

01.07.2019

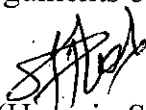
Counsel for the appellant present. Mian Amir Qadir, DDA for respondents present. The learned counsel for the appellant seeks adjournment. Adjourned Case to come up for arguments on 07.10.2019 before D.B at camp court Swat.

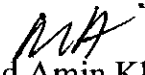

Member


Member
Camp Court Swat

07.10.2019


Counsel for the appellant and Mr. Anwar-ul-Haq, Deputy District Attorney for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 02.12.2019 for arguments before D.B at Camp Court Swat.



(Hussain Shah)
Member
Camp Court Swat


(Muhammad Amin Khan Kundi)
Member
Camp Court Swat

02.12.2019

Appellant absent. Learned counsel for the appellant absent. Mr. Riaz Paindakheil learned Assistant Advocate General present. Case called but neither the appellant nor his counsel turned up. Consequently the present service appeal is hereby dismissed in default. No order as to costs. File be consigned to the record room.



(Ahmad Hassan)
Member
Camp Court, Swat


(Muhammad Hamid Mughal)
Member
Camp Court, Swat

ANNOUNCED.
02.12.2019

08.01.2019

Clerk of counsel for the appellant present. Mr. Khawas Khan, S.I (Legal) alongwith Mr. Mian Amir Qadir, District Attorney for the respondents present. Written reply on behalf of respondents not submitted. Learned District Attorney requested for further adjournment. Adjourned. To come up for written reply/comments on 05.03.2019 before S.B at camp court Swat.


(Muhammad Amin Khan Kundi)
Member
Camp Court Swat

05.03.2019

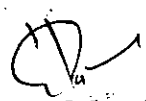
Appellant with counsel present. Mian Amir Qadir, District Attorney alongwith Mr. Khawas Khan, SI (Legal) for respondents present. Written reply/comments submitted which is placed on file. Case to come up for rejoinder and arguments on 06.05.2019 before D.B at camp court, Swat.


Member
Camp Court, Swat

06.05.2019

Learned counsel for the appellant and Mr. Mian Amir Qadir learned District Attorney alongwith Mr. Khawas Khan SI for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 01.07.2019 before D.B at Camp Court, Swat.


Member


Member
Camp Court Swat

05.10.2018


Counsel Mr. Imdadullah Advocate present and heard in limine.

Contends that the respondents deprived the appellant from his due right of back benefits at the time of his adjustment as ordered by this Tribunal in the previous judgment.

Points raised need consideration. The appeal is admitted to regular hearing subject to all legal objections, if raised by the respondents. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to the respondents. To come up for written reply/comments on 03.12.2018, before the S.B at camp court, Swat.

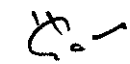
Appellant Deposited
Security & Process Fee




Chairman
Camp court, Swat

03.12.2018

Learned counsel for the appellant and Mr. Usman Ghani learned District Attorney alongwith Mr. Muhammad Siraj Inspector present. Written reply not submitted. Representative of the respondents seeks time to furnish written reply/comments. Granted. To come up for written reply/comments on 08.1.2019 before S.B at Camp Court Swat.

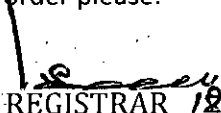


Member
Camp Court, Swat

Form- A

FORM OF ORDER SHEET

Court of _____

Case No: _____ 1167/2018 _____

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	18/09/2018	<p>The appeal of Mr. Fawad Khan presented today by Mr. Aziz-ur-Rehman 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 18/9/18 </p>
2-	24-9-2018	<p>This case is entrusted to touring S. Bench at Swat for preliminary hearing to be put up there on <u>05-10-18</u></p> <p style="text-align: center;">  CHAIRMAN </p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1167 of 2018

Fawad Khan Constable No. 2663, Swat Police, District Swat.

...Appellant

VERSUS

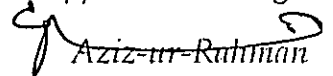
The Provincial Police Officer Khyber Pakhtunkhwa, Peshawar and Others.

...Respondents

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7.	Copy of the Departmental Appeal	D	18-21
8.	Copy of the Order dated 13-04-2017	E	22
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Appellant Through


Aziz-ur-Rahman

Advocate Swat

Office: Khan Plaza, Gulshone Chotok,
Mingora Swat, Cell 0333 929 7746

1/

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1167 of 2018

Fawad Khan Constable No. 2663, Swat Police, District
Swat.

...Appellant **Khyber Pakhtunkhwa
Service Tribunal**

VERSUS

Diary No. 1448

Dated. 18/9/2018

1. The Provincial Police Officer Khyber Pakhtunkhwa,
Peshawar.
2. The Regional Police Officer, Malakand, Saidu
Sharif, District Swat.
3. The District Police Officer, Gulkada, District Swat.

...Respondents

Filed to-day

Registrar

18/9/18

SERVICE APPEAL UNDER SECTION 4
OF THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974
AGAINST THE ORDER O.B. NO. 87
DATED 24-05-2018 TO THE EXTENT OF
WITHHOLDING THE BACK BENEFITS,
WHEREBY THE APPELLANT IS
REINSTATED INTO SERVICE, BUT
WITHOUT GRANTING BACK
BENEFITS AGAINST THE LAW, RULES
AND SHARIAH, FEELING AGGRIEVED
OF THE SAME THE APPELLANT
PREFERRED A DEPARTMENTAL
APPEAL, BUT THE SAME WAS NOT
RESPONDED TO DESPITE THE LAPSE
OF STATUTORY PERIOD OF TIME.

2/

Prayer:

That on acceptance of this service appeal the order impugned may be modified to the extent that the back benefits for the period the appellant remained terminated i.e. from 13-10-2016 till 24-05-2018 be released with all consequential benefits.

Respectfully Sheweth:

Facts:

- i. That the appellant joined the Police Force as Constable and was performing his duties as such to the satisfaction of both the authorities and the general public at large and no complaint has ever been made against the appellant.*
- ii. That the appellant was falsely involved in a criminal case vide FIR No. 430 dated 22-06-2016 under sections 9C CNSA. Copy of the FIR is enclosed as Annexure "A".*
- iii. That on the basis of the said FIR a shame inquiry was conducted against the appellant and as a result of the said farce and predetermined inquiry the major penalty of dismissal from service was imposed upon the appellant vide order O.B. No. 175 dated 13-10-2016. Copy of the order dated 13-10-2016 is enclosed as Annexure "B".*
- iv. That mean while the appellant got acquitted vide judgment dated 14-03-2017 by the Court of competent jurisdiction and that too after proper*

evaluation of the record and evidence produced by the prosecution. Copy of the judgment dated 14-03-2017 is enclosed as Annexure "C".

- v. That the appellant feeling aggrieved of the order of dismissal preferred departmental appeal to the respondent No. 2 for the redressal of is grievance, but the same was also filed vide order No. 3560/E dated 13-04-2017, received on 18-04-2017, in a very mechanical manner without fulfilling the codal formalities neither adopting the due course of law nor properly associating the appellant with the so called inquiry. Copy of the departmental appeal is enclosed as Annexure "D" and that of the order dated 13-04-2017 is enclosed as Annexure "E", respectively.
- vi. That the appellant filed a service appeal before this honourable tribunal bearing No. SA 406/2017 decided on 06-03-2018, for proper order in a de novo inquiry by the authority. Copy of the judgment dated 06-03-2018 is enclosed as Annexure "F".
- vii. That in light of the judgment of this honourable tribunal the appellant was firstly reinstated into service temporarily vide order O.B. No. 68 dated 23-04-2018 and finally was reinstated vide order O.B. No. 87 dated 24-05-2018, but withholding the back benefits against the law, rules and Shariah. Copy of the order dated 23-04-2018 is enclosed as Annexure "G" and that of the order

dated 24-05-2018 is enclosed as Annexure "H",
respectively.

- viii. That feeling aggrieved of the same the appellant filed a departmental appeal, but the same was not responded to despite the lapse of statutory period of time, hence this service appeal on the following grounds. Copy of the departmental appeal is enclosed as Annexure "I".

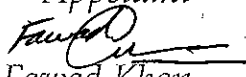
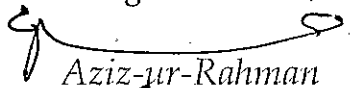

Grounds:

- a. That the appellant has never been associated in the mode and manner provided by the law neither has his defence version been considered at all for no valid reasons. Moreover the evidence, if any, used against the appellant was never showed to the appellant neither was the appellant afforded to cross examine the witnesses if any very produced at all, thus the appellant has not been treated in accordance with the law and rules.
- b. That no inquiry is ever conducted in the mode and manner required under the law, rather was a shame and farce inquiry and that too with a pre-decided conclusion, despite the fact that penalty of dismissal from service has been imposed as a result of the so called farce inquiry, thus the appellant has been discriminated as well.
- c. That respondents have used their official authority in a very arbitrary, mechanical and colourful manner to the detriment of the appellant:

- d. That the appellant has been condemned as unheard.
- e. That the order impugned is made in violation of the judgment of this honourable tribunal.
- f. That the appellant has remained jobless during this whole period.
- g. That the appellant has not committed any act of commission or omission which may constitute any offence under any law.

It is, therefore, very respectfully prayed that on acceptance of this appeal the impugned order may very kindly be modified to the extent of granting all back / consequential benefits to the appellant for the period he was kept out of the service.

Any other relief deemed appropriate in the circumstances and not specifically prayed for may also very kindly be granted in the circumstances.

Appellant

Fawad Khan
Through Counsels,

Aziz-ur-Rahman

Imdad Ullah
Advocates Swat

6/

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____ of 2018

Fawad Khan Constable No. 2663, Swat Police, District
Swat.

...Appellant

VERSUS

The Provincial Police Officer Khyber Pakhtunkhwa,
Peshawar and Others.

...Respondents


AFFIDAVIT

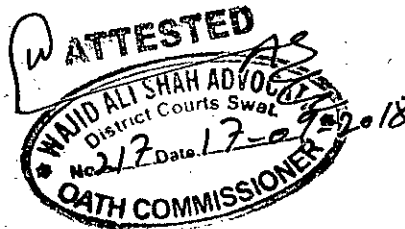
It is solemnly stated on Oath that all the contents of
this service appeal are true and correct to the best of my
knowledge and belief and nothing has either been
misstated or kept concealed before this Honourable
Tribunal.

Deponent


Fawad Khan

Identified By:


Imdad Ullah
Advocate Swat



7/

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____ of 2018

Fawad Khan Constable No. 2663, Swat Police, District
Swat.

...Appellant

VERSUS

The Provincial Police Officer Khyber Pakhtunkhwa,
Peshawar and Others.

...Respondents

ADDRESSES OF THE PARTIES

Appellant:

Fawad Khan Constable No. 2663, Swat Police, District
Swat.

Respondents:

1. The Provincial Police Officer Khyber Pakhtunkhwa,
Peshawar.
2. The Regional Police Officer, Malakand, Saidu
Sharif, District Swat.
3. The District Police Officer, Gulkada, District Swat.

Appellant
Through Counsel,

Aziz-ur-Rahman
Advocate Swat

ت جرم قابل دست اندازی پولیس کارپوریشن لاہور کے تحت ۱۵۴ ریڈو ۱۷۵۲ مجموعہ ضابطہ فوجداری

ضلع سوات

8/

تاریخ 22/7/22 بوقت 21:30 بجے

430 -

تاریخ 22/7/22 بوقت 21:30 بجے		تاریخ 22/7/22 بوقت 22:10 بجے		تاریخ 22/7/22 بوقت 23:00 بجے	
نام شخصیت عام خاندان SHO سکونت		نام شخصیت عام خاندان SHO سکونت		نام شخصیت عام خاندان SHO سکونت	
سوائل نمبر 0345-6046460		سوائل نمبر 0345-6046460		سوائل نمبر 0345-6046460	
9CCNSA		9CCNSA		9CCNSA	
ذات اطلاع دہندہ مستغیث		ذات اطلاع دہندہ مستغیث		ذات اطلاع دہندہ مستغیث	
بھیت جرم (معدومہ) حال اگر کچھ لیا گیا ہو۔		بھیت جرم (معدومہ) حال اگر کچھ لیا گیا ہو۔		بھیت جرم (معدومہ) حال اگر کچھ لیا گیا ہو۔	
عے وقوعہ فاصلہ تھانہ سے اور سمت راستہ اونڈہ لطف کوٹ نزد خانہ ملزم واقع بلوگرام فاصلہ قریب 3 کلومیٹر طائف		عے وقوعہ فاصلہ تھانہ سے اور سمت راستہ اونڈہ لطف کوٹ نزد خانہ ملزم واقع بلوگرام فاصلہ قریب 3 کلومیٹر طائف		عے وقوعہ فاصلہ تھانہ سے اور سمت راستہ اونڈہ لطف کوٹ نزد خانہ ملزم واقع بلوگرام فاصلہ قریب 3 کلومیٹر طائف	
م سکونت ملزم		م سکونت ملزم		م سکونت ملزم	
1 CNIC فرمان اللہ ولد محمد اللہ سکونت بلوگرام		1 CNIC فرمان اللہ ولد محمد اللہ سکونت بلوگرام		1 CNIC فرمان اللہ ولد محمد اللہ سکونت بلوگرام	
2 CNIC 0341-1191271 سوائل نمبر 15602-0606050 سکونت		2 CNIC 0341-1191271 سوائل نمبر 15602-0606050 سکونت		2 CNIC 0341-1191271 سوائل نمبر 15602-0606050 سکونت	
3 CNIC سوائل نمبر		3 CNIC سوائل نمبر		3 CNIC سوائل نمبر	
انی جو تفتیش کے متعلق کی گئی اگر اطلاع		انی جو تفتیش کے متعلق کی گئی اگر اطلاع		انی جو تفتیش کے متعلق کی گئی اگر اطلاع	
ہ کرنے میں توقف ہوا ہو تو وجہ بیان کرو		ہ کرنے میں توقف ہوا ہو تو وجہ بیان کرو		ہ کرنے میں توقف ہوا ہو تو وجہ بیان کرو	
سے روانگی کی تاریخ و وقت		سے روانگی کی تاریخ و وقت		سے روانگی کی تاریخ و وقت	
برسر مدگی مراسلہ مقدمہ قائم کیا جاتا ہے۔		برسر مدگی مراسلہ مقدمہ قائم کیا جاتا ہے۔		برسر مدگی مراسلہ مقدمہ قائم کیا جاتا ہے۔	
م سہیل ڈاک		م سہیل ڈاک		م سہیل ڈاک	

ابتدائی اطلاع نیچے درج کرو۔ بوقت صدر ایک تحریری مراسلہ
 حوالہ قبیل عام خان SHO بہ نسبت کینل یا سر علی مر 2525 موصول ہو کر متن ذیل
 پر خدمت آفیسر اخبار نے خانہ رحیم آباد، موبائل گنت پر مقام بانی ماس جو کہ موجود تھا
 قریب میں چرس فروخت کر رہا ہے۔ اطلاع کے پیش نظر پوراہ عمر سیاب خان ASI
 دیگر نفری پولیس کے مقام بالا اکثر مذکورہ فرمان اللہ ولد محمد اللہ ساکن محلہ رنجوگٹ
 بلوگرام موجود پا کر چکی جا تہ تلاشی عمل میں لائی جا کر حکم قبضہ کے لیے لڑھا سے
 پلاسٹک کے قند میں بند چرس برآمد ہو کر چرس سیاہ، سرخ چھوٹے ڈارکھلی میں
 لپیٹی ہوئی ہے۔ چھیلی پر انگریزی حروف میں (natural coppee) لکھا ہوا ہے۔ چرس
 وزن کرنے پر 1056 گرام نکلی جس سے باج گرام چرس برائے ملوٹ تجزیہ ASI نے
 بارسل 10 میں بند کرنے جبکہ بقایا 1045 گرام چرس علیہ بارسل 10 میں بند کیے
 بارسلوں پر 3/3 عدد ہوا پر یہ اسم "M" ثبت کیے۔ چرس بروئے فرد قبضہ پولیس
 میں کرنے ملزم کو جرم الا کا مرتبہ پا کر حسب ضابطہ گرفتار کیا گیا۔ مراسلہ لغز
 قایم مقدمہ بہ نسبت کینل یا سر علی مر 2525 ارسال تمام ہے۔ شعبہ انٹرنی گیشن کو قضیت
 حوالہ کیا جائے۔ مراسلہ گزارش ہے۔ SHO قبیل عام خان SHO خانہ رحیم آباد 22/7/22
 کارروائی خانہ بہ کس آمدہ مراسلہ صرف صرف درج صدر ہو کر میر جہا جرم فوق حاکم
 کرتے فضل میر جہا اصل مراسلہ، فرد عضو ضکی، کارڈ گرفتاری ملزم مراد قضیت حوالہ
 اخبار شعبہ قضیت کیا جاتا ہے میر جہا گزارش ہے۔

(محمد اقبال)

SI-PS-R.Abad

Attested

Advocate

ORDER

Annexure B

9/

This order will dispose off the departmental enquiry conducted against Constable Fawad Ali No.2663 that he while posted to Police Station Ghalegay was found involved with Narcotic Peddler and also smuggle of Chars/Hashish from Batkhela to his local area. Which amount gross misconduct on his part. As per report of SHO Police Station Rahimabad dated 30-03-2016.

He was issued Charge Sheet alongwith statement of Allegations and SDPO/Matta was deputed as Enquiry Officer. The Enquiry Officer conducted proper departmental enquiry against the delinquent Constable and recorded the statements of all concerned officers. He has provided ample opportunity to the delinquent Constable to defense the charges rendered by him. After conducting proper departmental enquiry, the Enquiry Officer submitted his findings wherein he intimated that the allegations leveled against him are baseless and not proved during enquiry, therefore, recommended for appropriate orders. The findings report of Enquiry Officer (SDPO/Matta) was perused and found unsatisfactory and SDPO/City was deputed to conduct denovo enquiry into the allegations leveled against him. The Enquiry Officer (SDPO/City) conducted denovo enquiry into the allegations leveled against him, recorded the statements of all concerned and submit his findings report wherein the Enquiry Officer intimated that the allegations leveled against Constable Fawad Ali No.2663 for drug peddling/narcotics smuggling are proved during denovo enquiry, while the delinquent Constable was also involved in case vide FIR No.430 dated 22-06-2016 u/s 9C CNSA Police Station Rahimabad and recommended for appropriate punishment. He was also called in Orderly Room on 13-10-2016 but he did not submit any plausible defense for the charges leveled against him.

Having perused his service record, it was patently evident that the delinquent Constable Fawad Ali No.2663 is a black stigma on the face of Police force. Forgoing in view the undersigned is of considered opinion that there are no chances that Constable Fawad Ali No.2663 will become an efficient, devoted and honest Police officer in future. His further retention in service is bound to affect the discipline of the entire force. Therefore, in exercise of the powers vested to the undersigned under Rules 2 (iii) of Police Disciplinary Rules-1975, I, Muhammad Saleem Marwat, PSP, District Police Officer, Swat as a competent authority, am constrained to award him the punishment of dismissal from service with immediate effect.

Order announced.

District Police Officer, Swat

O.B. No. 175.

Dated 13-10-2016.

Attested
Inded
Advocate

Annexure C 10/

IN THE COURT OF SYED OBAID ULLAH SHAH
ADDITIONAL SESSIONS JUDGE-VI/JUDGE SPECIAL COURT/
IZAFI ZILLA QAZI, SWAT

CASE NO. 46/3 CNSA OF 2016

Date of institution: 21.09.2016
Date of decision: 14.03.2017

The State

...VERSUS...

- 1) Farman Ullah son of Hamid Ullah,
- 2) Fawad Khan son of Zoor Mohammad Khan, residents of Mohallah Ranjo Gat, Balogram, District Swat.

... (Accused Facing Trial)

Case FIR No.430, Dated: 22.06.2016
Under Section 9(c)CNSA,
Police Station Rahim Abad, District Swat

JUDGMENT

14.03.2017

Accused Farman Ullah and Fawad Khan faced trial in case FIR No. 430 dated 22.06.2016, registered under section 9(c) CNSA, Police Station Rahim Abad, District Swat.

The brief background of the present case is that on spy information Mujeeb Alam Khan SHO alongwith other police contingent proceeded to the spot and found accused Farman Ullah at Mohallah Ranjo Gat Balogram and during his personal search, recovered a polythene bag containing Chars weighing 1050 grams, out of which 5 grams were separated and sealed into parcel No.1 for sending to FSL

[Handwritten Signature]
Additional Sessions Judge
Izafi Zilla Qazi-VI, Swat.

Attested
[Handwritten Signature]
Advocate

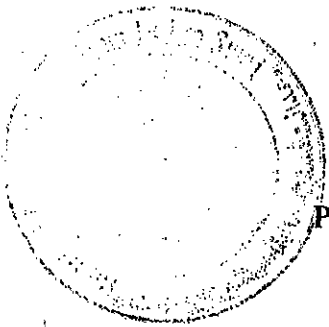
14 (8)

while the remaining *charas* was sealed into parcel No.2. The accused was taken into custody and *Murasilla* in this respect was drafted and sent to Police Station for registration of FIR, hence, the present case. During interrogation of accused Farman Ullah, accused Fawad Khan was also charged in the instant FIR for the commission of the offence.

After completion of investigation, complete challan u/s 173 Cr.PC against the accused was sent up for trial. The accused were summoned who being on bail attended the Court and accordingly they were supplied with copies of relevant documents within the meaning of section 265-C Cr.PC. Charge was framed to which they pleaded not guilty and claimed trial, so the case was posted for prosecution evidence. Prosecution in order to substantiate its case produced and examined as many as nine (09) witnesses. The gist of the prosecution evidence is as under:-

PW-1: Ismail constable No.103, deposed that he has handed over parcel containing 05 grams of *Chars* along with *Rahdari* receipt and copy of FIR, to FSL for analysis.

PW-2: Aurangzeb Khan SI, has conducted investigation in the instant case, he prepared site plan ExPW-2/1, obtained police custody from competent court vide application ExPW-2/2, prepared pointation memo ExPW-2/3, captured photographs ExPW-2/4 of pointation process. Charged accused Fawad Khan and issued *parwana* ExPW-2/5. Arrested accused Fawad and issued his card of arrest ExPW-2/6 and on his



Fawad Khan
Additional Sessions Judge
Qazi Zilla Qazi-VII
13/07/77

Attested
Under
Advocate

12/

pointation recovered *Chars* weighing 155 gram, separate 05 grams for FSL and sealed the remaining 150 grams ExPA and took into possession vide memo ExPW-2/7, prepared sketch of recovery ExPW-2/8. On 24.06.2016 vide application ExPW-2/9 he produced accused Farman Ullah for recording his statement u/s 164/364 Cr.PC before competent Court, who on denial was sent to judicial lockup. He has also captured photographs ExPW-2/10 & ExPW-2/11 of the proceedings of pointation of accused Fawad Khan. On 25.06.2016 vide application ExPW-2/13 he has produced accused Fawad Khan for recording statement u/s 164/364 Cr.PC before competent court of law, who on denial was sent to judicial lockup. On completion of investigation he handed over case file to SHO for submission of *Challan*. On receiving FSL reports ExPW-2/14 & ExPW-2/15, he placed the same on file.



PW-3: Hamid Iqbal Khan SI, deposed that he incorporated the contents of *Murasila* into FIR ExPW-3/1.

PW-4: Ayaz constable No. 1283, is the marginal witness of recovery memo ExPW-2/7. He has also taken samples to FSL Peshawar.

PW-5: Mujib Alam Khan SHO, deposed and narrated the contents of *Murasila* ExPW-5/3 and sent it to

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Additional Sessions Judge
12th Zilla Gazi-196/5/17

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Advocate

Police Station. He recovered 1050 grams *Chars* from accused Farman Ullah, out of which 5 grams was separated and sealed into parcel No.1 for sending to the FSL while remaining *Chars* ExP-1 was taken into possession vide recovery memo as ExPW-5/1. He also prepared card of arrest ExPW-5/2. On completion of investigation he submitted complete Challan Ex.PW-5/4.

PW-6: Umar Seyab ASI, deposed that he is marginal witness of recovery memo ExPw-5/1.

PW-7: Haider Ali constable No.2201, entered into witness box and stated that he carried parcel containing 05 grams *Chars* to the FSL, Peshawar.

PW-8: Yasar Ali No. 2525, deposed that Mujab Alam SHO has handed over *Murasila*, which was taken to police station and handed over to Muharrir of P.S.

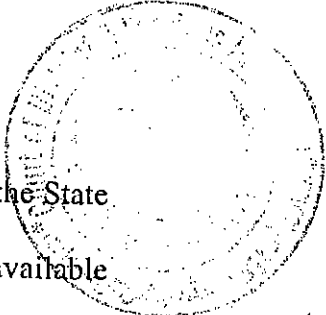
PW-9: Bakhtyar AMHC, deposed that on 24.06.2016 he has given 05 grams *Chars* along with application etc to Haider Ali constable for taking to FSL Peshawar.

After the closure of prosecution evidence, statements of both accused were recorded U/S 342 Cr.PC, wherein they professed their innocence; however, they neither wished to be examined on oath nor opted to produce evidence in their defense.

[Signature]
Additional Sessions Judge
Trafik Zilla Qazi, Swat.

Attested
[Signature]
Advocate

14/



I have heard the arguments advanced by learned APP for the State and that of learned counsel for accused facing trial and record available on case file scanned.

Perusal of record reveals that, no doubt, the accused Farman Ullah has been arrested red handed and the alleged recovery of *Chars* weighing 1050 grams has been effected from his direct possession and later on during interrogation he charged accused Fawad Khan and on whose pointation recovery of *Chars* weighing 150 grams was also made, but he did not try to arrange any witness of the locality to the recovery proceedings. Provisions of Section 103 Cr.PC are excluded and the association of independent witness is not necessary at the time of search, seizure and arrest, but statement of official witnesses in the circumstances would be looked into very carefully; and would be scaled with great caution. According to the complainant, he alongwith other police during *gusht*, received spy information that accused Farman Ullah is busy in selling narcotics, but he did not made any test purchase in this regard.

Though, report of FSL has received in positive, but mere positive report of Forensic Science Laboratory is not sufficient to bring home guilt of the accused. Moreso, the occurrence has taken place on 22.06.2016 in respect of which FIR was lodged on the same date while contraband have been sent to FSL on 24.06.2016 which was handed over to FSL on 27.06.2017 and the same fact is also narrated by PW-04 in his examination-in-chief. There is delay of about five days between lodging of FIR and sending the sample to FSL, which was not explained and its

15/

safe custody during the said five days was not proved. Wisdom is drawn from worthy case law reported in PLD 2005 Peshawar 162.

PW-1 stated in his examination in chief that on 24.06.2016 he handed over the parcel to constable Ayaz for taking it to FSL Peshwar. While in cross-examination he stated that:

"میں نے پارسل مذکورہ بالا بذات خود FSL پشاور لے گیا ہوں۔"

PW-02 Investigation Officer in his examination-in-chief stated that he prepared site plan in the presence of eyewitness and also recorded their statements u/s 161 Cr.PC, while in cross-examination he admitted that:-

"جب میں جائے وقوعہ مذکورہ بالا پہنچا تو وہاں پر موجود لوگوں میں سے کسی نے بھی مجھے وقوعہ کی تائید میں کوئی بیان نہیں دیا۔"

At another place the said PW also admitted that:

"دوران تفتیش کوشش بیسار کے باوجود کئی شہادت اکھٹی نہیں کی ہے، جس سے یہ ظاہر ہو کہ ملزم فرمان اللہ چرس کی خرید و فروخت کا کاروبار کرتا ہے یا وہ ڈیلر، سمگلر ہے... اسی طرح کوشش بیسار کے باوجود مجھے ملزم فرمان اللہ کے سابق ریکارڈ بابت ملوث ہونے مقدمات منشیات وغیرہ بھی نہیں ملے ہیں۔"

PW-02 in his examination in chief stated that during interrogation accused Farman Ullah nominated accused Fawad Khan in the instant case, but in cross-examination he admitted that :

"پوری تفتیش کے دوران مجھے ملزم کے خلاف ہچوں قسم کے مقدمات کی نسبت کوئی FIR نہیں ملا اور نہ ہی پوری تفتیش کے دوران مجھے کوئی ایسا گواہ ملا ہے، جس نے یہ کہا ہو کہ ملزم نواد چرس کی خرید و فروخت کا کاروبار کرتا ہے یا چرس کا ڈیلر / سمگلر ہے۔"

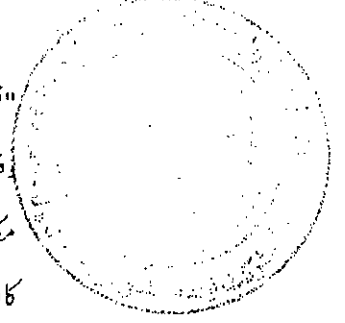
Advocate Sessions Judge
Mafi Zilla Qazi, Swat
14/3/07

Attested
Advocate

16/

PW-05 Mujib Alam Khan SHO/complainant in his examination in chief stated that he received spy information that the accused is selling narcotics near his house and he arrested the accused and allegedly recovered 1050 gram Chars from his personal possession. In his cross-examination he stated that:

"نقشہ موقع کے مطابق جائے وقوعہ راستہ عام پر ہے، جس پر ہر وقت لوگ آتے جاتے ہیں۔ جائے وقوعہ کے آس پاس لوگوں کے مکانات بھی موجود ہیں... فرد مقبوضگی پر کسی بھی پرائیویٹ شخص کا دستخط بطور گواہ موجود نہ ہے۔"



Hence, he excluded provision of section 103 Cr.PC by not associating of independent witness at the time of arrest of accused.

After scanning entire evidence, it follows that the prosecution has failed to prove its case against accused beyond any shadow of reasonable doubt. As only a single doubt is sufficient for acquittal of accused, because law favours the accused for benefit of doubt arising out of the prosecution case. It is settled principle that accused is the favourite child of law and shall be considered innocent until proved guilty and benefit of a single doubt arising out of the prosecution must be stretched in favour of accused. Moreso, record is also silent about previous involvement of the present accused in such like cases.

Consequently, this Court hereby acquits both the accused of such charge by giving them the benefit of doubt. They are on bail. Their sureties are accordingly absolved of their liability under such bail bonds.

Case property, if any, shall remain intact till the expiry of period of appeal/revision.

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14/3/07
Additional Sessions Judge
Tzafi Zilla Qazi Swat.

Attested
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Advocate

17/

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

Announced:
14.03.2017

(Signature)
14/3/17
(SYED OBAID ULLAH SHAH)
Additional Sessions Judge-VI/IZQ/
Judge Special Court, Swat.

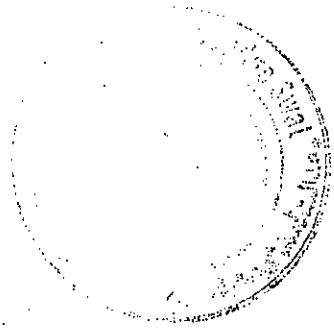
CERTIFICATE.

Additional Sessions Judge/
Izafi Zilla Qazi-VI, Swat.

Certified that this judgment consist of eight (08) pages. Each page has been read over and signed by me after making necessary corrections therein.

(Signature)
14/3/17
(SYED OBAID ULLAH SHAH)
Additional Sessions Judge-VI/IZQ/
Judge Special Court, Swat.

Additional Sessions Judge/
Izafi Zilla Qazi-VI, Swat.



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Date of Judgment
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ATTESTED TO BE TRUE COPY:

(Signature)
District Sessions Judge/
Izafi Zilla Qazi, Swat.
17/3/17

Attested
(Signature)
Advocate

کے مندرجہ ذیل کے تحت - DPD - ملازمین کی فہرست کے تحت

Annexure - D

18/

سرخاستہ زدہ پولیس نیشنل فواد خان بی 2663
پولیس آرڈیننگ آفسر - ... سائل ایبلز

بنام

ڈسٹرکٹ پولیس آفسر (DPD) - ...
منجانب ڈی ایچ او - ...

محکمہ ایبل دوبارہ بحالی نوٹری

ایبل مبارک علی حکم و فیصلہ 08 بی 175 از دفتر ایبلز
موصوف جبار علی من ایبلز نوٹری کو بند حبس حکم نوٹری سے
پر حالت کردیا گیا ہے۔
13-10-2016

استدعاۃ ایبل :- منظور ایبل حکم و فیصلہ

از دفتر ایبلز نوٹری موصوف حکم 08 بی 175
موصوف 13-10-2016 ایبلز نوٹری، غیر قانونی خلاف
اصول ضابطہ کا اندر و مستحق قرار دیا جا رہا ہے
ایبلز نوٹری کو دوبارہ نوٹری پر بحالی کیلئے
اطلاقاً ہمدردی و معاونی۔

صاحب عالی! ... سائل ایبلز نوٹری کے مندرجہ ذیل کے تحت

(2) یہ کہ سائل ایبلز نوٹری ایبلز نوٹری کے مندرجہ ذیل کے تحت

Attested
[Signature]
Advocate

مدرسہ 2016ء کو کھانہ خالی ہو کر میں ڈیوٹی سرانجام
 دے رہا تھا کہ چارج ڈیوٹی منترہ بال قضا نے رقم کی یاد دلائی
 S.H.O (محمد عالم) کی ذرا کی عناد کی وجہ سے درج ہو کر
 بعد ازاں ساہیل ارمن ایوانہ شہزاد S.H.O محمد عالم کی ذرا کی
 عناد پر یہ رقم ورنہ سٹیٹ منسٹر نے 430 مورخہ 22-06-16
 جو عزیز رقم قضا QCCNSA قضا نے رقم کی یاد دلائی قائم کی
 جس میں ساہیل کو بے تگاب طور پر حقائق معلوم کیے تھے
 رہا فیڈ بک موصول ہونے سے ساہیل کو رقم 08-175
 نوٹس سے برخاستہ کر دیا گیا ہے،
 13-10-16

(2) یہ ایک مکمل کارروائی ہے جو بے تگاب ہے و بوجہ اس کی
 واپس نوٹس پر بحال کرنے کا حکم دیا گیا ہے۔

I - یہ کہ ساہیل کے گاؤں بلوڑا میں سورت کے ایک مذکورہ شخص
 عطا اللہ ولد رفیع اللہ کھانا لے کر 29-03-16
 پر موٹر سائیکل سواروں کھانا لے کر گزرتے ہوئے ان میں
 سے ایک نے موٹر سائیکل سوار یا زور سے کام میں پھینکا
 مندرجہ بالا مذکورہ گاؤں کے مذکورہ مذکورہ شخص نے اپنے
 NEP گاؤں کا طلب کر کے یہ مقدمہ چلا کر سورت میں درج
 کر کے اسے ساتھ سورت میں گاؤں کا موٹر گاڑ
 S.H.O محمد عالم نے اس کے عطا اللہ شہزاد اللہ
 مقدمہ درج کروا کر - مذکورہ شخص عطا اللہ شہزاد
 قضا نے رقم کی یاد میں S.H.O محمد عالم کو جائزہ لیا کہ کھانا
 سورت S.H.O نے اپنے ریسٹورنٹ میں کھینا ہے
 QCCNSA کو تبدیل کر دیا عطا اللہ شہزاد سورت میں
 قبیل سے قریب FIR (مشتاق) FIR (میرزا) -
 بددیوبند S.H.O موصول ہونے سے قضا نے خالی سورت کو فون کیا
 ساہیل کو قضا نے اطلاع دے کر کہا - اور اس دن سے سورت میں ساہیل

Attested
 [Signature]
 Advocate

S.H.O محمد عالم غیوانی راستہ ڈھنڈہ ناراہنڈہ کے
 دوسرے موقع پر سائل سبیل الدین اورینٹل ٹیوٹیور
 موجود تھا۔ تقاضا رقم آباد سورت اورینٹل ٹیوٹیور کے سائل
 ٹیوٹیور سے کہیں کنٹیکٹ فواد بھی اپیلانٹ
 بھیج دیں۔ جبکہ فون پر رورانا سائل تقاضا رقم آباد
 سورت حافر پور S.H.O محمد عالم تقاضا رقم آباد
 سائل کو کیا مقصد ملتا ہے 430
 05-06-06

CCNSA 9 تقاضا رقم آباد سورت میں ملے وہاں اللہ
 رب سائل (اپیلانٹ کے خلاف بیانیہ) میں ملے
 فواد کنٹیکٹ میں 06/06 کو ملے
 صاحبہ درحقیقت سائل اپیلانٹ سبیل الدین اورینٹل
 میں موجود تھا۔ S.H.O محمد عالم غیوانی وہاں اللہ
 کو بی زبانہ کو پیش کیا اور سائل S.H.O غیر آواز
 بارہواں طور پر جس میں بھی ملے۔ سائل کو
 معین 06-06-06 پر بی زبانہ کو پیش کیا۔
 سائل نے پورا بیٹا نے کسی قسم کا اقبال نہیں کیا۔
 اور راز صفت میں سائل نے ملے۔ جو
 سورتی حافر پور بھی ملے۔ تو وہیں بہ امداد جعلی فرجی
 و عن زنی سائل کے سائل کی وازفہ قابل ہاں ملے

II
 سورتی حافر پور S.H.O محمد عالم کی مدد سے
 DSP سورت سے سائل کے خلاف آنٹور
 دوہا کی جو بیانیہ آنٹور سائل اپیلانٹ
 کے حق میں کرنی جس میں 06/06 محمد عالم نے
 دوبارہ مدد سے اپیلانٹ موصوف
 D.P.O سورت کو غلام بیانی (موجود کوئی ساہوکار ہے)
 05-06-06

Attested
 [Signature]
 Advocate

جس میں منٹو سورت D.S.P نے انٹورسنگ ٹریڈ جو رقبہ قائم کیا
 پر عین تھا جس پر ایک فوٹو ٹیٹو ہونے سے سائل
 ایڈورٹ کو بیک جسٹس قائم کیا گیا ہے جو B نمبر 175
 2016-10-13 کو نوٹس لکھ کر بلا جواز غیر قانونی
 غیر شرعی طور پر سہ ماہی اردلیکے حکم و قضا
 OB نمبر بالا سے ترقی پانچ بجالی ہے اور قابل
 ملاحظہ ہے۔

II: اس سائل ایڈورٹ نیدھن پر امن نہیں ہو سکتا
 وراثتی ہے جس کے 10 اہل بیتہ اور اس کوئی تعلقات رکھتا
 نہ رہتا ہے، ملائے جھانڈو والا، 5110 جی ایم کی
 غیر قانونی رسائی ذاتی علاقہ بلکہ سائل کو مقدمہ نمبر بالا
 علیحدہ 430 کے تحت رجم آباد سورت جس میں سورت کے زیر اثر
 2016-06-28
 موجود ہونے سے ملے باز نکالنے کے لیے سائل کو غیر قانونی
 طور پر نوٹس لکھ کر سہ ماہی اردلیکے حکم و قضا

III: سائل کو ایس جے مورس فورس سے والی انٹرفیڈر
 رکھنے والا اور پید میں غیر ویرا لکھنور سے دوبارہ نوٹس
 پر محاکمہ کیے گئے تھے اور سہ ماہی اردلیکے حکم و قضا

کے اندر سے ایک نظر منظور کیا اور اس کے ذریعہ
 حکم و قضا OB نمبر 175 از دفتر ریسیڈنٹ
 2016-10-13
 موصوف حقوق میں ایڈورٹ پر کالعدم وغیر موثر
 گردانا جا کر منڈی ایڈورٹ کو دوبارہ نوٹس پر بحال
 کیا ہے اور کالعدم کیا گیا اور سہ ماہی اردلیکے حکم و قضا

ایڈورٹ (برقائت رده تیشیل فواد خان 2663
 کوٹھن اڈیشن کیکل سورت
 لکھنور

Attested
 [Signature]
 Advocate

22/
4176
17-4-17

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

ORDER:

This order will dispose off appeal of Ex-Constable Fawad Khan No. 2663 of Swat District for reinstatement in service.

Brief facts of the case are that Ex-Constable Fawad Khan No. 2663, while posted to Police Station Ghaligly involved in Narcotics case vide FIR No. 430 dated 22/06/2016 u/s 9-CCNSA PS Rahimabad. He was issued Charge Sheet/ Statement of allegation and DSP City Circle was deputed as enquiry officer. The enquiry officer submitted his finding report wherein he found that the above named Constable was involved in Narcotics Smuggling, not suitable for Police Job and recommended him for appropriate punishment. Being found guilty of the charges the District Police Officer, Swat dismissed him from service vide his office OB No. 175 dated 13/10/2016.

He was called in Orderly Room on 30/12/2016 and heard him in person. The DPO Swat was directed to conduct Denovo Enquiry by some other officer. Hence he was again called in Orderly Room on 11/04/2017 and heard him in person again. Finding report of the Enquiry Officer was perused wherein the Enquiry Officer has submitted that the punishment has rightly been inflicted upon him. The appellant could not produce any substantial material in his defence. Therefore, his appeal for reinstatement in service is hereby filed.

Order announced


(AKHTAR HAYAT KHAN)
Regional Police Officer,
Malakand, at Saidu Sharif Swat
Naqi

No. 3560 /E,

Dated 13-04-2017.

Copy to District Police Officer, Swat for information with reference to his office

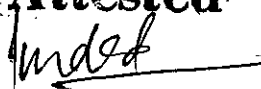
Memo: No. 2783/E, dated 03/03/2017.

Encls: (65) Pages
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for necessary action
and informed the above
named constable about
his appeal.


DPO SWAT
13/4/17

Attested

Advocate

Annexure F

23/

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT SWAT

Service Appeal No. 406/2017
Date of Institution... 28.04.2017
Date of decision... 06.03.2018



Fawad Khan, Ex-Constable No. 2663, Swat Police, District Swat. ... (Appellant)

Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and two others. ... (Respondents)

Mr. Imdadullah, ... For appellant.

MR. Usman Ghani,
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 13.10.2016 against which he filed departmental appeal on 24.10.2016. The departmental appellate authority on the departmental appeal directed the authority to hold denovo enquiry. After denovo enquiry, the departmental appellate authority passed the final order on 13.4.2017 by maintaining the order of dismissal. Thereafter, the appellant filed the present service appeal on 28.4.2017.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Attested

Advocate

24/

ARGUMENTS


3. The learned counsel for the appellant argued that the appellant was charge sheeted for his involvement with Narcotics peddler and smuggling. That both the enquiry reports conducted prior to order of dismissal dated 13.10.2016 were not in accordance with law and procedural due processes were not complied with. That on the basis of departmental appeal, the appellate authority ordered for denovo proceedings but those denovo proceedings were also not conducted in accordance with the settled procedure. That in the denovo proceedings no order was passed by the authority.


4. On the other hand learned District Attorney argued that three enquiries were conducted, two by the authority and one at the order of departmental appellate authority. That the departmental appellate authority had rightly maintained the dismissal order passed by the authority.

CONCLUSION

5. The record shows that the authority (DPO) ordered for the holding of departmental enquiry and the enquiry officer submitted his report on 12.5.2016. Dissatisfied with this enquiry report, the authority again appointed another enquiry officer, namely Habibullah, DSP who submitted his report on 28.6.2016. On the basis of this report, the dismissal order was passed by the DPO. On appeal, the departmental appellate authority ordered for denovo enquiry but the enquiry officer namely Badshah Hazrat, SDPO submitted his enquiry report on 27.2.2017 to the DPO. It was incumbent upon the DPO to have had passed the final order on the basis of the denovo enquiry but the DPO did not pass any order on this enquiry

ATTESTED


EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

Attested

Advocate

25/

report and the enquiry report was put up to the departmental appellate authority, who after providing personal hearing to the appellant maintained the earlier order of 13.10.2016. After order of denovo proceedings by the departmental appellate authority, he became *functus officio* and he could not pass any order anymore. All the proceedings were to be concluded by the authority. The enquiry officer submitted his report to the DPO but the DPO instead of passing final order forwarded the departmental enquiry to the appellate authority. This procedural lapse has caused prejudice to the appellant because the appellant was denied the right of defence before the authority after fresh enquiry report and he was also denied right of another departmental appeal after the passing of the order by the appellate authority. This Tribunal therefore, sets aside, the order of departmental appellate authority dated 13.4.2017 and remit the case back to the authority (DPO) for proceedings in accordance with the rules from the stage of submission of enquiry report by SDPO Badshah Hazrat to him. The authority is directed to conclude the proceedings within a period of 60 days from the date of receipt of this judgment. Parties are left to bear their own costs. File be consigned to the record room.

SD/
 (Ahmad Hassan)
 Member

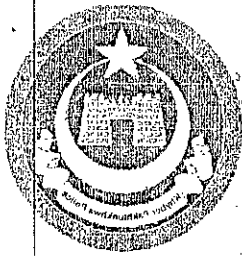
SD/
 (Niaz Muhammad Khan)
 Chairman
 Camp Court, Swat

ANNOUNCED
 06.03.2018

Certified to be true copy
 Khyber Pakhtunkhwa
 50
 Registrar

Date of Presentation of Application 24-4-18
 Number of Words 1200
 Copying Fee 800
 Urgent 25
 Total 10
 Name of Copyist [Signature]
 Date of Completion of Copy 24-4-18
 Date of Delivery of Copy 24-4-18

Attested
[Signature]
Advocate



OFFICE OF THE
DISTRICT POLICE OFFICER,
SWAT

Tel No. 0946-9240393 & Fax No. 0946-9240402,
Email: dposwat@gmail.com

2018

1

26/

LS

ORDER

Annexure

In compliance with the judgment of Service Tribunal, Khyber Pakhtunkhwa in Service Appeal No.406/2017, dated 06-03-2018 and directions received from CPO/Khyber Pakhtunkhwa, Peshawar vide Memo: No.1108/Legal, dated 28-03-2018 and Memo: No.614/E&I, dated 13-04-2018, Ex-Constable Fawad Khan No.2663 is hereby temporarily re-instated into service for the purpose of denovo departmental enquiry against him.

OB No. 68

Dated. 23/4 /2018.

(Capt: (R) Waheed Mehmood) PSP
District Police Officer, Swat.

No. 8747 /E, dated Saidu Sharif the 23-4 /2018.

✓ Copy to the Superintendent of Police, Investigation Wing, Swat (Enquiry Officer) for information and necessary action please.

Attested

Advocate

Annexure H

27/

ORDER

This order will dispose of departmental Denovo enquiry against Constable Fawad Khan ex-constabulary No. 2663 who had been dismissed from service vide this office OR No. 175, dated 13-10-2016 on the allegations that he while posted at Police Station Ghalegay had been reported of having links with narcotics peddlers and having involvement in smuggling of charas from Batkhela to Swat. He had been dismissed from service after carrying out proper departmental enquiry against him.

In compliance with the judgment of Service Tribunal Khyber Pakhtunkhwa in service appeal No. 406/2017, dated 06-03-2018 followed by directions received to this office vide CPO Peshawar Memo: No. 1108/Legal, dated 28-03-2018, the Constable was temporarily re-instated in service for the purpose of denovo departmental enquiry against him.

In compliance with CPO Peshawar Memo: No. 614/E&I, dated 13-04-2018, he was issued charge sheet coupled with statement of allegations vide this office No. 70/PA, dated 23-04-2018 and SP Investigation, Swat was appointed as enquiry officer. The enquiry officer conducted proper departmental enquiry against the re-instated Constable and provided him ample opportunity to defend his side. The enquiry officer submitted that the accused official first reported by the then SHO Police Station Rahim Abad for his nexus with narcotics peddlers and later booked him vide case FIR No. 430 dated 22-06-2016 u/s 9CCNSA Police Station Rahim Abad. Also 155 gm charas were recovered on his pointation but on the other hand the prosecution failed to prove the allegations leveled against the accused official. As such the accused Constable was acquitted in the case. The enquiry officer recommended to re-instate accused official in service without back benefits and keeping him under strict watch.

Keeping in view the recommendation of the enquiry officer and poor family background of the official under enquiry, the undersigned as a competent authority is pleased to re-instate him into service without back benefits. He is hereby re-instated into service without back benefits. The interim period is treated as leave without pay.

Order announced.

District Police Officer, Swat

O.B. No. 87.

Dated: 24-05/2018.

Copies to:-

- 1. ✓ Deputy Inspector General of Police, Enquiry and Inspection, Khyber Pakhtunkhwa, Peshawar with reference to CPO Memo: No. quoted above.

FOR INFORMATION PLEASE.

- 2. Addl: SP Swat
- 3. Establishment Branch District Police Swat
- 4. OASI

For information and necessary action.

District Police Officer, Swat

Attested
(Signed)
Advocate

خواجہ خان کسٹل 2663

حال متعین جاوید اقبال شہر لائسنس سوانہ

سائل

سوال: درخواست مجانبہ سائل بدین مراد

سائل کو DP.O صاحب سوانہ سروس

پر سونیل حکم صدر 06-03-18

کی روشنی میں برو B 87 دوبارہ

ملازمت پر بحال کر دیا جائے، مگر سائل

کو سروس بٹیفٹس (BENEFITS)

سخواہیں۔ ڈسٹیس پٹر سڈر لٹیف بین دیا جائے۔

وہاں اس کے لئے سروس منظور کی

درخواست ہے۔ سائل کو سروس

BENEFITS، سخواہیں، ڈسٹیس پٹر سڈر

و لٹیف عطاء کرنے کے احکامات جاری فرمائیں۔

صباہ عالیہ ذیل ہے۔

(1) سائل کو DP.O صاحب سوانہ سروس

B 87 کو ملازمت پر دوبارہ بحال کر دیا جائے

24-05-18 مگر DP.O صاحب سوانہ سائل کو سروس

BENEFITS، سخواہیں، ڈسٹیس پٹر سڈر لٹیف بین دیا

جے جو سائل کو عطاء کرنا از روئے قانون و اضافی

نقل جائے۔

وہاں اس کے لئے سروس منظور کی درخواست ہے۔ سائل کو سروس

BENEFITS، سخواہیں، ڈسٹیس پٹر سڈر لٹیف بین دیا جائے۔

31-05-18

Attested
Inded
Advocate

الحاج علی محمد خان کسٹل 2663

حال متعین جاوید اقبال شہر لائسنس سوانہ

سائل

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In the matter of:-

Fawad Khan

Appellant

VERSUS

The PPO K.P. &
Others

Respondents

KNOWN ALL to whom these present shall come that I/we, the undersigned appoint

AZIZ-UR-RAHMAN and IMDAD ULLAH

Advocates High Court

To be the advocate for the Appellant in the above mentioned case to do all the following acts, deeds and things or any one of them, that is to say:-

- ❖ To acts, appear and plead in the above mentioned case in this court or any other Court in which the same may be tried or heard in the first instance or in appeal or review or revision or execution or at any other stage of its progress until its final decision.
- ❖ To present pleadings, appeals, cross objections or petitions for execution review, revision, withdrawal, compromise or other petition or affidavits or other documents as shall be deemed necessary or advisable for the prosecution of the said case in all its stages.
- ❖ To withdraw or compromise the said or submit to arbitration any difference or dispute that shall arise touching or in any manner relating to the said case.
- ❖ To receive money and grant receipts therefore, and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.
- ❖ To employ any other Legal Practitioner authorizing him to exercise the power and authorities hereby conferred on the Advocate wherever he may think fit to do so.
- ❖ I understand that the services of aforesaid lawyer are hired irrespective of the outcome of the case.

And I/We hereby agreed to ratify whatever the advocate or his substitute shall to do in the said premises.

And I/We hereby agree not to hold the Advocate or his substitute responsible for the result of the said case in consequences of his absence from the Court when the said case is called up for hearing.

And I/We hereby agree that in the event of the whole or any part of the fee agreed by me/us to be paid to the Advocate remaining unpaid, the Advocate shall be entitled to withdraw from the prosecution of the case until the same is paid.

IN THE WITNESS WHEREOF I/WE hereunto set my/our hand(s) to these present the contents of which have been explained to and understood by me/us, this 16 day of 09 2018.

Fawad Khan

(Signature or thumb impression)

(Signature or thumb impression)

(Signature or thumb impression)

۰۶ > ۱۰

Accepted subject to terms regarding fees

(AZIZ-UR-RAHMAN)

Advocate High Court

Office: Khan Plaza, Gulshone Chowk

G.T. Road Mingora, District Swat.

Cell No. 0300 907 0671

(IMDAD ULLAH)

Advocate High Court

Office: Khan Plaza, Gulshone Chowk,

G.T. Road, Mingora, District Swat

Cell No. 0333 929 7746

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.1167/2018

Fawad Khan Ex-Constable No.2663, Swat Police, District Swat.

----- (Appellant)

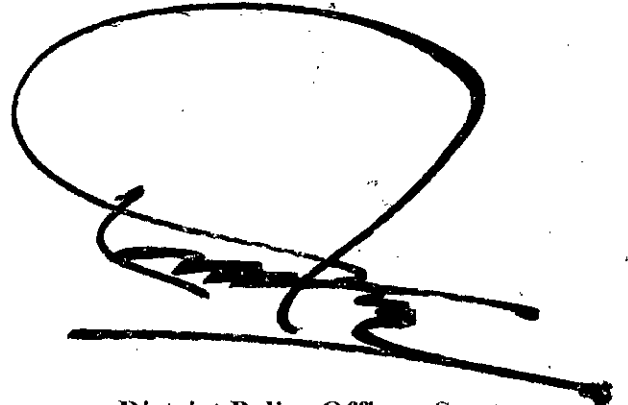
Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Malakand Region at Saidu Sharif, Swat.
3. The District Police Officer, Swat.

----- (Respondents)

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	Copy of Challan	"A"	6



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

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No. 1167/2018.

Fawad Khan Constable No.2663, District Swat.

..... Appellant

VERSUS

1. The Provincial Police officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Malakand Region at Saidu Sharif Swat.
3. The District Police Officer, Swat.

..... Respondents

PARAWISE COMMENTS BY RESPONDENTS

Respectfully Shewith,

The comments by Respondents are submitted as below.

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 has not come to the Tribunal with clean hands.
5. That this Hon'ble Tribunal has got no jurisdiction to entertain the present appeal.
6. That the instant appeal is not maintainable in its present form.
7. That the appellant concealed the material facts from this Hon'ble Tribunal.

FACTS:

- i. Correct to the extent that the Appellant was serving as Constable in Police Department, but during service his performance was not satisfactory and he has been awarded a lot of minor punishments for willful absence from official duty.
- ii. Incorrect. The appellant was found responsible for the alleged offence during the course of investigation conducted by Investigation Officer Police Station Rahimabad. (Copy of Challan is enclosed as annexure "A")

- 2
- i. Incorrect. Regular inquiry was conducted against the appellant wherein he was held responsible by the Enquiry Officer. The allegations i.e involvement of appellant in dealing of narcotics, smuggling of Charas/Hashish from Butkhela to local area and recovery of huge quantity from his possession by SHO Rahimabad have been established and on the basis of denovo enquiry he was awarded major punishment in accordance with facts and rules.
 - iv. Correct to the extent that appellant was acquitted in criminal case but criminal proceedings and departmental proceedings are different from each other. The appellant was not honorably acquitted from the charges, mere technical grounds and benefit of doubt was mentioned in the alleged criminal court judgment.
 - v. Pertains to record. However, departmental appeal of the appellant was filed after observing all the codal formalities and hearing of the appellant in person. The order of appellate authority is based on cogent reasons and in accordance with Law/Rules.
 - vi. Pertains to record, hence needs no comments.
 - vii. Correct to extent that the appellant was re instated in service without back benefit. Withholding the back benefit of the appellant is in accordance with law and judgment of superior Court as the appellant has not performed duty and cannot claim the back benefit.
 - viii. The appellant has no cause of action to file the departmental appeal as in the intervening period he has not performed duty and thus cannot claim back benefits.

GROUND:

- a. Incorrect. The appellant has been treated in accordance with Law/Rules. In the denovo departmental enquiry all the opportunities of self defence and personnel hearing were provided to the appellant but he failed.
- b. Incorrect. The appellant had not been discriminated and during the course of enquiry all codal formalities have been fulfilled and no miscarriage of justice has been committed by the Enquiry Officer in conducting of denovo enquiry in compliance with judgment dated 06/03/2018 in appeal No.406/2017 of Service Tribunal Peshawar.
- c. Incorrect. The respondents have used their official authority in accordance with facts, law and rules.
- d. Incorrect. All the opportunities of personal hearing and defence were given to the appellant during course of denovo enquiry.

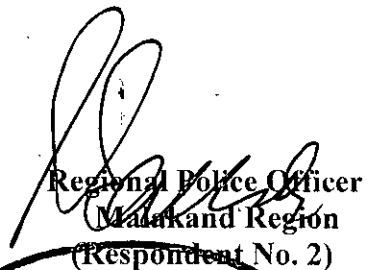
- e. Incorrect. The competent authority had passed the impugned order in accordance with Law/Rules and directions of honorable Service Tribunal regarding denovo enquiry. Keeping in view the poor financial back ground, appellant was re instated into service without back benefits.
- f. The appellant has nexus with narcotics peddlers and in dealing of narcotics, therefore his plea of jobless is over ruled.
- g. Incorrect. In the investigation of criminal case and preliminary departmental enquiry the charges i.e nexus with narcotics peddlers and recovery of huge quantity of Charas from his possession were established, but keeping in view his poor financial background he was re instated in service without back benefit on humanitarian grounds which order was wrongly challenged before the honorable Tribunal.

PRAYER:

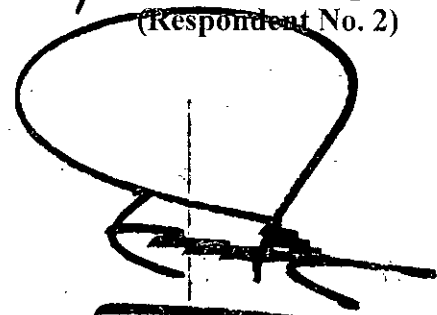
Keeping in views the above facts and circumstances, it is humbly prayed that the appeal of appellant is devoid of legal force, may kindly be dismissed with costs.



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



**Regional Police Officer
Malakand Region
(Respondent No. 2)**



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

Service Appeal No.1167/2018

Fawad Khan Ex-Constable No.2663, Swat Police, District Swat.

----- (Appellant)

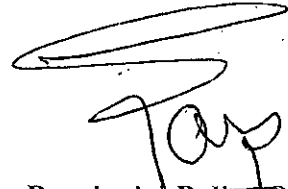
Versus

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3. The District Police Officer, Swat.

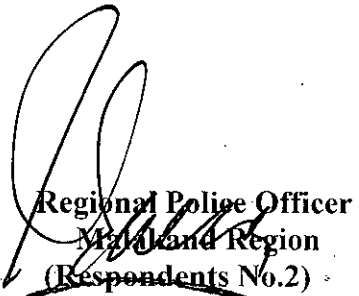
----- (Respondents)

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 secret from the honorable Tribunal.



**Provincial Police Officer
Khyber Pakhtunkhwa Peshawar
(Respondents No.1)**



**Regional Police Officer
Malakand Region
(Respondents No.2)**



**District Police Officer, Swat
(Respondents No.3)**

Service Appeal No.1167/2018

Fawad Khan Ex-Constable No.2663, Swat Police, District Swat.

----- (Appellant)

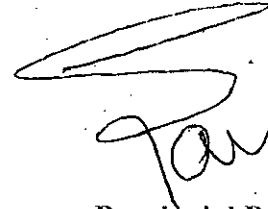
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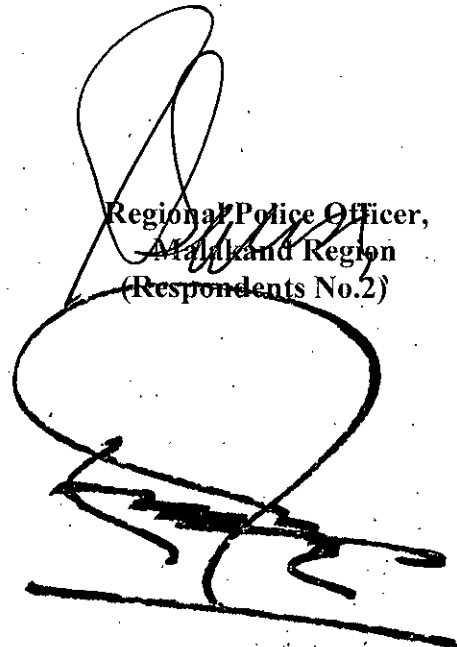
----- (Respondents)

Authority Letter

We, the above respondents do hereby authorize Mr. Khawas Khan SI Legal Swat to appear in the Service Tribunal on our behalf on each date fixed in connection with titled Service Appeal and do whatever is needed.



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



**Regional Police Officer,
Malakand Region
(Respondents No.2)**

**District Police Officer, Swat
(Respondents No.3)**

فارم چالان مکمل

زیر دفعہ ۱۳۱ ض ف ، باب ۲۵ فقرہ ۵۷ ضمن ۲

ذات اللہ ۱۱-۷-۰۱۶
ضلع سوات

صم آباد

District Public Prosecutor
Swat District
CNISA

22161016

EXPAN 5/1
Additional District
Swat
17-07-17

430

مقدمہ علت نمبر

۱ نام و پتہ مستغیث	۲ ملازمان جو گرفتار نہ ہوئے ہوں۔ بشمول مفروران	۳ ملازمان جو گرفتار ہوئے ہیں		۴ تفصیل بالمقدمہ	۵ ناو پتہ گواہان	۶ مختصر حالات مقدمہ بمعہ جرم
		برضات	زیر حراست			
نام و پتہ مستغیث CHD Swat 06/12/19	2732 6/2/19 100 IP 2-19	No..... Date of Presentation of..... Date of which..... No of Cards..... Urgent For..... Name of..... Signature..... Copying Fee..... Date of.....	۱۰۵۵۰ گرام جس میں سے پانچ گرام اور ایک ٹیکریا کا لٹا ہوا بجواریا ہے۔ تین ٹیکریاں اور ۱۰ گرام مندرجہ ذیل کے نمونوں کے ساتھ ۱۵۵۰ گرام جس میں سے پانچ گرام اور ایک ٹیکریا کا لٹا ہوا بجواریا ہے۔ تین ٹیکریاں اور ۱۰ گرام مندرجہ ذیل کے نمونوں کے ساتھ	۱. عیسیٰ خان ASI تپان صم آباد ۲. سلطنت خان 2882 ۳. راعلی 2525 ۴. سعید اقبال 51 ۵. یار محمد 1606 RHC ۶. سلطنت خان 1148 SPF ۷. مختار 1612 7xMHC ۸. یسین سعید رعلی 2201 ۹. شہزاد 1058 1017 ۱۰. اسماعیل 412 1017 ۱۱. یار محمد 1283 ۱۲. اورنگزیف خان 51 ۱۳. حبیب خان 570	تپان صم آباد ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~	جہاں عالی دوران سٹوٹ سویسٹس از حوزہ 22/6/06 جہاں عالی (الحدیثی) ایک آرٹیکل سیکھا وہاں اللہ ولد سعید اللہ سٹوٹ فلم ریڈیو سٹوٹ بلورگم راستہ روئندہ ریڈیو سٹوٹ آئیٹ گورٹ حویب صم آباد فریڈ کرائیج - اطلاع کیشن نظر ہوا عمر سیاف خان ASI، ڈیپارٹمنٹ پولیس صم آباد راستہ روئندہ ریڈیو سٹوٹ آئیٹ گورٹ سٹوٹ زمان اللہ صوفیہ پیکر جس کا جائزہ ملا تھا عمل سے (ای) کی کارکن کے قبضے میں تھے پڑھانے پر اس کے تبدیلی سے بند رہا وہ ہوا جو سیاہ سٹوٹ گورنڈر کھیل سے لپٹا ہوا کھیل آئیٹریز ووف سے (natural coffee) لکھا ہوا تھا جس میں سٹوٹ آئیٹ گورٹ 1050

