

176/2014

11.3.2015

Appellant with counsel and Addl. AG with Khawas Khan, SI (Legal) for the respondents present. The case need further clarification. Therefore, representative of the respondents is directed to produce enquiry reports alongwith other relevant record. To come up for order on 19.3.2015.



MEMBER



MEMBER

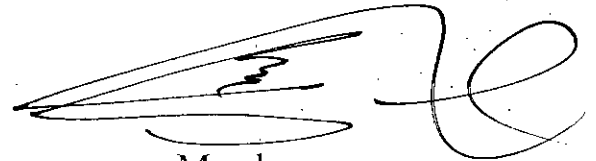
19.3.2015

Appellant with counsel and Mr. Muhammad Adeel Butt, Addl. AG with Khawas Khan, SI (Legal) for the respondents present. Arguments heard. Record perused. Vide our detailed judgment of to-day in connected Service Appeal No. 172/2014, titled "Khair-ur-Rahman Versus Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar etc.", This appeal is disposed of as per detailed judgment. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
19.03.2015.



Member



Member

21.01.2015

Since 20<sup>th</sup> January has been declared as public holiday by the provincial government, therefore, case to come up for the same on 2.2.2015.



READER

2.2.2015

Appellant with counsel and Mr. Muhammad Adeel Butt, AAG with Khawas Khan, SI (Legal) for the respondents present. Arguments heard. To come up for order on 26.2.2015.



MEMBER



MEMBER

26.2.2015

Appellant with counsel and Add. AG with Khawas Khan, SI (Legal) for the respondents present. Case is adjourned to 09.3.2015 for order.



MEMBER



MEMBER

09.3.2015

Counsel for the appellant and Addl. AG with Khawas Khan, SI (Legal) for the respondents present. The learned Member-II of the bench is on leave, therefore, case to come up for order on 11.3.2015.



MEMBER

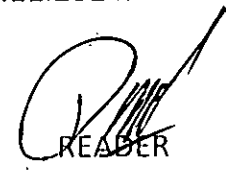
06.08.2014

Counsel for the appellant and AAG with Khawas Khan, SI (Legal) for the respondents present. Due to retirement of learned executive Member, the bench is incomplete. To come up for ~~ex-parte~~ arguments on 15.09.2014.

  
MEMBER

15.09.2014

Counsel for the appellant and Mr. Muhammad Adeel Butt, AAG with Khawas Khan, SI (Legal) for the respondents present. The learned Member (Judicial) is not working due to a recent order of the Hon'ble Peshawar High Court affecting his status as District & Sessions Judge. To come up as before on 25.11.2014.

  
READER

25.11.2014

Clerk to counsel for the appellant, and Mr. Muhammad Jan, GP with Khawas Khan, SI (Legal) for the respondents present. The Tribunal is incomplete. To come up for the same on 22.12.2014 along with connected appeals.

  
READER

22.12.2014

Counsel for the appellant and Mr Muhammad Jan, GP for the official respondents present. The Tribunal is incomplete. To come up for the same on 20.01.2015.

  
READER

28.3.2014.

Counsel for the appellant and Mr. Muhammad Jan, GP with Khawas Khan, SI (Legal) for the respondents present. Respondents need further time. To come up for reply/arguments on stay application on 14.4.2014.

MEMBER

MEMBER

14.4.2014.

Clerk to counsel for the appellant and AAG with Khawas Khan, SI (Legal) for the respondents present. Written reply on main appeal received. Copy handed over to clerk to counsel for the appellant. Representative of the respondents need time to file reply on stay application. Reply on stay application in the meantime. To come up for rejoinder and arguments on stay application on 8.5.2014.

MEMBER

8.5.2014.

Clerk to counsel for the appellant and Mr. Muhammad Jan, GP with Khawas Khan, SI (Legal) for the respondents present. Rejoinder received and copy handed over to the learned GP. To come up for arguments on 4.6.2014.

MEMBER

MEMBER

4.6.2014

Counsel for the appellant and AAG present. The learned AAG stated that he is not in possession of departmental record and representative of the respondents is absent to-day. To come up for arguments on 06.8.2014.

MEMBER

MEMBER

3. 21.02.2014

Counsel for the appellant present and submitted an application for fixing an early dated of hearing instead of 13.03.2014. Application is accepted. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. Against the order dated 23.12.2013, the appellant filed departmental appeal on 24.12.2013, which has been rejected on 06.02.2014, hence the present appeal on 14.02.2014. That the appellant has been treated under Police Rules-1975 for awarding the major punishment of compulsory retirement which is wrong law. He further contended that the impugned final order has been issued in violation of Rule-5 of the Civil Servant (Appeal) Rules-1986. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents. Appellant has also filed an application for suspending the operation of the impugned orders dated 06.02.2014 of respondent No.2 and dated 23.12.2013 of respondent No.3. Notice of application should also be issued to the respondents for reply/arguments. To come up for written reply on main appeal on 13.05.2014 as well as reply/arguments on application on 07.03.2014.

  
Member

4. 21.02.2014

This case be put before the Final Bench  for further proceedings.

  
Chairman

7.3.2014

Counsel for the appellant and AAG present. Fresh notices be issued to the respondents for reply/arguments on stay application on 28.3.2014.

  
MEMBER

  
MEMBER

Form- A

FORM OF ORDER SHEET

Court of: \_\_\_\_\_

Case No: 176/2014

S.No	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	14/02/2014	<p>The appeal of Mr. Dawar Khan presented today by Mr. Khaled Rehman Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR</p>
2	18-2-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>13-3-2014</u></p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 176 /2014

Dawar Khan, Ex-ASI  
.....Appellant

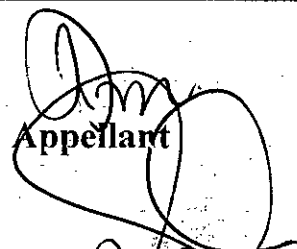
Versus

The PPO and others  
.....Respondents

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal			1-6
2.	Application for interim relief			7-8
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4.	Reply to the charge sheet and statement od allegations		B	11
5.	Statements recorded by enquiry officer		C	12-14
6.	Report of enquiry Officer		D	15
7.	Impugned order	10.12.2013	E	16
8.	Departmental appeal	12.12.2003	F	17-18
9.	Impugned appellate order	06.02.2014	G	19
10.	Wakalat Nama			

Through

  
Appellant

Khaled Dawar Khan  
Advocate, Peshawar  
Cell #: 0345-9337312

Dated: 14 / 02/2014

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 176 /2014

Dawar Khan, Ex-ASI,  
District Police, Swat District .....Appellant

Versus

1. The Provincial Police Officer,  
Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police,  
Malakand Region at Saidu Sharif Swat.
3. The District Police Officer,  
District Swat.....Respondents

**W.P. Provincial**  
**176**  
**14-2-14**

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**SERVICE APPEAL UNDER SECTION 4 OF THE  
KHYBER PAKHTUNKHWA SERVICE TRIBUNALS  
ACT, 1974 AGAINST THE IMPUGNED APPELLATE  
ORDER DATED 06.02.2014 VIDE WHICH THE  
DEPARTMENTAL APPEAL OF THE APPELLANT  
AGAINST THE IMPUGNED ORDER DATED  
10.12.2013 ISSUED BY RESPONDENT NO.3  
WHEREBY THE APPELLANT WAS IMPOSED UPON  
THE MAJOR PENALTY OF COMPULSORY  
RETIREMENT WAS REJECTED.**

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**PRAYER:**

On acceptance of the instant appeal, the impugned appellate order dated 06.02.2014 passed by Respondent No.2 and the impugned order dated 10.12.2013 passed by Respondent No.3 may graciously be set aside and appellant be re-instated into service with all back benefits.

---

Speed to-day

*14/2/14*



Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. That appellant joined the service of Police Force in the year 1991 as a Constable and later on promoted as Assistant Sub-Inspector by dint of his efficient performance of duties. Since his appointment, appellant has been performing his duties to the entire satisfaction of his high-ups.
2. That on 24.10.2013 appellant was issued a Charge Sheet and Statement of Allegations (*Annex:-A*) alleging therein involvement of the appellant in corruption. Since the charges were unfounded and baseless, therefore, appellant submitted his reply (*Annex:-B*) to Charge Sheet and Statement of Allegations thereby denying the allegations and explaining his position. The reply may kindly be considered an integral part of this appeal.
3. That thereafter an enquiry was conducted by Salim Khan Jadoon, DSP Barikot, who after recording some statements (*Annex:-C*) concluded that the appellant is innocent and recommended for filing of the enquiry vide Enquiry Report (*Annex:-D*).
4. That inspite of the recommendations of the Enquiry Officer for filing the enquiry and exonerating the appellant vide impugned order dated 10.12.2013 (*Annex:-E*) the competent authority imposed the major penalty of compulsory retirement upon the appellant with immediate

effect even without issuing final show cause notice.

5. That being aggrieved of the impugned order *ibid*, appellant preferred departmental appeal (*Annex:-F*) to Respondent No.2 but the same was also summarily rejected vide impugned appellate order dated 06.02.2014 (*Annex:-G*). Hence this appeal inter-alia on the following grounds:-

**Grounds:**

- A. That Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned orders, which are unjust, unfair and hence not sustainable in the eye of law.
- B. That appellant has been imposed upon the major penalty on the basis of no evidence. Not an iota of evidence/material has been brought to prove the allegations leveled against the appellant which fact has been admitted by the enquiry Officer himself in his enquiry report, therefore, the impugned order is arbitrary, unlawful and hence not sustainable in the eye of law.
- C. That Enquiry Officer has exonerated the appellant from the allegations leveled against him and has recommended to competent authority the filing of the enquiry and disciplinary proceedings against

the appellant but strange enough the competent authority neither ordered a second enquiry nor agreed with enquiry report of the Enquiry Officer and directly passed the impugned order without any lawful justification, therefore, the impugned order is void, arbitrary and hence not sustainable in the eye of law.

- D. That it is a settled legal principle that where major penalty is proposed then only a regular enquiry is to be conducted wherein the accused must be associated with all stages of the enquiry including the collecting of oral and documentary evidence in his presence and he must be confronted to the same and must be afforded an opportunity of cross-examining the witnesses. In the case in hand although the enquiry was conducted which was in favour of appellant but inspite of the same the appellant was imposed upon the major penalty. Thus the impugned orders are nullity in the eye of law and hence liable to be set aside.
- E. That the controversy was indeed factual in nature and the same could only be resolved by holding a regular enquiry. It is also a settled legal principle that in such eventuality where factual controversy is involved then only alternative left with the competent authority is to hold a regular enquiry into the allegations. Since no such enquiry had been contemplated, therefore, the passing of the impugned order is ill-founded and therefore not maintainable.

- F. That no meaningful opportunity of personal hearing was afforded to the appellant neither by the competent authority, nor even by the appellate authority which are the mandatory requirements of law. Thus appellant was condemned unheard as the action has been taken at the back of the appellant which is against the principle of natural justice.
- G. That appellant was not served with final show cause notice which is also the mandatory requirement of law hence the impugned order imposing the major penalty without show cause notice is void, coram-non-judice and as such not maintainable.
- H. That the appellant has served the Department for about 22 years and has consumed his precious life in the service and keeping in view his longstanding unblemished service the imposition of the major penalty in peculiar facts and circumstances of the case is harsh, excessive and does not commensurate with the guilt of the appellant.
- I. That the allegations leveled against the appellant are general and sweeping in nature and moreover fabricated without any legal and tangible footings nor the same have been substantiated by any solid evidence.
- J. That appellant would like to offer some other additional grounds during the course of arguments when the stance of the Respondents is known to

the appellant.

It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

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

Through

  
Appellant

  
Khaleel Rahman,  
Advocate, Peshawar

Dated: 10 / 02 / 2014

## BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. \_\_\_\_\_/2014

Dawar Khan .....Applicant/Appellant

Versus

The PPO &amp; others.....Respondents

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**Application for suspending the operation of the impugned orders dated 06.02.2014 of Respondent No.2 and dated 10.12.2013 of Respondent No.3 till the final disposal of the instant appeal.**

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Respectfully Sheweth,

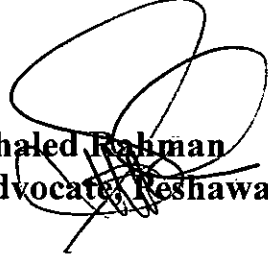
1. That the titled appeal is being filed today which is yet to fixed for hearing.
2. That the facts alleged and grounds taken in the body of appeal which may also be considered as an integral part of this application, make out an excellent prima facie case in favour of appellant who is quite sanguine of its success.
3. That in case the impugned orders are not suspended appellant will suffer irreparable loss moreover, the balance of convenience and inconvenience also lie in favour of the appellant.

It is therefore, humbly prayed that on acceptance of this application, the operation of the impugned orders dated 06.02.2014 of Respondent No.2 and dated

10.12.2013 of Respondent No.3 may graciously be suspended till the final disposal of the instant appeal.

  
Applicant/appellant

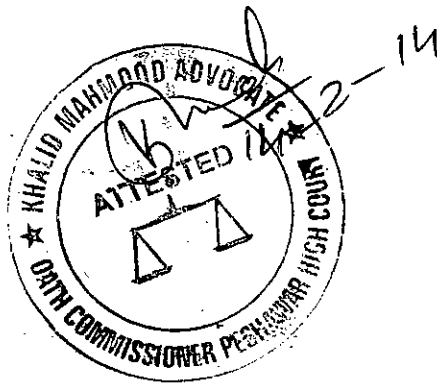
Through

  
Khaled Rahman  
Advocate, Reshawar.

Dated: 16 / 02 / 2014

**AFFIDAVITE**

Stated on oath that the contents of the application, are true and correct and nothing has been concealed from the Hon'ble tribunal.



  
Applicant/Appellant

CHARGE SHEET

ANNEX 'A'

9

I Mr. Sher Akbar S.St. P.S.P. District Police Officer, Swat as competent authority hereby charge you, A.S.I. Dawar Khan while posted as I/C Police Post Bihar PS K.K.S. as follows:-

It has been reported that you committed the following act / acts, which is / are gross misconduct on your part as defined in Rules 2 (iii) of Police Disciplinary Rules 1975.

You A.S.I. Dawar Khan while posted as I/C Police Post Bihar PS K.K.S. have been reported to be allegedly involved in corruption, which is a gross misconduct on your part.


2. By reasons of the above, you appear to be guilty of misconduct and rendered yourself liable to all or any of penalties specified in Rule-4 of the Disciplinary Rules 1975.

3. You are, therefore, required to submit your written reply within seven (7) days of the receipt of this Charge Sheet to the Enquiry officer.

4. Your written reply, 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 and in that case ex-parte action shall follow against you.

5. Intimate as to whether you desire to be heard in person or not.


6. A statement of allegations is enclosed.

  
District Police Officer, Swat

No. 206 /E.

Dated: 24/10 /2013

*Handwritten notes:*  
24/10/13  
206/E





DISCIPLINARY ACTION

10

Mr. Sher Akbar S.St. P.S.P. District Police Officer, Swat as competent authority is of the opinion that he A.S.I. Dawar Khan while posted as I/C Police Post Bihar PS K.K.S. has rendered himself liable to be proceeded against departmentally as he has committed the following acts/omissions as defined in Rule 2 (iii) of Police Rules 1975, as per Provincial Assembly of Khyber Pakhtunkhwa Notification No. PA/Khyber Pakhtunkhwa/ Bills/ 2011/ 44905 dated 16/09/2011 and C.P.O, K.P.K Peshawar Memo: No. 3037-62/Legal, dated 19/11/2011.

STATEMENT OF ALLEGATIONS

It has been reported that he while posted as I/C Police Post Bihar PS K.K.S. committed the following act / acts, which is / are gross misconduct on his part as defined in Rules 2 (iii) of Police Rules 1975.

That he A.S.I. Dawar Khan while posted as I/C Police Post Bihar PS K.K.S. has been reported to be allegedly involved in corruption, which is a gross misconduct on his part.

2. For the purpose of scrutinizing the conduct of the said officer with reference to the above allegations, DSP/Barikot, Swat is appointed as Enquiry Officer.

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

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

District Police Officer, Swat

No. 206 /EB, Dated Gulkada the, 24-10 2013.

Copy of above is forwarded to the:-

1. DSP/Barikot, Swat for initiating proceeding against the accused Officer/ Official namely A.S.I. Dawar Khan under Police Rules, 1975.
2. A.S.I. Dawar Khan Police Post Bihar PS K.K.S.:-  
With the direction to appear before the enquiry officer on the date, time and place fixed by the enquiry officer for the purpose of enquiry proceeding.

\*\*\*\*\*


9

حوالہ نمبر چارج ٹیکٹ نمبر 206/E ورنہ 24-10-013

جاریہ حساب 1991ء کے حسابات سے وہاں سے اس کی کاپی 1991ء سے قائم پولیس میں خدمات سر انجام دے رہا ہے۔ عہدے کے سلسلے میں اب تک بائیس سالہ عرصہ ملازمت میں خدمت گزار کے علاوہ دیگر شہرہ نامی میں خدمات سر انجام دی ہیں اور کسی وقت بھی ان کی بالائے حوصلگی کا موقع نہیں دیا گیا۔

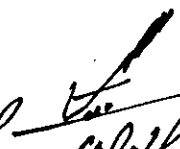
ASI کے طور پر ترقی نہ ہونے کے بعد تمام فرائض انجام دیے گئے ہیں۔ اس کے علاوہ پولیس میں دیگر فرائض بھی انجام دیے ہیں اور ترقیاتی کاموں میں بھی حصہ لیا ہے۔ اس کے علاوہ اس کی فہم اور ترقیاتی کاموں میں بھی حصہ لیا ہے۔ اس کے علاوہ اس کی فہم اور ترقیاتی کاموں میں بھی حصہ لیا ہے۔ اس کے علاوہ اس کی فہم اور ترقیاتی کاموں میں بھی حصہ لیا ہے۔

جہاں تک یہ طرف اشارے کی توقع اور الزامات کا تعلق ہے تو اس بار میں عرض ہے کہ اس کی ادنیٰ انتظامیہ کے چاہنے والے کے ساتھ ساتھ اس کی فہم اور ترقیاتی کاموں میں بھی حصہ لیا ہے۔ اس کے علاوہ اس کی فہم اور ترقیاتی کاموں میں بھی حصہ لیا ہے۔ اس کے علاوہ اس کی فہم اور ترقیاتی کاموں میں بھی حصہ لیا ہے۔

ANNEX 

(12)

تعمیراتی کاموں کے لیے درج ذیل تعیناتی سرکل افسر مد  
داروغہ ایچ ڈی ڈی، ایچ ڈی ڈی، ایچ ڈی ڈی کے خلاف جو  
ایچ ڈی ڈی کے خلاف کوئی شکایت موصول نہیں ہوئی ہے  
درج ذیل تعیناتی ایچ ڈی ڈی فروش ایچ ڈی ڈی سے سرانجام

  
5/11/2023

Atte

13

صباح عالی

معروف خدمتوں - آج سے شروع 2/1/2013 تا 7/1/2013

کاغذ آئیو انسٹیٹو SHO صاحب کے زیر نگرانی گزاری ہے۔ لہذا  
اس کے بارے میں۔ اگر اس دوران قید پر کوئی عوامی شکایت آتا ہے  
تو ذرا سے مسئلہ اپنے رائے پر کریں۔ مہربانی ہوگی

APM P. S. KICS

داورخان

صباح عالی

ASI داورخان میرے وقتے قیامی (مہینہ SHO صاحبہ پیدرہاں)  
میں کوئی گواہی کا امتیاز نہ تھا۔ اس دوران مذکورہ ASI  
کے خلاف کسی قسم کی عوامی شکایت نہیں ملی ہے۔

APM P. S. KICS  
5-11-2013

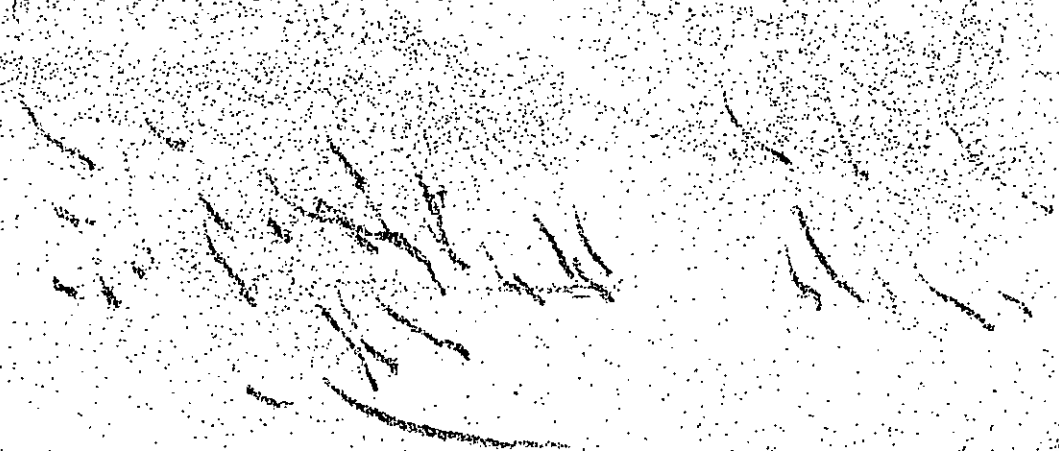
ATC

3/1/13

تصدیق کیجاتی معینہ مہر دوران تعیناتی SHO تھانہ چیمبرائی - اور خان آبی بازار  
جوئی گٹ اور بازار جوئی گٹ اور کی تعینات تھا۔ اس دوران مگورہ آبی کے خلاف تھے  
کسی قسم کی رسالت میں ملی ہے اور اپنی اور کفن نہیں خوش و خراب سے سرور نام دیا ہے

Manal  
SIPS. Muttai  
ASIB 07-11-2013

ATC



(15)

جای علیہ

خواجہ انکوائری برخلاف داور خان ASI شروع کردہ خواجہ خان کی ہے  
 مری 206/2 مورخ 10/13/2011 عیارم دفتر ضابطہ DPo کا سوات مسز من عدت  
 چونکہ مذکورہ ASI پر الزام ہے کہ آپ دوران ڈیوٹی کرشن میں ملوث  
 پایا ہے جو باخاتمہ انکوائری کے نتیجے میں مارک جو کہ سندھ انکوائری مذکورہ  
 ASI جو اس کیلئے اس میں بیانات کے مطابق کہ طلبہ کے مذکورہ کامیاب  
 ہیں اور اس کے علاوہ جان جان مذکورہ ASI کے بیانات سے جان  
 متعلقہ (HOD) سرمن کاں SI اور اس کے سربراہ اور DPo کے  
 بیانات کے لئے ہیں چونکہ مذکورہ ASI کو ٹرانا فٹنی اور دیگر  
 قرار پایا ہے۔ مذکورہ ASI کے کارکردگی میں حاصل کر کے لے انکوائری  
 کی گئی ہے۔ حالے مطابق مذکورہ ASI کے کارکردگی کافی بہتر ہیں  
 رہے کی گئی ہے۔ ان دوران انکوائری کے نتیجے میں یا مٹری طور پر کوئی ایسا  
 بیان نہیں دیا جس سے کرشن کا کوئی ثبوت مل سکا ہے  
 لہذا مذکورہ کے خلاف انکوائری داخل دست کر رہی

اس کے لئے  
 ایس ایچ جیو  
 ڈپو سرکل سرگودھا  
 5 نومبر سال 2013

As

ORDER

(16) ANNEX E

This order will dispose off the departmental enquiry against Assistant Sub-Inspector Dawar Khan has been reported to be allegedly involved in corruption which is a gross misconduct on his part.

He was issued Charge Sheet alongwith Statement of Allegations and DSP/Barikot, Swat was deputed as Enquiry Officer. The Enquiry Officer conducted proper departmental enquiry against the delinquent Officer and recorded the statements of all concerned officers. He provided ample opportunity to the delinquent officer to present justification for the charges leveled against him. After conducting proper departmental enquiry, the Enquiry Officer submitted his findings. He was heard in Orderly Room.

Having gone through the enquiry report and the relevant record in undersigned is of considered opinion that the delinquent officer bears notorious reputation of involvement in corrupt practices. Therefore, in exercise of the powers vested in the undersigned in Rules 2 (iii) of Police Disciplinary Rules-1975, I, Sher Akbar, S.St, P.S.P, District Police Officer, Swat as a competent authority, am constrained to award him the punishment of Compulsory Retirement from service with immediate effect.

Order announced.

District Police Officer Swat

O.B. No. 202

Dated 10/12 /2013.

\*\*\*\*\*

APD

To

The Deputy Inspector General of Police

Malakand Range at

Saidu Sharif, District Swat

ANNEX 'F'

(17)

Subject: Departmental appeal against the order O.B. No. 202 dated 10-12-2013 vide which major penalty of compulsory retirement was imposed on the appellant.

Respected Sir,

The appellant submits as under:

That the appellant was regular member of the police force was performing his duty as <sup>Assistant</sup> Sub-Inspector to the satisfaction of his authorities and the public as well.

That recently the appellant was issued charge sheet and statement of allegations, wherein, vague charges of corruption were alleged. This charge sheet and statement of allegation was replied and the charges specifically denied, being baseless and frivolous.

That shame inquiry was conducted in violation of the law and rules and as a result of which major penalty of compulsory retirement was imposed on the appellant, despite the fact that the appellant was never given the chance to be heard in person.

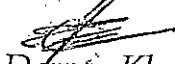
That the order mentioned above is passed in a very hush hush manner and in violation of the law and rules, hence liable to be set aside.

PD



It is, therefore, very respectfully prayed that on acceptance of this appeal the order impugned may be set aside and the appellant reinstated into service with all back benefits.

Appellant

  
Dawar Khan

12-12-013

18

ATC

Arms 9<sup>3</sup>

(19)

**OFFICE OF THE REGIONAL POLICE OFFICER, MALAKAND  
REGION, AT SAIDU SHARIF SWAT**

**ORDER:**

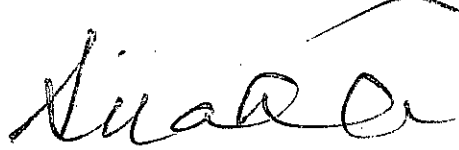
This order will dispose off the appeal preferred by Ex-ASI Dawar Khan of Swat District for reinstatement in service.

Brief facts are that the above named Ex-ASI while posted to Police Post Behar was involved in corruption. DSP Barikot Swat conducted proper departmental enquiry against him. During enquiry the Enquiry Officer recorded statements of concerned officer / official. The Enquiry Officer in his finding exonerated the delinquent officer from the charges and recommended that the enquiry may be filed, but the District Police Officer, Swat did not agree with finding report of the Enquiry Officer.

The applicant was called in Orderly Room by District Police Officer, Swat but he could not present any plausible defense. After completion of codal formalities of the enquiry he was found guilty of misconduct. Hence he was awarded major punishment of compulsory retirement from service under Police Rules 1975 by District Police Officer, Swat vide his office OB No. 202 dated 10/12/2013.

The appellant was called in Orderly Room on 06/02/2014 and heard in person, but he did not produce any substantive materials in his defense. Therefore I uphold the order of District Police Officer, Swat, whereby the appellant has been awarded major punishment for compulsory retirement from service.

Order announced.

  
(ABDULLAH KHAN) PSP  
Regional Police Officer,  
Malakand, at Saidu Sharif Swat

\*Nagi\*

No. 1106-7 /E,

Dated 6/2 /2013.

Copy for information and necessary action to the:-

1. District Police Officer, Swat with reference to his office Memo: No. 19070/E, dated 24/12/2013.
- ✓ 2. Ex-ASI Dawar Khan of Swat District.

\*\*\*\*\*

WAKALAT NAMA

IN THE COURT OF

Dear Begun

Appellant(s)/Petitioner(s)

VERSUS

Govt

Respondent(s)

I/We \_\_\_\_\_ do hereby appoint  
**Mr. Khaled Rehman, Advocate** in the above mentioned case, to do all or  
any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

AND hereby agree:-

- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this \_\_\_\_\_

Attested & Accepted by

Khaled Rehman,  
Advocate, Peshawar.

Signature of Executants

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No. 176 /2014.

Dawar Khan Ex-ASI District Police, Swat District Swat.

Appellant

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Inspector General of Police, Malakand Region, Saidu Sharif Swat.
3. The District Police Officer, Swat.

Respondents.

WRITTEN REPLY ON BEHALF OF RESPONDENTS.

1. Preliminary Objections.

1. That the appellant has got no Cause of action and locus standi to file the present appeal.
2. That the appeal is bad due to misjoinder and nonjoinder of necessary parties.
3. That the appeal is time barred.
4. That the appellant is estopped by his own conduct to file the instant appeal.
5. That the appellant has not come to the Tribunal with clean hands.
6. That this Hon'ble Tribunal has got no jurisdiction to entertain the present appeal.
7. That the instant appeal is not maintainable in its present form.
8. That the appellant concealed the material facts from this Hon'ble Tribunal.
9. That the appellant has been estopped by his own conduct to file the appeal.


2. REPLY ON FACTS.

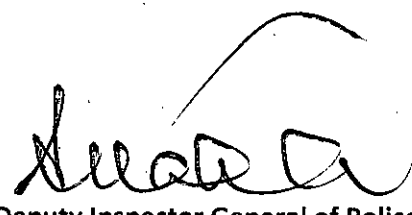
1. Para No. 1 of appeal, pertain to service record, hence needs no comments.
2. Para No. 2 of appeal is correct, to the extent that appellant has been served with charge sheet and summary of allegation, but the same were based on facts and for the purpose of securitizing the conduct of appellant proper departmental enquiry was conducted through DSP/Barikot, Swat. After the receipt of recommendations from Enquiry Officer the competent authority keeping in view the nature of charges, awarded the punishment of compulsory retirement from the service, which is according to law and rules.
3. Para No. 3 of appeal is incorrect DSP/Barikot conducted proper departmental enquiry and after conclusion of enquiry the competent authority after satisfying himself awarded proper punishment in accordance with rules which commensurate with the charges.
4. Para No 4 of appeal is correct to the extent of imposition of major punishment of compulsory retirement, however after receipt of enquiry report the competent authority gone through the enquiry report and also heard the appellant in person in Orderly room but could not produce any cogent evidence in his defense to prove his innocence, however the recommendations of enquiry officer is not binding upon the competent authority.
5. Para No. 5 of appeal is correct to the extent that appellant filed departmental appeal but the same was entertained by the respondent No. 2 and rejected the same being devoid of merits.

**GROUNDS.**

- a. Incorrect, appellant was treated in accordance with Law and Rules.
- b. Incorrect, the charges against the appellant were of serious in nature and the respondent has taken a lenient view by awarding major punishment of compulsory retirement.
- c. Incorrect, the competent authority has satisfied himself and after personal hearing of appellant major penalty was imposed, however the recommendations of Enquiry Officer are not binding upon the competent authority.
- d. Incorrect, proper departmental enquiry was conducted against the appellant and proper opportunity of defence was provided but the appellant could not prove himself as innocent.
- e. Incorrect, reply already given in para above.
- f. Incorrect, reply already given in para above.
- g. Incorrect, proper opportunity of personal hearing was provided to the appellant and all codel formalities were fulfilled.
- h. Incorrect, the respondents by keeping in view the long service of appellant had already taken lenient view and thereby awarded major punishment of compulsory retirement.
- i. Incorrect, the charges against appellant has been proved during departmental enquiry.
- j. The respondents also offered some additional grounds during the course of arrangement.

It is therefore prayed that the appeal of appellant may kindly be dismissed with cost being devoid of merits and without any legal substance.

1)   
 Provincial Police Officer,  
 Khyber Pakhtunkhwa, Peshawar  
 (Respondent No. 1)

2)   
 Deputy Inspector General of Police,  
 Malakand Region Saidu Sharif Swat  
 (Respondent No. 2)

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

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No. 176 /2014.

Dawar Khan Ex-ASI District Police, Swat District Swat.

Appellant

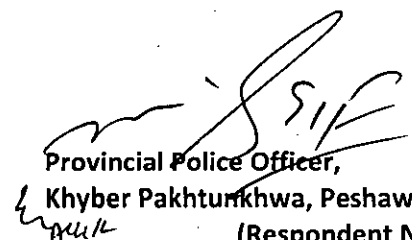
VERSUS

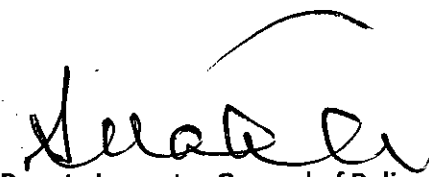
- 1) Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
- 2) The Deputy Inspector General of Police, Malakand Region, Saidu Sharif Swat.
- 3) The District Police Officer, Swat.

Respondents.

POWER OF ATTORNEY.

We, the undersigned No. 1 to 3 do hereby appoint Muhammad Ayaz DSP Legal Swat as special representative on our behalf in the above noted appeal. He is authorized to represent us before the Tribunal on each and every date fixed and to assist the Govt: Pleader attach to Tribunal in Submission of record.

1)   
Provincial Police Officer,  
Khyber Pakhtunkhwa, Peshawar  
(Respondent No. 1)

2)   
Deputy Inspector General of Police,  
Malakand Region Saidu Sharif Swat  
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Appellant


VERSUS

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- 2) The Deputy Inspector General of Police, Malakand Region, Saidu Sharif Swat.
- 3) The District Police Officer, Swat.

Respondents.

AFFIDAVIT:-

We the above respondents do hereby solemnly affirm on oath and declare that the contents of the appeal are correct/true to the best of our knowledge / belief and nothing has been kept secrete from the honourable Service Tribunal Khyber Pakhtunkhwa, Peshawar.

1)   
Provincial Police Officer,  
Khyber Pakhtunkhwa, Peshawar  
(Respondent No. 1)

2)   
Deputy Inspector General of Police,  
Malakand Region Saidu Sharif Swat  
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District Police Officer, Swat.  
(Respondent No. 3)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR****Service Appeal No. 176 /2014**

Dawar Khan.....Appellant

Versus

The PPO and others.....Respondents

---

**REJOINDER ON BEHALF OF APPELLANT IN  
RESPONSE TO REPLY FILED BY  
RESPONDENTS.**

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Respectfully Sheweth,

**Preliminary Objections:**

Preliminary objections raised by answering respondents are erroneous and frivolous, the detailed replies thereof are as under:-

- I. That valuable rights of the appellant have been infringed through the impugned orders which have been challenged through the instant appeal under the law, therefore, appellant has got a strong cause of action and for that matter locus standi to file the instant appeal.
- II. That all necessary and proper parties have been arrayed as Respondents in the instant appeal, hence the question of mis-joinder and non-joinder is misconceived.
- III. That the appeal is within time.



- IV&IX. That appellant has challenged the impugned order within the meaning of Section-4 of the Khyber Pakhtunkhwa Service Tribunal Acts, 1974. It is a settled principle that estoppel does not operate against the law.
- V. That appellant has approached the Hon'ble Tribunal with a bonafide claim inas much as he has been treated in violation of the law.
- VI. That being a matter relatable to the terms and conditions of service, the Service Tribunal has got exclusive jurisdiction in the matter.
- VII. That all codal formalities as per the Khyber Pakhtunkhwa Service Tribunal Act, 1974 have been complied with and therefore the appeal is in its correct form and shape.
- VIII. That all the facts relevant for the disposal of the instant appeal concisely have been incorporated in the appeal and nothing has been concealed from the Hon'ble Tribunal.

**Facts:**

1. Being not replied hence admitted.
2. Incorrect. The allegations were altogether ill-founded. Moreover, the departmental enquiry was also conducted in an improper manner. No material was available in support of the allegations, therefore, the Enquiry Officer declared the appellant as innocent and recommended the

filing of the enquiry but inspite of the recommendations, the impugned order was unlawfully issued which is against the law.

3. Incorrect. Once the Enquiry Officer exonerated the appellant then no justification arose to impose the major penalty upon the appellant.
4. Misconceived. Without Show Cause Notice and personal hearing, the impugned orders were passed in a highly illegal manner which has resulted in serious miscarriage of justice.
5. Being admitted needs no further clarification.

**Grounds:**

- A. Incorrect. The appellant was not treated in accordance with law and rules on the subject.
  - B. Incorrect. The allegations were without any legal basis nor the same were established, therefore, the imposition of major penalty is without lawful authority and hence not maintainable.
  - C. Misconceived. No opportunity of personal hearing has been provided to the appellant. The recommendations of the Enquiry Officer are binding upon the competent authority.
  - D. Misconceived. The Departmental enquiry has been conducted irregularly and in violation of the rules, therefore, no punishment can be based upon the same.
- E&F. Being not replied hence admitted.

- G. Incorrect. No opportunity of personal hearing as well as defence was given to the appellant nor other formalities have been complied with.
- H. Misconceived. No leniency has been shown to the appellant inas much as major penalty of compulsory retirement has been imposed upon the appellant.
- I&J. Incorrect hence denied.

It is, therefore, humbly prayed that the reply of answering Respondents may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

Through

Appellant

**Khaled Rahman**  
Advocate, Peshawar

Dated: 16 /04/2014

**Affidavit**

I, Khaled Rahman, Advocate, as per instructions of my client, do hereby affirm and declare on oath that the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Deponent



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 176 /2014

Dawar Khan.....Appellant

Versus

The PPO and others.....Respondents

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Advocate, Peshawar

Dated: 16 /04/2014

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Deponent

Service Appeal No. 176/2014

Dawar Khan.....Appellant

Versus

The PPO and others.....Respondents

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Through

Appellant

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Advocate, Peshawar

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Affidavit

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Deponent