

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 992/2014

Date of institution ... 05.08.2014

Date of judgment ... 05.05.2016

Sher Bahadar Khan,
Ex-Sub Inspector,
Chokara Tehsil Takht-e-Nasrati District Karak.

... (Appellant)

VERSUS

1. The Provincial Police Officer Govt: Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer Kohat Region Kohat.
3. The District Police Officer, Hangu.

... (Respondents)

APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST IMPUGNED ORDER OF RESPONDENT NO.3 DATED 31.03.2014 AND AGAINST WHICH APPELLANT FILED DEPARTMENTAL APPEAL BEFORE THE RESPONDENT NO.2, WHICH IS STILL PENDING WITHOUT DISPOSAL.

Mr. Shahid Qayyum Khattak, Advocate.
Mr. Usman Ghani, Senior Government Pleader

.. For appellant.
.. For respondents.

MR. PIR BAKHSH SHAH
MR. ABDUL LATIF

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

JUDGMENT

PIR BAKHASH SHAH, MEMBER: Enrolled in the Police Department in the year 1975, the appellant a (Sub-Inspector) was compulsorily retired from service vide order dated 31.03.2014 on the charge of his involvement in the Cattle smuggling.

3. Relevant paragraph of the enquiry report dated 05.03.2013, for appreciation of facts, is reproduced as followed:-

“This is departmental enquiry against SI Sher Bahadar SHO PS
Thall presently posted in PS City Hangu alleged to be involved

in illegal transportation of cattle's. Enquiry against the above named officer was initiated on the basis of enquiry previously conducted by Atif-Ur-Rehman DCO Bannu in which Mr. Atif-Ur-Rehman District Co-Ordination Officer Bannu was appointed as enquiry officer to conduct facts finding enquiry in illegal transportation of animals vide Home & Tribal Affairs Department letter No. SO(Com/Enq)/HD/1-6/2012 dated 17.08.2012. The enquiry officer vide his finding report that Mr. Sher Bahadar Khan, the then SHO PS Thall forcibly released twenty six (26) trucks loaded with cattle's from possession of Mobile Squad Karak and Peshawar. Instead of assisting the above Squad in performing their official obligations, Mr. Sher Bahadar facilitated the smugglers. The Home Department vide letter No. SO(COM/Enq/HD/1-3/2012 dated 16.11.2012, accord approval to initiate departmental proceedings against Police Officials allegedly involved in illegal animals transportations. As such, SI Sher Bahadar Khan, the then SHO Ps Thall was charge sheeted vide charge sheet No. 5787/PA dated 06.12.2012, on the basis of allegations that he was allegedly involved in cattle smuggling. SI Sher Bahadar in response to the charge sheet replied that proper case vide FIR No. 06 dated 21.12.2012 under Section-201/217/218/409/420 PPC/5(2) PC Act: has been registered in Police Station anti-corruption Hangu, on the basis of same allegations, and requested that departmental proceedings may be filed against him under Police Rules-16-3."

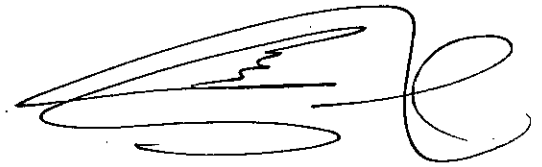
4. We have heard arguments and perused the record.

5. After a careful perusal of the record, it was found that transportation of cattle's from Pakistan to Afghanistan was banned at the relevant time. The Government had received reports that the cattle's smuggling is being assisted on taking bribe money from smugglers. At the relevant time almost twenty six (26) trucks full of cattle's, were not stopped by the appellant who was SHO. It further revealed that one Salam Wazir, duly armed with Kalashnikov (private person) was also present at the relevant time but he was not arrested by appellant. Similarly, one Shoaib under the cover of Live Stock Department was found checking the vehicles loaded with cattle's who was not a Government Servant but had support of un-identified Boss. According to the Local Administration, though the cattle's transportation from Peshawar to Afghanistan was prohibited but the same prohibition order could not be actualized due to appellant. The record shows that ample opportunity of defense and hearing has been provided to the appellant. We do not find any merits in this appeal to interfere in the impugned order. Hence the appeal is dismissed. Parties are, however, left to bear their own costs. File be consigned to the record room.

ANNOUNCED
05.05.2016.



(ABDUL LATIF)
MEMBER



(PIR BAKHSH SHAH)
MEMBER

05.05.2016

Appellant with counsel and Mr. Abdur Rehman, Inspector
(Legal) along with Mr. Usman Ghani for respondents present.

Vide our detailed judgment of to-day consists of three pages placed on file, we do not find any merits in this appeal to interfere in the impugned order. Hence the appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record.

Announced
05.05.2016



MEMBER



MEMBER

D.F.A

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 992/2014

Date of institution ... 05.08.2014
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Sher Bahadar Khan,
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1. The Provincial Police Officer-Govt: Khyber Pakhtunkhwa, Peshawar.
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Mr. Shahid Qayyum Khattak, Advocate.
Mr. Usman Ghani, Senior Government Pleader

∴ For appellant.
∴ For respondents.

MR. PIR BAKHSH SHAH
MR. ABDUL LATIF

∴ MEMBER (JUDICIAL)
∴ MEMBER (EXECUTIVE)

JUDGMENT

PIR BAKHASH SHAH, MEMBER: Enrolled in the Police Department in the year 1975, the appellant (Sub-Inspector) was compulsorily retired from service on the charge of his involvement in the Cattle smuggling ^{vide order dt: 31-3-14} ~~vide order dated 31.03.2014.~~ ^{ge}

3. ~~Relevant facts can better be re-produce from the~~ Relevant paragraph of the enquiry report which is ^{as follows} followed:-
It: 5-6-2013, for appreciation of facts, reproduced as

"This is departmental enquiry against SI Sher Bahadar SHO PS

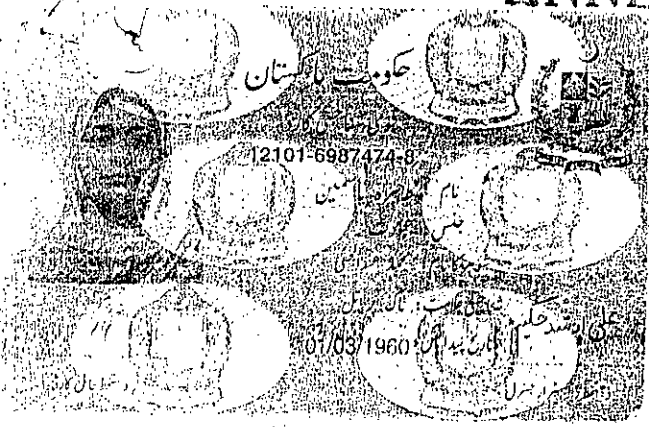
Thall presently posted in PS City Hangu, alleged to be involved

ANNEXURE A/1

7

SS4B1X 12101-6987474-8

14960426-46



29/02/2020 تاریخ ترمیم: 06/03/2009 تاریخ اجراء
کھنڈہ کارڈ ملنے پر فری ایئر ٹکٹس میں ڈال دیں



Attested

to be true copy

in illegal transportation of cattle's. Enquiry against the above named officer was initiated on the basis of enquiry previously conducted by Atif-Ur-Rehman DCO Bann^u in which Mr. Atif-ur-Rehman District Co-Ordination Officer Bannu was appointed as enquiry officer to conduct facts finding enquiry in illegal transportation of animals vide Home & Tribal Affairs Department letter No. SO(Com/Enq)/HD/1-6/2012 dated 17.08.2012. The enquiry officer vide his finding report that Mr. Sher Bahadar Khan, the then SHO PS Thall forcibly released twenty six (26) trucks loaded with cattle's from possession of Mobile Squad Karak and Peshawar. Instead of assisting the above Squad in performing their official obligations, Mr. Sher Bahadar, facilitated the smugglers. The Home Department vide letter No. SO(COM/Enq/HD/1-3/2012 dated 16.11.2012, accord approval to initiate departmental proceedings against Police Officials allegedly involved in illegal animals transportations. As such, SI Sher Bahadar Khan, the then SHO Ps Thall was charge sheeted vide charge sheet No. 5787/PA dated 06.12.2012, on the basis of allegations that he was allegedly involved in cattle smuggling. SI Sher Bahadar in response to the charge sheet replied that proper case vide FIR No. 06 dated 21.12.2012 under Section-201/217/218/409/420 PPC/5(2) PC Act: has been registered in Police Station anti-corruption Hangu, on the basis of same allegations, and requested that departmental proceedings may be filed against him under Police Rules-16-3."

4. *we have checked* arguments heard and record *the record* perused with their assistance.

DOMICILE CERTIFICATE

ANNEXURE

A/2

8

I declare that I was born of parents who are permanently domiciled in North-West Frontier Province having been born/settled in this Province.

I was born at Village/Mohallah SHIV SHAH

Tehsil _____ and District Dera Ismail Khan.

*Verified
Chairman
Assoc.
D.I.K.*

Tahira Yasmin
Signature of the applicant,
Dated: 2/10/79

Pursuant to the declaration dated _____ filed by
Mrs TAMRA YASMEEN S/o LATE SAHIB ZAMAN
domiciled in North-West Frontier Province, it is hereby certified that the
said MRS TAMRA YASMEEN is born of parents who are permanent
residents of the North-West Frontier Province having been born/settled* within it.

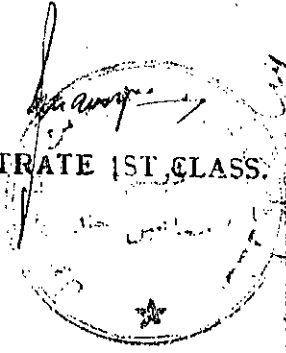
I have satisfied myself from personal knowledge/verification* that the
above declaration is true and certify accordingly.

This _____ day of 1-10 19 79

Seal

*1013766/H2
27/3/10/79*

MAGISTRATE 1ST CLASS.

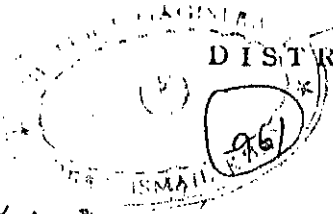


COUNTERSIGNED:

[Signature]

DISTRICT MAGISTRATE,
Dera Ismail Khan.

Attested



*Verified
Chairman
Assoc.
D.I.K.*

to be true copy

*Strike out which ever is not applicable.

[Faint handwritten notes and signatures at the bottom of the page]

transportation of cattle from PAK to Afghanistan was ~~not~~ banned at the relevant time. The Govt. had received reports that the cattle smuggling is being assisted on taking of bribe money from smugglers. At 5. After a careful perusal of the record, it was found that almost twenty six (26) trucks full of cattle's, were not stopped by the appellant who was SHO at the relevant time. It further revealed that one Salam Wazir, ^{armed} ~~Duty an~~ with Kalashnikov (private person) was also present at the relevant time but ~~no action was taken against him~~ ^{he was not arrested by appellant}. Similarly, one Shoab under the cover of Live Stock Department was found checking the vehicles loaded with cattle's who was not a Government Servant but ^{had of} supported by un-identified Boss. According to the Local Administration though the cattle's ~~smuggling~~ ^{transportation} cattle's from Peshawar to Afghanistan was prohibited but the same prohibition order could not be actualized due to ^{appealant-} ~~the under-hand~~ exchange of bribe. The record shows that ample opportunity of defense and hearing has been provided to the appellant. We do not ^{find} any merits in this appeal to interfere in the impugned order. ^{The appeal is} ~~hence~~ dismissed. Parties are, however, left to bear their own costs. File be consigned to the record room.

ANNOUNCED
05.05.2016.

(ABDUL LATIF)
MEMBER

(PIR BAKHISH SHAH)
MEMBER



GOVERNMENT KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Peshawar the 4th April, 2014

CIRCULAR

No. SO(E)H-II/4-1/2014: The Competent Authority is pleased to impose ban on all kind of postings/ transfers in Health Department, Khyber Pakhtunkhwa with immediate effect till further orders.

Ban will not be applicable on the recommendees of Public Service Commission, arrival from leave/ deputation, posting of TMOs/ Demonstrators/ Junior Registrars/ Senior Registrars and where desired by the competent authority in exigencies of service / greater public interest.

Sd/xxxxxx
SECRETARY HEALTH
KHYBER PAKHTUNKHWA

OFFICE OF THE DGHS, KHYBER PAKHTUNKHWA PESHAWAR

No. 2666-796 /Personnel

Dated 15 /04/2014

Copy forwarded to the:

1. All Sub: Offices in Health Department of Khyber Pakhtunkhwa.
2. All Officers/Incharge of Branches of DGHS office Khyber Pakhtunkhwa.

For necessary action and compliance.

[Signature]
Assistant Director (P-II)
DGHS, Khyber Pakhtunkhwa Peshawar.

Hafiz S.M. Ali Shah

*Established
for strict compliance
Mumel
19/4/14*

[Signature]
16-4-14

Attested
[Signature]
to be true copy

10.03.2016

Appellant with counsel and Mr. Abdur Rehman, Inspector (legal) alongwith Mr. Usman Ghani, Sr.GP for respondents present. Record not produced. Representative of respondent-department submitted that he may be given further time to collect all relevant record from the main office. Last opportunity given with the observations that in case record not produced on the next date, the case will be decide on available record on merit. To come up for record and arguments on 7.4.16. before D.B.


MEMBER


MEMBER

07.04.2016

Appellant with counsel and Mr. Abdur Rehman, Inspector alongwith Mr. Usman Ghani, Sr.GP for respondents present. The learned Member (Executive) is on leave therefore, Bench is incomplete. To come up for same on 28.4.16.


Member

28.04.2016

Appellant in person and Mr. Abdur Rehman, Inspector alongwith Mr. Usman Ghani, Sr.GP for respondents present. Due strike of the Bar learned counsel for the appellant is not available today before the Court, therefore, case is adjourned for argument

5.5.16.


Member


Member

10.5.16



992/14

09.10.2015

Appellant with counsel (Mr. Shahid Qayum, Advocate) and Mr. Usman Ghani, Sr.GP with Abid Waseem, ASI for the respondents present. During the course of arguments, one of the contentions of learned counsel for the appellant was that transportation of the cattle was not prohibited, hence allegations of smuggling or facilitating smuggling are not correct. Learned Sr.GP submitted that the department may be directed to produce all the relevant records. To come up for such records and further arguments on 17-11-2015



MEMBER



MEMBER

17.11.2015

Appellant with counsel and Mr. Zeeshan Ahmad, ASI along with Mr. Usman Ghani, Sr. GP for respondents present. Requisite records as per order sheet dated 9.10.2015 have not been submitted. Representative of respondent-department is once again directed to submit the same on the next date of hearing. To come for such records and further arguments on 10-12-2015



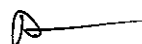
MEMBER



MEMBER

10.12.2015

Appellant with counsel and Mr. Shamim, ASI along with Mr. Muhammad Jan, GP for respondents present. Requisite records as per order sheet dated 9.10.2015 have not been submitted. Representative of respondent-department is once again directed to submit the same on the next date of hearing. To come up for such records and further arguments on 10.3.2016



MEMBER



MEMBER

46
Appeal No. 992/2014

Mr. Sher Bakhsh Khan
Appellant in person and Mr. Muhammad Waqas, ASI

06.04.2015

(Legal) alongwith Asstt: AG for the respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder/final hearing for 10.11.2015.



Member

11.06.2015

Counsel for the appellant and Muhammad Jan, GP for the respondents present. Counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on 09.10.2015.



Member



Member

04.09.2015

Counsel for the appellant (Mr. Muhammad Asif Yousafzai, Advocate) and Mr. Usman Ghani, Sr. GP for respondents present. Counsel for the appellant filed Wakalat Nama on behalf of the appellant and requested for adjournment. To come up for arguments on 9-10-2015.



Member



Member

Appeal No. 992/2014
Mr. Sher Bahadar Khan

6. 14.01.2015

Counsel for the appellant present and filed amended appeal with spare sets. Preliminary arguments heard and case file perused. Through the instant appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 read with section 19 of the Khyber Pakhtunkhwa (Efficiency & Conduct) Rules, 2011, the appellant has impugned order dated 31.03.2014, vide which the major penalty of compulsory retirement from service has been imposed upon the appellant. Against the above referred impugned order appellant filed departmental appeal on 09.04.2014 which was rejected vide order dated 19.09.2014, hence the instant appeal on 05.08.2014.

Since the matter pertains to terms and conditions of service of the appellant, hence admit for 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 for submission of written reply. To come up for written reply/comments on 19/3/2015.

Appellant Deposited
Security & Process Fee
Rs. 300/- Bank
Receipt is Attached with File.

[Signature]

[Signature]
Member

7. 19.03.2015

Counsel for the appellant and Mr. Muhabbat Ali, ASI with Asst: AG for the respondents present. Representative of the respondents requested for time. To come up for written reply/comments on 06.04.2015.

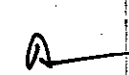
[Signature]
Member

3.

28.10.2014

Counsel for the appellant present. At the very outset the learned counsel for the appellant requested for amended ^{ment} in service appeal in light of order dated 19.09.2014 passed by the Competent Authority on the departmental appeal filed by the appellant. Since the appellant has filed the present appeal after expiry of statutory period on departmental appeal and by that time the Competent Authority had not passed any order on the departmental appeal. Now the competent authority has decided the departmental appeal vide order dated 19.09.2014, therefore, it would be appropriate to amend the instant appeal to that extent. Request is accepted and the appellant is directed to submit amended appeal challenging order of the Departmental Authority. To come up for preliminary hearing on 20.11.2014.

Reader Note:



20.11.2014

Clerk of counsel for the appellant present. Since the Tribunal is incomplete, therefore, case is adjourned to 11.12.2014 for the same.


Reader

Reader Note:

11.12.2014

Clerk to counsel for the appellant present. Since the Tribunal is incomplete, therefore, case is adjourned to 14.01.2015 for the same.

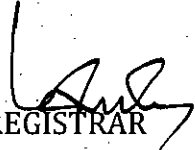


Reader

4.

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 992 /2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	05/08/2014	<p>The appeal of Mr. Sher Bahadar Khan presented today by Mr. Ashraf Ali Khattak Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	11-8-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>28-10-2014</u></p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Amended Service Appeal No. ____/2015

In

Service Appeal No. 998 /2014

Sher Bahadar Khan Ex.SI.....Appellant

V E R S U S

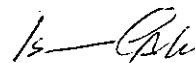
The Provincial Police Officer & others.....Respondents

I N D E X

S.No	Description of Documents	Annex	Pages
1.	Service Appeal		1-6
2.	Affidavit		
3.	Addresses of Parties		
4.	Copy of Nakal Mad	"A"	7-8
5.	Copy of FIR	"B"	9
6.	Copy of Slip shod Inquiry	"C"	10-13
7.	Copy of Departmental Appeal	"D"	14
8.	Copy of reply of final show cause	"E"	15-19
9.	Copy of final show cause	"F"	20
10.	Copy of reply to final show cause	"G"	21-22
11.	Copy of impugned order dt:31.03.14	"H"	23-24
12.	Copy of Departmental Appeal	"I"	25-26
13.	Copy of Order dated 19.09.2014	"J"	27

Petitioner

Through



Ahsraf Ali Khattak
Advocate, Peshawar

Date: __/__/2015

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Amended Service Appeal No.-----/2014

in

SERVICE APPEAL NO. 492 /2014

SHER BAHADAR KHAN Ex SI,Petitioner.

Versus

1. The Provincial Police Officer Govt: Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer Kohat Region Kohat.
3. The District Police Officer, Hangu..... Respondents.

Service Appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned final order of respondent No.2 dated 19-09-2014 passed on the departmental appeal; preferred against the order dated 31-03-2014 passed by respondent No.3.

Prayer:

On acceptance of the instant service appeal this Honorable Tribunal may graciously be pleased to declare the impugned final order dated 19-09-2014 is illegal, unlawful, without lawful authority and set aside the same and also re instate the appellant with all back benefits.

Any other relief under the circumstance of the case deemed appropriate under law may also graciously be granted.

Respectfully Sheweth,

Facts giving rise to the present writ petition are as under:-

1. That appellant has been enrolled in the Police Force in the year, 1975 and since then he has been performing his duty devotedly, efficiently and beyond the call of his duty. He has got long standing service at his credit comprising of about 39 years. Appellant has never been rated as in-efficient and unqualified during his long standing service.
2. That on 01-12- 2011, when appellant was posted as SHO Police Station Thall, Hangu he on the complaint of general public and passengers rushed towards Rahmat Shah Banda, where GT Road was blocked by Employees of Live Stock illegally for their own means. The general public was suffering as the Road was blocked completely. Appellant on the request of general public and passengers, who were carrying their serious ill relatives to Peshawar and Kohat for treatment requested the official of the Live Stock to kindly perform their duty on certain proper place and get free the GT Road, which request was graciously allowed and the road was freed for passengers use. Proper Nakal Mad was also endorsed for record purpose and investigation (Annexure-A).
3. That after the lapse of one year, Two consecutive FIR were lodged against the appellant (Annexure-B), investigation were carried out and Challan was put in court and trial commenced.
4. That in pursuance of FIRs disciplinary action was also initiated against the appellant and as per impugned order appellant was served with charge sheet and statement of allegation, to which as per impugned order appellant submitted reply.
5. That slip shod inquiry was conducted (Annexure-C) in the absence and at the back of the appellant. The inquiry report is worth perusal. Neither any statement was recorded in the presence of the appellant not the opportunity of cross examination provided and even than the charge has not been proved against the appellant. The prosecution failed to bring an iota of evidence against the appellant.

6. That later on the worthy respondent No.2 order that the departmental proceeding be kept pending till the outcome of the criminal trial.
7. That it is pertinent to mention here that recently another disciplinary proceeding was initiated against the appellant on the basis of corruption and corrupt practices. The prosecution failed to establish any sort of corruption on the part of appellant and he was exonerated by the inquiry officer and the departmental proceeding was filed (Annexure-D).
8. That after honourable acquittal from the above cited disciplinary proceeding appellant was again illegally involved on the same set of allegation and was thus subjected to another departmental proceeding. Appellant was charged sheeted. Appellant submitted his reply, inquiry was conducted and final show cause was also served and that too without providing inquiry report. Appellant submitted his reply in response to the final show cause and again the prosecution failed to establish any sort of corruption on the part of appellant during his long standing service (Annexure-E). Appellant was again exonerated and inquiry as per bona fide knowledge of the appellant has been filed.
9. That the mala fide of the respondent can best be judged from the perusal of all above explained position that when they did find any guilt on the part of appellant inspite of their hectic efforts and by prosecuting the appellant twice, they managed another way of prosecuting appellant and restored pending 1st inquiry and thereby served the appellant with final show cause (Annexure-F) and that too without serving him with copy of the inquiry report. Appellant submitted reply to the final show cause (Annexure-G).
10. That it is very surprising and astonish that when the respondent again failed to bring evidence against the appellant, respondent managed to penalize the appellant on the score of other flimsy grounds, which was not part of charge sheet, statement of allegation and final show cause and thereby penalized the appellant with major penalty of compulsory retirement vide impugned order dated 31-03-2014 (Annexure-H).

11. That being aggrieved from the illegal, unlawful impugned order appellant preferred departmental appeal (Annexure-I), before the respondent No.2, but the same was not disposed of within statutory period of 60 days, appellant therefore, filed the titled service appeal.
12. That now the pending departmental appeal has been decided by respondent No.2 vides impugned order dated 19-09-2014 (Annexure-J). Appellant brought the fresh development into the notice of this Honourable Tribunal and this Honourable Tribunal was pleased to direct the appellant to submit/file fresh amendment appeal, hence the instant amended appeal inter alias on the following grounds:

GROUND:-

- A. That the respondents have not treated the petitioner in accordance with law, rules and policy on the subject and acted in violation of Article 4 of the Constitution of Pakistan, 1973. Appellant has been subjected for 03 times for the same set of allegation. Appellant has been exonerated by the 1st two inquiries officer and the inquiry against appellant has been filed. The 3rd inquiry has been conducted with bad faith for reason best known to the respondents. An alien procedure has been adopted by the 3rd Inquiry officer and has been held guilty without any sort of supporting evidence and that too on the basis of charges other than the one which was part of charge sheet and statement of allegation and thus appellant has been condemned unheard for the so alleged charges. Appellant was/is regular employee of the force therefore, was entitled for prescribed disciplinary procedure in case of any mis conduct on his part. The authority in order to prosecute the appellant made a short cut way. In absence of prescribed procedure as explained in the statute and statutory rules the prosecution of the appellant cannot be clothed with validity and action on the part of this Honourable Tribunal is required to nullify the action of the respondents on the sole ground of bad faith.

- B. That departmental appeal has not been disposed of as per provision of section 5 of the appeal Rules, 1986. The appellate authority failed to scrutinize the appeal as per spirit of rule.
- C. That the impugned order has been passed in sheer violation of the rules and laws governing the subject. Inquiry has failed to procure an iota of evidence in respect of the charge leveled against the appellant. The finding of the inquiry officer is based on conjecture and summarize and speculations, which has evidently value and legal backing therefore, the verdict of the respondent No.3 is illegal, unlawful and without lawful authority and liable to set back and set aside.
- D. Section 16 of the Civil Servant Act, 1973 provides that every civil servant is liable for prescribed disciplinary action and penalty only through prescribed procedure. In the instant case no prescribed procedure has been adopted by the respondents, hence the action taken by them is illegal, coarm non judice and liable to be set aside.
- E. That as per section 2(a) of the Khyber Pakhtunkhwa Removal from service (Special Power Ordinance), 2000 only the competent authority (Appointing authority) can initiate disciplinary proceeding against a civil servant. In the instant case, the so called disciplinary action has been initiated by the respondent No.3, who is not competent authority in the case of the appellant, thus the very act of respondent is/was contrary to the express provision of law, therefore, the impugned disciplinary action against the appellant, which is contrary to the cited provision of law cannot be sustained in the eyes of law and liable to be set aside.
- F. That where an authority had been authorized to make some order under the rules of law, such authority alone can exercise power in question.....Where anything was prescribed by law to be done in a particular manner, it must be done in that manner or not at all. Order passed by authority other than competent authority, even though of higher rank would be nullity in the eyes of law, more so, when such order was penal one. Reliance is placed on 1989 MLD 3676, 1998 CLC 770, PLD 1997 Lah 692, 2001 PLC(CS) 771, 2000 PLC(CS) 21, 1988 PLC(CS) 387 and so many other numbers of judgments of the Honourable

Supreme Court of Pakistan. In the instant case, the very impugned disciplinary action and impugned order has been exercised by incompetent authority, therefore, nullity in the eyes of law and liable to be set aside.

- G. That when initial order or act relating to initiation of disciplinary proceedings was contrary to law, than all subsequent proceedings and action taken there on would have no base and would fall. If mandatory condition for exercise of jurisdiction by the judicial or quasi judicial authority was not fulfilled, entire proceedings, which followed, would become illegal and would suffer from inherent defect of jurisdiction. Any order passed in continuation of those proceeding would equally suffer from illegality and would be without jurisdiction. Reliance is placed on 2003 PLC (CS) 748 and 2009 SCMR 339(A). More over the appellant has been prosecuted under wrong law.
- H. That major penalty has been imposed without giving reason for disregarding appellant's defense constitute violation of Section 24A of the General Clauses Act, 1897, therefore, the impugned orders are not sustainable in the eyes of law and liable to be struck down.
- I. That the Honourable Supreme Court of Pakistan has in thousand of cases has held that no major punishment could be imposed without regular inquiry, the subject impugned order based on slipshod inquiry, has therefore, no base in the light of the decision of the Apex Court, thus liable to be set aside.
- J. That so called slipshod inquiry has been conducted in the absence and at the back of the appellant. Appellant active participation during inquiry proceeding has been willfully and deliberately ignored. Inquiry proceedings are of judicial in nature in which participation of accused civil servant as per law condition sine qua non. On this ground the impugned orders are coarm non judice and liable to be set back.
- K. That the well-known principle of law " Audi altram Partem" has been violated. This principle of law was always deemed to have embedded in every statute even though there was no express specific or express provision in this regard.

....An adverse order passed against a person without affording him an opportunity of personal hearing was to be treated as void order. Reliance is placed on 2006 PLC(CS) 1140. As no proper personal hearing has been afforded to the appellant before the issuing of the impugned order, therefore, on this ground as well the impugned order is liable to be set aside.

- L. That no inquiry report has been provided along with final show cause notice. Failure to supply copy of inquiry report to a civil servant proceeded against would be sufficient circumstances to hold that either no inquiry was held at all or if inquiry was held, the inquiry report was held as a secret document. Delivery of copy of inquiry report to civil servant proceeded against being a mandatory requirement; disciplinary action taken against a civil servant would not be sustainable in the eyes of law. Reliance is placed on the reported judgment 2010 TD (Service)19.
- M. That petitioner is jobless since impugned order, therefore, entitled to be reinstated with all back benefits.
- For the aforesaid reasons, it is therefore, humbly prayed that the appeal may kindly be allowed as prayed for above.

Appellant

Through

Ashraf Ali Khattak

and

Nawaz Khan Khattak

Advocates, Peshawar.

Dated: _____ / 11/ 2014

Note: All annexure has already been attached with memo of initial appeal, hence no need of further attachment, however copy of the impugned final order is hereby attached as annexure- J.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.

Service Appeal No. /2014

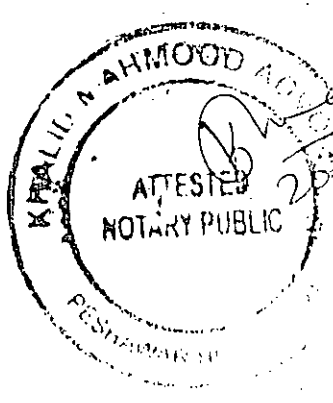
SHER BAHADAR KHAN Ex SIAppellant.

Versus

The Provincial Police Officer Govt: Khyber Pakhtunkhwa, Peshawar and
othersRespondents.

Affidavit

I, SHER BAHADAR KHAN Ex SI , do hereby solemnly affirm and declare on
oath that the contents of this amended Service Appeal are true and correct
to the best of my knowledge, and nothing has been concealed from this
Hon'ble Tribunal.



Deponent

Anx: J

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ORDER

Through this order, I propose to decide a departmental appeal moved by Ex- SI Sher Bahader (compulsory retired) against the punishment order passed by the competent authority (DPO Hangu) vide OB No. 194 dated 31.03.2014.

Facts of the case are that the Provincial Govt: vide order No SO (Comp / Eng) / HD/1-6/2012 dated 07.08.2012 ordered for an enquiry regarding involvement of district Hangu Police in the incident reported by I/C Animal Transportation & Monitoring Cell (smuggling of cattle): Mr. Atif-ur-Rehman (DMG-BS19) District Co-ordination Officer, Bannu was appointed as enquiry officer to conduct a fact finding Enquiry into the matter. The Enquiry Officer vide his finding submitted to the Secretary Home, Govt: of Khyber Pakhtunkhwa, held responsible Ex: SI Sher Bahader the then SHO PS Thall as the appellant forcibly released 26 trucks loaded with cattle from the possession of Mobile squad of Karak and Peshawar, performing the obligations to curb the menace of cattle smuggling. Hence, the appellant was recommended for departmental proceedings by the Enquiry Officer.

In pursuance of the above recommendations, the Worthy, IGF Khyber Pakhtunkhwa directed for departmental proceeding against the delinquent official (now appellant).

Therefore, in compliance with the above and fact finding of the enquiry. The appellant (Ex-SI Sher Bahader) was served with charge sheet along with statement of allegations under Police Rules 1975 by the competent authority. DSP Legal Hangu was appointed as Enquiry Officer to probe the conduct of delinquent official. On submission of findings by the Enquiry Officer, Final Show Cause Notice was issued to the delinquent official by the competent authority accordingly.

He was found guilty of the charges as well as reported ill-reputation. Hence a major penalty of compulsory retirement from service was imposed on him by the competent authority (DPO, Hangu) vide OB No. 194 dated 31.03.2014.

Feeling aggrieved, he moved the instant appeal and comments, relevant record & service record of the appellant were requisitioned.

Record gone through, indicates that besides of the above, the appellant has also been booked under the criminal Law and arrested by the ACE in case FIR No 06 dated 21.12.2012 U/Ss 201, 217, 218, 409, 420 PPC r/w 5(2) PC Act PS ACE Hangu. The available record further indicates the appellant while posted as SHO PS Thall had joined hands with cattle smugglers, forcibly released 26 cattles loaded trucks from the possession of Anti- Cattle Smuggling Squad. He has

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committed a gross professional misconduct for his personal gain on one hand and also caused embarrassment to the disciplined force on the other. Hence, the charges leveled against him have been established beyond any shadow of doubt.

The appellant was also dealt with departmentally for his ill-reputation, but the proceedings were filed being infructuous as he has already been compulsory retired from service.

His service record was found indifferent, he was placed under supervision, awarded different punishments including reversion to the lower rank on several occasions.

Keeping in view of the above and available record, I am convinced that the competent authority has passed a legal and speaking order and taken a lenient view keeping in mind service length of the appellant. The retention of appellant in a discipline force shall earn a bad name to the department. Therefore, in exercise of powers conferred on me under **Rule-11(4)(a) of Khyber Pakhtunkhwa Police Rules 1975 (Amendments 2014)** I hereby reject the appeal of Ex-SI Sher Bahader (compulsory retired) and uphold the punishment order passed by the competent authority.

(DR. ISHTIAQ AHMAD MARWAT)
Dy. Inspector General of Police
Kohat Region, Kohat

No. 8789-9 /EC

- Copy of above for information and necessary action to the:-
- 1 District Police Officer, Hangu, service record of the appellant and enquiry file is returned herewith
 - 2 Appellant (Ex: SI Sher Bahader)

(DR. ISHTIAQ AHMAD MARWAT)
Dy. Inspector General of Police
Kohat Region, Kohat

14/9/2014

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 999 /2014

SHER BAHADAR KHAN Ex
SIAppellant

Versus

THE PROVINCIAL POLICE
OFFICER AND OTHES.
.....Respondents

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4.	Copy of Inquiry Report		C	10- 13
5.	Copy of Order on 1 st Inquiry report.		D	14
6.	Copies of Charge Sheet, Statement of allegation, reply, final show cause, reply to final show cause		E	15- 19
7.	Copy of final show cause	01-2014	F	20
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Appellant

Through

Ashraf Ali Khattak

and

Nawaz Khan Khattak
Advocates, Peshawar

Dated: _____ / 07/ 2014

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 992 /2014

1040
25/8/2014

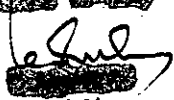
SHER BAHADAR KHAN Ex SI, S/o Sardar Ali Khan R/o Chokara Tehsil Takht e
Nasrati District Karak.....Petitioner.

Versus

1. The Provincial Police Officer Govt: Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer Kohat Region Kohat.
3. The District Police Officer, Hangu..... Respondents.

Service Appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned order of respondent No.3 dated 31-03-2014 and against which appellant filed departmental appeal before the respondent No.2, which is still pending without disposal.

Prayer:


5/8/14
On acceptance of the instant service appeal this Honorable Tribunal may graciously be pleased to declare the impugned order dated 31-03-2014 of respondent No.3 (Annex:H) as void ab initio, illegal, unlawful and without lawful authority and set aside the same and also re-instate the appellant with all back benefits.

Any other relief under the circumstance of the case deemed appropriate under law may also graciously be granted.

Respectfully Sheweth,

Facts giving rise to the present writ petition are as under:-

1. That appellant has been enrolled in the Police Force in the year, 1975 and since then he has been performing his duty devotedly, efficiently and beyond the call of his duty. He has got long standing service at his credit comprising of about 39 years. Appellant has never been rated as in-efficient and unqualified during his long standing service.
2. That on 01-12- 2011, when appellant was posted as SHO Police Station Thall, Hangu he on the complaint of general public and passengers as well instructions from Pak Army rushed towards Rahmat Shah Banda, where GT Road was blocked by Employees of Live Stock illegally for their own means. The general public was suffering as the Road was blocked completely. Appellant on the request of general public and passengers, who were carrying their serious ill relatives to Peshawar and Kohat for treatment requested the official of the Live Stock to kindly perform their duty on certain proper place and get free the GT Road, which request was graciously allowed and the road was freed for passengers use. Proper Nakal Mad was also endorsed for record purpose and investigation (Annexure-A).
3. That after the lapse of one year, Two consecutive FIR were lodged against the appellant (Annexure-B), investigation were carried out and Challan was put in court and trial commenced.
4. That in pursuance of FIRs disciplinary action was also initiated against the appellant and as per impugned order appellant was served with charge sheet and statement of allegation, to which as per impugned order appellant submitted reply.
5. That slip shod inquiry was conducted (Annexure-C) in the absence and at the back of the appellant. The inquiry report is worth perusal. Neither any statement was recorded in the presence of the appellant not the opportunity of cross examination provided and even than the charge has not been proved against the appellant. The prosecution failed to bring an iota of evidence against the appellant.
6. That later on the worthy respondent No.2 order that the departmental proceeding be kept pending till the outcome of the criminal trial.
7. That it is pertinent to mention here that recently another disciplinary proceeding was initiated against the appellant on the basis of corruption and corrupt practices. The

prosecution failed to establish any sort of corruption on the part of appellant and he was exonerated by the inquiry officer and the departmental proceeding was filed (Annexure-D).

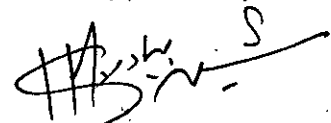
8. That after honourable acquittal from the above cited disciplinary proceeding appellant was again illegally involved on the same set of allegation and was thus subjected to another departmental proceeding. Appellant was charged sheeted. Appellant submitted his reply, inquiry was conducted and final show cause was also served and that too without providing inquiry report. Appellant submitted his reply in response to the final show cause and again the prosecution failed to establish any sort of corruption on the part of appellant during his long standing service (Annexure-E). Appellant was again exonerated and inquiry as per bona fide knowledge of the appellant has been filed.
9. That the mala fide of the respondent can best be judged from the perusal of all above explained position that when they did find any guilt on the part of appellant inspite of their hectic efforts and by prosecuting the appellant twice, they managed another way of prosecuting appellant and restored pending 1st inquiry and thereby served the appellant with final show cause (Annexure-F) and that too without serving him with copy of the inquiry report. Appellant submitted reply to the final show cause (Annexure-G).
10. That it is very surprising and astonish that when the respondent again failed to bring evidence against the appellant, respondent managed to penalize the appellant on the score of other flimsy grounds, which was not part of charge sheet, statement of allegation and final show cause and thereby penalized the appellant with major penalty of compulsory retirement vide impugned order dated 31-03-2014 (Annexure-H).
11. That being aggrieved from the illegal, unlawful impugned order appellant preferred departmental appeal (Annexure-I) which is still pending without disposal, hence the statutory period has elapsed therefore, the instant service appeal inter alia on the following grounds:-
GROUND:-
 - A. That the respondents have not treated the petitioner in accordance with law, rules and policy on the subject and acted in violation of Article 4 of the Constitution of Pakistan, 1973. Appellant has been subjected for 03 times for the same set of allegation.

Appellant has been exonerated by the 1st two inquiries officer and the inquiry against appellant has been filed. The 3rd inquiry has been conducted with bad faith for reason best known to the respondents. An alien procedure has been adopted by the 3rd Inquiry officer and has been held guilty without any sort of supporting evidence and that too on the basis of charges other than the one which was part of charge sheet and statement of allegation and thus appellant has been condemned unheard for the so alleged charges. Appellant was/is regular employee of the force therefore, was entitled for prescribed disciplinary procedure in case of any mis conduct on his part. The authority in order to prosecute the appellant made a short cut way. In absence of prescribed procedure as explained in the statute and statutory rules the prosecution of the appellant cannot be clothed with validity and action on the part of this Honourable Tribunal is required to nullify the action of the respondents on the sole ground of bad faith.

- B. That the impugned order has been passed in sheer violation of the rules and laws governing the subject. Inquiry has failed to procure an iota of evidence in respect of the charge leveled against the appellant. The finding of the inquiry officer is based on conjecture and summarize and speculations, which has evidently value and legal backing therefore, the verdict of the respondent No.3 is illegal, unlawful and without lawful authority and liable to set back and set aside.
- C. Section 16 of the Civil Servant Act, 1973 provides that every civil servant is liable for prescribed disciplinary action and penalty only through prescribed procedure. In the instant case no prescribed procedure has been adopted by the respondents, hence the action taken by them is illegal, coarm non judice and liable to be set aside.
- D. That as per section 2(a) of the Khyber Pakhtunkhwa Removal from service (Special Power Ordinance), 2000 only the competent authority (Appointing authority) can initiate disciplinary proceeding against a civil servant. In the instant case, the so called disciplinary action has been initiated by the respondent No.3, who is not competent authority in the case of the appellant, thus the very act of respondent is/was contrary to the express provision of law, therefore, the impugned disciplinary action against the appellant, which is contrary to the cited provision of law cannot be sustained in the eyes of law and liable to be set aside.
- E. That where an authority had been authorized to make some order under the rules of law, such authority alone can exercise power in question.....Where anything was

- J. That the well-known principle of law "Audi altram Partem" has been violated. This principle of law was always deemed to have embedded in every statute even though there was no express specific or express provision in this regard.
An adverse order passed against a person without affording him an opportunity of personal hearing was to be treated as void order. Reliance is placed on 2006 PLC(CS) 1140. As no proper personal hearing has been afforded to the appellant before the issuing of the impugned order, therefore, on this ground as well the impugned order is liable to be set aside.
- K. That no inquiry report has been provided along with final show cause notice. Failure to supply copy of inquiry report to a civil servant proceeded against would be sufficient circumstances to hold that either no inquiry was held at all or if inquiry was held, the inquiry report was held as a secret document. Delivery of copy of inquiry report to civil servant proceeded against being a mandatory requirement; disciplinary action taken against a civil servant would not be sustainable in the eyes of law. Reliance is placed on the reported judgment 2010 TD (Service)19.
- L. That petitioner is jobless since impugned order, therefore, entitled to be re instated with all back benefits.

For the aforesaid reasons, it is therefore, humbly prayed that the appeal may kindly be allowed as prayed for above.


 Appellant

Through

Ashraf Ali Khattak

and



Nawaz Khan Khattak
 Advocates, Peshawar.

Dated: _____ / 08/ 2014

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No. /2014

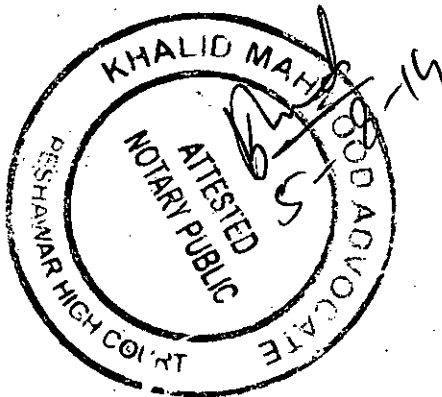
SHER BHADAR KHAN Ex SIAppellant.

Versus

The Provincial Police Officer Govt: Khyber Pakhtunkhwa, Peshawar and others
.....Respondents.

Affidavit

I, SHER BHADAR KHAN Ex SI , do hereby solemnly affirm and declare on oath that the contents of this Service Appeal are true and correct to the best of my knowledge, and nothing has been concealed from this Hon'ble Tribunal.



Sher Bahadar

Deponent

(Signature)

ضلع حیدرآباد

19 نومبر 2011

شمارہ 12

19 دسمبر 2011 کو ایسی مشورہ سلطان SHD نوشہرہ 12 اگست 2011 کو 14:00 بجے میں جمع ہوئی۔
 رفقہ جوالم پیر کا باپا بعد از گشت و ایس ایس ایس برہان گشت اللہ عام ملہا کہ
 حضرت شاہ باہرہ میاں روڑ پیرانک پو پکا ہے اللہ عام میر گشت شاہ باہرہ
 ایسا۔ دوحان پیر کافی تعداد میں شرک و غیرہ ماعوں پر وہ کسوف سے آئے ہیں
 جن میں چیز سال پیشی کے شرک بھی موجود تھے۔ باہرہ شاہک علیہ السلام
 پیشی کے چند شرک کو بالکل روک کے درمیان میں کھڑا کی گئی۔ روڑ آئے ہیں
 شریک کیلئے بندھا۔ لائبرٹساک سٹاف کیساتھ اسکا ایجنٹ علی علیہ السلام
 عزیر سٹاک شہوان بھی تھا۔ جو سال پیشی گزاروں سے لائبرٹساک پیرانک
 کیلئے رقم لیتے ہیں۔ میں نے وجہ پوچھی کہ روڑ دونوں طرف سے بندھے
 اس پر سال پیشی کے گزاروں کے ڈرائیور ان کے ظاہر کر کے کہا کہ میں باہرہ
 بندھ کر رہتا ہوں۔ کہو کہ لائبرٹساک کے پوچھنے سے باہرہ اور سٹاک
 کر گیا۔ اور سال میں لائبرٹساک کے سبک پوسٹ خانے سے روڑ
 اور ہم نے پوسٹ حاصل کیجی ہیں۔ SHD نے بھی لائبرٹساک علیہ السلام اور
 وزیر کیساتھ گفت و شنید کر کے یہ لیت گئی کہ یہ بات تو درست ہے کہ
 ایک ایجنٹ پوسٹ انٹری پوسٹ کرک، جو خانہ اور ایک پوسٹ لائبرٹ
 سٹاک میں سبک پوسٹ روڑ ہے جس پر باقاعدہ اپنی سال پیشی کے گزاروں
 کی بندھ کر رہتی ہے۔ یہاں تو آپ لوگوں نے گزاروں کو کھڑا کر کے روڑ
 کو بندھ کر رکھا۔ کیونکہ اس میں دیگر گزاروں کے ڈرائیور ان اور سٹاک
 شور اور شہر پیرا کر رہے تھے میں نے لائبرٹساک میں خود گاڑی چھوڑا کر
 گیا۔ گاڑیوں کو چھوڑ کر شرک خانے ڈرائیور ان کو روڑ کو لے کر یہ لیت گئی
 اور ڈرائیور ان نے گاڑیوں کو روڑ کر کے کافی کوشش کے بعد وہ دونوں طرف سے
 کی آمد و رفت کو چالو کر کے روڑ کو کھول دیا گیا۔ تمام حالات و احوال جناب
 DP صاحب اور SDP صاحب کے نوٹس میں لکھے گئے ہیں۔ یہی پورے احتیاط
 روڑ ناچ تھا کافی ہے۔ ایسی مشورہ

ضلع حیدرآباد

12/11/2011

Attested

to be true copy Advocate

نام نمبر 23-5 (1)

ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم ذمیل دست اندازی پولیس رپورٹ شدہ زبردفعہ 152 مجموعہ ضابطہ فوجداری

ایسی کرپشن ہنگو	ضلع	ہنگو
15	علت	06
12/2011	تاریخ	12/2011 وقت منقطع
14:00	وقت	14:00
مقام و سبب اطلاع دہندہ مستغیث	جاگیرگی	عبدالستار خان سرکل آفیسر تھانہ ACE ضلع ہنگو
مظہر کیفیت جرم (مردودہ) حال اگر کچھ لیا گیا ہو۔	ممنوعہ	ACT (2) 5/420/409/217/201/PP
جائے وقوعہ فاصلہ تھانہ سے اور سمت بمقام صاحبوں خوزہ/رقبت شانہ راتھ علاقہ تھانہ محل جمع ہنگو بنیاصلہ تقریباً 5 کوئیہ بانسہ غریب اتر تھانہ	تعمیرات	لاٹھو سٹاک چیک پوسٹ ٹل
مقام و سبب ظہم (1) شہیر بہادر خان سابقہ SHO تھانہ محل (2) شہل ذات اسٹینڈ ٹل تعینات	بمذکورہ تہذیب	110/18/ACE حسب اسکم جناب DAC صاحب
کارروائی پر تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا تو وجہ بیان کردہ	بطلوز سیشنل رپورٹ	21-12-2012
تعمیرات سے روائی کی تاریخ و وقت		

ابتدائی اطلاع نیچے درج کرو۔ جناب عالی: امین اڈکوائٹری نمبر 07/012/07 برخلاف سر بہادر خان سابقہ SHO تھانہ محل حال برائیسر لاٹھو سٹاک چیک پوسٹ ڈیوٹی میں تھانہ محل سے 10400/ACE 27-11-012 سے متعلقہ ریکارڈ/انکوائٹری جناب DCO صاحب بنوں یا ت سمگینگ مال مویشی جناب ADC/ACE صاحب کو دیات تھانہ ACE ہنگو مویشی ہو کر انکوائٹری کبگنی بدوربان انکوائٹری و ملاحظہ ریکارڈ/انکوائٹری DCO صاحب بنوں یا اگر شہیر بہادر خان سابقہ SHO تھانہ محل نے سرکاری اختیارات کا غلط استعمال کر کے سینہ زوری سے کام لیتے ہوئے متعلقہ ایڈکاران سے بکٹے گئے 26 عدد ٹرکس (معمولہ 780 مال مویشی چھڑائے۔ اسی طرح شہل جان (ملزم) تعینات لاٹھو سٹاک چیک پوسٹ ٹل نے فراتض منہبی میں چشم پوشی اور غفلت سے کام لیتے ہوئے سنگرمال مویشیوں کے ساتھ ملی ہوگئی کر کے مال مویشی کی سمگینگ میں تعاون کیا۔ سید امروہوں ملزمان مندرجہ بالا کو مرتکب جرائم باز یا کرمقدومہ درج رجسٹر کیا جاتا ہے۔ بدوربان تفتیش اگر کوئی اور ملوث پایا گیا تو کارروائی حسب ضابطہ کی جائیگی۔ پرچہ گزارش جسے میں

سرکل آفیسر تھانہ ایسی کرپشن ضلع ہنگو
21-12-2012

Attested
To be true copy
Advocate

مہر و تفتیش بنوں

Ameer-C =

A- (10)

ENQUIRY FINDING REPORT.

This is departmental enquiry against SI Sher Bahadar SHO PS Thall presently posted in PS City Hangu alleged to be involved in illegal transportation of cattles. Enquiry against the above named officer was initiated on the basis of enquiry previously conducted by Atif-ur-Rehman DCO Bannu in which Mr. Atif-ur-Rehman District Coordination Officer Bannu was appointed as enquiry officer to conduct facts finding enquiry in illegal transportation of animals vide Home & Tribal Affairs department letter No. SO(Com/Enq)/HD/1-6/2012 dated 17.08.2012. The enquiry officer vide his finding reported that Mr. Sher Bahadar Khan, the then SHO PS Thall forcibly released 26 trucks loaded with cattle's from possession of Mobile squade of Karak and Peshawar. Instead of assisting the above squad in performing their official obligations, Mr. Sher Bahadar facilitated the smugglers. The Home department vide letter No. SO(COM/Enq)HD/1-3/2012 dated 16.11.2012, accord approval to initiate departmental proceeding against police official allegedly involved in illegal animals transportation. As such, SI Sher Bahadar Khan, the then SHO PS Thall was charge sheeted vide charge-sheet No.5787/PA dated 06.12.2012, on the basis of allegations that he was allegedly involved in cattle smuggling. SI Sher Bahadar in response to the charge sheet replied that proper case vide FIR No.06 dated 21.12.2012 u/s 201/217/218/409/420 PPC/502, PC Act: has been registered in Police Station Anti Corruption Hangu, on the basis of same allegations, and requested that departmental proceeding may be filed against him under Police Rules 16-3.

In view of the above, departmental proceeding against SI Sher Bahadar were kept pending till the decision of criminal court vide the order of District Police Officer Hangu on 08.02.2013. After that, worthy Dy: Inspector General of Police Kohat Region, Kohat vide his office Memo No.3594/EC dated 21.05.2013 ordered that criminal & departmental proceeding are distinct in nature and opinion of one forum is not binding on the other. Therefore, enquiry be re-opened to find out the commission of misconduct and negligence on the part of defaulter official.

In compliance to the order of worthy Dy: Inspector General of Police, Kohat Region, Kohat contained in Memo No.3594/EC dated 21.05.2013, enquiry was re-opened on 27.05.2013. During the course of enquiry the statements of following witnesses were recorded.

1. Constable Alif Rehman PS Balyamona.
2. Constable Umar Zad Gul No.699 Police Line Hangu.
3. Constable Anjad Mehmood No.1512 PS Thall.
4. Constable Waseem Iqbal No.1519 PS Thall.

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[Signature]
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Advocate

5. HC Sher Zaman Moharrir PS Thall.
6. ASI Jahanger Khan PS Thall.
7. SI Ameerullah IC Traffic Staff Hangu.
8. Joint Statements of drivers Coach stand Thall.
9. Dr. Naeem Shah Live Stock Department Civil Hospital Karak presently posted civil Hospital Latamber.
10. SI Sher Bahader SHO PS Thall now PS City Hangu.

Constable Alif Rehman, Constable Umar Zad Gui No.699, Constable Amjad Mehmood No.1512 and Constable Waseem Iqbal No.1519 vide their statements had accompanied SHO Sher Bahadar and were present with the said officer during the proceeding. According to their statement neither SHO Sher Bahadar had received any illegal gratification from the truck driver's loaded with cattles nor had obtained any valuable thing as reward for himself or for any other person in discharge of official's functions. Dr. Naeem Shah Live Stock department has also supported the version of the constables with regard to omission of criminal misconduct on the part of SHO Sher Bahader. All the above four constables disclosed in their statement that drivers of trucks loaded with cattles complained to SHO Sher Bahader that Live Stock department were demanding illegal gratifications from them. On this score SHO Sher Bahader asked the staff of Live Stock department to set free the vehicles. After that, vehicles loaded with cattles proceeded toward Parachinar. SI Ameerullah vide his statement testified the contents of report entered in DD No.23 dated 13.08.203 which contains the allegations of drivers and butchers of Parachinar and Sadda against Live Stock department that they had demanded Rs. 2200 per truck from them but denying from the authority of valid permits. It is also admitted by the constables that neither the Live Stock Department nor Police Department had arrested/challaned the drivers of trucks loaded with cattles. It is also on the record that one private person Kalam Wazir duly armed with Kalashinkov and one Shoib were present on the spot with Live Stock department. So far as Kalam Wazir is concerned he was arrested and challaned u/s 3MPO vide the order of DCO Hangu Letter No.126 dated 14.01.2012 but Shoib has not been yet arrested u/s 3MPO. Dr. Naeem Shah has disclosed in his statement that Shoib had signaled to stop the trucks loaded with cattles and he had also checked the permits of the cattles. He added that Shoib was in possession of identity Card of Inspector Animal Khyber Pakhtunkhwa and govt. vehicle, on the basis which they took him as govt servant which shows that actually Shoib was not govt servant but supported by unidentified boss. Dr. Naeem Shah has stated in his statement that DCO Hangu was

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[Signature]
To be true copy
Advocate

very much allergic from the performance of Live Stock department who told him that District Live Stock officer, Dr. Shah Sawar Khan and the members of Mobile Squad Peshawar both are allegedly involved in smuggling of cattles.

To sum up the above discussion, it has been established on the record that one Shoib under the cover of Live Stock department official was found checking the vehicles loaded with cattles. Neither the Live Stock Department staff nor Police official has checked the document of the said vehicles. So far as Shoib is concerned, DCO Hangu has reported that he has fled away. If the said person was actually an employee of Live Stock department he would certainly attend the office of DCO Hangu to face legal proceeding. Moreover Dr. Naeem Shah has admitted in his statement that the said person was in possession of identity Card of Inspector Animal movement Khyber Pakhtunkhwa Peshawar and govt. vehicles on the basis of which he was considered to be a govt servant. In addition to it one Kalam Wazir duly armed with Kalashinkov (Private person) was also present with the staff of Live Stock department at Rehmat Shah Banda whose presence is also an un-explained question mark.

As per prescribed criminal law, a govt servant is said to commit criminal misconduct, (i) if he, accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any illegal gratification as a motive or reward or (ii) if he accepts or obtains or agrees to accept or attempts to obtain ~~for~~ any person for himself or for any other person with or without consideration which he knows to be inadequate, related to any proceeding or official functions of himself or any other govt servant to whom he is subordinate or (iii) if he by corrupt or illegal means or by abusing his position as public servant obtain for himself or for any other person any valuable thing or pecuniary advantage. He would be liable to commit criminal misconduct. In this case there is no evidence about the acceptance of any illegal gratification or any valuable thing or agreeing to accept the same with or without consideration as a reward for himself or for any other officer to whom he is subordinate which related to any proceeding or official function of the said officer concerned, hence not falling within the ambit of criminal misconduct.

On the other hand, it has to be seen as to whether the official has facilitated the offence of smuggling. In this case, the law demands that the principle accused/smugglers would have been booked for the commission of offence. But in this case, no one from so called smugglers has been arrested nor challaned for any criminal offence as

Attested
[Signature]
To be true copy
Advocate

DSD / Legal Hangu

Issue Final Show Cause
notice to Si Sher Bahadar
and charge sheets to
the officials responsible
for keeping the enquiry
file in cold storage.

DSD / Hangu

12/3/2014.

such the question of facilitating the offender or arrest does not arise in these circumstances.

In spite of above detailed discussion, SHO Sher Bahadar was under the legal obligation to first check the documents/permit of the vehicle transporting the cattle and then to let them free. The law demands that proper care may be exercised to handle the situation in available circumstances and failure to do so with reasonable and proper care amounts to neglect the legal obligation which is a deviation from performance of official functions demanded by the circumstances.

Submitted please.

Worthy DPO Hangan.

REGISTRY OFFICE, DISTRICT JAGDALPURA

5/6/2013

S/M

Received from DSP(L) office on 14²/₁₄
Submitted for H/o Perusal & further
order please.

W/DPO DSP(L)
DUSKRI

RA
17/2/14

now received on 9.3.2014

R/Sir, The Dak Bai of this office shows that departmental enquiry in hand against Si Sher Bahadar has been received by Constable Shakheel of PA to DPO office Hangan on b.b. 2013 which requires proper proceedings against the defaulters.

Worthy DPO Hangan

DSP(L)
12/13

Attested
To be true copy
Advocate

ORDER

This order of mine will dispose of the departmental enquiry initiated against SI Sher Bahadar on the basis of allegations that he while posted at Police Station Bilyamina as per secret information received from general public of this district coupled with routine standard of his life establishes that he is involved in corrupt practices which indicate that he is ill reputed government serving in district Hangu.

He was served with Charge Sheet together-with statement of allegations under Police Disciplinary Rules 1975 vide No. 2591/PA dated 28.08.2013, to which he submitted his reply. SP Investigation Hangu was appointed as Enquiry Officer to conduct departmental enquiry against him. After completion of enquiry, the enquiry officer submitted his findings on 23.09.2013, having gone through available record/checking of his previous record and examination of SI Sher Bahadar, the enquiry officer has come to the conclusion that the official not found guilty.

Keeping in view of above and having gone through available record, I, Shakirullah Bangash, District Police Officer, Hangu in exercise of the power conferred upon me, disposed of the enquiry with the order that *defaulter SI is hereby warned him to be careful in future, his services will be kept under watch and the enquiry in hand is hereby filed.*

Order Announced.

OB No. 604

Dated X/X /2013.

Shakirullah
SHAKIRULLAH BANGASH
 DISTRICT POLICE OFFICER,
 HANGU

OFFICE OF THE DISTRICT POLICE OFFICER, HANGU.

No. 3056-59/PA, dated Hangu, the 26 / 09 /2013.

Copies to Pay Officer, Reader, SRC & OHC for information & necessary action.

Attested
Signature
 To be true copy
 Advocate

Attested
Signature
Aziz ur Rehman
 DSF
 Distt: Hangu

CHARGE SHEET.

1. MR. IFTIKHAR AHMAD, D.P.O, HANGU as competent authority, hereby charge you SI Sher Bahadar while posted as SHO Police Station Bilyamina committed the following irregularities :-

You are time and again involved in corruption and also not taking interest in official job, which shows disinterest, non professionalism and also amounts to gross misconduct on the part of your official job.

2. By reasons of the above, you appear to be guilty of misconduct Under Police Disciplinary Rules, 1975 and have rendered yourself liable to all or any of the penalties specified in the above rules.

3. You are, therefore, required to submit your written defence within seven days of the receipt of this Charge Sheet to the Enquiry Officer/Committees, as the case may be.

4. Your written defence, if any, should reach to the Enquiry Officer/Committees within the specified period, failing which it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.

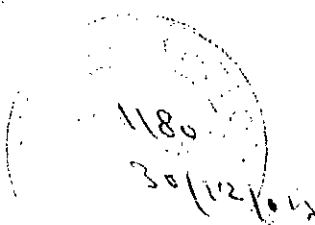
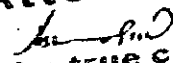
5. Intimate whether you desire to be heard in person.

6. A statement of allegation is enclosed.


(IFTIKHAR AHMAD)
DISTRICT POLICE OFFICER,
HANGU

No. 4180 /PA,

Dated 27/12 /2013.


Attested

To be true copy
Advocate

DISCIPLINARY ACTION.

I, **MR. IFTIKHAR AHMAD, D.P.O, HANGU** as competent authority, am of the opinion that SI Sher Bahadar has rendered himself liable to be proceeded against as he committed the following acts/omissions within the meaning Under Police Disciplinary Rules, 1975:

STATEMENT OF ALLEGATIONS.

You are time and again involved in corruption and also not taking interest in official job, which shows disinterest, non professionalism and also amounts to gross misconduct on the part of your official job.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations, an Enquiry Officer consisting of the following is constituted under the law :-

- i. Mr. Aziz-ur-Rehman DSP Legal Hangu

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

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


(IFTIKHAR AHMAD)
DISTRICT POLICE OFFICER,
HANGU.

A copy of the above is forwarded to :-

1. Mr. Aziz-ur-Rehman DSP Legal Hangu. The Enquiry Officer for initiating proceedings against the accused under the provisions of Police Disciplinary Rules, 1975.

2. SI Sher Bahadar. The concerned officer with the directions to appear before the Enquiry Officer, on the date, time and place fixed by the Officer, for the purpose of the enquiry proceedings.

Attested

To be true copy
Advocate

جہاں وقت اور تاریخ ششہم 27-12-13 4180/PA معروف یوں

① قعانہ بلیا میں یو سٹیک کسی بھی افسر اور الیکٹریٹس لوسٹریڈ نہیں۔ کہ قعانہ بلیا میں کسی لکھنؤ یو لیں الیکٹران SHO لکھتے ہیں۔

② سائل پر عائد کردہ الزامات کو دور کی بات ہے۔ قعانہ بلیا میں میں کرپشن وغیرہ کو چھوڑ۔ رات گزارنا بھی مشکل ہے۔ مگر افسران نے لکھنؤ کے اپنی ڈیوٹی لکھنؤ سے جھوک اور کونابھی کی سرانجام دیا ہے۔ اندر میں بارہ یو لیں الیکٹران قعانہ قعانہ بلیا میں سے بھی کو چھوڑا جا سکتا ہے۔

③ سائل کو بے جا ان الزامات میں ناخوگوار ٹونسا جارہی ہے۔ حالانکہ اس قسم کے الزام میں آئیے بار قبل سائل انکوٹریٹس مانتا تھا ہے۔ جو 3P 50. الفیسٹی گین تصدیق کے قیاس کے جواہر اردو بک نمبر 604 حوض 26/09/2013 کو سائل جو عدم تبویق کے سائل ہے نہاں تبویق کیا گیا ہے۔ اب دوبارہ اس قسم کے الزامات پر انکوٹریٹس از رو قانون زبردفع 354 ص 3۔ اس کے ارسال نمبر 16 کے تضاد میں ہے۔

④ سائل خلاف اگر کوئی قریبی یا زبانی شکایت ہو۔ تو انکوٹریٹس افسر سے استدعا کرنا ہوں۔ کہ سائل کو از رو قانون۔ الضافہ دلانے کی خاطر اس شخص کو طلب کے جمع کر کے سائل کو فراہم کیا جاوے۔

لہذا استدعا ہے سائل کی سروس کی پستاد۔ غریب اور بال کون کی کفالت کو مد نظر رکھتے ہو خارج سے داخل رفتہ فرمایا جاوے۔ اور سائل سے اس کے الضافہ کیا جاوے۔

21/12/2014

Attested

To be true copy

نوٹ: سالانہ انکوٹریٹس میں کسی لکھنؤ کی صورت میں شامل نہیں کیا جائے۔

FINAL SHOW CAUSE NOTICE.

WHEREAS, you SI Sher Bahadar while posted at Police Station Bilyamina as SHO, as per secret information received from general public of this district coupled with routine standard of your life establishes that you are involved in corrupt practices which indicate that you are ill reputed government servant in district Hangu. Your above act shows that you are indisciplind, non professionalism government servant which amounts to gross misconduct on your part.

THEREFORE, you are served with Charge Sheet and Statement of Allegations vide No. 4189/PA, dated 27.12.2013 under Police Disciplinary Rules, 1975 to which you submit your reply. Mr. Aziz-ur-Rehman, DSP Legal Hangu was appointed as Enquiry Officer to conduct departmental enquiry against you. After the completion of enquiry, the enquiry officer submitted his findings, ^{09/28/11/14} in which he suggested that accused officer may be awarded, minor punishment of two annual increments without cumulative effect if approved please.

Now, therefore, I, **Iftikhar Ahmad, District Police Officer, Hangu** have vested the power under Police Disciplinary Rules, 1975 liable to take action against you, which will render you.

Your reply to this Final Show Cause Notice must reach to the office of the undersigned within **7 days** of the receipt of Final Show Cause Notice. In case your reply is not received within the stipulated period, it shall be presumed that you have no defence and ex-parte action will be taken against you. Also state, whether you desire to be heard in person?

(Copy of the findings of the Enquiry Officer is enclosed).

No. 479 /PA,

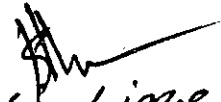
Dt: 31/01/2014.

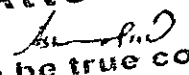
[Signature]
DISTRICT POLICE OFFICER,
HANGU

[Handwritten signature]
S/District Hangu
31/2/2014

Attested
[Signature]
To be true copy
Advocate

جناب عالی! بحوالہ فائل شوکار نوش نمبر 479 معروض ہوں۔ آنٹوائری پڑا میں آنٹوائری
 افسر کو تفصیلہ بیان دے چکا ہوں۔ حالات واقعات یوں صحیفہ مورخ 8/13 کو بحوالہ چھٹی
 انڈینری نمبر 55-2240 مجاریہ انسپکٹرنٹل اف پولیس KPK حسب ہدایت صوبائی
 گورنمنٹ KPK کپشن میں ملوث پولیس ایلیمینٹس کے خلاف آل D.P.O مہمان
 جاری پورے جہ مورخ 8/16 کو D.P.O مہمان سید ارخان بحوالہ چھٹی انڈینری نمبر 3586
 ڈسٹرکٹ نیٹو سے NIL میں جواب دے کر دوبارہ کسی نہ عنایت بناہ پر میرا نام
 نامی نہیں کرتا دیا ہے۔ مورخ 13/28 کو من سائل کو اس قسم کی الزامات میں
 چارج شیٹ کرتا SP مہمان انوشی گیشن نیٹو کو آنٹوائری حوالہ کرتا بدوروز آنٹوائری سائل
 5440 بلایا مینہ تعینات تھا۔ آنٹوائری افسر نے عدم ثبوت کی بنیاد پر باگناہ قرار کرتا
 مورخ 13.9.30 کو بحوالہ آرڈر بک نمبر 604 سائل کو انڈر وچ کرتا جناب D.P.O مہمان
 نے آنٹوائری فائل کیا۔ مورخ 12/27 کو وہی الزامات دوبارہ لگا کر سائل کو چارج شیٹ
 کیا گیا۔ آنٹوائری افسر نے کافی کوشش سے باوجود سائل کے خلاف کسی قسم کا ثبوت پیدا
 نہیں کی۔ اور نہ ہی سائل پر بدوروز آنٹوائری کوئی جرم کیٹس ہے۔ من سائل کا نہ تو
 کوئی سبب ہے۔ اور نہ کوئی کارخانہ۔ اور نہ کوئی بینک بیلنس ہے۔
 سائل آج تک آبائی عاؤں اور آبائی جائیداد میں راجسٹیشن پذیر ہوں
 سائل کے خلاف الزامات بے بنیاد اور من گھڑت ہے۔ آپ مہمان انصاف
 دلانے سے مجاز ہے۔ انصاف کا طلبگار ہوں۔


 SI - Lime Hamra
 3-2-2014

Attested

 To be true copy
 Advocate

Anex F : P-20

FINAL SHOW CAUSE NOTICE.

WHEREAS, you SI Sher Bahadar while posted as SHO PS Thall a letter received from Home Department Govt: of Khyber Pakhtunkhwa Peshawar through Regional Police Officer, Kohat that you were allegedly involved in cattle smuggling vide letter No. SO(SOM/Eng/HD/1-3/Cattle smuggling/2012 dated 16.11.2012. your this act shows non-professionalism also amounts to gross misconduct on your part.

THEREFORE, you are served with Charge Sheet and Statement of Allegations vide No. 5787/PA, dated 04.12.2012 under Police Disciplinary Rules, 1975 to which you submit your reply. Mr. Aziz-ur-Rehman DSP Legal Hangu was appointed as Enquiry Officer to conduct departmental enquiry against you. After the completion of enquiry, the enquiry officer submitted his findings in which he found you guilty.

Now, therefore, I, **Ifthikhar Ahmad, District Police Officer, Hangu** have vested the power under Police Disciplinary Rules, 1975 liable to take action against you, which will render you.

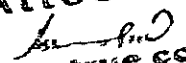
Your reply to this Final Show Cause Notice must reach to the office of the undersigned within **7 days** of the receipt of Final Show Cause Notice. In case your reply is not received within the stipulated period, it shall be presumed that you have no defence and ex-parte action will be taken against you. Also state, whether you desire to be heard in person?

(Copy of the findings of the Enquiry Officer is enclosed).

No. 930 /PA,

Dt: 12/03/2014.


**DISTRICT POLICE OFFICER,
HANGU**

Attested

**To be true copy
Advocate**

حصہ اول

محکمہ امور شہریوں کے دفتر، لاہور۔ 930-PA ہارپ
12-3-14

مذکورہ DP صاحبہ کے مفروضہ میں، انگریزی میں مذکورہ DP صاحبہ کی طرف سے
اس واقعہ کے متعلق مندرجہ ذیل حوالہ دیا گیا ہے کہ 12/11/14
میں ایک تفصیلی رپورٹ جمع و درج ذیل تھی، جسے نوٹس کی
لیف ہے۔ تمام حالات واقعات اس وقت DP صاحبہ کی
مدد کے تحت اس واقعہ میں لاپرواہی سے مداخلت کی گئی
DP صاحبہ، DP صاحبہ کو ارسال کر کے اس واقعہ کے لئے نوٹس
دیا گیا اور اس واقعہ کے حوالہ سے 3MP کے
تحت و تحت جاری کر کے اس واقعہ کے حوالہ سے
لیا گیا۔ ایک مذکورہ رپورٹ میں درج ذیل ہے کہ 12/1-14
ہاویہ DP صاحبہ کے نوٹس کی لیف ہے۔

جہاں تک اس واقعہ کے متعلق ہے، مندرجہ ذیل واقعہ
میں درج ذیل واقعہ کے متعلق درج ذیل نوٹس کے لئے حوالہ دیا گیا ہے۔
اور نوٹس کے عمل کے تحت اس واقعہ کے متعلق اس واقعہ کے
پتے پر ایک نوٹس جمع کیا گیا ہے۔
جہاں تک انگریزی میں مذکورہ DP صاحبہ کے متعلق ہے، جہاں
انگریزی میں مذکورہ DP صاحبہ کے متعلق ہے، انگریزی میں
مذکورہ واقعہ کے متعلق اس واقعہ کے متعلق ہے، اس
واقعہ پر آیا کہ اس واقعہ کے متعلق اس واقعہ کے متعلق
ہے کہ ایک ایک واقعہ، چونکہ اس واقعہ کے متعلق
رپورٹ ہونے کے وقت اس واقعہ کے متعلق اس واقعہ کے

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Advocate

علیہ آقا در میان عیسا ماری و دیگر سواروں کے ہاتھوں
چھی تھی، جس میں عوام نے حکومت کے خلاف اعلان
کے لئے حلف منقول ہے۔

جیسا کہ فائل شورکار ٹولہ کا لفظ ہے جس
میں اے کے حلف والے حلقے کے متعلقہ عیسا ملک
ہوئے گا جو ملک ہے، جو انٹرویو اس کے فائل
اور شورکار ٹولہ کے حوالہ نام میں لکھا ہے۔

خواب دلہ سائل اس انٹرویو میں 1/4 ماہ سبٹ کا اس
وقت کے وجود ہے عیاد خان میں سائل کو ملدیت
پر عمل کر کے وہ تمام بلحاظ تصنیف کیا گیا ہے۔
بلحاظ میں ہے کہ عیاد خان کے انٹرویو میں
فائل شورکار ٹولہ دیا گیا ہے، انٹرویو اس کے فائل
میں ہے کہ جو عیاد خان کے، انٹرویو اس کے فائل
جس پر منفع میں ہے عیاد خان شورکار ٹولہ داخل
دھڑک رہا ہے۔

Signature
S. S. S. S.

17/3/2014

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To be true copy
Advocate

23 اپریل 2013ء صبح 8:30 بجے وقت 21:30 بجے

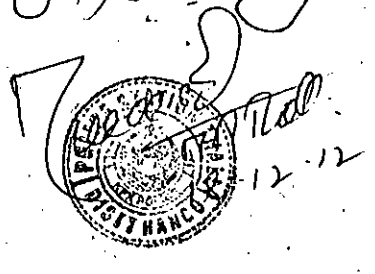
1. حامد بیگ خان ولد زریاب خان 2. سلیم ولد سکندر بیگ 3. گل ولد
 4. حیدر 5. کامران خان ولد بادشاہ خان 6. محبت خان ولد حامد زریاب
 7. سید مریم خان 8. افسر خان 9. افسر خان 10. گل خان
 11. طارق خان 12. سید ولد فقیر 13. سنان
 14. سعید خان 15. شہین ولد فقیر 16. سنان
 17. طارق خان 18. سید ولد فقیر 19. سنان
 20. طارق خان 21. سید ولد فقیر 22. سنان
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 92. طارق خان 93. سید ولد فقیر 94. سنان
 95. طارق خان 96. سید ولد فقیر 97. سنان
 98. طارق خان 99. سید ولد فقیر 100. سنان

- 1. طارق خان ولد زریاب خان 0926-335258
- 2. سلیم ولد سکندر بیگ 0300-5842430
- 3. گل ولد 0926-521712
- 4. کامران خان ولد بادشاہ خان 0926-521712
- 5. محبت خان ولد حامد زریاب 0300-5825946
- 6. سید مریم خان 0926-322053
- 7. افسر خان 0308-2157091
- 8. افسر خان 0926-335258
- 9. گل خان 0926-335258
- 10. طارق خان 0926-335258

مذرا لایٹ ٹیلی فون چنا۔ P.D.F. - حیدرآباد لائن میں لپٹا گیا ہے۔
P.D.F. - پیرس ڈیپارٹمنٹ کے لیے پوسٹ کے کارڈ کے لیے موصول ہوا
دیکھ کر اس کی طرف سے روزنامہ ہدیہ نقدیہ کی طرف سے موصول ہوا
مذرا لایٹ ٹیلی فون کے لیے لپٹا گیا ہے۔

۱۰۰

تقریباً ۱۰۰



ORDER

This order of mine will dispose of the departmental enquiry initiated against SI Sher Bahadar on the basis of allegations that he while posted as SHO Police Station Thall forcibly released 26 trucks loaded with cattle's from the possession of Mobile Squad of Karak and Peshawar instead of assisting the above squads in performing their official obligations. In this regard a letter was also received from Home & T.A department Govt: of Khyber Pakhtunkhwa Peshawar through worthy P.P.O K.PK Peshawar and R.P.O Kohat that you were allegedly involved in cattle smuggling vide letter No. SO/Com/Eng/HD/1-3/Cattle smuggling/2012 dated 16.11.2012. Your this act showed non professionalism and also amounted to gross misconduct on the your part during the performance of official function.

He was served with charge sheet together-with statement of allegations under Police Disciplinary Rules 1975 vide No. 5787/PA, dated 04.12.2012, to which he submitted his reply requesting therein that departmental proceedings may be filed in terms of Police Rules 16-3. Mr. Aziz-ur-Rehman DSP Legal Hangu was appointed as Enquiry Officer to conduct departmental enquiry against him. The enquiry officer submitted his findings on 27.12.2012. From the perusal of enquiry report, the then DPO Hangu ordered on 08.02.2013 that the departmental proceeding against the accused officer may be kept pending till the decision of criminal court. After that, worthy D.I.G Police Kohat vide his office Memo: No. 3594/EC, dated 21.05.2013 ordered that criminal and departmental proceedings are distinct in nature and opinion of one forum is not binding on the other. Therefore enquiry be re-opened to find out the commission of misconduct and negligence on the part of defaulter official. In compliance to the order of worthy D.I.G Police Kohat. Enquiry was re-opened on 27.05.2013. After the completion enquiry, the enquiry officer submitted his finding on 05.06.2013 and found him guilty.

Thereafter, Final Show Cause Notice was issued against the defaulter SI vide this office No.930/PA, dated 12.03.2014. In response to which the defaulter SI submitted his reply on 17.03.2014.

The record of connected departmental enquiry of the above named accused officer vide Charge Sheet No. 4189/PA, dated 27.12.2013 shows that he had succeeded to get attractive posting as SHO PS Doaba with effect from 24.01.2009 to 02.02.2009, as SHO PS Saddar from 03.02.2009 to 15.04.2009, as SHO PS Thall from 21.10.2010 to 22.01.2012, as SHO PS Thall from 24.03.2012 to 07.06.2012, as SHO PS Bilyamina from 08.06.2013 to 26.07.2012 and as SHO PS Bilyamina from 19.06.2013 to 26.12.2013 by using influential means in order to earn a lot. Furthermore the accused officer has proved himself as an inefficient Police officer with poor performance on his part.

Keeping in view of above and having gone through available record, the undersigned has come to the conclusion that the defaulter SI Sher Bahadar had intentionally and deliberately let the loaded vehicles allegedly transporting the cattle to Afghanistan without checking the documents/permits. In this way, the accused officer had joined hands with the accused drivers in illegal transportation of cattle's to Afghanistan. Thus it has been established beyond any shadow of doubt that accused officer has been found involved in



Aziz ur Rehman
DSP/LEGAL
Distt: Hangu


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Advocate

financial corruption. It was the legal obligation of accused officer first to check the documents/permits of the vehicles and then to let them to proceed towards the place of destination but he badly failed to exercise reasonable and proper care in discharge of official functions thus amounting to gross misconduct. In such a situation, his retention in Police Department is a black spot on the forehead of Police Department and also burden on public exchequer. Therefore, I, **Iftikhar Ahmad, District Police Officer, Hangu** in exercise of the powers conferred upon me, award him major punishment of "**Compulsory retirement**" with immediate effect.

Order Announced.

OB No. 194
Dated 31/3/2014.


IFTIKHAR AHMAD
DISTRICT POLICE OFFICER,
HANGU

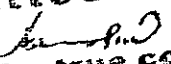
OFFICE OF THE DISTRICT POLICE OFFICER, HANGU.

No. 1158-63 /PA, dated Hangu, the 31/3/2014.

1. Copy of above is submitted to the Regional Police Officer, Kohat for favour of information please.
2. Ex: Sub Inspector Sher Bahadar.
3. Pay Officer, Reader, SRC & OHC for necessary action.


IFTIKHAR AHMAD
DISTRICT POLICE OFFICER,
HANGU


Aziz ur Rehman
DSP LEGAL
Distt: Hangu

Attested

To be true copy
Advocate

BEFORE THE DEPUTY INSPECTOR GENERAL OF POLICE
KOHAT REGION KOHAT

Subject: APPEAL AGAINST THE ORDER OF DPO HANGU BEARING OB NO. 194 DATED 31-03-2014 WHEREBY THE APPELLANT EX-S.I SHER BAHADAR WAS AWARDED THE MAJOR PUNISHMENT OF COMPULSORY RETIREMENT WITH IMMEDIATE EFFECT.

Respectfully Sheweth:

The petitioner with veneration, submits the instant appeal on the basis of the following facts and grounds.

FACTS:

Briefly stated allegation against the petitioner was that he while posted as SHO P.S Thall was illegally involved in cattle smuggling vide letter No. SOL Com / Eng / HD / 1-3 Cattle smuggling / 2012 dated 16-11-2012 received from Home Department Government of Khyber Pakhtunkhwa Peshawar and Regional Police Officer, Kohat. On the above allegation the petitioner was dealt with departmentally and the major punishment of compulsory retirement was awarded of by DPO Hangu vide the impugned order.

GROUND:

- a) As per statement of PWs recorded during the course of departmental inquiry, none had deposed to the effect that the petitioner had facilitated the cattle smuggling. They were unanimous that the road at Rehmat Shah Banda was blocked due the checking of vehicles carrying cattles by the live stock squads of Karak and Peshawar. They further deposed that as per statements of the persons carrying the cattle, the Live Stock officials were demanding illegal gratification. None such witness had stated that the petitioner had forcibly released the vehicles in question from the live

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Advocate

stock officials. However he had asked the live stock officials to let the vehicles go, so that the road blocked could be clear. In this respect I had entered a report in the D.D at S. No. 19 dated 01-12-2011 i.e. the same day at P.S Thall.

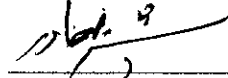
- b) Proper check post of live stock deptt: existed at "Tandaro" on Thall-Parachina road and there was no justification for the checking by live stock officials at Rehmant Shah Banda away from Thall towards Hangu side. The situation was defused by the petitioner in the public interest as these vehicles could be checked subsequently at "Tandaro" check post of the live stock deptt:
- c) The enquiry officer vide his findings had submitted that involvement of the petitioner in cattle smuggling was not established in view of the deposition offered by the witnesses. However the petitioner had failed to check the relevant permits and had deviated from performance of duty as demanded by the circumstances.
- d) The punishment awarded to the petitioner was not commensurate with nature of charge as negligence in performance duty could not be considered as an act of gross misconduct entailing major punishment of compulsory retirement. The punishment awarded to the petitioner is harsh as involvement of the petitioner in cattle smuggling or facilitating the same was not proved in light of the evidence offered by the witnesses and so opined also by the enquiry officer vide his findings.

PRAYER:

In light of the above submissions. It is prayed that the impugned order of DPO Hangu may be set-aside and the petitioner re-instated in service w.e.f. the date of compulsory retirement please.


Dated: 09-04-2014

Yours Obediently



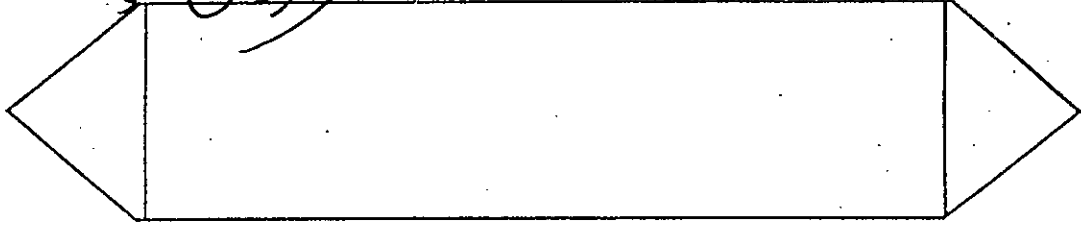
Ex-S.I Sher Bahadar
S/o Sardar Ali Khan
R/o Chokara Karak.

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To be true copy
Advocate

11/4/2013

بعدالت جناب سے رس رسول مبارک



۲۰۱۵ء منجانب

بنام P.P. ۵

شہر بہادر خان

موزخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آئندہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و کل کاروائی متعلقہ
آن مقام سٹیشن منجانب کیلئے سٹیشن منجانب ریزا خان صاحب

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثتہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیار حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

المرقوم _____ ماہ _____ 2015ء

_____ واہ العبد _____

کے لئے منظور ہے۔

۱۱/۱۱/۱۵

Accepted
2/11/15

بمقام سٹیشن

POLICE DEPARTMENT

DISTRICT HANGU

ORDER

SI Sher Bahadur Khan is hereby
re-instated with immediate effect.

3
DISTRICT POLICE OFFICER,
HANGU 4/5

OFFICE OF THE DISTRICT POLICE OFFICER HANGU.

No. 1176-98/PA dated Hangu the 06/1/05 /2013.

Copy of above is submitted to the Regional Police Officer,
Kohat Region Kohat for favour of information please.

2. Inspector Legal to finalize the enquiry as early as possible.
3. E.C for necessary action.

1
DISTRICT POLICE OFFICER,
HANGU 4/5

OB-302/
4-8-12

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Amended Service Appeal No. ____/2014
In
Service Appeal No. 999 /2014

Sher Bahadar Khan Ex.SI.....Appellant

V E R S U S

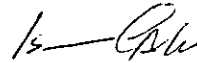
The Provincial Police Officer & others.....Respondents

I N D E X

S.No	Description of Documents	Annex	Pages
1.	Service Appeal		1-6
2.	Affidavit		
3.	Addresses of Parties		
4.	Copy of Nakal Mad	"A"	7-8
5.	Copy of FIR	"B"	9
6.	Copy of Slip shod Inquiry	"C"	10-13
7.	Copy of Departmental Appeal	"D"	14
8.	Copy of reply of final show cause	"E"	15-19
9.	Copy of final show cause	"F"	20
10.	Copy of reply to final show cause	"G"	21-22
11.	Copy of impugned order dt:31.03.14	"H"	23-24
12.	Copy of Departmental Appeal	"I"	25-26
13.	Copy of Order dated 19.09.2014	"J"	27

Petitioner

Through



Ahsraf Ali Khattak
Advocate, Peshawar

Date: __/__/2015

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Amended Service Appeal No.-----/2014

in

SERVICE APPEAL NO. 998 /2014

SHER BAHADAR KHAN Ex SI,Petitioner.

Versus

1. The Provincial Police Officer Govt: Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer Kohat Region Kohat.
3. The District Police Officer, Hangu..... Respondents.

Service Appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned final order of respondent No.2 dated 19-09-2014 passed on the departmental appeal; preferred against the order dated 31-03-2014 passed by respondent No.3.

Prayer:

On acceptance of the instant service appeal this Honorable Tribunal may graciously be pleased to declare the impugned final order dated 19-09-2014 is illegal, unlawful, without lawful authority and set aside the same and also re instate the appellant with all back benefits.

Any other relief under the circumstance of the case deemed appropriate under law may also graciously be granted.

Respectfully Sheweth,

Facts giving rise to the present writ petition are as under:-

1. That appellant has been enrolled in the Police Force in the year, 1975 and since then he has been performing his duty devotedly, efficiently and beyond the call of his duty. He has got long standing service at his credit comprising of about 39 years. Appellant has never been rated as in-efficient and unqualified during his long standing service.
2. That on 01-12- 2011, when appellant was posted as SHO Police Station Thall, Hangu he on the complaint of general public and passengers rushed towards Rahmat Shah Banda, where GT Road was blocked by Employees of Live Stock illegally for their own means. The general public was suffering as the Road was blocked completely. Appellant on the request of general public and passengers, who were carrying their serious ill relatives to Peshawar and Kohat for treatment requested the official of the Live Stock to kindly perform their duty on certain proper place and get free the GT Road, which request was graciously allowed and the road was freed for passengers use. Proper Nakal Mad was also endorsed for record purpose and investigation (Annexure-A).
3. That after the lapse of one year, Two consecutive FIR were lodged against the appellant (Annexure-B), investigation were carried out and Challan was put in court and trial commenced.
4. That in pursuance of FIRs disciplinary action was also initiated against the appellant and as per impugned order appellant was served with charge sheet and statement of allegation, to which as per impugned order appellant submitted reply.
5. That slip shod inquiry was conducted (Annexure-C) in the absence and at the back of the appellant. The inquiry report is worth perusal. Neither any statement was recorded in the presence of the appellant not the opportunity of cross examination provided and even than the charge has not been proved against the appellant. The prosecution failed to bring an iota of evidence against the appellant.

6. That later on the worthy respondent No.2 order that the departmental proceeding be kept pending till the outcome of the criminal trial.
7. That it is pertinent to mention here that recently another disciplinary proceeding was initiated against the appellant on the basis of corruption and corrupt practices. The prosecution failed to establish any sort of corruption on the part of appellant and he was exonerated by the inquiry officer and the departmental proceeding was filed (Annexure-D).
8. That after honourable acquittal from the above cited disciplinary proceeding appellant was again illegally involved on the same set of allegation and was thus subjected to another departmental proceeding. Appellant was charged sheeted. Appellant submitted his reply, inquiry was conducted and final show cause was also served and that too without providing inquiry report. Appellant submitted his reply in response to the final show cause and again the prosecution failed to establish any sort of corruption on the part of appellant during his long standing service (Annexure-E). Appellant was again exonerated and inquiry as per bona fide knowledge of the appellant has been filed.
9. That the mala fide of the respondent can best be judged from the perusal of all above explained position that when they did find any guilt on the part of appellant inspite of their hectic efforts and by prosecuting the appellant twice, they managed another way of prosecuting appellant and restored pending 1st inquiry and thereby served the appellant with final show cause (Annexure-F) and that too without serving him with copy of the inquiry report. Appellant submitted reply to the final show cause (Annexure-G).
10. That it is very surprising and astonish that when the respondent again failed to bring evidence against the appellant, respondent managed to penalize the appellant on the score of other flimsy grounds, which was not part of charge sheet, statement of allegation and final show cause and thereby penalized the appellant with major penalty of compulsory retirement vide impugned order dated 31-03-2014 (Annexure-H).

- 4
11. That being aggrieved from the illegal, unlawful impugned order appellant preferred departmental appeal (Annexure-I), before the respondent No.2, but the same was not disposed of within statutory period of 60 days, appellant therefore, filed the titled service appeal.
 12. That now the pending departmental appeal has been decided by respondent No.2 vides impugned order dated 19-09-2014 (Annexure-J). Appellant brought the fresh development into the notice of this Honourable Tribunal and this Honourable Tribunal was pleased to direct the appellant to submit/file fresh amendment appeal, hence the instant amended appeal inter alias on the following grounds:

GROUND:-

- A. That the respondents have not treated the petitioner in accordance with law, rules and policy on the subject and acted in violation of Article 4 of the Constitution of Pakistan, 1973. Appellant has been subjected for 03 times for the same set of allegation. Appellant has been exonerated by the 1st two inquiries officer and the inquiry against appellant has been filed. The 3rd inquiry has been conducted with bad faith for reason best known to the respondents. An alien procedure has been adopted by the 3rd Inquiry officer and has been held guilty without any sort of supporting evidence and that too on the basis of charges other than the one which was part of charge sheet and statement of allegation and thus appellant has been condemned unheard for the so alleged charges. Appellant was/is regular employee of the force therefore, was entitled for prescribed disciplinary procedure in case of any mis conduct on his part. The authority in order to prosecute the appellant made a short cut way. In absence of prescribed procedure as explained in the statute and statutory rules the prosecution of the appellant cannot be clothed with validity and action on the part of this Honourable Tribunal is required to nullify the action of the respondents on the sole ground of bad faith.

- B. That departmental appeal has not been disposed of as per provision of section 5 of the appeal Rules, 1986. The appellate authority failed to scrutinize the appeal as per spirit of rule.
- C. That the impugned order has been passed in sheer violation of the rules and laws governing the subject. Inquiry has failed to procure an iota of evidence in respect of the charge leveled against the appellant. The finding of the inquiry officer is based on conjecture and summarize and speculations, which has evidently value and legal backing therefore, the verdict of the respondent No.3 is illegal, unlawful and without lawful authority and liable to set back and set aside.
- D. Section 16 of the Civil Servant Act, 1973 provides that every civil servant is liable for prescribed disciplinary action and penalty only through prescribed procedure. In the instant case no prescribed procedure has been adopted by the respondents, hence the action taken by them is illegal, coarm non judice and liable to be set aside.
- E. That as per section 2(a) of the Khyber Pakhtunkhwa Removal from service (Special Power Ordinance), 2000 only the competent authority (Appointing authority) can initiate disciplinary proceeding against a civil servant. In the instant case, the so called disciplinary action has been initiated by the respondent No.3, who is not competent authority in the case of the appellant, thus the very act of respondent is/was contrary to the express provision of law, therefore, the impugned disciplinary action against the appellant, which is contrary to the cited provision of law cannot be sustained in the eyes of law and liable to be set aside.
- F. That where an authority had been authorized to make some order under the rules of law, such authority alone can exercise power in question.....Where anything was prescribed by law to be done in a particular manner, it must be done in that manner or not at all. Order passed by authority other than competent authority, even though of higher rank would be nullity in the eyes of law, more so, when such order was penal one. Reliance is placed on 1989 MLD 3676, 1998 CLC 770, PLD 1997 Lah 692, 2001 PLC(CS) 771, 2000 PLC(CS) 21, 1988 PLC(CS) 387 and so many other numbers of judgments of the Honourable

Supreme Court of Pakistan. In the instant case, the very impugned disciplinary action and impugned order has been exercised by incompetent authority, therefore, nullity in the eyes of law and liable to be set aside.

- G. That when initial order or act relating to initiation of disciplinary proceedings was contrary to law, than all subsequent proceedings and action taken there on would have no base and would fall. If mandatory condition for exercise of jurisdiction by the judicial or qasi judicial authority was not fulfilled, entire proceedings, which followed, would become illegal and would suffer from inherent defect of jurisdiction. Any order passed in continuation of those proceeding would equally suffer from illegality and would be without jurisdiction. Reliance is placed on 2003 PLC (CS) 748 and 2009 SCMR 339(A). More over the appellant has been prosecuted under wrong law.
- H. That major penalty has been imposed without giving reason for disregarding appellant's defense constitute violation of Section 24A of the General Clauses Act, 1897, therefore, the impugned orders are not sustainable in the eyes of law and liable to be struck down.
- I. That the Honourable Supreme Court of Pakistan has in thousand of cases has held that no major punishment could be imposed without regular inquiry, the subject impugned order based on slipshod inquiry, has therefore, no base in the light of the decision of the Apex Court, thus liable to be set aside.
- J. That so called slipshod inquiry has been conducted in the absence and at the back of the appellant. Appellant active participation during inquiry proceeding has been willfully and deliberately ignored. Inquiry proceedings are of judicial in nature in which participation of accused civil servant as per law condition sine qua non. On this ground the impugned orders are coarm non judice and liable to be set back.
- K. That the well-known principle of law " Audi altram Partem" has been violated. This principle of law was always deemed to have embedded in every statute even though there was no express specific or express provision in this regard.

....An adverse order passed against a person without affording him an opportunity of personal hearing was to be treated as void order. Reliance is placed on 2006 PLC(CS) 1140. As no proper personal hearing has been afforded to the appellant before the issuing of the impugned order, therefore, on this ground as well the impugned order is liable to be set aside.

- L. That no inquiry report has been provided along with final show cause notice. Failure to supply copy of inquiry report to a civil servant proceeded against would be sufficient circumstances to hold that either no inquiry was held at all or if inquiry was held, the inquiry report was held as a secret document. Delivery of copy of inquiry report to civil servant proceeded against being a mandatory requirement; disciplinary action taken against a civil servant would not be sustainable in the eyes of law. Reliance is placed on the reported judgment 2010 TD (Service)19.
- M. That petitioner is jobless since impugned order, therefore, entitled to be re instated with all back benefits.

For the aforesaid reasons, it is therefore, humbly prayed that the appeal may kindly be allowed as prayed for above.

Appellant

Through

Ashraf Ali Khattak

and

Nawaz Khan Khattak

Advocates, Peshawar.

Dated: _____ / 11/ 2014

Note: All annexure has already been attached with memo of initial appeal, hence no need of further attachment, however copy of the impugned final order is hereby attached as annexure- J.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.

Service Appeal No. /2014

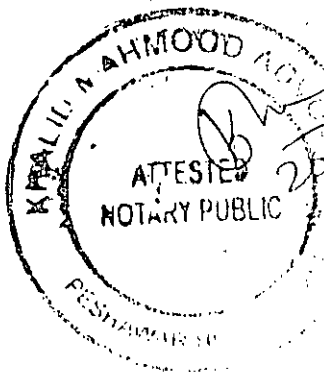
SHER BAHADAR KHAN Ex SIAppellant.

Versus

The Provincial Police Officer Govt: Khyber Pakhtunkhwa, Peshawar and
othersRespondents.

Affidavit

I, SHER BAHADAR KHAN Ex SI , do hereby solemnly affirm and declare on
oath that the contents of this amended Service Appeal are true and correct
to the best of my knowledge, and nothing has been concealed from this
Hon'ble Tribunal.



Deponent

Anx: J

(9)

ORDER

Through this order, I propose to decide a departmental appeal moved by Ex- SI Sher Bahader (compulsory retired) against the punishment order passed by the competent authority (DPO Hangu) vide OB No. 194 dated 31.03.2014.

Facts of the case are that, the Provincial Govt: vide order No SO (Comp / Eng) / HD/1-6/2012 dated 07.08.2012 ordered for an enquiry regarding involvement of district Hangu Police in the incident reported by I/C Animal Transportation & Monitoring Cell (smuggling of cattle). Mr. Atif-ur-Rehman (DMG-BS19) District Co-ordination Officer, Bannu was appointed as enquiry officer to conduct a fact finding Enquiry into the matter. The Enquiry Officer vide his finding submitted to the Secretary Home, Govt: of Khyber Pakhtunkhwa, held responsible Ex: SI Sher Bahader the then SHO PS Thall as the appellant forcibly released 26 trucks loaded with cattle from the possession of Mobile squad of Karak and Peshawar, performing the obligations to curb the menace of cattle smuggling. Hence, the appellant was recommended for departmental proceedings by the Enquiry Officer.

In pursuance of the above recommendations, the Worthy, IGF Khyber Pakhtunkhwa directed for departmental proceeding against the delinquent official (now appellant).

Therefore, in compliance with the above and fact finding of the enquiry. The appellant (Ex-SI Sher Bahader) was served with charge sheet along with statement of allegations under Police Rules 1975 by the competent authority. DSP Legal Hangu was appointed as Enquiry Officer to probe the conduct of delinquent official. On submission of findings by the Enquiry Officer, Final Show Cause Notice was issued to the delinquent official by the competent authority accordingly.

He was found guilty of the charges as well as reported ill-reputation. Hence a major penalty of compulsory retirement from service was imposed on him by the competent authority (DPO, Hangu) vide OB No. 194 dated 31.03.2014.

Feeling aggrieved, he moved the instant appeal and comments, relevant record & service record of the appellant were requisitioned.

Record gone through, indicates that besides of the above, the appellant has also been booked under the criminal Law and arrested by the ACE in case FIR No 06 dated 21.12.2012 U/Ss 201, 217, 218, 409, 420 PPC r/w 5(2) PC Act PS ACE Hangu. The available record further indicates the appellant while posted as SHO PS Thall had joined hands with cattle smugglers, forcibly released 26 cattles loaded trucks from the possession of Anti- Cattle Smuggling Squad. He has

10

committed a gross professional misconduct for his personal gain on one hand and also caused embarrassment to the disciplined force on the other. Hence, the charges leveled against him have been established beyond any shadow of doubt.

The appellant was also dealt with departmentally for his ill-reputation, but the proceedings were filed being infructuous as he has already been compulsory retired from service.

His service record was found indifferent, he was placed under supervision, awarded different punishments including reversion to the lower rank on several occasions.

Keeping in view of the above and available record, I am convinced that the competent authority has passed a legal and speaking order and taken a lenient view keeping in mind service length of the appellant. The retention of appellant in a discipline force shall earn a bad name to the department. Therefore, in exercise of powers conferred on me under **Rule-11(4)(a) of Khyber Pakhtunkhwa Police Rules 1975 (Amendments 2014)** I hereby reject the appeal of Ex-SI Sher Bahader (compulsory retired) and uphold the punishment order passed by the competent authority.

(DR. ISHTIAQ AHMAD MARWAT)
Dy. Inspector General of Police
Kohat Region, Kohat

No. 8789-9 /EC

- Copy of above for information and necessary action to the:-
- 1 District Police Officer, Hangu, service record of the appellant and enquiry file is re turned herewith
 - 2 Appellant (Ex: SI Sher Bahader)

(DR. ISHTIAQ AHMAD MARWAT)
Dy. Inspector General of Police
Kohat Region, Kohat

19/9/2014

ORDER

Through this order, I propose to decide a departmental appeal moved by Ex- SI Sher Bahader (compulsory retired) against the punishment order passed by the competent authority (DPO Hangu) vide OB No. 194 dated 31.03.2014.

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He was found guilty of the charges as well as reported ill-reputation. Hence a major penalty of compulsory retirement from service was imposed on him by the competent authority (DPO, Hangu) vide OB No. 194 dated 31.03.2014.

Feeling aggrieved, he moved the instant appeal and comments, relevant record & service record of the appellant were requisitioned.

Record gone through, indicates that besides of the above, the appellant has also been booked under the criminal Law and arrested by the ACE in case FIR No 06 dated 21.12.2012 U/Ss 201, 217, 218, 409, 420 PPC r/w 5(2) PC Act PS ACE Hangu. The available record further indicates the appellant while posted as SHO PS Thall had joined hands with cattle smugglers, forcibly released 26 cattles loaded trucks from the possession of Anti- Cattle Smuggling Squad. He has

committed a gross professional misconduct for his personal gain on one hand and also caused embarrassment to the disciplined force on the other. Hence, the charges leveled against him have been established beyond any shadow of doubt.

The appellant was also dealt with departmentally for his ill-reputation, but the proceedings were filed being infructuous as he has already been compulsory retired from service.

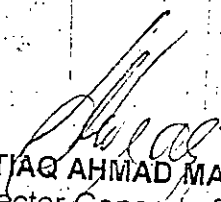
His service record was found indifferent, he was placed under supervision, awarded different punishments including reversion to the lower rank on several occasions.

Keeping in view of the above and available record, I am convinced that the competent authority has passed a legal and speaking order and taken a lenient view keeping in mind service length of the appellant. The retention of appellant in a discipline force shall earn a bad name to the department. Therefore, in exercise of powers conferred on me under **Rule-11(4)(a) of Khyber Pakhtunkhwa Police Rules 1975 (Amendments 2014)** I hereby **reject** the appeal of Ex-SI Sher Bahader (compulsory retired) and **uphold** the punishment order passed by the competent authority.

(DR. ISHTIAQ AHMAD MARWAT)
Dy: Inspector General of Police
Kohat Region, Kohat

No. 8789-90 /EC.

- 1 Copy of above for information and necessary action to the:-
District Police Officer, Hangu, service record of the appellant and enquiry file is returned herewith
- 2 Appellant (Ex: SI Sher Bahader)


(DR. ISHTIAQ AHMAD MARWAT)
Dy: Inspector General of Police
Kohat Region, Kohat

19/9

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR.

Service Appeal No.992-P/2014.

Ex-SI Sher Bahadar

District Police Hangu

..... (Appellant)

VERSUS

The Provincial Police Officer,

Khyber Pakhtunkhwa Peshawar and others

..... Respondents

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S.No	Description of Documents	Annexure	Pages
1.	Affidavit		1
2.	Reply/Parawise Comments		2-3
3.	Copy of order/Endst: No.1186-89/PA dated 01.04.2014		4
4.	Copy of Dy: Inspector of Police Kohat Region Kohat office Letter No.3594/EC dated 21.05.2013.		5
5.	Copy of Enquiry conducted by Home Department of Khyber Pakhtunkhwa Peshawar		6-7
6.	Copy of departmental appeal		8-9

Haas
District Police Officer,
Hangu.

①

**BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR.**

Service Appeal No.992 of 2014

Ex-Sub Inspector Sher Bahadar Khan s/o Sardar Ali Khan

r/o Chokara Tehsil Takht-e-Nasrati, District Karak.

.....Appellant

VERSUS

The Provincial of Police Officer, Khyber Pakhtunkhwa Peshawar.

The Regional Police Officer, Kohat Region Kohat.

The District Police Officer, Hangu

-----Respondents

AFFIDAVIT

We the following respondents do hereby solemnly affirm and declare that contents of **Reply/Parawise Comments** to the appeal filed by Sher Bahadar Ex-SI are true to the best of our knowledge and nothing has been concealed from this honourable tribunal.


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

(Respondent No.1)


**Regional Police Officer,
Kohat Region, Kohat**

(Respondent No.2)


**District Police Officer,
Hangu.**

(Respondent No.3)

**BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA , PESHAWAR.**

Service Appeal No.992 of 2014

Ex-SI Sher Bahadar

Appellant

VERSUS

1. The Provincial of Police Officer, Khyber Pakhtunkhwa Peshawar.
2. The Regional Police Officer, Kohat Region Kohat.
3. The District Police Officer, HanguRespondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS

Respectfully, sheweth,

Reply/Parawise comments on behalf of respondent No. 1, 2 and 3 are submitted as under:-

Preliminary Objection.

1. That the appeal is not maintainable in the present form.
2. The appellant has no cause of action.
3. That the appellant has not approached to this Honourable Tribunal with clean hands.
4. That the appeal is badly time barred.
5. That the appeal is bad for non joinder and misjoinder of necessary parties.

Parawise Comments.

1. Pertains to record, however record is not upto the mark.
2. Pertains to record. An enquiry in the matter was conducted and the Home Department vide Letter bearing Provincial Police Officer Office Dairy No.24689/12 dated 21.11.2012 directed for criminal as well as departmental action against the Police Officials.
3. That case FIR No.06 dated 21.12.2012 u/s 201/217/218/409/420 PPC R/W 5(2) PC Act was registered at ACE Hangu against petitioner and others.
4. Correct to the extent of issuance of charge sheet and initiation of departmental proceedings.
5. Incorrect. Proper departmental enquiry was conducted and allegations were established. However it was kept pending.
6. Pertains to record. However departmental and judicial proceeding are independent of each other and may run parallel.
7. Pertains to record. That as per record charge sheet containing allegation of involvement in corruption and not taking interest was issued against appellant vide No.2591/PA dated 28.08.2013 in which he was warned to be careful in future and his service to be kept under watch.
8. Pertains to record. That a charge sheet with the allegation of corrupt practices was issued vide No.4189/PA dated 27.12.2013 but was filed being infructuous vide order/Enst: No.1186-89/PA dated 01.04.2014. copy attached.
9. Incorrect. The enquiry on the allegations of involvement in cattle smuggling was ordered to be finalized on the direction of Dy: Inspector General of Police Kohat

Region Kohat vide his office Letter No.3594/EC dated 21.05.2013, the direction was issued much before the initiation of 2nd enquiry on distinct allegations. Copy attached.

10. Incorrect. The allegations were reported to be established during enquiry.


11. That, the departmental appeal of petitioner was filed/rejected vide order bearing No.8789-90/EC dated 19.09.2014.


GROUND.

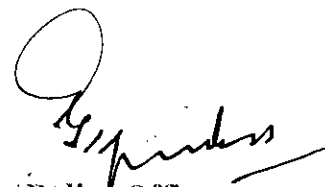
- A. Incorrect. All the proceedings were held in accordance with law and rules. All the enquiries were on separate/distinct allegations whereas the enquiry upon which impugned order of compulsory retirement was passed, was initiated prior to other enquiries. The departmental enquiry was initiated on the basis of preliminary enquiry conducted by the Home Department of Khyber Pakhtunkhwa Peshawar. Copy attached.
- B. Incorrect. Proper enquiry was conducted in accordance with law and allegations established.
- C. Incorrect. All the codal formalities were observed.
- D. Incorrect. The enquiry was conducted under Police Rules 1975 by the competent authority.
- E. Incorrect. All the proceedings were conducted in accordance with law/rules and all the codal formalities were observed.
- F. Incorrect. As stated above.
- G. That allegations were of serious nature, therefore keeping view his length of service, the punishment of compulsory retirement was awarded.
- H. That proper enquiry in accordance with law/rules was conducted.
- I. Incorrect. No such objection was raised during departmental appeal. Copy attached.
- J. All the codal formalities were observed.
- K. Incorrect. The copy of enquiry was enclosed with final show cause notice.
- L. In view of the above, it is humbly prayed that on acceptance of parawise comments the instant appeal may kindly be dismissed being meritless.

Prayer

In view of the above, it is humbly prayed that on acceptance of Parawise comments, the instant service appeal may kindly be dismissed being meritless and time barred please.


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


 Regional Police Officer,
 Kohat Region, Kohat
 (Respondent No.2)


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

④

ORDER.

My this order shall dispose off departmental enquiry against SI Sher Bahadar on the basis of allegations contained in Charge Sheet No. 4189/PA, dated 27.12.2013.

As the accused officer has already been awarded Major Punishment of Compulsory retirement vide this office order Book No. 194 dated 31.03.2014 in departmental enquiry vide Charge Sheet No. 5787/PA, dated 04.12.2012.

Therefore, the instant departmental enquiry against Ex-SI Sher Bahadar has become infrutous and filed accordingly.

However, this departmental enquiry file may be attached with the above mentioned departmental enquiry file vide Order Book No. 194 dated 31.03.2014 for the purpose of office record.

OB No. 199

Dated 11/4/2014


DISTRICT POLICE OFFICER
HANGU.

OFFICE OF THE DISTRICT POLICE OFFICER, HANGU.

No 1186-89/PA, dated Hangu the 11/4/2014.

Copy of above is forwarded to Reader, SRC, Pay Officer for information and necessary action.

Phone No: 9260112.
Fax No: 9260114.

From:- The Dy: Inspector General of Police,
Kohat Region, Kohat.

To :- The District Police Officer, Hangu.

No. 3594 /EC Dated Kohat the 21-5- /2013.

Subject:- CASE FIR NO. 06 DATED 21.12.2012 U/SS 201,217,218,
409,420 PPC / 5 (2) PC ACT POLICE STATION ACE
HANGU

Memorandum.

Reference to your office Memo: No. 1597/LB dated 25.04.2013.

Criminal proceedings and departmental proceedings are distinct in nature and opinion of one forum is not binding on the other forum. Therefore, the enquiry be reopened to find the commission of misconduct and negligence on the part of defaulter official.

Dy: Inspector General of Police
Kohat Region, Kohat.

Insp/Legal. / PA

*Do the needful and
Report Compliance within
(07) days positively.*

District Police Officer
Hangu

703/LB
26-5-13



⑥

**GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT**

**NOTE FOR THE HON'ABLE CHIEF SECRETARY,
KHYBER PAKHTUNKHWA**

Subject: - **ILLEGAL ANIMAL MOVEMENT / TRANSPORTATION.**

To curb menace of cattle smuggling and bring to book all those culprits who are allegedly involved therein; the Provincial Government of Khyber Pakhtunkhwa nominated Mr. Atif-ur-Rehman, (PAS BS-19) District Coordination Officer Bannu as Inquiry Officer and assigned him the obligation to conduct an enquiry in the subject matter and submit report vide **(Annex-I)**.

2. The Enquiry was carried out and the District Coordination Officer, Bannu (Inquiry Officer) has submitted Enquiry Report vide **(Annex-II)** with the recommendations given below;

CONCLUSION / RECOMMENDATIONS OF ENQUIRY REPORT.

- ✓ The role of Mr. Sher Bahadar the then SHO PS Thall is quite clear in promoting smuggling and departmental proceedings against him is recommended. Furthermore, District Livestock Officer Hangu seems to have kept himself completely isolated from the incident and took no interest in pursuing it. He may be warned to remain vigilant and support his staff.
- The Police Department is also to be asked to support whole-heartedly the Livestock Department in curbing the smuggling of cattle as their attitude has been found non-serious and non-cooperative.
- Dr. Naeem Shah, Incharge Animal Transportation and Monitoring Cell Karak had shown courage by reporting the matter to his high ups. Such person needs to be encouraged and assigned further important responsibilities.

3. Keeping in view recommendations of the Inquiry Officer, Home & Tribal Affairs Department, suggests that;

- ✓ i. The Provincial Police Officer, Khyber Pakhtunkhwa may be approached to initiate Departmental proceedings against the allegedly involved Police Official.
- ✓ ii. The Anti-corruption Department may be directed to initiate formal proceedings against the Police Official.
- iii. The Police Department may also be asked to extend coordination and cooperation to Livestock Department in curbing the menace of cattle smuggling.

P

9-22

stock officials. However he had asked the five stock officials to let the vehicles go, so that the road blocked could be clear. In this respect I had entered a report in the D.O. at S. No. 19 dated 01-12-2011 i.e. the same day at S. No. 19.

b) Proper check post of live stock deptt. existed at "Tandara" on Thall-Panchina road and there was no justification for the checking by live stock officials at Rechman Shah Banda away from Thall towards Jangru side. The situation was defused by the petitioner in the public interest as these vehicles could be checked subsequently at "Tandara" check post of the live stock deptt.

c) The enquiry officer vide his findings had submitted that involvement of the petitioner in cattle smuggling was not established in view of the deposition offered by the witnesses. However the petitioner had failed to check the relevant permits and had deviated from performance of duty as demanded by the circumstances.

d) The punishment awarded to the petitioner was not commensurate with nature of charge as negligence in performance duty could not be considered as an act of gross misconduct entailing major punishment of compulsory retirement. The punishment awarded to the petitioner is harsh as involvement of the petitioner in cattle smuggling or facilitating the same was not proved in light of the evidence offered by the witnesses and so opined also by the enquiry officer vide his findings.

PRAYERS:

In light of the above submissions, it is prayed that the impugned order of DPO Hangu may be set-aside and the petitioner re-instated in service w.e.f. the date of compulsory retirement please.

Date: 09-04-2014

Yours Obediently

[Signature]
Ex-21 Shri Bahadar
S/o Sardar Ali Khan
R/o Chokras Kark.

11/1/2-13

Attested
[Signature]
To all true copy
Attorney

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR.

C.M. No. ____/2015

In

Service Appeal No. 992/2014

Sher Bahadur.....(Appellant)

VERSUS

Provincial Police Officer and others.....(Respondents)

APPLICATION FOR EARLY HEARING

Respectfully Sheweth:

1. That the above mentioned Service Appeal is pending adjudication before this Hon'ble Court which is fixe for 10/11/2015.
2. That the appellant is jobless and the services of the appellant is the only source of his family livelihood.
3. That identical appeals of "Jahangir and Naik Nawaz" has already been fixed for 11/06/2015.

May be rebramed
to 11-6-2015 as request.
Rendur

07/5

4. That it shall be in the interest of justice to accelerate the date in the Service Appeal and the date may be fixed on 11/06/2015 along with appeal of Jahangir and Naik Nawaz being of similar and identical nature.

It is, therefore, respectfully prayed that on acceptance of this application, the date in the Service Appeal may kindly be accelerated by fixing it on an earlier date.

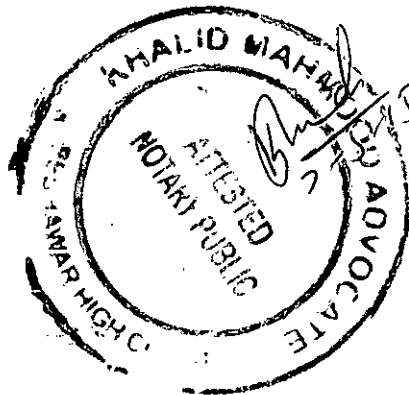

Appellant

Dated: 07/05/2015

In person

AFFIDAVIT:

I, **Sher Bahadur** (Appellant) do hereby solemnly affirm and declare, that the contents of the **Application** 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.992-P/2014

Ex-SI Sher Bahadar.....Appellant.

Versus

The Regional Police Officer Kohat and others.....Respondents

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

Respectfully Sheweth,

Preliminary Objections:

Preliminary objections raised by answering respondents are erroneous and frivolous as having no factual and legal backing. The answering respondents have failed to explain as why appellant has got no cause of action and locus standi; how the appeal suffers from limitation and laches; how appellant is estopped by his conduct, how the appellant is not an aggrieved person within the meaning of section 4 of the Service Tribunal Act, 1974 and how the appeal is not maintainable; what material facts have been concealed by the appellant and why the appeal is not maintainable; why the appeal liable to be dismissed in limini. No plausible explanation has been provided/submitted by the answering respondents? No specific and due objection regarding the controversial question of fact involved in the instant service appeal has

been raised therefore, appellant is unable to submit proper rejoinder to the preliminary objection raised by the answering respondents.

Facts:

1. That Para No.1 of the appeal has been admitted by the answering respondents as correct.
2. That Para No.2 of the appeal has been partially admitted by the answering respondents.
3. That reply to Para No.3 is partially correct, but it is humbly submitted that appellant has been honourably acquitted of the alleged criminal proceedings.
4. That no specific reply has been submitted to Para No.4 to 11 and the stance of the appellant has been over looked. The departmental appeal of the appellant has been rejected by the respondent in violation of Rule 5 of the Appeal Rules, 1986.

Grounds:

A-I The replies to grounds A-I of the appeal are mere repetition of the facts, hence no need of further elucidation. Appellant rely on his grounds already submitted in his memo of appeal. However, it is humbly submitted that no proper and due inquiry has been conducted by the respondents. Appellant was the regular employee of the respondent organization, therefore entitled for all legal mandatory disciplinary procedure. The respondent have violated the spirit and provisions of section 16 of the Civil Servant Act, 1973 and the rules made under the said Act. Appellant has been

acquitted by the competent court of law. In this reference appellant rely on the following judgment of the Honourable Supreme Court of Pakistan.

When facts and circumstances of the criminal case and disciplinary proceeding are the same..... Civil Servant entitle for reinstatement... (2011 TD 164). Acquittal from criminal charge. Reinstatement is a Rule under Article 4 and 25 of the Constitution, 1973. 1997 PLC (CS) 752.

Civil Servant Charged with Criminal Offence...exonerated by the complainant ...Acquitted... Department constituted fact finding inquiry... Civil Servant not participated ... Major Penalty (Dismissal) ... set aside.(2003 SCMR 207(b), 2003 PLC (CS) 7(b).

Dismissal... Registration of FIR... Acquitted... Such dismissal could not be insisted to be retained in field (2009 PLC (CS) 471, 1986 PLC (CS) 130.

2001 SCMR 269, 2003 PLC (CS) 814, 2002 SCMR 57.

Charge of Corruption... Dismissed...Acquittal by competent court of law....Civil servant shall be deemed not to have committed the charge offence....Authority would be bound to re-instate the civil servant. (2013 PLC (CS) 1398(a) (b).

Civil Servant was proceeded against on the statement of compliant before Police. Complainant resiled from his statement during the course of Criminal Proceedings and Civil Servant was acquitted of the charge level against him, but in departmental proceeding he was dismissed from service on the basis of complainant statement before the police. Statement of complaint has been recorded before the police and the same could not be used in departmental proceeding and more so the same has not scrutinized through the scrutiny of cross examination, therefore has no evidently value. Civil Servant was re instated, 2003 SCMR 207+ 2013 PLC (CS) 1059+ 2013 SCMR 714.

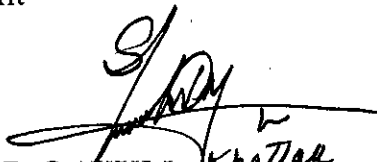
Acquittal of civil servant from a criminal case. Civil servant in case of acquittal was to be considered to have committed no offence because the competent criminal court had freed/cleared him from accusation or charge of crime. Such civil servant, therefore, was entitled to grant of arrears of his pay and allowances in respect of the period he remained under suspension on the basis of murder case against him. 1998 SCMR 1993.

Where the departmental proceedings were initiated only on the basis of criminal charge, which was not subsequently proved in the competent court of law and resulted in acquittal, Order of service Tribunal upholding the order of compulsory retirement by the department was set aside by the Supreme Court. PLD 2003 SC 187.

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.


Appellant

Through


SHAHID QAYUM Khattar
Advocate, Peshawar

⁰³
Dated: /09/2015

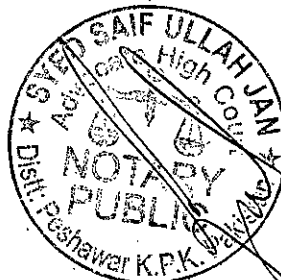
AFFIDAVIT

I, Ex-SI Sher Bahadar, do hereby affirm and declare on oath that the content 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.

03 SEP 2015

ATTESTED


Deponent



BEFORE THE KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL PESHAWAR

Service Appeal No.992-P/2014

Ex-SI Sher Bahadar.....Appellant.

Versus

The Regional Police Officer Kohat and others.....Respondents

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

Respectfully Sheweth,

Preliminary Objections:

Preliminary objections raised by answering respondents are erroneous and frivolous as having no factual and legal backing. The answering respondents have failed to explain as why appellant has got no cause of action and locus standi; how the appeal suffers from limitation and laches; how appellant is estopped by his conduct, how the appellant is not an aggrieved person within the meaning of section 4 of the Service Tribunal Act, 1974 and how the appeal is not maintainable; what material facts have been concealed by the appellant and why the appeal is not maintainable; why the appeal liable to be dismissed in limini. No plausible explanation has been provided/submitted by the answering respondents? No specific and due objection regarding the controversial question of fact involved in the instant service appeal has

been raised therefore, appellant is unable to submit proper rejoinder to the preliminary objection raised by the answering respondents.

Facts:

1. That Para No.1 of the appeal has been admitted by the answering respondents as correct.
2. That Para No.2 of the appeal has been partially admitted by the answering respondents.
3. That reply to Para No.3 is partially correct, but it is humbly submitted that appellant has been honourably acquitted of the alleged criminal proceedings.
4. That no specific reply has been submitted to Para No.4 to 11 and the stance of the appellant has been over looked. The departmental appeal of the appellant has been rejected by the respondent in violation of Rule 5 of the Appeal Rules, 1986.

Grounds:

A-I The replies to grounds A-I of the appeal are mere repetition of the facts, hence no need of further elucidation. Appellant rely on his grounds already submitted in his memo of appeal. However, it is humbly submitted that no proper and due inquiry has been conducted by the respondents. Appellant was the regular employee of the respondent organization, therefore entitled for all legal mandatory disciplinary procedure. The respondent have violated the spirit and provisions of section 16 of the Civil Servant Act, 1973 and the rules made under the said Act. Appellant has been

acquitted by the competent court of law. In this reference appellant rely on the following judgment of the Honourable Supreme Court of Pakistan.

When facts and circumstances of the criminal case and disciplinary proceeding are the same.... Civil Servant entitle for re-instatement... (2011 TD 164). Acquittal from criminal charge. Re-instatement is a Rule under Article 4 and 25 of the Constitution, 1973. 1997 PLC (CS) 752.

Civil Servant Charged with Criminal Offence...exonerated by the complainant ...Acquitted... Department constituted fact finding inquiry... Civil Servant not participated ... Major Penalty (Dismissal) ... set aside.(2003 SCMR 207(b), 2003 PLC (CS) 7(b).

Dismissal... Registration of FIR... Acquitted... Such dismissal could not be insisted to be retained in field (2009 PLC (CS) 471, 1986 PLC (CS) 130.

2001 SCMR 269, 2003 PLC (CS) 814, 2002 SCMR 57.

Charge of Corruption... Dismissed...Acquittal by competent court of law...Civil servant shall be deemed not to have committed the charge offence....Authority would be bound to re-instate the civil servant. (2013 PLC (CS) 1398(a) (b).

Civil Servant was proceeded against on the statement of compliant before Police. Complainant resiled from his statement during the course of Criminal Proceedings and Civil Servant was acquitted of the charge level against him, but in departmental proceeding he was dismissed from service on the basis of complainant statement before the police. Statement of complaint has been recorded before the police and the same could not be used in departmental proceeding and more so the same has not scrutinized through the scrutiny of cross examination, therefore has no evidently value. Civil Servant was re instated, 2003 SCMR 207+ 2013 PLC (CS) 1059+ 2013 SCMR 714.

Acquittal of civil servant from a criminal case. Civil servant in case of acquittal was to be considered to have committed no offence because the competent criminal court had freed/cleared him from accusation or charge of crime. Such civil servant, therefore, was entitled to grant of arrears of his pay and allowances in respect of the period he remained under suspension on the basis of murder case against him. 1998 SCMR 1993.

Where the departmental proceedings were initiated only on the basis of criminal charge, which was not subsequently proved in the competent court of law and resulted in acquittal, Order of service Tribunal upholding the order of compulsory retirement by the department was set aside by the Supreme Court. PLD 2003 SC 187.

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.

Am
Appellant

Through

Shahid Qayum
SHAHID QAYUM
Advocate, Peshawar

⁰³
Dated: /09/2015

AFFIDAVIT

I, Ex-SI Sher Bahadar, do hereby affirm and declare on oath that the content 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.

03 SEP 2015

ATTESTED *Deponent*



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

C.M. No. _____/2015

In

Service Appeal No. 992/2014

Sher Bahadur.....(Appellant)

VERSUS

Government of K.P.K

and others.....(Respondents)

APPLICATION FOR EARLY HEARING

Respectfully Sheweth:

1. That the titled Service Appeal is pending before the Hon'ble Tribunal, which fixed for 04/10/2015.
2. That two other same nature cases "Naik Nawaz..VS..Govt of KPK and others" and Jehangir Khan...VS..Govt of KPK and others" are fixed for 04/09/2015.
3. That the above mentioned cases are same nature, needs same date fixation.

Revs. pt. arrange as requested as per relevant procedure.

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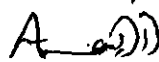
4. That it shall be in the interest of justice to accelerate the date in the Service Appeal and fixed the same for 04/09/2015.

It is, therefore, humbly prayed that the titled Service Appeal may kindly be fix on 04/09/2015.


Appellant

Through

Dated: 13/08/2015


Ashraf Ali Khattak
Advocate High Court,
Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

C.M. No. _____/2015

In

Service Appeal No. 998 /2014

Sher Bahadur.....(Appellant)

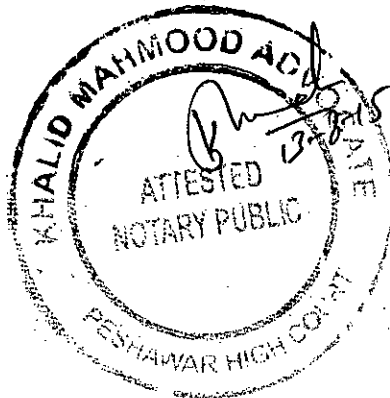
VERSUS

Government of K.P.K

and others.....(Respondents)

AFFIDAVIT

I, **Sher Bahadur** S/o Sardar Ali Khan R/o Chokara,
District Karak, do hereby solemnly affirm and declare that the
contents of the **Application** are true and correct to the best of
my knowledge and belief and nothing has been concealed from
this Hon'ble Tribunal.




DEPONENT

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 791 /ST

Dated 16 / 5 / 2016


To

The DPO,
Hangu.

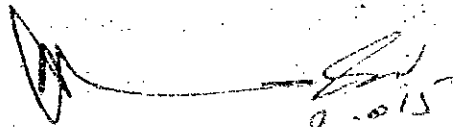
Subject: - **JUDGMENT**

I am directed to forward herewith a certified copy of Judgement dated 5.5.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

directions of the Chief Secretary KPK, in which the accused Sher Bahadar SHO was found involved in cattle smuggling to Afghanistan and FATA, who, on 01.12.2011, let 26 trucks carrying 780 cattle go without checking papers/permits and in view of enquiry of the DCO another separate enquiry was conducted by the Anti-Corruption Establishment (ACE). The ACE summoned the SHO Sher Bahadar and recorded his statement, who explained that he relied on his statement recorded before the DCO Bannu and that he was innocent. It was found in the enquiry that on 01.12.2011 Mobile Squad Peshawar comprising Nawab Ali and Mr Shoaib apprehended 26 trucks carrying 780 cattle at Mamu Khura/Rehmat Shah Banda within the jurisdiction of Police Station Hangu where the accused Sher Bahadar, forcibly and with the aid of the smugglers, let those trucks go and his such act amounted to pave way for smuggling knowingly that there was ban imposed by the Provincial Government on the cattle smuggling. Similarly the other accused Misal Khan posted as Veterinary Assistant in the Livestock Office Hangu, while performing duties at Joint Check post Thal Hangu was also summoned and enquired about the above facts, who did not report the matter to the superiors either in writing or orally. On completion of the open enquiry case, vide F.I.R No.06 (EXPA) dated 21.12.2012 under sections 201/217/218/409/420 PPC read with section 5 (2) of the PC Act, Police Station ACE Hangu, was registered against the accused facing trial. The accused were arrested and the case was investigated. After


 11.08.2015
 A. J. S. JUDGE
 Anti-Corruption Establishment
 Hangu District

completion of necessary formalities challan was sent to this court for trial against the accused.

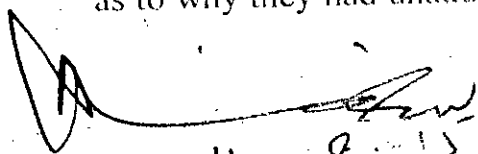
2. On receipt of challan, the accused were summoned and on their putting appearance, copies were delivered to them and they were charged sheeted under sections 201/217/218/409/420 PPC readwith 5 (2) PC Act, 1947 to which they pleaded not guilty. Trial was commenced and PWs were summoned.
3. Prosecution, for the establishment of charge, examined as many as five witnesses in all, abandoning rest of the witnesses.
4. Dr Naeem Shah, Incharge C.I.I Dispensary, Latamber Karak (PW-1) stated that on 01.12.2011 the mobile squad of Peshawar had gone to the Gurguri Check post at Band Daud Shah and told him that 26 trucks carrying 780 animals had crossed the Karak border; that being incharge animal movement, it was his duty to stop the trucks; that he told the mobile squad Peshawar that he was duty bound to stop those trucks within his district, in response Mr Shoaib Inspector Animal Movement KPK and Nawab Ali Veterinary Assistant told him that those trucks had crossed Karak so he was responsible and then the members of mobile staff of Karak and Peshawar proceeded to Mamu Khuwar from Gurguri check post and at Mamu Khuwar all 26 trucks were stopped by Mr Shoaib; that in the meanwhile SHO Bahadar Sher was informed, who came to the spot and told the smugglers that that was the job of the local police and not the livestock and then pressurized Mr Shoaib as to why he

11. 2015
Addl: Special Judge
Anti-Corr. Region

- 4 -

had blocked the road; that he further said that they were making problems for him; that the SHO then permitted all the drivers of the trucks to leave without permission and consent of the livestock officers; that, Mr Shoaib then contacted Mr Hidayatullah the then Minister, who ordered Mr Shoaib to go to the DCO office Hangu and meet DCO Hangu Kamal Khan, who told him that he was gentleman while Mr Shoaib and District Livestock Officer both were also involved in the cattle smuggling; then Mr Shoaib again contacted the Livestock Minister that the DCO was not cooperating with the mobile squad, the Minister directed that he should submit a detailed report of all the events of that day and he prepared the same, which consisted three pages; that, Mr Shoaib informed him, that the smugglers had invited them for "nannawatey" (dinner) but he refused; that he then returned to his duty.

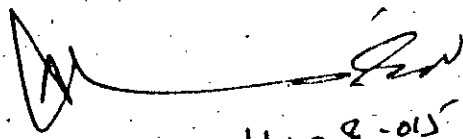
5. Shariq Hayat Veterinary Assistant MVC Karak (PW-2) stated that on the day of occurrence he was present on his duty at Banda Daud Shah and Dr Nacem Shah was also present, when in the meanwhile Shoaib Inspector along with Nawab Ali veterinary assistant went to their check post and informed them that 26 trucks carrying 780 animals had passed their check post to which they replied that there were other many routes; that the Inspector directed them to accompany him to stop those vehicles; that they stopped those near Mamu Khuwar District Hangu where the accused SHO reached and on seeing that the trucks had blocked the road, asked them as to why they had unauthorizedly stopped the trucks, as



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Mr Shoaib had parked his vehicle in front of the trucks on the main road on which the SHO directed him to move his vehicle where after all the trucks passed along with loaded cattle; there after Mr Shoaib inspector contacted the Minister Livestock, who directed him to report the matter to the DCO Hangu, where the DCO informed Dr Naeem Shah that Shoaib was in league with the smugglers and that he should not involve himself in the affairs; that the DCO refused to extend any help; that there after Shoaib Inspector contacted the Minister Livestock, who directed him to report the entire incident in writing; from there they returned to their check post.

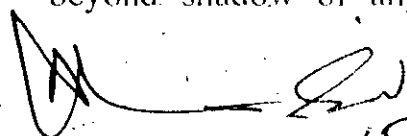
6. Sattar Khan Inspector Investigation wing Kohat(PW-3) said that after receipt of enquiry conducted by the DCO Bannu, he started his own open enquiry and recorded statements of PWs Subhanullah, Shariq Hayat, Muhammad Zada and Naeem complainant; that he then prepared final report EXPW-3/2 and recommended for registration of case; that he received permission letter EXPW-3/3 and registered FIR EXPA. That after registration of FIR he submitted application for permission to arrest the accused, in the meanwhile the accused obtained pre-arrest bail, which was dismissed and he arrested the accused Sher Bahadar and Misal Khan and recorded their statements under section 161 CrPC and produced them before the Illaqa Magistrate for judicial remand. That on completion of investigation he submitted challan.



11-08-05

Addl: Special Judge
Anti-Corruption, Southern Region
Camp at Kohat

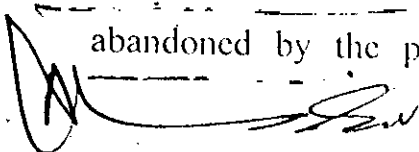
7. Dr Saifullah Shah District Director Livestock (PW-4) deposed that on 13.07.2010 he had requested the DG Livestock and Dairy Development KPK for the non-cooperation of Police and that through his letter No.22-25 dated 21.06.2010 sent through proper channel he informed his DG about the livestock movement and transportation.
8. Atif Rehman Khan Political Agent North Waziristan Agency (PW-5) deposed that the Provincial Government had nominated him as an authorized enquiry officer in the cattle smuggling case on 17.08.2012 and he conducted the facts finding enquiry consisting of six pages EXPW-5/1.
9. The prosecution then closed its evidence.
10. At the close of prosecution evidence, statements of accused facing trial were recorded under section 342 of the Criminal Procedure Code, 1898 in which they denied the prosecution allegations and professed innocence. They neither wished to be examined on oath, nor to produce evidence in defense.
11. I have heard arguments of learned Senior Public Prosecutor for the state and learned counsel for the accused facing trial and have gone through the case file.
12. Learned Senior Public Prosecutor submitted that the accused facing trial were found involved in aiding the cattle smugglers to enable them to smuggle the cattle and the allegations against them stood proved at the trial beyond shadow of any reasonable doubt, hence the


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accused were liable to be convicted for the offences they were charged with.

13. On the contrary learned defence counsel submitted that there was no case against the accused; that the accused were innocent and were falsely implicated in the case; that there was no evidence against the accused and that none of the sections leveled against the accused could have been proved at the trial. They argued that the prosecution has failed to prove the case against the accused and prayed for their acquittal.

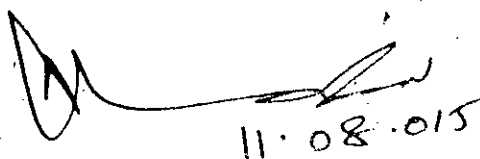
14. It is the case of the prosecution that the accused SHO Sher Bahadar had, willfully and knowingly, directed the mobile squad of the Livestock department to open the road at Mamu Khuwar within the jurisdiction of Police Station Thall District Hangu and thereby 26 trucks carrying 780 cattle were passed. It is alleged that the mobile squad comprising Mr Shoaib and Nawab Ali Assistant Livestock Department, had stopped 26 trucks smuggling 780 cattle but the SHO ordered them to open the road and the trucks went. It is astonishing to observe that one of the members of mobile squad named Mr Shoaib, whose name has, time and again, been taken by the PWs, who were produced before the court, was neither listed as witness nor produced to depose in favour of the prosecution, thus best available evidence was withheld by the prosecution creating great dent in the prosecution case, whereas another important witness i.e. the other member of the mobile squad, was abandoned by the prosecution. These were the two


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Add: Special Judge
Anti-Corruption, Southern Region
Camp at Nchar

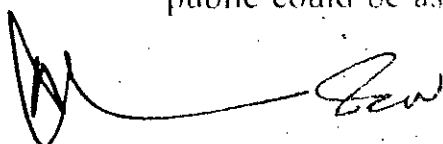
witnesses who could depose about the factum of trucks carrying cattle and who could complete the story. Without examining such important witnesses the case of the prosecution has badly failed especially when the entire structure of the story has been built on these two witnesses because PW-1 Dr Naeem Shah Incharge Civil Dispensary Karak starts his deposition from coming of the mobile squad to him and also the other prosecution witness PW-2 Shariq Hayat Veterinary Assistant MVC Karak says like the same. PW-1 stated as under:

"on 01.12.2011 the mobile squad of Peshawar had gone to the Gurguri Check post at Band Daud Shah and told him that 26 trucks carrying 780 animals had crossed the Karak border; that being incharge animal movement, it was his duty to stop the trucks; that he told the mobile squad Peshawar that he was duty bound to stop those trucks within his district, in response Mr Shoaib Inspector Animal Movement KPK and Nawab Ali Veterinary Assistant told him that those trucks had crossed Karak so he was responsible and then the members of mobile staff of Karak and Peshawar proceeded to Mamu Khuwar from Gurguri check post and at Mamu Khuwar all 26 trucks were stopped by Mr Shoaib; that in the meanwhile SLIO Bahadar Sher was informed, who came to the spot and told the smugglers that that was the job of the local police and not the livestock


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and then pressurized Mr Shoaib as to why he had blocked the road; that he further said that they were making problems for him; that the SHO then permitted all the drivers of the trucks to leave without permission and consent of the livestock officers; that Mr ~~Shoaib then contacted Mr Hidayatullah the~~ then Minister, who ordered Mr Shoaib to go to the DCO office Hangu and meet DCO Hangu Kamal Khan, who told him that he was gentleman while Mr Shoaib and District Livestock Officer both were also involved in cattle smuggling; then Mr Shoaib again contacted the Livestock Minister that the DCO was not cooperating with the mobile squad, the Minister directed that he should submit a detailed report of all the events of that day and he prepared the same, which consisted three pages; that, Mr Shoaib informed him that the smugglers had invited them for "nannawatey" (dinner) but he refused; that he then returned to his duty."

The above deposition shows that the trucks carrying cattle had crossed the area where PW-1 was posted but he was unaware of such passage. It was allegedly the mobile squad who informed him about such passage. But none of the members of the mobile squad could be produced to substantiate the fact narrated by PW-1. Similarly no one from the public could be associated with the story. It is said

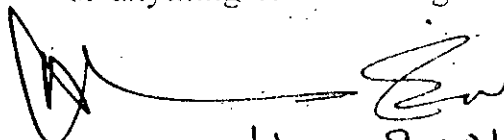


11.08.015

Add: Special Judge
Law, Corruption, Southern Region

by PW-1 that the 26 trucks were apprehended at Mamu Khuwar by Mr Shoaib, one of the alleged members of the mobile squad and the SHO Sher Bahadar was informed, who reached the spot but in the meanwhile neither the members of the squad nor PW-1 a high ranking officer of the Livestock could note or bring on record the registration number of even a single truck because registration number of not a single truck could be given. True that in the cross examination PW-1 told that he could note registration numbers of few trucks but even then he, while deposing on oath before the court, did not tell a single number. Similarly the prosecution did not bother to trace any of the 26 trucks.

15. Another amazing thing to observe is that PW-1 being an official of the department and having served there for more than 17/18 years says in the cross examination that Mr Shoaib had introduced himself to him. It means that PW-1 was not himself knowing Mr Shoaib the alleged member of the mobile squad. In the entire episode narrated by PW-1 there is active part of Mr Shoaib throughout, who is, as aforesaid, not made witness nor produced by the prosecution and surprisingly PW-1 does not know the important official i.e. member of the mobile squad nor could the prosecution produce any order of deputing Mr Shoaib as member of the mobile squad or for that matter that of Nawab Ali. The prosecution has failed to even produce their duty roster or anything else showing or confirming that the alleged

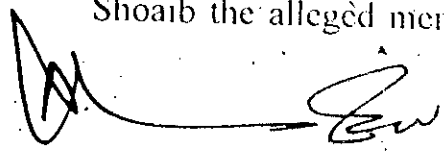

11.08.015
Inspector

members of the mobile squad were there at Karak, Kohat and/or Hangu for the job they were allegedly assigned with.

16. There is yet another point to be taken notice of and that is PW-1 an officer of the Livestock, despite being present on the check post under his jurisdiction, did not know about passage of 26 trucks carrying 780 cattle. It was not a truck, two or so but allegedly 26 trucks and passage of such huge convoy of trucks from the jurisdiction of PW-1 itself not only speaks volumes about the sense of responsibility of PW-1 but also a question mark regarding his involvement in the matter. In his cross examination he also admitted that he had not lodged report about the matter in any of the Police Stations falling within his jurisdiction.

17. As to the count of the cattle it is everywhere alleged that there were 780 cattle loaded in 26 trucks but PW-1 in his cross examination fails to give the exact number of the cattle. He, however, told that ~~those~~ were cows, buffalos and bulls. He does not also know as to how many cattle were in each truck. Then how did PW-1 come to know that the number of cattle was 780 is also a question which remained unanswered throughout the trial.

18. Regarding the involvement or otherwise of accused Sher Bahadar, the statement of PW-2 Shariq Hayat is worth perusal. In his cross examination he discloses that the accused SHO had not met the staff of the Livestock department thereby totally negating the story of PW-1 who said that the accused SHO had pressurized Mr Shoaib the alleged member of the mobile squad. PW-2


11.08.015
Addl: Special Judge
Anti-Corruption, Swat Region
Camp of Swat

has also told in the cross examination that the accused SHO, after his reaching the spot, had tried to open the blocked road and that he had not seen him (SHO) having any conversation with the drivers of the trucks. He admitted that the SHO had not received any bribe money in his presence. He went on to say that there were two more check posts of the Livestock ahead of the place of occurrence and the Livestock officials posted at such posts could very conveniently have apprehended the trucks and in the absence of any reported incident of the alleged 26 trucks on the next two check posts, one can best assess the fate of this case. He also admitted that he and other officials of the Livestock did not lodge any report to the SHO nor did they meet the SP Hangu to report the matter. He admitted that the SHO had tried to open the blocked road.

19. On an enquiry conducted by the then DCO Bannu the accused SHO was found involved in letting go 26 trucks carrying 780 cattle. The then DCO Bannu appeared as PW-5 and stated that he was nominated as Enquiry Officer by the Provincial Government in the cattle smuggling case on 17.08.2012 and he submitted his report EXPW-5/1. This is the only piece of evidence and that too against one of the accused named Sher Bahadar. But findings of the DCO Bannu/Enquiry officer could not have been substantiated at the trial because of the above detailed discussion especially when it was nowhere mentioned in the report that an opportunity of cross examination was provided to the accused officials.


11.08.2015
Addl: Special Judge
Anti-Corruption, Southern Region
Camp at Kohat

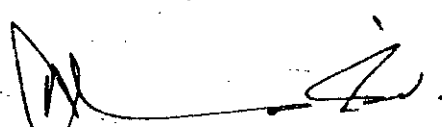
20. Regarding the culpability of accused Misal Khan the entire file is completely silent. None of the prosecution witnesses could say anything regarding his involvement in the alleged incident in any manner.

21. It is also worth observing that no order of any authority has been placed on file to show that there was any ban on the cattle carriage on or from the place of occurrence.

22. In view of the above situation the allegations against the accused facing trial went disproved and thus it can be safely held that the prosecution has failed to bring home the guilt of the accused facing trial.

23. Therefore, while extending benefit of doubt, I acquit the both the accused of the charges leveled against them. They are on bail. Their bail bonds are cancelled and their sureties are absolved of the liabilities of the bail bonds. Case property, if any; be dealt with in accordance with law after expiry of period of appeal/revision. Consign.

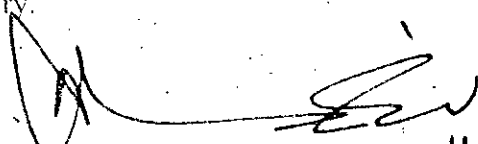
24. Pronounced in open Court at Kohat and given under my hand and seal of the Court this 11th August, 2015.



KALIM ARSHAD KHAN,
Additional Special Judge,
Anti-Corruption, Southern Districts,
Camp Court Kohat.

CERTIFICATE

Certified that this judgment consists of 13 pages. Each page has been read, signed and corrected by me wherever necessary.



KALIM ARSHAD KHAN, 11.08.2015
Additional Special Judge,
Anti-Corruption, Southern Districts,
Camp Court Kohat.

Before The Service Tribunal, Peshawar.
Appeal No 992-P/2014

Sher Bahadar vs IGP


APPLICATION FOR EARLY FIXATION OF CASE

Respectfully Sheweth:

- 1- That above noted appeal is pending adjudication before this Honble Tribunal and is fixed for hearing today.
- 2- That Arguments in instant case is almost concluded and this Honble Tribunal directed the respondent to bring an order U/s 144 Crpc on the relevant date if any.
(Copy of the order is attached)

It is, therefore, most humbly prayed that by accepting this application case may please be fixed as early as possible.

Dated: 28/04/2016

Applicant/Appellee

Sher Bahadar

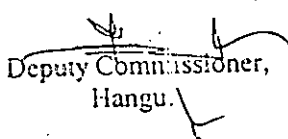
DEPUTY COMMISSIONER, HANGU.
No. 26 /PS//DC (H).
Dated Hangu the 18/11 2016.

To
The District Police Officer,
Hangu.

Subject:- SERVICE APPEAL.
Memo:

Please refer to your office memo No. 307/15, dated 14.1.2016 on the subject noted above.

It is submitted that as per record of this office order u/s 144 Cr.P.C was not imposed on 01-12-2011, it was imposed on 22-10-2011 to 10-11-2011 and 27-12-2011 to 26-1-2012.


Deputy Commissioner,
Hangu.

A Deputy Inspector-General may prohibit by special order a Superintendent officiating in a vacancy of less than six months' duration from carrying out an award made by him of dismissal, reduction, stoppage of increment, or forfeiture of approved service for increment unless and until such award has been confirmed by him.

The Assistant Superintendent Government Railway Police, and (except in cases where the offenders are sergeants) Deputy Superintendents in charge of Railway Police Sub-Divisions exercise the full disciplinary powers of a Superintendent of Police in respect of the provisions of this Chapter, within the limits prescribed in the above Table.

(3) For the purposes of these rules, the term "major punishment" shall be held to mean any authorized punishment of reduction, withholding of increments, forfeiture of approved service, dismissal and every judicial conviction on a criminal charge.

The term "minor punishment" shall mean all other authorized punishments.

16-2. Dismissal.—(1) Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. In making such an award regard shall be had to the length of service of the offender and his claim to pension.

(2) An enrolled police officer sentenced judicially to rigorous imprisonment exceeding one month or to any other punishment not less severe, shall, if such sentence is not quashed on appeal or revision, be dismissed. An enrolled police officer sentenced by a criminal court to a punishment of fine or simple imprisonment, or both, or to rigorous imprisonment not exceeding one month, or who, having been proclaimed under section 87 of the Code of Criminal Procedure, fails to appear within the statutory period of thirty days, may be dismissed or otherwise dealt with at the discretion of the officer empowered to appoint him. Final departmental orders in such cases shall be postponed until the appeal or revision proceedings have been decided, or until the period allowed for filing an appeal has lapsed without appellate or revisionary proceedings having been instituted. Departmental punishments under this rule shall be awarded in accordance with the powers conferred by rule 16-1.

(3) When a police officer is convicted judicially and dismissed, or dismissed as a result of a departmental enquiry, in consequence of corrupt practices, the conviction and dismissal and its cause shall be published in the *Police Gazette*. In other cases of dismissal when it is desired to ensure that the officer dismissed shall not be re-employed elsewhere, a full descriptive roll, with particulars of the punishments, shall be sent for publication in the *Police Gazette*.

16-3. Action following on a judicial acquittal.—(1) When a Police Officer has been tried and acquitted by a criminal court he shall not be punished departmentally on the same charge or on a different charge based upon the evidence cited in the criminal case, whether actually led or not, unless :—

- (a) the criminal charge has failed on technical grounds ; or
- (b) in the opinion of the court or of the Superintendent of Police the prosecution witnesses have been won over ; or

- (c) the court has held in its judgment that an offence was actually committed and that suspicion rests upon the Police officer concerned ; or
- (d) the evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify departmental proceedings on a different charge ; or
- (e) additional evidence admissible under rule 16-25 (1) in departmental proceedings is available.

(2) Departmental proceedings admissible under sub-rule (1) may be instituted against lower subordinates by the order of the Superintendent of Police but may be taken against Upper Subordinates only with the sanction of the Deputy Inspector-General of Police, and a police officer against whom such action is admissible shall not be deemed to have been honourably acquitted for the purpose of rule 7-3 of the Civil Services Rules (Punjab), Volume I, Part I.

16-4. Reduction.—(1) A police officer may be reduced (a) to a lower rank (except in the case of sergeants and of constables on the time scale) ; (b) from the selection grade of a rank to the time-scale of the same rank ; (c) if in a graded rank, to a lower position in the seniority list of his grade or to a lower grade in his rank. A police officer so reduced shall be placed in the time-scale to which he is reduced, whether from higher rank or from the selection grade of the same rank, at the point to which his approved service entitles him, but below the efficiency bar, if any. An officer reduced in rank shall not be placed in the selection grade of the rank to which he is reduced.

(2) An upper subordinate shall not ordinarily be reduced to the rank of head constable, unless he has been promoted from that rank and is capable of performing the duties of a head constable. If he is absolutely unfitted for his position or for that of a head constable ; he shall be dismissed, and not reduced in rank.

(3) A head constable reduced to the rank of constable shall ordinarily occupy a position in the gradation list of constables according to the length of his approved service.

16-5. Stoppage of increments of forfeiture of approved service for increment.—(1) The increment of police officer on a time-scale may be withheld as a punishment. The order must state definitely the period for which the increment is withheld, and whether the postponement shall have the effect of postponing future increments. The detailed orders regarding the grant and stoppage of increments are contained in rule 13-2.

(2) Approved service for increment may be forfeited, either temporarily or permanently, and such forfeiture may entail either the deferment of an increment or increments or a reduction in pay. The order must state whether the forfeiture of approved service is to be permanent ; or, if not, the period for which it has been forfeited.

(3) Reinstatement on the expiry of a period fixed under sub-rule (1) or (2) above shall be conditional upon good conduct in the interval, but, if it is desired under this rule not to reinstate an officer, a separate order shall be recorded, after the officer concerned has been given opportunity to show cause why his reinstatement should not be deferred, and the period for which such order shall be stated. Rules regarding the method of recording punishment under this rule in seniority rolls are contained in Chapter X.

Ex-51 Sher Bahadar vs IGP

Application for early fixation of case.

Respectfully Sheweth;

- 1- That above noted appeal is pending adjudication before this Hon'ble Tribunal and was fixed for hearing today.
2. That due to unavailability of a bench the case was not taken up and has been adjourned.
- 3- That already arguments in the instant case had been completed and the prosecution was directed to provide Report regarding date of hearing which they fails to provide.
- 4- That applicant is going to be retired in the month of May/2016 and then after he will not be in a position to enjoy the fruit of acceptance of appeal.

To be fixed
in this month:
8/7/14/2016
Sic 144 case

It is therefore most humbly prayed that by accepting this application the case may please be fixed as early as possible.

Applicant
Sher Bahadar

Dated 07/04/2016

through S

CHARGE SHEET.

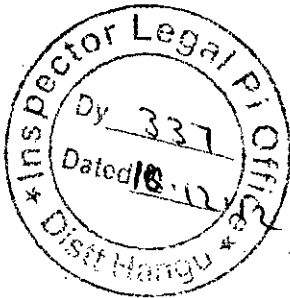
I, **DR. MIAN SAEED AHMED, PSP, D.P.O, HANGU** as competent authority, hereby charge you **SI Sher Bahadar** while posted at **I/C Judicial Lock-up Hangu** committed the following irregularities :-

A letter received from Home Deptt: Gout: of Khyber Pakhtunkhwa Peshawar through worthy PPO Peshawar and Regional Police Officer Kohat that you were involved allegedly involved in cattle smuggling vide letter No. SO(Com/Enq/HD/1-3/Cattle Smuggling/2012 dated Peshawar the 16/11/2012 . Your this act shows non professionalism and also amounts to gross misconduct on the part of your official job therefore, you are suspended and closed to Police Lines.

2. By reasons of the above, you appear to be guilty of misconduct under Police Disciplinary Rules, 1975 and have rendered yourself liable to all or any of the penalties specified by rules.
3. You are, therefore, required to submit your written defence within seven days of the receipt of this Charge Sheet to the Enquiry Officer/Committee, as the case may be.
4. Your written defence, if any, should reach to the Enquiry Officer/Committee within the specified period, failing which it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.
5. Intimate whether you desire to be heard in person.
6. A statement of allegation is enclosed.


(DR. MIAN SAEED AHMED) PSP
DISTRICT POLICE OFFICER
HANGU

No. 5787 /PA,
Dated 4 /12/2012.



DISCIPLINARY ACTION.

I, **Dr. Mian Saeed Ahmed, PSP, D.P.O. HANGU** as competent authority, am of the opinion that **SI Sher Bahadar** while posted at **I/C Judicial Lock-up Hangu** has rendered himself liable to be proceeded against as he committed the following acts/omissions within the meaning under Police Disciplinary Rules, 1975: -

STATEMENT OF ALLEGATIONS


A letter received from Home Deptt. Govt. of Khyber Pakhtunkhwa Peshawar through worthy PPO Peshawar and Regional Police Officer Kohat that you were involved allegedly involved in cattle smuggling vide letter No. SO(Com/Enq/HD/1-3/Cattle Smuggling/2012 dated Peshawar the 16/11/2012. Your this act shows non professionalism and also amounts to gross misconduct on the part of your official job therefore, you are suspended and closed to Police Lines.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations, an Enquiry Officer is appointed under relevant rules/law :-

Mr. Aziz-ur-Rehman DSP/Legal

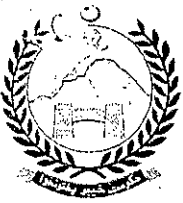
3. The Enquiry Officer shall, in accordance with the provisions of the Ordinance, provide reasonable opportunity of hearing to the accused, record its findings and make, within twenty five days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

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


(DR. MIAN SAEED AHMED) PSP
DISTRICT POLICE OFFICER
HANGU

A copy of the above is forwarded to: -

1. **Mr. Aziz-ur-Rehman DSP/Legal** The Officer for initiating proceedings against the accused under Police Disciplinary Rules, 1975.
2. **SI Sher Bahadar** while posted at **I/C Judicial Lock-up Hangu**. The concerned officer with the directions to appear before the Enquiry Officer, on the date, time and place fixed by the Officer, for the purpose of the inquiry proceedings.



GOVERNMENT OF KHYBER PAKHTUNKHWA HOME & TRIBAL AFFAIRS DEPARTMENT

No. SO (Com/ Enq)/HD/1-3/Cattle Smuggling/2012
Dated Peshawar, the 16/11/2012

To
The Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.



Subject: - **ILLEGAL ANIMAL MOVEMENT / TRANSPORTATION.**

R/Sir,

I am directed to refer to the subject noted above and to state that the Provincial Government of Khyber Pakhtunkhwa ordered an enquiry in the subject matter that was carried out and the Inquiry Officer submitted report (enclosed). On the basis of enquiry report, the competent authority has been pleased to accord approval to the following recommendations;

- i. The Provincial Police Officer, Khyber Pakhtunkhwa may be approached to initiate Disciplinary Proceedings departmentally against police official allegedly involved in illegal animal movement / transportation.
- ii. The Police Department may also be asked to extend coordination and cooperation to Livestock Department in curbing the menace of cattle smuggling.
- iii. The Police Department may register FIRs against all those officials / facilitators / touts who are allegedly involved in cattle smuggling.

It is requested that further necessary action in the subject matter may be initiated under intimation to this department immediately.

Handwritten notes:
DIG Kohat
For proper
Departmental
proceedings
against ex-SMO Thall
Shir Bahadal, PI.
Mak
P.P.O. WPU

Encl: As above

Handwritten:
No. 1651 e-cell
DT 28-11-12

Office of the PPO NWFP Pesh.
(Secret. In-charge)
By No. S/ 24689/12
Dated 21-11-2012

Yours faithfully,

(BASHIR AHMAD)
SECTION OFFICER (Com/Enq)
Ph No. 091-9214149

Endst. No. & Date Even

Copy forwarded for information to the: -

- 1. Section Officer (NFM), Home and Tribal Affairs Department, Khyber Pakhtunkhwa.
- 2. PS to Secretary, Home and Tribal Affairs Department, Khyber Pakhtunkhwa.

Handwritten:
Sir: submitted in order placed
23/11

Handwritten:
b5/PP SECTION OFFICER (Com/Enq)

Handwritten:
Encl
47

Handwritten:
SI 5, submitted for T/O

COURT OF MR. KALIM ARSHAD KHAN,
ADDITIONAL SPECIAL JUDGE ANTI-CORRUPTION,
SOUTHERN DISTRICTS, CAMP COURT KOHAT.

Case No. 23 of 2013.

Date of receipt of the Challan 30.08.2013
Dates of hearing 03.06.2015 & 28.07.2015
Date of Decision 11.08.2015

State.....Versus.....1. Sher Bahadar Ex-SHO Police
Station Thall District Hangu and
2. Misal Khan Veterinary Assistant,
livestock. Check Post Thall
District Hangu.
.....(Accused on bail).

CHARGE UNDER SECTIONS
201/217/218/409/420 OF THE PAKISTAN
PENAL CODE, 1860 READ WITH 5 (2) OF
THE PREVENTION ACT, 1947 IN CASE FIR
NO.06 DATED 21.12.2012 OF POLICE
STATION ANTI-CORRUPTION
ESTABLISHMENT, HANGU.

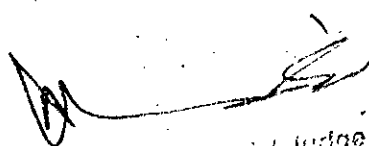
CASE ARGUED BY

1. Mr. Kamran Khan Wazir, learned Senior Public Prosecutor for the state and
2. Mr. Abrar Alam, Advocate, for the accused Sher Bahadar and
3. Mr. Imad Azam, Advocate for the accused Misal Khan.

JUDGMENT

11th August, 2015.

1. Facts of the prosecution case gathered from the Final Report (EXPW-3/2) submitted in Open Enquiry No.07/2012 against the accused facing trial, are, that an enquiry was conducted by the then DCO Bannu, on the


Additional Special Judge
Anti-Corruption
Southern Districts
Kohat

BEFORE THE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR

992
Service Appeal No. ~~992~~-P /2014

Ex-SI Sher Bahadar.....Applicant/ Appellant

Versus

Provincial Police Officer and others.....Respondents

APPLICATION FOR EARLY HEARING


Respectfully Sheweth;

1. That above noted appeal is pending adjudication before this Hon'ble Tribunal and is fixed for final hearing on 10/03/2016.
2. That applicant has challenged order of his compulsory retirement from service before this Hon'ble Tribunal.
3. That due to impugned order applicant and his whole family are suffering from huge financial restrained .
4. That counsel for the petitioner has already concluded his arguments 09/10/2015 but on the request of the Leaned Government pleader the case was adjourned twice. It is pertinent to mention that the case required early disposal because petitioner is at the verge of retirement.
5. That there is no bar in the entertainment of this application.

It is, therefore, most humbly prayed that by acceptance of this application the case may please be fixed as early as possible for the safe administration of justice convenient to this Hon'ble Tribunal .

Applicant/ Appellant

Through


Shahid Qayum Khattak
Advocate, High Court
Peshawar
Mob No. 0333-9195776

~~Not~~ Dated: 13/01/2016