے لکھتے تھے؟
 12۔ ہر ملک میں لکھتے تھے جو اس نئی کے ذریعہ کا نام تھا۔

فیصل زمان

بیان اڑاں ذوالفقار خان صدون حال DSP صدر سوات

آج مورخہ 2/1/18 بمسئلہ Denov انوائٹری اڑاں Ex کنٹریبل فیصل زمان فرم 544 حاضر
 دفتر DSP ملک اڑاں سسٹن ماہرہ آباد۔ اس وقت میں بطور SHO قضاہ ٹیکڑہ
 تعینات تھا۔ تاریخ 9/4/09 کو اٹھارہ دن انوائٹری آفیسر آباد سے قیام بندہ ماہرہ آباد
 کا مدد فرم فیصل زمان جن سے 10 لاکھ روپے پٹری گئی ہے۔ آپ نے فرم آفیسر آباد
 آفس میں فرم افکار لاہورہ بندہ ماہرہ آباد CIA آفس آٹھواں جہاں پور
 اٹھارہ دن انوائٹری CIA نے قیام بندہ ماہرہ فیصل زمان 544 سے (10) لاکھ روپے پٹری
 کی ہے۔ یہ بیانی ہے کہ جس میں اس نے مالیات قضاہ ٹیکڑہ سے افکار فرم کے
 مستورہ سے لائی ہے۔ جس میں وہیں قضاہ آفیسر کوالم مد فرم 12 روز تاریخ 9/4/09
 پارانہ ملکی ادائیگی میں پٹری کرنے پر پائل 995 گرام فرم مالیات سوات
 پایا جس پائل کے متعلق فیصل زمان 544 نے CIA سسٹری آفیسر آباد والوں کو بندہ ماہرہ
 جس قضاہ ٹیکڑہ کے مالیات سے لائی ہے۔ وہ پائل مالیات قضاہ ٹیکڑہ میں فرم قضاہ
 کنٹری آفیسر آباد والوں نے اس سے میں لاعلم ہیں جہاں میں پائل کا تعلق
 ہے۔ وہ مالیات قضاہ ٹیکڑہ میں فرم سوات ہے۔ میں نے یہی بیان سابقہ انوائٹری
 میں دیا ہے۔ دروست ہے۔ میرا ہی بیان ہے۔

ذوالفقار خان صدون حال DSP صدر

تاریخ 1

1 - 2 - 2018

NIL XX

Attested

Superintendent of Police
Investigation Manshro

چ - ندو و صاحب الزام علیہ
 [Signature]
 فیصل زمان

س۔ مہراؤ میں سے یہ کون سے مہراؤ ہیں؟

ج۔ مہراؤ تیزی کا پورا ہے۔ اور مہراؤ کے ہر 95000 ایم ٹی کے

س۔ جی ہاں۔ 10 ایکٹ کے 95000 ایم ٹی کے۔ اور مہراؤ میں سے مہراؤ کی آدھ مہراؤ؟

ج۔ ہر مہراؤ میں سے یہ وہی ہے۔

تعمیر زمان

مشترکہ بیانات

1- امجد خان نمبر 702 حال سٹیشن 14C نواح فیروز پور ایس ایف آباد

2- ڈاکٹر رحمان نمبر 636 حال سٹیشن DRG کیمٹی ایس ایف آباد

3- ضیافت خان نمبر 688 حال سٹیشن CTD ہزارہ سٹی ایس ایف آباد

تہ آج مورخہ 01/02/18 کو اپنے مشترکہ بیانات میں کہا کہ جو بیان شہرت خان 480/HC نے دیا ہے سچا نہیں وہی بیانات میں جو شکایت مبنی ہیں اور سچا ہے یہی بیانات صالح انٹراپری میں بھی لکھے جو درست ہیں۔

02/18

(Signature)
702/HC
0348-9596598

2a
(Signature)
01/02/18

636 ڈاکٹر رحمان
0322-8541599

688 ضیافت خان
0333-5067483

Attended
(Signature)
Superintendent of Police
Investigation Manshru

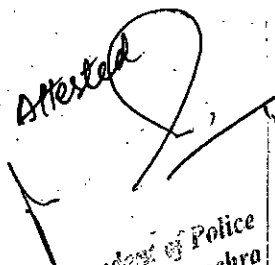
NIL / XX

پر 2 - نثار و منانہ الزام علیہ

(Signature)
نثار و منان

بیان آراء فیصل زمان نمبر 44 مستعدہ حال پولیس اسٹیشن مانسہرہ آج مورخہ 2018
 سلسلہ انٹرنیٹ طائر دفتر جناب S.P.O. جناب مالہوہ حاکم آیا میرا وہی بیان ہے
 کہ جو میں نے چارج شیٹ کے جواب میں جناب مالہوہ سے پوسٹل حالت میں سہ ماہی
 جناب ڈسٹرکٹ جیل مانسہرہ کو بھیجا تھا۔ میرا وہی بیان ہے کہ جو حقیقت
 پر مبنی ہے۔ اور درست ہے۔

فیصل زمان نمبر 44 حال پولیس اسٹیشن مانسہرہ
 1-2-18

Attested

 Superintendent of Police
 Investigation Manshra

ENQUIRY REPORT.

Vide order dated 21.11.2017, Service Tribunal Abbottabad Bench re-instated the accused official Ex- Constable Faisal Zaman and set the department at liberty to conduct denovo departmental proceedings against the accused official. Hence vide DIG Enquiry and Inspection letter No. 188-89/E&I dated 29.01.2018 directed the undersigned through DPO Mansehra to hold denovo departmental enquiry against EX-FC Faisal Zaman No.544. The Undersigned constituted the enquiry committee of the following officials.

1. Mr. Ashiq Hussain DSP Inv Mansehra.
2. Syed Ikhtlaq Hussain Shah Inspector legal Mansehra.
3. ASI Muhammad Iqbal Reader SP Inv: Mansehra.

In compliance of the order proper departmental proceeding has been initiated against the accused official Faisal Zaman to substantiate the charges leveled in the charge sheet to the effect that while posted as MM Police Station Phulra has involved himself in Case FIR No. 435 dated 09.04.2009 u/s 9C-CNSA PS Cantt Abbottabad.

During the enquiry proceedings accused official alongwith others official witnesses were summoned to appear before the enquiry committee to submit their statements which are discussed as follows.

1. Accused official FC Faisal Zaman stated that his reply to the charge sheet served upon him during the days of his imprisonment in District Jail Mansehra may be considered as his reply to the charge sheet as well as his statement during the enquiry proceedings. In his reply he negated the allegations leveled against him.
2. Inspector Ejaz Khan presently posted as SP Elite Force Hazara Region Abbottabad stated that on 09.04.2009 he alongwith CIA Staff was present near Fawara Chowk Abbottabad. he saw an unknown person holding a black bag in his hand, no sooner did accused official saw the police party he tried to escape from the spot but police party over powered him and during search of the bag 10 packets of Resin (Charas) recovered from the bag and the accused official was proceeded against under Section 9C-CNSA in PS Cantt Abbottabad.
3. Inspector Zulfiqar Jadoon presently posted as DSP Saddar Haripur stated that the relevant time he was posted as SHO PS Phulra and on 09.04.2009 Inspector Ejaz Khan CIA Abbottabad called him on his mobile phone and informed that accused official Faisal Zaman has been arrested by the CIA police and recovered about 10 Kgs Chars from his possession. On this information he recorded the report in DD No.12 dated 09.04.2009.
4. HC Shaukat No.480 presently posted in District Security Branch Abbottabad stated that on 09.04.2009 he alongwith other CIA Staff under the supervision of Inspector Ejaz Khan were present near Fawara Chowk Abbottabad. He further stated that they had arrested a suspicious person holding a black bag in his hand and during the search of bag about 9500 gram chars was recovered, the suspected person disclosed his name as Faisal Zaman and also disclosed that he is member of police force and performing duty as M.M Police Station Phulra.
5. Following officials were also summoned to appear before the enquiry committee and recorded their statements.


- a. HC Amjad No.702 presently posted IHC PS Mirpur Abbottabad.
- b. FC Zakir Rehman No.636 presently posted DRC Abbottabad.
- c. FC Ziafat Khan No.668 presently posted CTD Hazara Abbottabad.

All the above officials in their joint statement stated that the statement given the HC Shoukat may be considered as their statements. However accused official was asked to cross examine the aforementioned officials which he refused to do so. However he cross examine the 02 official witness namely Mr. Ejaz khan (SP Elite) and HC Shaukat NO. 480.

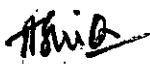
FINDING.

In view of the above the reply of the accused official as well as statements of the official witness have been gone through. Similarly the case file of Case FIR No. 435 dated 09.04.2009 u/s 9C-CNSA PS Cantt Abbottabad has also been thoroughly perused and found that huge quantity of narcotics i.e 9500 grams was recovered from the possession of accused official and trial court convicted the accused for the term of 15 years imprisonment with fine of Rs.100,000/- or in default of fine to further undergo one year simple imprisonment. The accused official preferred appeal against his conviction before the Peshawar High Court Abbottabad Bench. The honorable court vide order dated 25.01.2012 acquitted the accused by extending him benefit of doubt as to quantity of contraband chars.

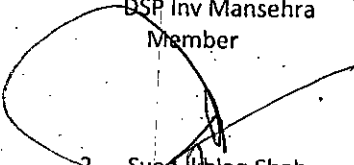
The Service Tribunal Abbottabad Bench reinstated the accused official on the ground of lacunas in the departmental proceedings i.e not giving the opportunity the cross examination to the accused official. The Service Tribunal Abbottabad Bench re instated the accused official without discussing the merits of the case as the acquittal of the accused in criminal case does not absolve the accused official from the act of moral turpitude . Hence the punishment awarded earlier to the accused official was genuine, therefore he is recommended for major punishment please.



Muhammad Suleman
Superintendent of Police,
Investigation Mansehra
Enquiry Officer



1. Ashiq Hussain
DSP Inv Mansehra
Member



2. Syed Ikhtiaq Shah
Inspector legal Mansehra
Member



3. ASI Muhammad Iqbal
Reader SP Inv
Member

Dismissed from service
for chus
2/5/18

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

In the matter of
Appeal No. 1221/2018

Faisal Zaman.....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:

- a. Contents incorrect and misleading; the appellant has been awarded penalty against the departmental rules and regulations for which law provides cause of action to approach this Honorable Service Tribunal for redress of grievance.
- b. Contents incorrect and misleading; the appellant has filed instant appeal according to procedure prescribed by law and rules governing the terms and conditions of appellant's service thus maintainable.
- c. Contents incorrect and misleading, all necessary parties have been arrayed in the instant appeal.
- d. Contents incorrect and misleading, no rule of estoppel is applicable in the instant case.
- e. Contents incorrect and misleading; the appellant has filed instant appeal according period prescribed by law and department rules is therefore well within time.
- f. Contents incorrect and misleading; the appellant has been awarded the penalty in violation of rules and regulations, thus instant appeal has been filed in according to law with clean hands.

ON FACTS:

Contents of para No.1 to 15 of the appeal are correct and the reply submitted to these paras by respondents in para-1 to 15 is incorrect and misleading hence denied.

GROUND:

All the grounds "A" to "I" 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 "I" 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


APPELLANT


(MOHAMMAD ASLAM TANOLI)
ADVOCATE HIGH COURT
AT HARIPUR

Dated: 17-06-2019

AFFIDAVIT:

I, Faisal Zaman S/O Shah Zaman appellant 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: 17-06-2019




Deponent/Appellant

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

In the matter of
Appeal No. 1221/2018

Faisal Zaman.....V/S..... .PPO/IGP KPK & Others
(Appellant) **(Respondents)**

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ADVOCATE HIGH COURT
AT HARIPUR

Dated: 17-06-2019

AFFIDAVIT:

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Dated: 17-06-2019




Deponent/Appellant

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 1745 /ST

Dated 14/10 2019

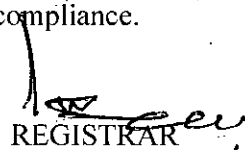
To

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

SUBJECT: -

JUDGMENT IN APPEAL NO. 1221/2018, MR. FAISAL ZAMAN.

I am directed to forward herewith a certified copy of Judgement dated 17.09.2019 passed by this Tribunal on the above subject for strict compliance.


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.