

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEALS NO. 589/2013

Date of institution 19.03.2013

Date of judgment ... 17.08.2016

Zulfiqar Hussain(Ex-Constable)No.665,
District Police, Kohat.

... (Appellant)

VERSUS

1. District Police Officer Kohat.
2. Deputy Inspector General of Police Kohat Region Kohat.
3. Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
4. State through AGP Peshawar.

... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBAUNAL ACT 1974 READ WITH RELEVANT RULES AGAINST THE ORDER DATED 20.02.2013 WHEREBY THE DEPARTMENTAL APPEAL OF APPELLANT WAS TURNED DOWN AND UPHELD THE ORDER/JUDGMENT OF THE RESPONDENT NO.1 DATED 08.01.2013.

SERVICE APPEALS NO. 590/2013

Date of institution ... 19.03.2013

Date of judgment ... 17.08.2016

Sakhi Badshah (Ex-Constable) No.583,
District Police, Kohat.

... (Appellant)

VERSUS

1. District Police Officer Kohat.
2. Deputy Inspector General of Police Kohat Region Kohat.
3. Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
4. State through AGP Peshawar.

... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBAUNAL ACT 1974 READ WITH RELEVANT RULES AGAINST THE ORDER DATED 20.02.2013 WHEREBY THE DEPARTMENTAL APPEAL OF APPELLANT WAS TURNED DOWN AND UPHELD THE ORDER/JUDGMENT OF THE RESPONDENT NO.1 DATED 08.01.2013.

SERVICE APPEALS NO. 1096/2014

Date of institution ... 25.08.2014
Date of judgment ... 17.08.2016

Shahid Saleem S/o Abdul Qadir,
Ex-Constable (No.1066), FRP,
R/o Kaghazae, Kohat.

... (Appellant)

VERSUS

1. Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police Kohat Region Kohat.
3. District Police Officer, Kohat
4. Additional Inspector General of Police/Commandant Frontier Reserve Police Khyber Pakhtunkhwa.
5. Superintendent of Police, Frontier Reserve Police Khyber Pakhtunkhwa, Kohat Rang Kohat.

... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBAUNAL ACT 1974 AGAINST THE IMPUGNED ORDER OF DISMISSAL OF THE APPELLANT FROM SERVICE, OF THE RESPONDENT NO.5 DATED 06.12.2012, WHEREBY THE REPRESENTATION/DEPARTMENTAL APPEAL OF THE APPELLANT ALSO REJECTED BY THE RESPONDENT NO.4 ON 28.01.2013, WHICH ARE AGAINST LAW AND JUSTICE AND LIABLE TO BE SET ASIDE.

Mr. Muhammad Amin Khattak Lachi, Advocate. .. For appellant.
Mr. Hasan U.K Afridi, Advocate .. For appellant.
Mr. Muhammad Jan, Government Pleader .. For respondents.

MR. PIR BAKHSH SHAH .. MEMBER (JUDICIAL)
MR. MUHAMMAD AAMIR NAZIR .. MEMBER (JUDICIAL)

JUDGMENT

PIR BAKHSH SHAH, MEMBER: At the relevant time, appellants, Zulfiqar Hussain, Sakhi Badshah, Constables in the Police Department, were in riding squad and appellant, Shahid Saleem was a Constable in FRP. They were dismissed from service for the reason of and their involvement in FIR No. 453 dated 30.06.2012 P.S Cantt: under Section 419,420,468,471,221,223 PPC and 155 police order District Kohat (which is placed on record) the basis of which is the Murasila of ASI, Muhammad Rauf. Since their departmental

appeals were also rejected, hence these appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

2. The facts as revealed from this FIR as well as other record are briefly stated that ASI complainant Muhammad Rauf and appellant Shahid Saleem alongwith other constables were present on duty of the National Bank, Kohat Branch. At the relevant time(10:00AM) a person came on the Bank gate who entered into exchange of talks with the appellant Shahid Saleem. After a few minutes the said person started fist blow assault on appellant Shahid Saleem. ASI, Muhammad Rauf over powered the said person. The reason told by appellant was that the said person was his cousin who was a Junior Clerk in the Post Office and there was some domestic dispute between them, hence the fist blows. But the appellant also implored ASI, Muhammad Rauf that the said person may be let free. In the meanwhile, the Riders Constables, appellants Sakhi Badshah and Zulfiqar Hussain, were also summoned and the said person was handed over to them with the direction to be put in the lockup. But after some time it revealed to ASI that the said person either escaped from the constables or was intentionally set free by them. The I.D Card recovered from the escapee was in the name of one Muhammad Asif S/o Ajmal Kahn which proved to be fake and the real person was one Tufail S/o Asadullah involved in a murder case and who was a proclaimed offender. That the escapee was known to appellant Shahid Saleem who deliberately concealed all these facts and tried to cheat the Police so much so that he also implored the police that the person may be set free. According to materials on record the assailant when arrested by the ASI Muhammad Rauf, ws handed over to the riding squad Constables, Zulfiqar Hussain and Sakhi Badshah to be taken to the lock up. On the way, appellant Shahid Saleem beseeched them to be let to talk to the accused in privacy and took him (escapee) away from them where he was let to escape. However, the said FIR was registered against all the three appellants, who were suspended and asserted and served with the charge sheets and statement of allegations to which they submitted reply. In case of Appellants Zulfiqar Hussain and Sakhi Badshah, the enquiry was conducted by SDPO Headquarter Kohat whereas in case of Shahid Saleem the enquiry was conducted by Gul Raees Khan, DSP FRP Kohat Range. Finally show

cause notices were also issued to the appellants. Consequently, appellants Zulfiqar Hussain and Sakhi Badshah were dismissed from service by order of DPO Kohat dated 08.01.2013 and their departmental appeals were rejected vide order dated 20.02.2013. On the other hand, appellant Shahid Saleem was dismissed from service by S.P FRP Kohat Range vide his order dated 06.12.2012 and his departmental appeal was rejected by Additional I.G/ Commandant FRP vide his order dated 28.01.2012. In view of the common questions of facts and law, all the above appeals are proposed to be disposed of by way of this single judgment.

3. Arguments heard and record perused.

4. Learned counsels for the appellants Zulfiqar Hussain and Sakhi Badshah submitted that connivance of the appellants with appellant Shahid Saleem has not been proved and these appellants did not know that the escapee was a proclaimed offender nor the same was told to them by either Shahid Saleem or by ASI Abdul Rauf. It was also argued that the escapee was provided opportunity of escape by appellant Shahid Saleem who prevailed on the Rider Constables, took him away from the spot on the pre-text that as the escapee is his relative therefore, he wanted to talk to him something in privacy. It was further argued that the appellants were not provided opportunity to participate in the enquiry proceedings nor provided the opportunity to cross examine the witnesses. It was also contended that the escapee was not formally arrested nor handed over to the Rider Constables, therefore, they cannot be punished for this escape. For appellant Shahid Saleem it was submitted that the story against him was concocted which is evident from the fact that all the appellants have been acquitted in the said criminal case. It was further argued that relations of the appellant Shahid Saleem with the escapee/proclaimed offender have not been established and appellant was dismissed from service without rhyme or reasons. It was also submitted for the appellants that penalty awarded to them is too harsh which may be set aside.

5. The learned Government Pleader while rebutting the arguments advanced by the learned counsels for the appellants stated that the person who escaped was in fact was intentionally assisted by appellant Shahid Saleem to escape who also knew that the escapee is

a proclaimed offender and further that all the facts have been admitted by appellants in their reply to the charge sheets as well as in their departmental appeals available on record. It was urged that the offence committed by the appellants was very serious in nature and acquittal in criminal proceedings does not mean that they deserved exoneration in departmental action also.

6. We have carefully perused the record and have heard pro & contra arguments. Undoubtedly, appellant Shahid Saleem was performing duty in the Bank on whom fist blows were inflicted by someone having I.D Card in the name of Muhammad Asif S/o Ajmal Khan. According to the ASI Muhammad Rauf despite this scuffle and fist blows between them appellant Shahid Saleem implored him that the assailant may be set free. Appellant Zulfiqar Hussain and Sakhi Badshah have also stated in their reply that appellant Shahid Saleem, being their colleague, implored them that the escapee may be let to talk with him in privacy for a while on which pretext when the escapee became secluded he was let to escape. In case of appellants Zulfiqar Hussain and Shakhi Babshah, the Enquiry Officer has concluded that they did not know about the escapee being a proclaimed offender. In case of appellant Shahid Saleem, the record shows that after the occurrence he absented (absconded) and remained absent for about four months and twenty three (23) days. There is no reason as to why he remained absent for such a long period just after the occurrence. While closely considering the above facts, the Tribunal is led to the inference that even if the escapee was handed over to the appellants Zulfiqar Hussain and Sakhi Badshah they did not know that the escapee was a proclaimed offender and for this mistake of fact the penalty of dismissal awarded to them does not commensurate with their misconduct. Their case is obviously distinguishable from the case of appellant Shahid Saleem. It is also on record that departmental appeal of the appellant Shahid Saleem was rejected on 28.01.2013 against which his service appeal on 25.08.2014 is hopelessly time barred. The reason given in his application for condonation of delay that he remained ill till 28.7.2014 is also not tenable as even from the said date he took almost one further month where-after he filed this service appeal for which one month he has no explanation. To conclude the discussion, the Tribunal is of the considered view that

penalty awarded to appellants Zulfiqar Hussain and Sakhi Babshah in these circumstances is too harsh. Consequently, their penalty of dismissal from service is converted into withholding of one increment for three years. They be immediate reinstated into service. Their intervening period be treated as their leave of the kind due. So for appeal of Shaid Saleem is concerned, the same is dismissed. All the appeals are disposed of in the above terms. Parties are, however, left to bear their own costs. File be consigned to the record room.

ANNOUNCED

17.08.2016



(MUHAMMAD AAMIR NAZIR)
MEMBER



(PIR BAKHSH SHAH)
MEMBER

17.08.2016

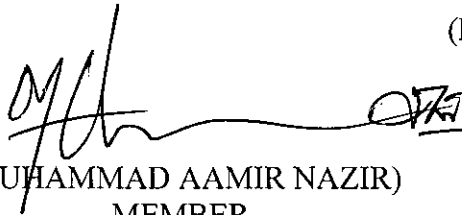
Counsels for the appellant and Mr. Muhammad Jan, GP for respondents present.

Vide our detailed judgment of today consists of six pages placed on file, to conclude the discussion, the Tribunal is of the considered view that penalty awarded to appellants Zulfiqar Hussain and Sakhi Babshah in these circumstances is too harsh. Consequently, their penalty of dismissal from service is converted into withholding of one increment for three years. They be immediate reinstated into service. Their intervening period be treated as their leave of the kind due. So for appeal of Shaid Saleem is concerned, the same is dismissed. All the appeals are disposed of in the above terms. Parties are, however, left to bear their own costs. File be consigned to the record.

Announced
17.08.2016



(PIR BAKHSH SHAH)
MEMBER



(MUHAMMAD AAMIR NAZIR)
MEMBER

18.03.2016

Junior to counsel for the appellant and Mr. Arif Saleem, ASI alongwith Mr. Usman Ghani, Sr.GP for respondents present. Junior to counsel for the appellant stated that similar nature of appeals have been fixed before this Bench on 27.04.2016, therefore the same may also be clubbed with the said appeals. Request accepted. To come up for arguments on 27.04.2016 alongwith connected appeals.



Member



Member

27.04.2016

Appellant in person and Mr. Arif Saleem, ASI alongwith Mr. Muhammad Adeel Butt, Addl: AG for respondents present. Due to general strike of the Bar learned counsel for the appellant is not in attendance. Adjourned for arguments to 17.08.2016 before D.B.



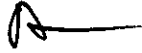
Member



Chairman

25.08.2015

Counsel for the appellant and Arif Saleem, ASI alongwith Mr. Muhammad Jan, GP for respondents present. Learned counsel for the appellant pointed out that identical appeal titled Shahid Saleem-vs-DPO Kohat, etc is pending before this Tribunal and fixed for hearing on 27.10.2015 therefore, the same may also be clubbed with the above mentioned appeal. Hence to come up for arguments alongwith the said appeal on 27-10-2015.



Member



Member

27.10.2015

Appellant with counsel and Mr. Peshawar Khan, H.C alongwith Addl: AG for respondents present. Arguments could not be heard due to learned Member (Judicial) is on official tour to D.I. Khan. Therefore, the case is adjourned to

18/3/16 for arguments.



Member

27.05.2014

Junior to counsel for the appellant and Mr. Muhammad Jan, GP with Mian Imtiaz Gul, DSP (Legal) for the respondents present. Counsel for the appellant needs time for filing of rejoinder. To come up for rejoinder on 18.8.2014.


MEMBER

18.08.2014

Appellant with counsel and Mr. Muhammad Jan, GP with Mian Imtiaz Gul, DSP (Legal) for the respondents present. Rejoinder received on behalf of the appellant. Copy handed over to the learned GP. To come up for arguments on 18.11.2014.


MEMBER

18.11.2014

Clerk to counsel for the appellant and Mr. Muhammad Adeel Butt, AAG with Arif Saleem, ASI for the respondents present. The Tribunal is incomplete. To come up for the same on 02.03.2015.


READER

2.3.2015

Counsel for the appellant, and Addl. AG with Imtiaz Khan, DSP (Legal) for the respondents present. The learned Member-II of the D.B is busy in Bench-III, therefore, case is adjourned to 25.8.2015 for arguments.


MEMBER

05.11.2013

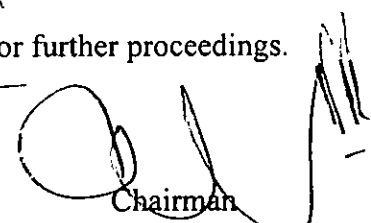
Appellant with counsel (Mr. Ibrahim Shah, Advocate)

present and heard. Contended that the appellant has not been treated in accordance with law/rules. The impugned final order dated 20.02.2013 has been issued in violation of Rule-5 of the Civil Servants (appeal) rules 1986. Moreover, the appellant has been treated under the wrong law so the very original order dated 08.01.2013 is illegal void ab-initio. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply on 24.02.2014.


Member

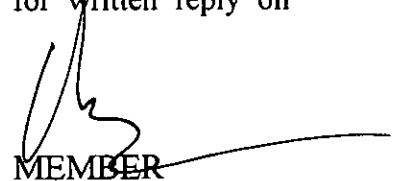
05.12.2013

This case be put before the Final Bench 11 for further proceedings.


Chairman

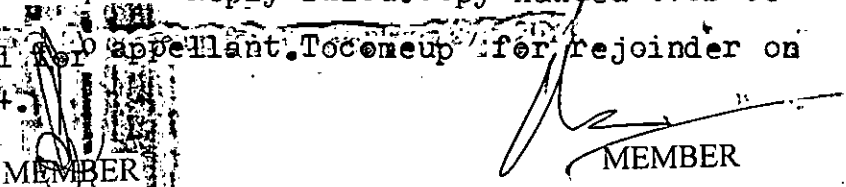
24.2.2014

Appellant in person and Mr. Muhammad Adeel Butt, AAG with Muhammad Ibrahim, Inspector (Legal) for the respondents present and requested for time. To come up for written reply on 7.4.2014.


MEMBER

7.4.2014.

Appellant in person and AAG with Intiaz Gul, DSP (L) for the respondents present. Reply filed. Copy handed over to counsel for appellant. To come up for rejoinder on 27.5.14.


MEMBER

Appellant deposited
of process fee & security
Rs. 2000/- Balance Receipt
attached with file

Appeal No. 589/2013,
Mr. Zaheer Hussain Shah

27.5.2013

Munshi to Counsel for the appellant present. In prsuance of the Khyber Pakhtunkhwa Service Tribunals (Amendment) Ordinance 2013 (Khyber Pakhtunkhwa ord. II of 2013), the case is adjourned on note reader for proceedings as before on 17.7.2013.


Reader


4
17.07.2013

Clerk of counsel for the appellant present and requested for adjournment. Case is adjourned. To come up for preliminary hearing on 02.09.2013.


Member

5
02.09.2013

Appellant in person alongwith clerk of counsel for the appellant present and requested for adjournment. Case is adjourned. To come up for preliminary hearing on 11.10.2013.


Member

6
11.10.2013

Appellant in person present and requested for adjournment. To come up for preliminary hearing on 5-12-2013.




MEMBER

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 589 /2013

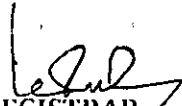
S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	03/04/2013	<p>The appeal of Mr. Zulfiqar Hussain resubmitted today by Muhammad Amin Khattak Lachi Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	8-4-2013	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>27-5-2013.</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Zulfiqar Hussain Ex-Constable Distt. Police Kohat received today i.e. on 19/03/2013 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Appeal may be got signed by the appellant.
- 2- Annexures of the appeal may be attested.
- 3- Address of respondent No. 4 is incomplete which may be according to Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 4- Copies of Charge Sheet, Statement of allegations, Show Cause Notice, Enquiry report and replies thereto are not attached with the appeal which may be placed on it.
- 5- Six more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 438 /S.T.

Dt. 21/03 /2013.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

MR. MUHAMMAD AMIN KHATTAK LACHI ADV. PESH.

3/4/2013

Resubmitted after compliance
and the documents of the above
in the objection slip are not available
Please pnt of to the court.
P
BY

BEFORE THE SERVICE TRIBUNAL K.P.K., PESHAWAR

Service Appeal No. 589 /2013

Zulfiqar Hussain (Ex-Constable) No. 665

District Police, Kohat.....Appellant

Versus

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

I N D E X

S.No	Description of Documents	Annex	Pages
1.	Service Appeal		1-4
2.	Copy of order dated 08.01.2013	'A'	5
3.	Copy of Representation	'B'	6-7
4.	Copy of order dated 20.02.2013	'C'	8
5.	Copy of FIR No. 453 dated 30.06.2012	'D'	9
6.	Copy of Card	'E'	10
7.	Copy of order sheets	'F'	11-14
8.	Wakalatnama		


Appellant

Through

Muhammad Amin Khattak Lachi
Advocate Supreme Court

①

BEFORE THE SERVICE TRIBUNAL K.P.K., PESHAWAR

Service Appeal No. 589 /2013

Service Tribunal
No. 562
19-3-13

Zulfiqar Hussain (Ex-Constable) No. 665
District Police, Kohat.....Appellant

Versus

1. District Police Officer, Kohat.
2. Deputy Inspector General of Police Kohat Region Kohat.
3. Inspector General of Police K.P.K., Peshawar.
4. State. *Thruy ABIP Peshawar.*

.....Respondents

Appeal u/s 4 of Service Tribunal Act the read with relevant rules against the order dated 20.02.2013 whereby the departmental appeal of appellant was turned down and upheld the order/judgment of the respondent No.1 dated 08.01.2013

✓
(Page 8)

Filed to file
[Signature]
19/3/13

Respectfully Sheweth:

Brief Facts

re-submitted to file and filed.

[Signature]
3/4/13

1. That appellant was inducted in Kohat Police as a Constable and performed his duty to the entire satisfaction of their superior.

2. That on 30.06.2012 appellant alongwith another constable namely ~~Zulfiqar~~ ^{Sakhi Badshah} were performing riddle duty in the premises of police station Cantt Kohat.
3. That on 30.06.2012 FIR No. 453 was registered against the appellant alongwith co-accused on the allegation that appellant released the proclaim offender with the connivance of the co-accused ~~Zulfiqar Hussain and Shahid Saleem~~ ^{Sakhi Badshah}.
4. That the inquiry was conducted and the appellant was dismissed from service on 08.01.2013 by the DPO Kohat.
5. That against the order dated 08.01.2013 of DPO Kohat appellant approached the DIG, Kohat who after hearing the case dismissed the appeal on 20.02.2013 hence this appeal is filed on the following grounds amongst others.

Grounds

- a) That the impugned orders by the appellate authority as well as by the DPO Kohat is against the law and facts and is liable to be set-aside.
- b) That for the same allegation FIR No. 453 dated 30.06.2012 was also registered against the appellant whose trial is still pending but appellant is dismissed from the service before the conclusion of criminal trial.

3

- c) That appellant is punished departmentally and FIR is also registered which amounts to a double jeopardy and there is a special bar constitutional for imposing double punishment for the same offence.
- d) That inquiry officer conducted ex-party proceeding no one was examine in support of the charges leveled against the appellant.
- e) That no chance of cross examination of the witness was provided to the appellant and the inquiry officer based his opinion on presumption.
- f) That no proper inquiry was conducted under relevant rules and law and no chance of hearing is given to the appellant.
- g) That for petty allegation severe punishment is given to the appellant which is restricted under the service law and the service laws
- h) That appellant had sufficient length of service and without taking into consideration the appellant is dismissed from the service and further more the appellant never released the proclaimed offender intentionally deliberated and the story is totally planted.

4

- i) That some other grounds may be adduced at the time of the arguments.

It is, therefore, prayed that on acceptance of this appeal the judgment/order dated 20.02.2013 and 08.01.2013 may be set-aside and appellant may be reinstated with all back benefits.


Appellant

Through


Muhammad Amin Khattak Lachi
Advocate Supreme Court

5

ORDER

This order is passed on the departmental enquiry against Constable Zulfiqar No. 66 of this district Police under Police Rule 1975.

Brief facts of the departmental enquiry are that the above named defaulter official was arrested in case FIR No. 453 dated 30.06.2012 u/s 419/420/468/471/221/223 PPC/155 Police Order PS Cant.

He was served with charge sheet/summary of allegations and Mr. Mushtaq Hussain DSP HQs: Kohat was appointed as Enquiry Officer to proceed against him departmentally. The enquiry officer has submitted his findings and found him guilty of the charges. He was served with Final Show Cause Notice. His reply was perused and found not satisfactory.

So far enquiry conducted into the matter, recommendation of the Enquiry Officer, perusal of the case file and also arrested in the above mentioned criminal case. The undersigned reached to the conclusion that his further retention in the discipline force is not justified and the allegations leveled against him are proved beyond any shadow of doubt. Therefore, he is dismissed from service under Police Rule 1975 with immediate effect.

OB No. 31

Date 08-01 /2013


**DISTRICT POLICE OFFICER,
KOHAT**


ATTESTED

②

BEFORE THE DEPUTY INSPECTOR GENERAL OF POLICE,
KOHAT REGION, KOHAT.

Subject: APPEAL AGAINST THE ORDER OF DPO KOHAT BEARING OB NO. 31 DATED 08.01.2013 WHEREBY THE APPELLANT EX-CONSTABLE ZULFIQAR NO. 665 OF KOHAT DISTRICT POLICE WAS DISMISSED FROM SERVICE WITH IMMEDIATE EFFECT.

Respectfully sheweth.

With great veneration, the appellant submits the instant appeal on the basis of the following facts and grounds.

Fact:-

Briefly stated the facts are that on 30.06.2012, the appellant alongwith constable Sakhi Badshah No. 583 was on rider squad duty in the limits of PS Cantt Kohat. On reaching National Bank of Pakistan main branch, Kohat, the appellant and his companion came to know through a public person that same one had a scuffle with a Police constable inside the said bank. We therefore, entered the Bank premises where I saw ASI Rauf alongwith Police personnel's and a private person in addition to constable Shahid Saleem.

ASI Rauf handed over the private person to me and my companion directing ^{us} as to take him to ^SPP Political Sarai Kohat. On personal search, constable Sakhi Badshah recovered an identity card in the name of Muhammad Asif an employee of posted department.

^{Postman} Before leaving the spot, constable Shahid Saleem informed us that the private person was his real cousin and he wanted to talk to him. He took away the said person to aside and let him runaway. I and my companion chased him but in vain.

It may be mentioned that neither it was know to ASI Rauf that the said person was PO nor we were informed by ASI Rauf that the said person was PO. ¹ probably constable Shahid Saleem was in the knowledge of this fact and therefore, he provided him ^{an} opportunity to escape.

The appellant later on came to know that the said private person was known by the name of Muhammad Tufail shah r/o Kaghzai and wanted in a murder case to the Police. My submission is that the above noted person was not let go by the appellant deliberately and his escape from the spot was facilitated by constable Shahid Saleem.

Grounds:-

1. The departmental inquiry has not been conducted by the inquiry officer in accordance with law as the appellant ^{as} the appellant was never summoned by the E.O while carrying out the departmental proceedings.
2. That no evidence was recorded by the E.O in the presence of the appellant and ^{his} the appellant was completely deprived of his right of cross examination.

ATTESTED

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3. That the appellant was not heard in person by the DPO Kohat before awarding the punishment.
4. That copy of the final report of the E.O was not provided to the appellant by DPO Kohat prior to announcing of the punishment. As such the whole proceedings were illegal, unlawful and not sustainable under the law.
5. That the criminal case against the appellant is still pending in court. The appellant is presumed to be innocent till convicted.

In view of the legal position discussed above, great miscarriage of justice is caused to the appellant.

Prayer:-

It is therefore prayed that by accepting the present appeal, the impugned order of DPO Kohat may kindly be set aside and the appellant re-instated in service w.e.f the date of dismissal with all back benefits please. I desire to be heard in person.

Yours obediently,



Ex-Constable Zulfiqar No. 665
Of Kohat District Police s/o
Altaf Hussain r/o Ali Zai PS
Usterzai



ATTESTED

ORDER

This order is passed on representation filed by Ex: Constable Zulfiqar Hussain No. 665 of Kohat district police.

Facts of the case are that the appellant alongwith Ex: Constable Sakhi Badshah No. 583 while performing duty of Cantt: Riders were dealt with departmentally by the competent authority (DPO Kohat) on the core of charges that on 30.6.2012 an unknown person scuffled with Constable Shahid Saleem deployed at National Bank Guard, Kohat cantt. The suspect was apprehended by ASI Rauf, handed over to the Rider (above named constables) and directed them to confine the assailant in Police Station. On the way the suspect was released by the appellant and his colleague with the connivance of suspect and Constable Shahid Saleem (now dismissed from service). The suspect was identified as Tofail s/o Assad Ullah r/o Kaghazai, Kohat, who was PO in case FIR No.308/2008 U/Ss 302,324 PPC, PS Cantt. The departmental proceedings resulted in his dismissal from service vide DPO Kohat order vide O.B No. 31 dated 08.01.2013

Besides the departmental proceedings a criminal case vide FIR No.453/2012 U/Ss 419,420,468,471,221,223 PPC, 155 Police Order was also registered against the appellant and above named persons.

Feeling aggrieved from the impugned order he preferred the instant representation, requesting therein to set-a-side the impugned order and reinstatement in service.

The appellant was called in Orderly Room held on 20.02.2013 and heard in person, but failed to advance any plausible explanation to his professional misconduct. Record perused.

Perusal of record revealed that the appellant was handed over a suspect by his senior to lock up him in Police station, but on the way he released him with the connivance of Ex: Constables Sakhi Badshah, Shahid Saleem (both also dismissed on the same charges) and suspect, who was PO in a murder case. The appellant did not comply with lawful order of his senior, hence committed a gross professional misconduct.

Keeping in view of the above and available record it is established beyond any shadow of doubt that the appellant did not comply with order of his senior and had committed a gross professional misconduct. Moreover sufficient material exists on record which transpired that the escaped person was a Proclaimed Offender. Therefore, the representation is in-convincing, without any substance is hereby rejected and the punishment order passed by DPO Kohat vide vide OB No.31 08.01.2013 is upheld.

This order is exclusively passed in departmental proceedings.

Announced
20.02.2013

No. 1539-48 /EC dated 4-3-13

Copy to District Police Officer, Kohat for information and necessary action. Service record of the appellant is returned herewith.

2

Appellant.

ATTESTED


(MOHAMMAD IMTIAZ SHAH)
PSP,QPM

Dy: Inspector General of Police,
Kohat Region, Kohat.


(MOHAMMAD IMTIAZ SHAH)
PSP,QPM

Dy: Inspector General of Police
Kohat Region, Kohat

ابتدائی اطلاعی رپورٹ

کنٹر

(ناٹین) ابتدائی اطلاع نسبت مجرم قابل دست اندازی پولیس رپورٹ شروع زیر دفعہ ۱۵۲ مجموعہ ضابطہ نوپوری

تھانہ کینٹ

منبع کوہاٹ

نمبر 453

تاریخ و وقت وقوع 30/6/12 وقت = 10:00ء

1	تاریخ و وقت رپورٹ 30/6/12 وقت = 10:30ء	تاریخ و وقت رپورٹ 30/6/12 وقت = 11:20ء
2	نام و سکونت اطلاع دہندہ و متغیث	قصد راولپ ASI پولیس لائن
3	مختصر کیفیت مجرم (موردہ) حال اگر کچھ بیایا گیا ہو	419-420. 468-471. 221-223 155 Police adre etc
4	جائے وقوع و فاصلہ تھانہ سے اور سمت	نیشنل بینک کوہاٹ
5	نام و سکونت ملزم	
6	کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہو تو وجہ بیان کرو۔	براسیدگی در ایسہ پر چہ دیا جاتا ہے۔
7	تھانہ سے روانگی کی تاریخ و وقت	بے سبیل ڈاک

ابتدائی اطلاع نیچے درج کرو اس وقت ایک تحریری مراسلہ جناب صدر راولپ ASI پولیس لائن وصول ہو کر درج ذیل ہے۔ جنمیت آفسیہ خارج تھانہ کینٹ آریوز میں سے مراد بیان اسماعیل 733 اسیر زمان 319، سن 457، شاہد سلم 1066، خیال زمان 314 برائے ڈیوٹی نیشنل بینک کوہاٹ کے پوٹی پر موجود۔ نئی کوہاٹ کے احاطہ میں ترتیب دیکھ کر اس کے وقت قریب 10:00 بجے ایک شخص بینک کینٹ کے اندر آکر کینٹل شاہد سلم 1066 کے ساتھ کھڑا ہو کر آپس میں باتیں شروع کی۔ چند منٹ بعد شخص مذکورہ نے کینٹل شاہد سلم 1066 کے مکانوں کے محذرات شروع کی۔ دیکھ کر میں نے فوراً شخص مذکورہ قابو کر کے ہر دونوں سے وجہ پوچھ پتائی کے بارے میں پوچھا تو نیشنل مذکورہ نے بتایا کہ شخص مذکورہ صاحب زادہ جانی صاحبے مابین جو بٹو سٹل ہے۔ اور ڈاکخانہ میں خود سرکل کے آدھے گھنٹے بعد ہی شخص مذکورہ پھر پٹے موجودگی نوری انتہائی سفاکشی کی اس دوران حسب طبعی راستہ نوری کینٹاں سخی بار شاہ 83 زوالفقار 665، آکر شخص مذکورہ انکو حوالہ دے کر حوالا دے کرے بعد اسی کے۔ کچھ در بعد معلوم ہوا کہ راستہ نوری سے شخص مذکورہ ہٹا گیا ہے۔ یا چھوڑا گیا ہے۔ راستہ نوری کو ایک عدد کارڈ بنام محمد امجد ولد اعلیٰ خان کے ساتھ نئی کلرک حوالہ دیا۔ جو جعلی معلوم ہوا شخص مذکورہ نے دوپہر ہی کے لیے ایک محمد آصف ولد اعلیٰ خان کو حوالہ دیا۔ حالانکہ یہ Po طفل و لہذا والد کے ساتھ نئی قسم اشتہاری حوصلہ ملت 308، خورج 5/06/12 جم 302/324 ہے۔ تھانہ کینٹ وغیرہ کینٹل سلم شاہد 1066 قسم اشتہاری سزورہ کو جانتے ہوئے پولیس کو دیکھ کر ریلر قصہ عمدہ حقیقت چھانے اور چھوڑنے کی سفارش کر رہا تھا۔ چونکہ راستہ کینٹاں سزورہ بالا قسم اشتہاری کو چھوڑ دیا ہے۔ ناما ستر سفارش اور پولیس کو دیکھ کر Po کا اصل نام طفل شاہ ظاہر نہیں ہے۔ دیوٹی غفلت کا بھی مرتکب ہوتے ہیں اور اسی طرح سلم شاہ نے ناچار سفاکشی کی ہے۔ یہ سزا کینٹاں جرائم نالہ پائے جاتے ہیں۔ مراسلہ بعض جاغی مقدمہ ارسال تھانہ ہے بعد اندراج مقدمہ حوالہ KBI سٹاف کیا جائے۔ تحت انگریزی صدر راولپ ASI پولیس لائن 30/6/12 کارروائی تھانہ آفسہ مراسلہ صرف یہ صرف زرج بالا ہو کر پرچہ بخرا م بالا چاک ہو کر نقل پرچہ مہ مراسلہ بعض تفتیش حوالہ KBI سٹاف کیا جاتا ہے۔ پرچہ تفتیش ہے۔

ATTESTED

Asi. PS. Cantt
30/6/12

12

ORDER-3

30.1.2013

Accused Zulfiqar and Sakhi Badshah on bail alongwith counsel and APP for the state present. Co-accused Shahid Saleem be summoned beside summoning search witness to the extent of accused Muhammad Tufail for 13/2/13

2

Muhammad Iqbal
30-1-2013
MUHAMMAD IQBAL

Judicial Magistrate-II, Kohat

ORDER-4

13.2.2013

Shahid Saleem
Zulfi
Sakhi

Accused Shahid Saleem, Zulfiqar and Sakhi Badshah on bail and APP for the state present. Accused Muhammad Tufail is absconding. SW, Khaliq Hussain present and recorded statement, in light of which it is clear that accused Muhammad Tufail is avoiding his lawful arrest and there is no probability of his arrest in the near future, hence proceedings U/S 512 Cr.PC are hereby initiated against the accused Muhammad Tufail and prosecution is allowed to adduce its evidence against the said accused in absentia. Provisions of section 241 A Cr.P.C are complied with. To come up for framing of formal charge on 20/2/13.

ATTESTED TO BE TRUE COPY

EXAMINED
COPING BRANCH KOHAT
15/2/13

Muhammad Iqbal
12-2-2013
MUHAMMAD IQBAL

Judicial Magistrate-II, Kohat

14

Order-7

15.3.2013

Accused Shahid Saleem, Zulfioar and Sakhi Badshah on bail alongwith counsel and AFP for the state present. Accused Muhammad Tufail is absconding. Pws Aqeeb Hussain, SHO and Shakeel Khan, ASI present, and examined as PW-1 and PW-2 respectively. Remaining Pws be summoned through special diary for 29/3/13

Tute
JM-II, Kohat

ATTESTED TO BE TRUE COPY

EXAMINED
COPING BRANCH KOHAT

16/3/13

WAKALATNAMA

IN THE

PESHAWAR HIGH COURT PESHAWAR

Zulfikar Hussain

(Petitioner)
(Plaintiff)
(Applicant)
(Complainant)
(Appellant)
(Decree Holder)

VERSUS

District Police Officer etc

(Respondent)
(Defendant)
(Accused)
(Judgment Debtor)

I/We,

Zulfikar Hussain s/o

in the above noted C.A. No—13, do hereby appoint and constitute **Muhammad Amin Khattak Lachi** Advocate, Peshawar to appear, plead, act, compromise, withdraw or refer to arbitration to me/ us as my/ our Counsel in the above noted matter, without any liability for their default and with the authority to engage/ appoint any other Advocate/ Counsel at my/ our matter.

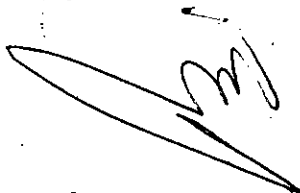
Attested & Accepted

FIR No. _____

Dated. ____/____/____

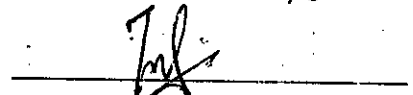
U/s. _____

P.S. _____



Muhammad Amin Khattak Lachi
Advocate,
Supreme Court of Pakistan

CLIENT/S



1/10/13

WAKALATNAMA

IN THE Service Tribunal K.P.K., Peshawar

Zulfiqar Hussain (EX-constable)

(Petitioner)

(Plaintiff)

(Applicant)

(Complainant)

(Appellant)

(Decree Holder)

VERSUS

589/2013

DPO, kabate & others

(Respondent)

(Defendant)

(Accused)

(Judgment Debtor)

I/we, Zulfiqar Hussain

In the above noted SA do hereby appoint and constitute **Muhammad Amin Khattak (Lachi) & Ibrahim Shah** Advocates, Peshawar to appear, plead, act, compromise, withdraw or refer to arbitration to me/ us as my/ our Counsel in the above noted matter, without any liability for their default and with the authority to engage/ appoint any other Advocate/ Counsel at my/ our matter.

Attested & Accepted

FIR No. _____

Dated. ____/____/____

U/s. _____

P.S. _____

CLIENT/S

Zulfiqar

Muhammad Amin Khattak (Lachi)

Advocate,
Supreme Court of Pakistan
Cell:0300-9151041

Ibrahim Shah

Advocate, High Court,
Peshawar

BEFORE THE HONORABLE SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 589/2013

Zulfiqar Hussain Ex-Constable No. 665 Appellant.

VERSUS

1. District Police Officer, Kohat
2. Deputy Inspector General of Police, Kohat Region, Kohat.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
4. State through AGP Peshawar Respondents.

Respectively sheweth:-

Parawise comments by Respondents No. 1 to 3 are submitted as under:-

FACTS:-

1. That the appellant has no cause of action
2. That the appeal is not maintainable in the present form.
3. That the appellant has not come to this Hon. Tribunal with clean hands.
4. That the appeal is bed for misjoinder and non joinder of necessary parties.
5. That appellant is stopped by his own acts to file the instant appeal.
6. That the appeal is time barred.


Facts:-

1. That appellant was appointed as constable in this district Police on 27.10.2003. The remaining para is not correct as he had remained absent on different occasion and he was awarded punishment for the same by the competent authority.
2. Correct to the extent that on 30.06.2012 he alongwith one other ex-constable Sakhi Badshah was deputed on rider in the limits of PS Cantt.
3. That case vide FIR No. 453 dated 30.06.2012 u/s 419/420/471/221/223 PPC/155 Police Order was registered against the present appellant and his two other co-accused namely ex-constable Sakhi Badshah and Shahid Saleem on the ground that on 30.06.2012 an unknown person scuffled with constable Shahid Saleem who was on duty at National Bank guard Kohat Cantt. The suspected person was apprehended by Rauf ASI and he was handed over to the rider squad (the present appellant) and his companions Sakhi Badshah and Shahid Saleem. On their way to PS Cantt, the said suspected person was released by the present appellant and his colleague Sakhi Badshah with connivance of ex-constable Shahid Saleem. Later on the said suspected person was identified as Tufail s/o Asad Ullah r/o Kaghazai who was PO in case FIR No. 308/2008 u/s 302/324 PPC PS Cantt. Copy of FIR is annexed as annexure "A".
4. That proper departmental inquiry was conducted against the appellant and after fulfillment of all codal formalities the appellant was dismissed from service vide OB No. 31 dated 08.01.2013 by respondent No. 1. Copy of charge sheet, statement of allegation, reply to charge sheet, inquiry report, final show cause notice and reply to final show cause notice are attached here with as annexure "B", "C", "D", "E", "F" and "G" Respectively.

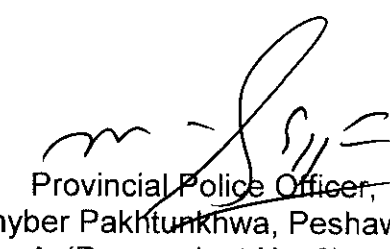
5. That his departmental appeal was correctly rejected by respondent No. 2 on 04.03.2013.

Grounds:-

- a. Incorrect. The orders of respondents No. 1 & 2 were passed in accordance with law and provisions of relevant rules.
- b. That there is difference between criminal and departmental proceeding as also held in various judgments by Hon: Supreme Court of Pakistan. Each is to be decided on its own merits. Copies of judgments are annexed as annexure "H".
- c. Incorrect. As explained above in para-B there is difference between criminal and departmental proceedings. Each is to be decided on its merits. It does not amount to double jeopardy and there is no legal bar on it which is clear from the above quoted judgments of Hon: Supreme Court of Pakistan.
- d. Incorrect. Proper departmental inquiry was conducted against the appellant. He had associated in the departmental enquiry proceedings. After fulfillment of all legal formalities, the appellant was awarded the punishment of dismissal from service in view of his act as per Rules.
- e. Incorrect. Full opportunity was afforded to the appellant as all statements of concerned officials were recorded in his presence.
- f. Incorrect. Proper departmental inquiry was conducted against the appellant and he was also afforded chance of hearing.
- g. Incorrect. In such like cases punishment of dismissal from service is required to be awarded to the official who has shown negligence in the discharge of his duty.
- h. Incorrect. The appellant had deliberately let free the PO at the instance of ex-constable Shahid Saleem as that PO Tufail was his cousin. No one has planted a story against the appellant. The appellant was handed over the said PO for taking him to PS Cant as is evident from copy of that FIR.
- i. That the other points would be submitted with permission of this Hon Court at the time of arguments.
- j. In view of the above mentioned grounds, it is therefore prayed that the appeal may kindly be dismissed.


Dy: Inspector General of Police,
Kohat Region, Kohat.
(Respondent No. 2)


District Police Officer,
Kohat
(Respondent No. 1)


Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 3)

BEFORE THE HONORABLE SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 589/2013


Zulfiqar Hussain Ex-Constable No. 665 Appellant.

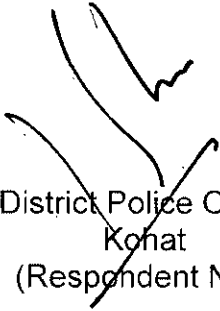
VERSUS


1. District Police Officer, Kohat
2. Deputy Inspector General of Police, Kohat Region, Kohat.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
4. State through AGP Peshawar Respondents.

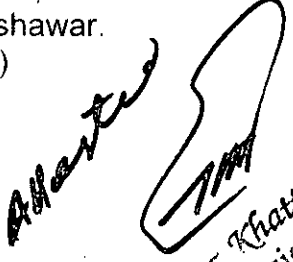
COUNTER AFFIDAVIT

We, the below mentioned respondents, do hereby solemnly affirm and declare on oath that contents of parawise comments are correct and true to the best of my knowledge and belief. Nothing has been concealed from this Hon: Court.


Dy: Inspector General of Police,
Kohat Region, Kohat.
(Respondent No. 2)


District Police Officer,
Kohat
(Respondent No. 1)


Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 3)


Magistrate
Oath Commissioner
District Court Kohat

ابتدائی اطلاعی رپورٹ

نومبر نمبر ۲۴۲۰۰۰ (۱۱)

کونٹر

(فائل) ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ ۱۵۲ مجموعہ ضابطہ نوپوری

تھانہ کینٹ

منبع کوہاٹ

نمبر 453

تاریخ و وقت وقوع 30/6/12 وقت = 10:00

تاریخ و وقت رپورٹ 30/6/12 وقت = 10:30	تاریخ و وقت وقوع 30/6/12 وقت = 10:00
نام و سکونت اطلاع دہندہ و متیغ	حیدر اروف ASI پولیس لاٹن
مختصر کیفیت جرم (موردفعہ) حال اگر کچھ بنا گیا ہو	419-420, 468-471, 221-223 155 Police Area
جائے وقوع حاصلہ تھانہ سے اور سمیت	نیشنل بینک کوہاٹ
نام و سکونت ملزم	
کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہو تو وجہ بیان کرو۔	برائیدگی دراصل پرچہ دیا جاتا ہے۔
تھانہ سے روانگی کی تاریخ و وقت	بے سبیل ڈاک

ابتدائی اطلاع نیچے درج کرو اس وقت ایک تحریری مراسلہ محتاب حیدر اروف ASI
 ایس آر ایف 319/30/6/12 نمبر 457/30/6/12 نمبر 1066/30/6/12 نمبر 314/30/6/12 نمبر 733/30/6/12
 نئی کوہاٹ کے احاطہ میں ترتیب دیکھ کر اس کے وقت قریب 10:00 ایک شخص بنک کی کینٹ
 کے دفتر آکر کینٹل شاہد سلیم کے ساتھ نکلا پورہ آئیس بائیں شروع کی۔ چند منٹ کے بعد شخص
 مذکورہ نے کینٹل شاہد سلیم کے ساتھ نکلا پورہ آئیس بائیں شروع کی۔ دیکھ کر میں نے فوراً شخص مذکورہ
 قاتلوں کے پردوں سے وجہ پتہ پائی کے مارے میں پوچھا۔ تو نیشنل مذکورہ نے بتایا۔ یہ شخص مذکورہ نرس
 جہاز ادھائی بجے کے بائیں پوچھا پوچھا گیا۔ اور ڈاکخانہ میں جو نرس مل گیا ہے۔ اور ساتھ ہی شخص مذکورہ
 گھر سے پوچھا گیا۔ نئی انتہائی سفارش کی۔ اس دوران حیدر اروف نئی کینٹان سخی بار شاہ
 رو الفصار 665، آکر شخص مذکورہ کے ہوالہ کر کے ہذحوالات کے عہدات کی۔ کچھ درپہرہ معلوم ہوا کہ
 رائدر نوری سے شخص مذکورہ بھاگ گیا ہے۔ یا چھوڑا گیا ہے۔ رائدر نوری کو ایک عدد کارڈ بنام محمد امجد
 ولد اجمل خان کے کاغذی طرح حوالہ کیا۔ جو جعلی معلوم ہوا۔ شخص مذکورہ نے دھوکہ دہی کر کے اپنے
 پوچھا حیدر اروف ولد اجمل خان پر حالہ تک یہ Po طفیل ولد عبداللہ کے کاغذی طرح استھاری ہوصہ
 نمبر 308/30/6/12 نمبر 302/30/6/12 نمبر 1066/30/6/12 نمبر 308/30/6/12
 خانے ہوئے پولیس کو رکولہ ریڈر قصہ عمدہ حقیقت چھانے اور چھانے کی سفارش کر رہا تھا۔ چونکہ رائدر
 کینٹان مذکورہ بالا جسم استھاری کو چھوڑ دیا ہے۔ ناماشر سفارش اور پولیس کو درج Po کا اصل نام طفیل
 شاہ طاہر نہیں ہے۔ دیوٹی محفلت کا بھی مرتکب ہوتے ہیں۔ اور اس طرح سلیم شاہ نے ناخائز سفارش
 کی ہے۔ ہر سہ ماہ کینٹان جرم بالا بانیے جاتے ہیں۔ دراصل بعض کاغذی مقدمہ ارسال تھا ہے بعد اندراج
 مقدمہ حوالہ KBI سٹاف کیا جائے دخط رائدر نوری حیدر اروف ASI پولیس لاٹن 30/6/12 کاروائی تھانہ آسہ
 دراصل صرف حرف درج بالا پورہ پرچہ بجراٹم بالا چاک پورہ نقل پرچہ ہم دراصل بعض تفتیش حوالہ KBI سٹاف
 کیا جاتا ہے۔ پرچہ کرائس ہے۔

ASi-PS. Cantt.
30/6/12

DISCIPLINARY ACTION

I, **MUBARAK ZEB DISTRICT POLICE OFFICER, KOHAT**, as competent authority, am of the opinion that **Constable Zulfiqar No. 66** has rendered himself liable to be proceeded against as he committed the following acts/omissions under Police Rule 1975:-

STATEMENT OF ALLEGATIONS

As reported by SSP Investigation Wing Kohat vide Memo: 3111/GC dated 04.07.2012 that you was arrested in case FIR No. 453 dated 30.06.2012 u/s 419/420/468/471/221/223 PPC/155 Police Order PS Cantt:

2. For the purpose of scrutinizing the conduct of said accused with reference to the above allegations, **Mr. Mansoor Aman, ASP HQrs, Kohat** is appointed as enquiry officer. The enquiry officer shall in accordance with provision of the Police Rule-1975, provide reasonable opportunity of hearing to the accused official, 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.

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

**DISTRICT POLICE OFFICER,
KOHAT**

No. 5089-90/PA, dated 11-7-2012.

Copy of above is forwarded to:-

1. **Mr. Mansoor Aman, ASP HQrs, Kohat**. The Enquiry Officer for initiating proceedings against the accused under the provisions of Police Rule-1975.
2. **Constable Zulfiqar No. 66** The concerned official/ officer's with the directions to appear before the Enquiry officer, on the date, time and place fixed by the enquiry officer, for the purpose of enquiry proceedings.

.....
13.07.2012

ORDER

The following Police Officials have been arrested in connection with their involvement in case FIR No. 453 dated 30.06.2012 u/s 419/420/468/471/221/223 PPC /155 Police order PS Cantt: are hereby suspended and closed to Police Lines Kohat with immediate effect.

1. Const: Zulfiqar No. 665
2. Const: Sakhi.Badshah No. 583

Mr. Mansoor Aman, ASP HQrs Kohat is appointed as enquiry officer to conduct proper departmental enquiry against the above named defaulter officials and submit findings within the stipulated period.


DISTRICT POLICE OFFICER,
KOHAT

OFFICE OF THE DISTRICT POLICE OFFICER KOHAT

No 5082-84 /PA dated Kohat the 11-7-12

1. ASP HQrs: Kohat for information and necessary action
2. Reader/OASI


DISTRICT POLICE OFFICER,
KOHAT

OB No 546

Detent 11-7-12

جواب چارج شیٹ کا نشیمل ذوالفقار نمبر 665 متعینہ پولیس لائن کوہاٹ

جناب عالی!

بحوالہ چارج شیٹ نمبری 5087-88/PA مورخہ 11-07-2012 مجاریہ جناب DPO صاحب کوہاٹ معروض

خدمت ہوں۔

کہ مورخہ 30-06-2012 کو میں معہ کنشیل سخی بادشاہ 583 رائیڈ رسکواڈ گشت ڈیوٹی حدود چوکی پولیس کل سرائے پر تھے۔ دوران گشت نیشنل بینک مین برانچ سے گزرتے ہوئے بینک بالمقابل سرک شاہی پر کھڑے ہو کر معلوم ہوا کہ ایک پرائیویٹ شخص نے بینک کے اندر ڈیوٹی پر معمر کنشیل شاہد سلیم کے ساتھ ہاتھ پائی کر کے باوردی کنشیل کو تھپڑ مارے ہیں۔ یہ بات سن کر میں معہ کنشیل سخی بادشاہ 583 بینک میں جا کر ASI محمد راؤف بمعہ نفری پولیس کے بشمول ایک پرائیویٹ شخص موجود گفتگو میں مصروف تھے۔ اور یہ بھی معلوم ہوا کہ مذکورہ شخص ڈاک خانہ کوہاٹ میں ملازم ہے۔ میں نے فوری طور پر مذکورہ شخص کی جامعہ تلاش لے کر جس کے جیب سے ایک کارڈ بنا محمد آصف ولد اجمل خان سکنہ کاغذی برآمد کر کے حوالہ ASI محمد راؤف کی۔


محمد راؤف ASI نے ہم رائیڈ رسکواڈ کو ہدایت کی کہ اس شخص کو چوکی پولیس کل سرائے لے جاؤ۔ مذکورہ شخص کو چوکی روانہ کر کے کنشیل شاہد سلیم ہمارے عقب آ کر ہمیں کہا کہ یہ شخص محمد آصف میرا چچا زاد محکمہ ڈاک میں بطور کلرک ملازم ہے۔ اسکے ساتھ علیحدگی میں دو تین باتیں کرتا ہوں۔ کیونکہ ایسا نہ ہو کہ اس ان کے لئے گھریلو مسئلہ نہ بن جائے۔

تو کنشیل شاہد سلیم نے مذکورہ کو ہاتھ سے پکڑ کر سائیڈ پر لے جا کر چھوڑ دیا۔ اور ہمیں کہا کہ وہ بھاگ گیا۔ میں نے اور ہمراہ ہی کنشیل سخی بادشاہ 583 مذکورہ شخص کی بازار میں کافی تلاش کی۔ مگر نہ ملا۔

عالیجاہ! مذکورہ شخص کو لیجاتے وقت نہ راؤف ASI نے اور کنشیل شاہد سلیم نے ہمیں یہ بتایا تھا کہ مذکورہ شخص بمقدمہ قتل مجرم اشتہاری تھا۔ دوران پتہ معلوم ہوا کہ مذکورہ کا اصل نام محمد طفیل ولد سعد اللہ خان سکنہ کاغذی ہے۔ اور تھانہ چھاونی سے مجرم PPC 302 مجرم اشتہاری ہے۔

کنشیل شاہد سلیم بھی کاغذی کا باشندہ ہے۔ کنشیل مذکورہ نے ہمیں دھوکہ دیا ہے۔ ایک قتل کے مجرم اشتہاری کو فرار کروانے میں اہم کردار ادا کیا ہے۔ مذکورہ نے پولیس فورس کی بدنامی کر کے اپنی فرائض میں غفلت کی ہے۔ اور ہم دونوں کنشیلان کو بھی اور ASI محمد راؤف کو بھی دھوکہ دیا ہے۔

میری 10/11 سالہ سروس بے داغ ہے۔ دیانت داری سے ڈیوٹی سرانجام دی ہے۔ جو کچھ بھی ہوا ہے۔ کنشیل شاہد سلیم کی وجہ سے ہوا ہے۔ میں بے گناہ ہوں۔ بیان گزارش ہے۔


کنشیل ذوالفقار نمبر 665
پولیس لائن کوہاٹ

No 464-H
Dt-21-11-11

FINDING

IN DEPARTMENTAL ENQUIRY AGAINST CONST ZULFIQAR NC.66

This is a finding in departmental enquiry against constable Zulfiqar No. 66 for the allegation that SSP Investigation Kohat vide his Memo: No. 3111/GC, dated 4.7.2012 intimated that the said constable is arrested in Case FIR NO. 453, dated 30.6.2012 U/S 419/420/468/471/221/223 PPC/155 Police Order PS Cantt.

On receipt of papers the said constable, FIR Lodger ASI Rauf, constable Sakhi No. 583, I.O alongwith case file etc were summoned, heard in person and recorded their statements.

Constable Zulfiqar No. 66 stated that on 30.6.2012 he was on rider duty with Constable Sakhi Badshah No.583 in the limits of PP Political Seria. Passing near National Bank he came to know that one civil person quarreled with Constable Shahid Salim who is on duty inside the Bank. So they rushed to the Bank where they saw ASI Rauf alongwith strength is busy in talking with a civilian. It is also learnt that the said civilian is serving in post office. He (const Zulfiqar) carried out his body search and also took out a NIC from his pocket according to the name of civilian was found as Mohammad Asif S/O Ajmal Khan R/O Kaghzai, which he handed over to ASI Rauf.

ASI Rauf directed them to carry the said civilian to Police Post so they carried him towards Police Post; meanwhile, Constable Shahid Salim came behind them and told to them that he (civilian) is his real Uncle and is a clerk in Post Office. He (const Shahid Salim) wants to talk with him (civilian) in alone so they permitted him. He(const) carried him (civilian) at some distance and let him free, came to them back and disclosed that the civilian escaped. After they (const Zulfiqar and Sakhi) searched the escapee but in vain.

In last of his statement he threw all responsibility on the shoulders of Constable Shahid Salim.

ASI Rauf stated that on the eventful day he alongwith constables Mir Zaman, Mohsin, Shahid Salim and Khalil Zaman were present in National Bank for duty. At 10.00 Hrs one civilian came and started blows of boxing on Constable Shahid Salim. He (ASI) overpowered him. The victim constable disclosed that the accused person is his real cousin, having some family dispute with him. The said constable instead of recommendation of taking legal action against the defaulter person in struggle to release the said person from police. He (ASI Rauf) directed the rider squad to carry him to Police Post. After some time it was reported to him that the said civil person escaped or released intentionally by the constables. Later on it was came to light the said civilian was a PO in criminal case U/S 302 PPC PS Cantt and is the villager of constable Shahid Salim, therefore, the said constable cheated with police party and arranged his escape.

I.O of the case stated that from the investigation so far the said constable is found guilty of misconduct.


Constable Sakhi corroborated the version of constable Zulfiqar.

Constable Shahid Salim denied all the allegations of releasing the PO from the clutches of any police official.

Opportunity of cross examination was given to the defaulter constable whom he did not avail.

From the enquiry so far conducted it revealed that though at the time of arrest and carrying of stranger he was not aware about his status but once they were directed by senior to carry the suspect to PP, they unlawfully handed over the arrested suspect to the irrelevant constable on his request. He (the defaulter constable) mis-used his authority and it is established that he did gross misconduct, hence, found guilty of the charges narrated in the FIR mentioned above.

Submitted please.


Sub-Divisional Police Officer,
HQrs: Kohat.

FINAL SHOW CAUSE NOTICE

1. I, **DILAWAR KHAN BANGASH, District Police Officer, Kohat** as competent authority under the Police Rule 1975 serve you **Constable Zulfiqar No. 665** as follow:-

The consequent upon the completion of enquiries conducted against you by the Enquiry Officer, **Mr. Mushtaq Hussain DSP HQrs., Kohat.**

2. On going through the findings and recommendations of the Enquiry Officer, the materials on the record and other connected papers, I am satisfied that the charge against you is proved and you have committed the following acts/omission specified in Police Rule 1975.

"You was arrested in case FIR No. 453 dated 30.06.2012 u/s 419/420/468/471/221/223 PPC/155 Police Order PS Cantt, Kohat".

3. As a result thereof I, as competent authority, have tentatively decided to impose upon you the penalty of major punishment under Police Rule 1975.

4. You are therefore, required to Show Cause as to why the aforesaid penalty should not be imposed upon you, also intimate whether you desire to be heard in person.

5. If no reply to this notice is received within seven (7) days of its delivery in the normal course of circumstances, it will be considered/presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

6. Copy of finding of the enquiry officer is enclosed.

No. 322 /PA
Dated 08-1-2012


**DISTRICT POLICE OFFICER,
KOHAT**

حصہ عالی

حوالہ شوکار ٹریڈنگ فائٹل نمبر 322/PA
8-1-2013

جو جواب میں نے چارج شیٹ میں انکوائری افسر صاحب کو دیا ہے وہی
حیرانیاں ہے اور حقیقت پر مشنی ہے

صاحب والا یہ نہایت نپیدردانہ التجا ہے کہ مسائل تقریب گھبرانے
سے تعلق رکھتا ہے۔ اور بیوی بچے ہیں اپنی نوکری شوق سے کرتا ہوں
اللہ اللہ وعدہ کرتا ہوں کہ دوران ڈیوٹی ایسا وضع ہے کہ
افسران بالا کو میں دوں گا۔ صاف رہے جائے

آئیے کا فرمانبردار کیش ذوالفقار 665
حصہ عالی نمبر 322/PA

ذوالفقار

9-1-2013

بیان ازان ذولفقار 665 لویسی لائن
FC

نے دریافت بیان کیا کہ میں نے چارج شیٹ میں
جو بیان دیا ہے وہی میرا بیان ہے۔

نی

میں کیا ملے ایک جواب دہانہ کو لے جانے کے لیے کیا گیا تھا

2. جی ہاں، بالکل حوالہ کیا گیا تھا۔

میں ملزم کو جمع کرنے کے لیے

2. نہیں ہیں۔

میں ملزم کا نام کیا تھا

2. نام کا ہے یہ نہیں تھا، جب جاہل تھا تو نہیں لیا۔

میں (سوال) محمد علی تھا

AA 1/1

MB
20

of hearing to the pre-emptors in whose favour the suit for pre-emption had been decreed and Mutation No.1187 was also sanctioned on 11-5-1985. The review of Mutation No.274 seems to have been sought by the informer for the purpose of defeating the pre-emption decrees. We are also satisfied that there was no contravention of provisions of paragraph 24 of the Regulation. No indulgence can be shown to the vendors or the informer, whose conduct is not appreciable. In our view, the impugned judgment of the High Court does not suffer from any defect or other legal infirmity and the same is just and fair doing complete justice between the parties.

8. For the foregoing reasons, we do not find any merit in these petitions which are dismissed and leave to appeal is refused accordingly.

S.A.K./F-4/SC

Leave refused.

2006 S C M R 554

[Supreme Court of Pakistan]

Present: Javed Iqbal and Ch. Ijaz Ahmad, JJ

SAMI ULLAH---Petitioner

versus

INSPECTOR-GENERAL OF POLICE and others---Respondents

Civil Petition No.909-L of 2005, decided on 3rd February, 2006.

(On appeal from the judgment, dated 5-4-2005 of the Punjab Service Tribunal, Lahore, passed in Appeals Nos.2873, 2874 and 2876 of 2004).

(a) Punjab Police (Efficiency and Discipline) Rules, 1975---

---Rr. 3 & 4---Punjab Service Tribunals Act (IX of 1974), S.4--- Constitution of Pakistan (1973), Art.212(3)---Dismissal from service--- Police constable---Facilitating escape of convict, charge of---Acquittal of petitioner/constable from criminal case registered against him--- Dismissal of appeal of constable by Service Tribunal---Validity--- Custody of convict had been handed over to armed police officials with official vehicle to escort prisoners---Petitioner was a member of such police party and had stopped vehicle to facilitate escape of convict on a lame pretext that he wanted to ease himself---Vehicle could have been taken to the nearest police station to avoid any untoward incident--- Police party duly armed with sophisticated weapons had remained highly negligent and acted in a very irresponsible manner and failed to perform

SCMR

their duties dilige
convict could no.
facilitation of polic
be absolved from h
case would have
Petitioner, after co
only for gross negl
in escape of conv
leave to appeal. [p

Muhammad
1993; Deputy I.-
134; Muhammad A
and Muhammad N
rel.

(b) Civil service---

---Disciplinary pro
from criminal case
bearing on merits o

Muhammad
1993; Deputy I.-
134; Muhammad A
and Muhammad N
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Talal Farooq

Nemo for R

Date of hea

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against the petitione
Rules, 1975 on acc
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Being aggrieved an
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avail. It is to be no.
224, P.P.C. was al
other accused at P.
acquitted by learned
10-3-2004.

2. Show-cause

SCMR

favour the suit for pre-emption
1187 was also sanctioned on
274 seems to have been sought
ing the pre-emption decrees. We
contravention of provisions of
indulgence can be shown to the
is not appreciable. In our view,
court does not suffer from any
the same is just and fair doing

their duties diligently and with vigilance---Unarmed and handcuffed
convict could not have been escaped without collective connivance and
facilitation of police party---No individual member of police party could
be absolved from its responsibility---Acquittal of petitioner from criminal
case would have absolutely no bearing on the merits of the case---
Petitioner, after comprehensive inquiry, had been found responsible not
only for gross negligence, but active connivance and facilitation resulting
in escape of convict---Supreme Court dismissed petition and refused
leave to appeal. [p. 557] A, B & C

do not find any merit in these
to appeal is refused accordingly

Muhammad Aslam v. Government of N.-W.F.P. 1998 SCMR
1993; Deputy I.-G. Police v. Anis-ur-Rehman Khan PLD 1985 SC
134; Muhammad Ayub v. Chairman E.B. WAPDA PLD 1987 SC 195
and Muhammad Nazir v. Superintendent of Police 1990 SCMR 1556
rel.

Leave refused

(b) Civil service---

R 554
[Pakistan]

---Disciplinary proceedings, initiation of---Acquittal of civil servant
from criminal case---Effect---Such acquittal would have absolutely no
bearing on merits of the case. [p. 557] B

Ch. Ijaz Ahmad, JJ
-Petitioner

Muhammad Aslam v. Government of N.-W.F.P. 1998 SCMR
1993; Deputy I.-G. Police v. Anis-ur-Rehman Khan PLD 1985 SC
134; Muhammad Ayub v. Chairman E.B. WAPDA PLD 1987 SC 195
and Muhammad Nazir v. Superintendent of Police 1990 SCMR 1556
ref.

CE and others---Respondents

Talal Farooq Sheikh, Advocate Supreme Court for Petitioner.

and on 3rd February, 2006.

Nemo for Respondents.

at, dated 5-4-2005 of the Punjab
appeals Nos.2873, 2874 and 2876

Date of hearing: 3rd February, 2006.

JUDGMENT

(Discipline) Rules, 1975---

JAVED IQBAL, J.--- Pursuant to the proceedings initiated
against the petitioner under the Punjab Police (Efficiency and Discipline)
Rules, 1975 on account of gross negligence penalty of dismissal from
service was imposed by D.P.O. Mianwali vide order dated 28-6-2002.
Being aggrieved an appeal was preferred which was also rejected and
assailed by way of appeal before the Punjab Service Tribunal but with no
avail. It is to be noted that a criminal case under sections 222, 223 and
224, P.P.C. was also got lodged against the petitioner as well as the
other accused at Police Station Mitha Tiwana on 3-1-2002 but were
acquitted by learned Magistrate Section 30, Khushab vide order, dated
10-3-2004.

Penals Act (IX of 1974), S.4
12(3)---Dismissal from service
of convict, charge of---Acquittal of
case registered against him---
by Service Tribunal---Validity---
ver to armed police officials with
petitioner was a member of such
to facilitate escape of convict on
himself---Vehicle could have been
to avoid any untoward incident---
ated weapons had remained highly
ible manner and failed to perform

2. Show-cause notice which was given to the petitioner is

reproduced hereinbelow to appreciate the legal and factual aspects of the controversy:--

"You constables Sami Ullah No.1156; Hidayat Ullah No.86 and Khan Bahadur No.301, District Mianwali did not perform your official duty in a proper and disciplined manner in that as per report of D.S.P.S.D.P.O., Mitha Tiwana received from the Superintendent of Police, Khushab vide his Memo. No.30/PA, dated 5-1-2001, on 2-1-2002, you were detailed to collect two criminals namely Muhammad Ramzan son of Allah Ditta caste Mitra resident of Harnoli involved in case F.I.R. No.92 dated 21-8-1999 under section 302/34, P.P.C. 7-A.T.A., Police Station Piplan from Central Jail, Mianwali to produce them in the Court of Special Judge, A.T.A. Sargodha. Official Vehicle No.4579/MIA was provided to escort the prisoners. H.C. Shahbaz Khan No.93 was driver of the said vehicle. The learned Special Judge convicted and sentenced them to undergo 14/17 years' R.I. each.

Thereafter, you along with above named convicts proceeded to Mianwali. At about 8-45 p.m., the vehicle was intentionally stopped near Tanveer Petroleum in the area of Police Station Mitha Tiwana, District Khushab in order to facilitate the convict Muhammad Ramzan to escape from police custody. As a result of your mala fide intention, he managed to escape from our lawful custody. In this regard, case F.I.R. No.2, dated 3-1-2002, under sections 222/223/224, P.P.C. was registered at Police Station Mitha Tiwana, District Khushab against you and other police officials which is under investigation and you have been placed under suspension.

It is thus, evident from the facts and circumstances that you all in connivance with each other facilitated the above named Muhammad Ramzan to escape from your lawful custody and also did not make any fruitful efforts to arrest him which amounts to grave misconduct under Punjab Police (E&D) Rules, 1975, warranting disciplinary action against you."

3. Heard Mr. Talat Farooq Sheikh, learned Advocate Supreme Court on behalf of petitioner who mainly argued that no evidence whatsoever has come on record on the basis whereof petitioner could be held responsible for the escape of convict Muhammad Ramzan which aspect of the matter has been ignored by the Police Department as well as learned Service Tribunal which resulted in serious miscarriage of justice. It is next contended that the petitioner could not have been dismissed from service after having clean acquittal from the criminal

case got registered ;
dictum as laid down
of N.-W.F.P. 1998 :

4. We have ca:
preceding paragraph
judgment impugned
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Muhammad Ramzan
years' R.I. by the le
registered vide F.I.)
P.P.C. read with sec
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are not persuaded to a
Supreme Court that
there was absolutel
disciplinary procedu
for the reason that re
no bearing on merits
dictum laid down in I
1985 SC 134; Muhan
SC 195 and Muhan
SCMR 1556.

In our view t
prejudice whatsoever.

legal and factual aspects of the

1156; Hidayat Ullah No.86 and Mianwali did not perform your duty in a disciplined manner in that as per the report which Mianwali received from the complainant vide his Memo. No.30/PA, you were detailed to collect two convicts, Muhammad Ramzan son of Allah Ditta casteed in case F.I.R. No.92 dated 21-8-1992, P.P.C. 7-A.T.A., Police Station Mianwali to produce them in the presence of A. Sargodha. Official Vehicle No. 4579/MIA to escort the prisoners. H.C. Mianwali was in charge of the said vehicle. The learned Judge sentenced them to undergo 14/17

The named convicts proceeded to Mianwali, the vehicle was intentionally stopped in the area of Police Station Mianwali in order to facilitate the conviction of the convicts from police custody. As a result of this collusion, he managed to escape. In this regard, case F.I.R. No.2, dated 21-8-1992, P.P.C. 3/224, was registered at Police Station District Khushab against you and the case is under investigation and you have

considered the facts and circumstances that you all have facilitated the above named convicts to escape from your lawful custody and despite all efforts to arrest him which were made under Punjab Police (E&D) Rules, a writ petition against you."

The learned Advocate Supreme Court has mainly argued that no evidence is on record on the basis whereof petitioner could be held liable for the conviction of convict Muhammad Ramzan which was obtained by the Police Department as well as the fact that it resulted in serious miscarriage of justice. It is submitted that petitioner could not have been held liable for the learned acquittal from the criminal

case got registered against him on the same charges in violative of the dictum as laid down by this Court in Muhammad Aslam v. Government of N.-W.F.P. 1998 SCMR 1993.

4. We have carefully examined the contention as mentioned in the preceding paragraph, thrashed out the entire record and perused the judgment impugned carefully. After having gone through the entire record we are of the view that the factum of gross negligence has been proved. A comprehensive inquiry was got conducted and the petitioner was found responsible not only for gross negligence but active connivance and facilitation which resulted in the escape of convict Muhammad Ramzan who was convicted and sentenced to death with 14 years' R.I. by the learned Special Judge, A.T.A., Sargodha in case got registered vide F.I.R. No.92, dated 21-8-1992 under section 302/34, P.P.C. read with section 7 of the Anti-Terrorism Act, 1997. There is no denying the fact that custody of convict Muhammad Ramzan was handed over to the armed police party with official Vehicle No.4579/MIA to escort the prisoners and petitioner was admittedly the member of that police party. The vehicle was stopped without any justification to facilitate the escape of Muhammad Ramzan on a lame pretext that he wanted to ease himself. The vehicle could have been taken to Mitha Tiwana Police Station to avoid any untoward incident which smacks of mala fides. The police party duly armed with sophisticated weapons remained highly negligent and acted in a very irresponsible manner and failed to perform their duties diligently and with vigilance which speaks a volume about their conduct. How an unarmed and handcuffed convict could have been escaped without the collective connivance and facilitation of police party. It cannot be a case of negligence simpliciter as pressed time and again by the learned Advocate Supreme Court on behalf of petitioner. It hardly matters that the handcuffs of escaped convict was buckled with whose belt as they all were responsible for the safe custody of convicts and being vicarious liability no individual member of the police party can be absolved from its responsibility. We are not persuaded to agree with the prime contention of learned Advocate Supreme Court that after having clean acquittal from the criminal case there was absolutely no lawful justification for the initiation of disciplinary proceedings which culminated into dismissal from service for the reason that result of criminal proceedings would have absolutely no bearing on merits of the case. In this regard we are fortified by the dictum laid down in Deputy I.-G. Police v. Anis-ur-Rehman Khan PLD 1985 SC 134; Muhammad Ayub v. Chairman E.B. WAPDA PLD 1987 SC 195 and Muhammad Nazir v. Superintendent of Police 1990 SCMR 1556.

In our view the procedural lapses are not very serious and no prejudice whatsoever has been caused against the petitioner. No question

of law of public importance is involved in the matter on the basis whereof leave could be granted. The petition being meritless is dismissed and leave refused.

S.A.K./S-9/SC

Leave refused

RANA BHAG
the Lahore High Co
Muhammad Asim in a

2006 S C M R 558

[Supreme Court of Pakistan]

Present: Rana Bhagwandas and Hamid Ali Mirza, JJ

AAMER SHAHZAD---Petitioner

versus

MUHAMMAD ASIM and another---Respondents

Criminal Petition No.166-L of 2005, decided on 5th July, 2005.

(On appeal from the judgment, dated 14-3-2005 passed in Criminal Miscellaneous No.1552-B of 2005 by Lahore High Court, Lahore).

Criminal Procedure Code (V of 1898)---

---S. 497(5)---Penal Code (XLV of 1860), S.337-A(ii)---Constitution of Pakistan (1973), Art.185(3)---Cancellation of bail, refusal of---High Court in granting bail to accused was stated to have been misled in observing that the injury attributed to accused by means of hatchet on the person of the complainant was not reflected in the F.I.R. and the Medico-legal report---Perusal of record including the Medico-legal certificates showed that it was a bona fide slip of pen or a clerical error, which did not invalidate the essence of the impugned order of High Court---Investigation in the case had been completed and the accused was behind the bars awaiting his trial along with his co-accused---Discretion exercised by High Court in granting bail to accused did not suffer from any error of law or jurisdiction---Leave to appeal was refused to complainant in circumstances and the petition was dismissed accordingly. [p. 559] A, B & C

N.A. Butt, Advocate Supreme Court for Petitioner.

Dil Muhammad Tarar, Advocate Supreme Court for the State.

Hasnaat Ahmad Khan, Advocate Supreme Court for Respondent.

No.1.

Date of hearing: 5th July, 2005.

SCMR

2. Precise allegation dealt a hatchet blow frontal region of head e.m. After X-ray of "Mudiha", falling under for this offence provided

3. Learned counsel Chambers of the High attributed to the respondent Shahzad was not reflected that as it may, on per we find that it was a bona not invalidate the essence

4. Since the investigation was behind the bars, discretion exercised by not suffer from any error

5. In the peculiar find any legal infirmity does not warrant any leave refused.

N.H.Q./A-9/SC

Present:

MUHAMMAD

MEDICAL SUP
LAHORE

Civil Petition No.384-L

SCMR

M. Zaman Bhatti, Advocate, Supreme Court for the State.

Date of hearing: 17th March, 2006.

JUDGMENT

SARDAR MUHAMMAD RAZA KHAN, J.--- While his five co-accused were acquitted by the trial Court, Azhar Shahzad, the petitioner was convicted under section 365-A, P.P.C. etcetra, for abducting Hafiz Waqar Ahmad for ransom, with reference to F.I.R. No.442 dated 25-8-2003 of Police Station Taxila District Rawalpindi. The petitioner failed before learned Lahore High Court, Rawalpindi Bench, in his appeal against conviction vide judgment, dated 9-2-2005 and hence he seeks leave to appeal.

2. A peculiar feature of the case is that the complainant/father of the abductee and Hafiz Waqar Ahmad, the abductee had died in an accident somewhere near Rahim Yar Khan and hence both of them could not be examined in the trial Court at Taxila.

3. After hearing the learned counsel for the petitioner, we would like to see the effect of non-appearance of the complainant as well as the abductee on the trial of the accused. It is also noticed that five co-accused of the petitioner were acquitted on the basis of same evidence used against the petitioner. We are of the view that in order to determine certain important facts, the evidence on record requires-a complete reappraisal. Leave is granted accordingly.

H.B.T./A-24/SC

Leave granted:

2006 S C M R 1005

[Supreme Court of Pakistan]

Present: Muhammad Nawaz Bhatti and Mian Shabbirullah Jan, JJ

GOVERNMENT OF PAKISTAN through Secretary
M/o Finance and others---Petitioners

versus

ASIF ALI and others---Respondents

Civil Appeals No.1781 and 1782 of 2001, decided on 11th October, 2005.

(On appeal from the judgment, dated 28-4-2001 passed by the Federal Service Tribunal in Appeal No.903(L) of 1997 in both cases).

SCMR

an record to suggest that loss to the exchequer but of payment of wages, the finding of the Tribunal ligence against them and dating to the penalty of period of two years, was of loss, was not proper. of departmental authority ment from the appellants the extent of penalty of a period of two years and ls, in the above terms, are

Order accordingly.

stan]

and Faiaq Sher, JJ

itioner

ident

17th March, 2006.

ed 9-2-2005 of the Lahore Criminal Appeal No.64/T of

a (1973), Art.185(3)--- well as the abductee, having at be examined in the Trial complainant and alleged, cused---Five co-accused of asis of same evidence used ted by the Supreme Court in evidence on record required

Supreme Court with Arshad ioner.

leave is granted in Civil Petition No.2276-L of 2001 to reconsider the case in its entirety in order to ascertain whether findings of the Tribunal reversing the findings of the departmental authority were based on evidence on the record or have been based on conjectures or surmises.

- (8) Since leave has been granted in Civil Petition No.2276/L of 2001, therefore, leave is also granted in Civil Petition No.3222/L of 2001 of Asif Ali to consider that if order of his reinstatement in service is upheld, he could be declined in law the arrears of pay during the period he remained out of service in the facts and circumstances of the case."

2. The respondent was charged in the following manner:--

- (1) While posted as Officer Incharge at National Savings Centre, Chunian and Pattoki during the period from 4-9-1992 to 7-4-1993 and from 8-4-1993 to 8-9-1994 respectively. You committed criminal financial procedural irregularities as per details given against 1(A to C) in the enclosed statement of allegations.

(2)(a) You misappropriated Rs.4,92,208.26 in various accounts while posted at National Savings Centre, Chunian.

(b) You while posted at NSC, Pattoki defrauded Mr. Bashir Ahmed son of Muhammad Ismail, Mst. Shamim Bashir and Mst. Razia for Rs.4,15,000 (51500) + 20,000, 80,000 respectively).

(3) You exercised contributory collaboration/connivance in the execution of parallel/private bank by Mr. Manzoor Ahmed Farooq DNSO at NSC, Chunian, due to which Rs.5,61,007.79 have been misappropriated.

(4) You filed incorrect false declarations of assets held by you your wife during the years, 1990, 1991, 1992 and 1993.

(5) You, unauthorisedly entered you name in the attendance register of Schemes Section of RDNS, Lahore on 12-1-1995 and marked your attendance right from 12-9-1994 to 12-1-1995 at a stretch in spite of the fact that you were never posted in the same section.

(6) You intentionally avoided/failed to comply with the directions of the competent authority regarding second medical opinion with reference to RDBS, Lahore's reminder dated 30-11-1994.

(7) You made payment of Rs.1,00,000 against DSC Registration No.2435 on 23-8-1994 at NSC Pattoki, without signatures of the purchaser.

(8) You delayed the deposit of 1 National Savings, Treasury for the amount of Rs.2,00,000 for more than one year.

(9) You are unauthorisedly absent

3. The three members Inquiry authorized Officer under Rule 5(1)(Efficiency and Discipline) Rules, 1973 in the matter, found the respondent guilty in the light of report recommendations of the Authorized dismissal from service. In addition to the charge of misconduct, the respondent was subsequently, acquitted under Special Judge (Central). The Tribunal respondent from criminal charge, having order of his dismissal and directed his

4. The learned Deputy Attorney acquittal of the appellant in the criminal exoneration from the criminal liability cannot be a valid reason to hold that the employee of a financial institution, with discipline and good order or it would business interest of the institution to be definition of misconduct in terms of service (E&D) Rules, 1973. The learned financial irregularities and misappropriation appellant by using the source of business planning a parallel financial institution personal benefit and gain in violation of Rules, 1964 and having caused heavy Organization has committed gross misconduct.

5. The expression misconduct different connotations and in the light of Government Servants (Efficiency and necessary that misconduct must carry the criminal misconduct essentially constitute misconduct in the Government Servants defined as under:--

"misconduct" means conduct service discipline on contrary

ivil Petition No.2276-L of 2001 to entirety in order to ascertain whether al reversing the findings of the re based on evidence on the record or tures or surmises.

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Rs.1,00,000 against DSC Registration at NSC Pattoki, without signatures of the

(8) You delayed the deposit of Rs.2,00,000 from NSC Pattoki to National Savings, Treasury from 20-7-1993 to 10-1994 and thus, the amount of Rs.2,00,000 remained out of Government books for more than one year.

(9) You are unauthorisedly absent w.e.f. 15-1-1995."

3. The three members Inquiry Committee appointed by the authorized Officer under Rule 5(1)(ii) of the Government Servants (Efficiency and Discipline) Rules, 1973, having made a detail scrutiny of the matter, found the respondent guilty of the charges and the competent authority in the light of report of Inquiry Committee and recommendations of the Authorized Officer, passed the order of his dismissal from service. In addition to the departmental proceedings for the charge of misconduct, the respondent was also proceeded against for criminal charge of misappropriation of the government money in which he was subsequently, acquitted under section 265-K, Cr.P.C. by the Special Judge (Central). The Tribunal on the basis of acquittal of the respondent from criminal charge, having allowed his appeal set aside the order of his dismissal and directed his reinstatement in service.

4. The learned Deputy Attorney-General has contended that the acquittal of the appellant in the criminal case on the basis of his exoneration from the criminal liability by the Investigating Officer, could not be a valid reason to hold that the conduct of respondent as an employee of a financial institution, was not prejudicial to the service discipline and good order or it would not be considered adverse to the business interest of the institution to be treated an act falling within the definition of misconduct in terms of section 2(a) of the Government Service (E&D) Rules, 1973. The learned D.A.-G. added that apart from financial irregularities and misappropriation, of certain amounts the appellant by using the source of business of the Organization, was also running a parallel financial institution in the private sector for his personal benefit and gain in violation of Government Servants (Conduct) Rules, 1964 and having caused heavy financial loss to the Government Organization has committed gross misconduct.

5. The expression misconduct and criminal misconduct have different connotations and in the light of definition of misconduct under Government Servants (Efficiency and Discipline) Rules, 1973 it is not necessary that misconduct must carry the element of criminal liability but criminal misconduct essentially constitutes misconduct. The expression misconduct in the Government Servants (E&D) Rules, 1973 has been defined as under:--

"misconduct" means conduct prejudicial to good order of service discipline on contrary to the Government Servants

(Conduct) Rules, 1964 or unbecoming of an officer and a gentleman includes, any act on the part of a Government servant to bring or attempt to bring political or other outside influence directly or indirectly to bear on the Government or any Government officer in respect of any matter relating to the appointment, promotion, transfer, punishment, retirement or other conditions of service of a Government servant."

The "criminal misconduct" is defined in section 5 of the Prevention of Corruption Act, 1947 as follows:--

"5. Criminal misconduct.---(1) A public servant is said to commit the offence of criminal misconduct:

- (a) if he accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification (other than legal remuneration) as a motive or reward such as is mentioned in section 161 of the Pakistan Penal Code, or
- (b) if he accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, or
- (c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do, or
- (d) if he, by corrupt or illegal means or by otherwise abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage.
- (e) For Central Government employees only.--- if he, or any of his dependents, is in possession, for which the public servant cannot reasonably account, of pecuniary resources or of property disproportionate to his known sources of income."

6. The prosecution before a regular Court for the charge of criminal misconduct, and the departmental proceedings for the charge of misconduct being governed by different laws and the rules of procedure are entirely different. In the present case, in addition to the departmental

8. The examination of the record would show that the charge of misconduct against the respondent was based on the allegation of corruption and misuse of office for personal gain and in support thereof direct evidence was brought on record but the Tribunal for misconception of law, without taking into consideration the said evidence, proceeded to set aside the order passed by the competent authority on the basis of judgment of criminal Court.

9. In the light of foregoing reasons, the impugned judgment is set aside and Civil Appeal No.1781 of 2001 is allowed, whereas Civil Appeal No.1782 of 2001 is dismissed. There will be no order as to costs.

M.H./G-13/SC

Order accordingly

Date of hearing: 14th February

ORD

ABDUL HAMEED DOGAR
appeal against the judgment dated 10-5-2004 of the Lahore High Court, Lahore, which was dismissed and the sentence of the Court was maintained and compensation legal heirs of the deceased or in default maintained. He was also convicted P.P.C. and sentenced to three years R.I. was also maintained. 1999 seeking confirmation of sentence affirmative.

2006 S C M R 1012

[Supreme Court of Pakistan]

Present: Abdul Hameed Dogar, Muhammad Nawaz Abbasi
and Saïyed Saeed Ashhad, JJ

MUHAMMAD AFZAAL---Petitioner

versus

THE STATE---Respondent

Jail Petition No.218 of 2004, decided on 14th February, 2006.

(On appeal from the judgment, dated 10-5-2004 of the Lahore High Court, Lahore, in Criminal Appeal No.67-J of 1999).

Penal Code (XLV of 1860)---

---Ss. 302, 324 & 337-F(ii)---Constitution of Pakistan (1973)
Art.185(3)---No reason existed to interfere with concurrent findings of two Courts below with regard to guilt of accused---Eye-witness accounts furnished by witnesses, was found to be trustworthy by the Trial Court as well as by first appellate court---No inherent defect or material lacuna was found in the evidence of witnesses whose presence at the site, had been established beyond any shadow of doubt---Counsel for petitioner had conceded that conviction and sentence had been properly awarded---Leave to appeal was refused. [p. 1014] A

Muhammad Zaman Bhatti, Advocate Supreme Court for
Petitioner.

Raja Saeed Akram, A.A.-G., Punjab for the State.

2. Briefly stated the facts of Muhammad Younus (P.W.7) lodged months prior to the occurrence Muhammad's daughter Mst. Asia with petitioner to the occurrence due to strained relationship of her husband and came to the house about 6-30 p.m. petitioner knocked to open the door, whereupon acquitted deceased for opening the door who had effected compromise between the deceased opened the door and as so petitioner inflicted Chhuri blows upon caught hold of deceased from his a Chhuri blows on the head of deceased Mst. Naveed wife of Sabir tried to petitioner also inflicted Chhuri blows. Petitioner cut the throat of deceased who died at the spot. Petitioner got recovered possession.

4.(sic) At the trial the prosecution

5. Petitioner in his statement recanted denied the case of prosecution and examined himself on oath as required. He did any evidence in defence. On the conviction and sentenced as stated above.

6. We have heard Mr. Muhammad for the petitioner and

① 18/11/2014

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
COURT, PESHAWAR

Service Case No. _____/

Zulfiqar Hussain Appellant

Versus

D.P.O, & others Respondents

= = = = =

REJOINDER ON BEHALF OF THE APPELLANT

= = = = =

Respectfully Sheweth:

Preliminary Objection:

1. All the preliminary objections are illegal and without lawful footing.
2. That appeal is within time and this court has got the jurisdiction.

REPLY ON FACTS:

1. That appellant was appointed as a constable on 27.10.2003 and never remain absent from his duty.
2. Para No.2 of comments correct to the extent that appellant along with one Sakhi Badshah were on duty as a rider.
3. Para No.3 of comments is incorrect, pro claim offender was never released by the appellant but was release by the co-accused namely Shahid Saleem to whom the custody of PO was given by ASI Rauf and the Shahid Saleem by deceiving the appellant that the arrested person namely Tufail is his real cousin and serving in

Post Office, on this pre text he insured the appellant that he want to discussed some domestic problem and then he release the pro claim offender and the custody of pro claim offender was not given to the appellant.

4. Para No.4 of comments is incorrect, no proper show cause notice was given and no proper inquiry was conducted and the alleged inquiry no finding against the appellant is given regarding the punishment.
5. Para No.5 of comments is admitted correct.

GROUND:

- A. Grounds "A" of comments is incorrect, dismissal of appellant is illegal and no reason is given for the dismissal of appellant.
- B. Para "B" of comments is incorrect, although criminal and departmental proceedings are different in nature but when the criminal proceedings are quashed by the criminal court then the departmental proceedings has got no evidentry value.
- C. Para "C" of comments is incorrect, appellant is acquitted in a criminal case so the allegation of negligence or disobedience of order is illegal and without lawful footing (Copy of judgment is attached).
- D. Para "D" of comments is incorrect and departmental inquiry officer never suggested for dismissal of service.
- E. Para "E" of the comments is incorrect, no proper chance was given to the appellant for personal hearing and no proper custody of pro claim offender was given to the appellant and no card of arrest are


attached in the inquiry, which shows that pro claim offender was handover to the appellant.


- F. Para "F" of the comments is totally incorrect.
- G. Para "G" of the comments is incorrect, inquiry never shows negligence in the performance of the duty of the appellant and pro claim offender was never surrender to the appellant.
- H. Para "H" of comments is totally incorrect, pro claim offender was never handed over to the appellant and released by the co-accused Shahid Salim and appellant never identified the person that he is a pro claimed offender.
- I. Para "I" needs no reply.
- J. Para "J" is totally incorrect, in view of the above mentioned grounds, it is therefore, prayed that the appeal of appellant may kindly be allowed and appellant may be re-instated with all back benefits.

Appellant

Through

Date:18/08/2014


Muhammad Amin Khattak Lachi
Advocate,
Supreme Court of Pakistan


Ibrahim Shah
Advocate,
High Court, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
COURT, PESHAWAR

Service Case No. _____/

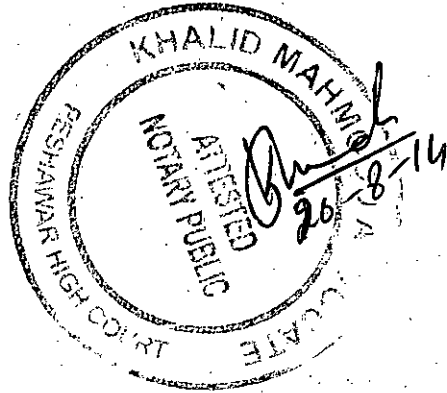
Zulfiqar Hussain Appellant

Versus

D.P.O, & others Respondents

A F F I D A V I T

I, Zulfiqar Hussain S/o Altaf Hussain R/o Alizai, District Kohat, do hereby solemnly affirm and declare that the contents of the accompanying **rejoinder** are true and correct to the best of my knowledge and belief and nothing has been concealed from this learned court.



Zulfiqar Hussain
Deponent

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IN THE COURT OF SHAHID MEHMOOD, JUDICIAL MAGISTRATE-II,
KOHAT.

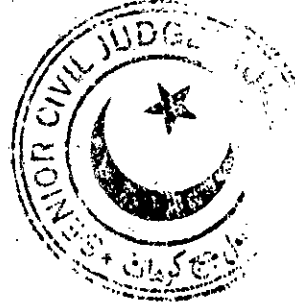
Case No.....187/2

Date of institution.....11.10.2012

Date of decision.....2.6.2014

THE STATE

VERSUS



1. Shahid Saleem S/O Abdul Qadeer R/O Kaghzai, District Kohat.
2. Zulfiqar S/O Altaf Hussain R/O Alizai, District Kohat.
3. Sakhi Badshah S/O Islam Shah R/O Ambar Banda District Kohat
(Accused facing trial)
4. Muhammad Tufail S/O Sadullah R/O Kaghzai (Absconding accused)

CASE FIR NO.453 dated 30.6.2012 U/S 419/420/468//471/ PPC/
221/223/155 Police Order PS Cantt. Kohat.

JUDGEMENT

2.6.2014

1. Accused Shahid Saleem, Zulfiqar and Sakhi Badshah were challaned to this court in order to face trial in connection with commission of crime. reported. vide. FIR No. 453 dated 30.6.2012 registered U/S 419/420/468//471/ PPC/ 221/223/155 Police Order with PS Cantt.

2. As per gist of the prosecution story, on 30.6.2012 Muhammad Rauf ASI alongwith Ismail No. 735, Ameer Zaman No, 319, Mohsin No. 457, Shahid Saleem No. 1066 and Khiyal Zaman No.314 were deployed on National Bank. At about 10:00 hours one person entered into the bank and started talking with constable Shahid Saleem, and after few minutes he scuffled with constable Shahid Saleem and extended fist blow. When Rauf Khan ASI inquired, constable Shahid Saleem told him that the said person is his cousin and serving in

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Post Office and they scuffled due to some domestic problem and recommended to set free him. Meanwhile Riders Sakhi Badshah and Zulfiqar came to the spot. The said person was handed over to them with the direction to confine him in lockup. After some time Muhammad Rauf ASI came to know that the said person has been escaped from the custody of rider police. One card in the name of Muhammad Asif S/O Ajmal R/O Kaghzai clerk was recovered from the said person by Riders, which seems to be fake. The said person fraudulently shown himself as Muhammad Asif S/O Ajmal, rather he was Tufail S/O Asadullah R/O Kaghzai proclaimed offender in case FIR No. 308 dated 12.5.2006 U/S 302/324 PPC PS Cantt. Shahid Saleem despite knowing the fact that the said person is PO, committed fraud and concealed this fact from police and recommended to set free the said person. The said person escaped from the lawful custody from rider police Sakhi Badshah and Zulfiqar due to their negligence in performance of their official duty, hence the instant case.

3. On being summoned, accused Shahid Saleem, Sakhi Badshah and Zulfiqar appeared. Provisions of section 241 A Cr.Pc were complied with, followed by framing of charge, to which accused pleaded not their guilt and claimed trial, whereas proceedings U/S 512 Cr.P.C started against the absconding accused Muhammad Tufail.

4. Prosecution has produced as many as seven witnesses.

5. The gist of the prosecution evidence is as under:

Aqeeq Hussain SHO, was examined as PW-1, who on 30.6.2012 arrested accused Shahid Saleem constable No. 1066, Zulfiqar constable No. 665 and Sakhi Badshah constable No. 563 and issued their card of arrest EX PW 1/1 and after completion of investigation submitted complete cahllan EX PW 1/2 against the accused.

Shakeel Khan ASI was examined as PW-2, who chalked out FIR EX PW 2/1 on receipt of Murasila.

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Shahid Saleem
4/1/14

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Muhammad Rauf ASI was examined as PW-3, who in his chief examination narrated the same and similar stance as mentioned in the report.

Ismail constable was examined as PW-4, who in his chief examination stated that he was on duty in National Bank alongwith other police officials. At about 10:00 O clock a person entered into the bank and meet with Shahid Saleem constable and start conversation with him. After few minutes the said person give fist to Shahid Saleem, who was overpowered by Abdul Rauf ASI and handed over to rider constables. During his body search constable Saki Badshah recovered one I.D card in the name of Muhammad Asif S/O Ajmal Khan R/O Kaghzai, which was handed over to ASI Muhammad Rauf, which was later on found as bogus. The said card was taken into possession on the recovery memo in his presence. The rider constables took away the said person on Motorcycle and after some time they came to know that the said person has been fled away from the rider constables. The said person was PO namely Tufail S/O Asadullah R/O Kaghzai.

Khijal Zaman constable was examined as PW-5, on the day of occurrence he was on duty at National Bank. One person came to National Bank and makes scuffle with Shahid Saleem constable. After the scuffle, Rauf Khan cursory made inquiry from Asif and after that he left the National Bank gate. His statement was recorded by IO.

Statement of Asif Khan S/O Ajmal Khan was recorded as PW-6, who in chief examination stated that he is resident of village Kaghzai and driving Suzuki to earn livelihood. Tufail is his cousin. He made a fake service card of Postal Service Department in his name. Except that he knows nothing about the instant case.

Statement of Ameer Zaman SI is recorded as PW-7, who is IO in the instant case. In his chief examination he stated that he proceeded to spot and prepared site plan on the pointation of Muhammad Rauf ASI alongwith other police officials, which is EX PW 7 1. He also took into possession one fake card

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memo EX PW 3/2 produced by constable Saleem Shah, in the presence of marginal witnesses. He produced the accused before the court and obtained one day police custody; vide application EX PW 7/2. He interrogated the accused and produced the accused Zulfiqar and Sakhi Badshah for judicial lockup, whereas accused Shahid Saleem for recording his confessional statement, however he refused to confess his guilt before the court and all the three accused were sent to judicial lockup. He summoned PW Asif and got recorded his statement in the court vide application EX PW 7/5. He also initiated proceedings against the accused Tufail vide application EX PW 7/6 and EX PW 7/7 respectively. He also recorded statements of PWs and after completion of investigation handed over the case file to SHO concern for submission of complete challan against the accused.

6. At the conclusion of prosecution evidence statements of accused were recorded U/S 342 Cr.P.C, wherein they reiterated their innocence, however they neither wished to be examined on oath nor opt to produce any evidence in defense.

Arguments of learned counsel for the accused and APP for the state heard and perused the record.

Perusal of the case file reveals that the occurrence took place inside the bank in duty time and at that time bank staff, watchman as well as other general public were present, however, local police neither made witness nor recorded statement of any independent witnesses to this effect. Moreover there is contradiction in the statements of prosecution witnesses. PW-3 Muhammad Rauf in his cross examination stated that, the rider police arrived at spot after 10 minutes of his call through wireless and the said person was handed over to the riders within 4/5 minutes. however, PW-4 Ismail in his cross admitted that Asif remained with police in a bank for about 45 minutes. PW-3 Muhammad Rauf ASI in his cross examination admitted that there is no documentary proof available on file that the said person was arrested by him and he was handed over to the rider police. He also admitted that if some one scuffle with the police official in a

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uniform, the police usually booked such person U/S 186 PPC and it is correct that he had not formally arrested the said person. He further stated that he drafted the Murasila after 20 minutes when he informed that the said person went away, however PW-4 in his cross examination admitted that at the time of arrest of the accused Asif, Murasila was written, his card of arrest was prepared and after that he was handed over to the rider police. This statement of the PW-4 contradicted the statement of PW-3 Muhammad Rauf, who stated that he drafted the Murasila after 20 minutes when he informed that the said person went away. Furthermore PW-7 Ameer Zaman SI/IO in his cross admitted that the Murasila was scribed when Tufail escaped from the clutches of police because the offence was committed after his escape and no offence is committed before the escape of Tufail. He also stated that point No. 4A, 5A and 6A were allotted at the pointation of Rauf. These points were drawn at the road outside the bank and it is also correct that according to the complainant he did not came out of the bank. He further admitted as correct that he had not recorded the statement of watchman of the bank. Moreover the alleged service card, so recovered from the possession of accused Muhammad Tufail is not produced before the court for exhibition which create doubts in the prosecution case. Apart from this from the evidence recorded and referred above it is established that at the time of arrest of accused Tufail the police officials were not in the knowledge that the accused Tufail is an accused or proclaimed offender in case FIR No. 308 dated 12.5.2006 U/S. 302/324 PPC PS Cantt. In the absence of knowledge of this fact section 221 and 223 and 155 of the Police Order does not attract in the circumstances.

With these lacunas, prosecution badly failed to establish his case against the accused and case of prosecution is full of doubt, the benefit of which is extended to accused, hence all the accused facing trial namely Shahid Saleem, Sakhi Badshah and Zulfiqar are acquitted of the charge leveled against them. Since, they are on bail, their bail bonds stands cancelled and sureties are discharged of their liabilities, whereas *Prima facie* case exist against the accused

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Muhammad Tufail S/O Sadullah R/O Kaphzai District Kohat, hence, in the existing circumstances I hereby declared him as **Proclaimed Offender**. Perpetual Non-bailable warrant of arrest be issued against him. The District Police Officer, Kohat be intimated to enter his name in the relevant register. Case property, if any, be kept intact till the arrest of the accused and final adjudication of the instant case while judicial file be consigned to record room after necessary completion and compilation.

Announced
2.6.2014


SHAHID MEHMOOD
Judicial Magistrate- II, Kohat
SHAHID MEHMOOD
Judicial Magistrate-II
Kohat

CERTIFICATE

Certified that my judgment consist of 06 pages. I have checked and signed each of the pages and made necessary correction, where required.


SHAHID MEHMOOD
Judicial Magistrate- II, Kohat
SHAHID MEHMOOD
Judicial Magistrate-II
Kohat

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19/6/14

درخواست بر
شماره 4856
تاریخ 14-6-101
موضوع
مدرسه
تاریخ 14-6-101
موضوع
تاریخ 14-6-101
موضوع

① 18/4/2014

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
COURT, PESHAWAR

Service Case No. _____/

Zulfiqar Hussain Appellant

Versus

D.P.O, & others Respondents

= = = = =

REJOINDER ON BEHALF OF THE APPELLANT

= = = = =

Respectfully Sheweth:

Preliminary Objection:

1. All the preliminary objections are illegal and without lawful footing.
2. That appeal is within time and this court has got the jurisdiction.

REPLY ON FACTS:

1. That appellant was appointed as a constable on 27.10.2003 and never remain absent from his duty.
2. Para No.2 of comments correct to the extent that appellant along with one Sakhi Badshah were on duty as a rider.
3. Para No.3 of comments is incorrect, pro claim offender was never released by the appellant but was release by the co-accused namely Shahid Saleem to whom the custody of PO was given by ASI Rauf and the Shahid Saleem by deceiving the appellant that the arrested person namely Tufail is his real cousin and serving in

Post Office, on this pre text he insured the appellant that he want to discussed some domestic problem and then he release the pro claim offender and the custody of pro claim offender was not given to the appellant.

4. Para No.4 of comments is incorrect, no proper show cause notice was given and no proper inquiry was conducted and the alleged inquiry no finding against the appellant is given regarding the punishment.
5. Para No.5 of comments is admitted correct.

GROUND:

- A. Grounds "A" of comments is incorrect, dismissal of appellant is illegal and no reason is given for the dismissal of appellant.
- B. Para "B" of comments is incorrect, although criminal and departmental proceedings are different in nature but when the criminal proceedings are quashed by the criminal court then the departmental proceedings has got no evidentry value.
- C. Para "C" of comments is incorrect, appellant is acquitted in a criminal case so the allegation of negligence or disobedience of order is illegal and without lawful footing (Copy of judgment is attached).
- D. Para "D" of comments is incorrect and departmental inquiry officer never suggested for dismissal of service.
- E. Para "E" of the comments is incorrect, no proper chance was given to the appellant for personal hearing and no proper custody of pro claim offender was given to the appellant and no card of arrest are

attached in the inquiry, which shows that pro claim offender was handover to the appellant.

- F. Para "F" of the comments is totally incorrect.
- G. Para "G" of the comments is incorrect, inquiry never shows negligence in the performance of the duty of the appellant and pro claim offender was never surrender to the appellant.
- H. Para "H" of comments is totally incorrect, pro claim offender was never handed over to the appellant and released by the co-accused Shahid Salim and appellant never identified the person that he is a pro claimed offender.
- I. Para "I" needs no reply.
- J. Para "J" is totally incorrect, in view of the above mentioned grounds, it is therefore, prayed that the appeal of appellant may kindly be allowed and appellant may be re-instated with all back benefits.

Appellant

Through

Muhammad Amin Khattak Lachi
Advocate,
Supreme Court of Pakistan

Date:18/08/2014

Ibrahim Shah
Advocate,
High Court, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
COURT, PESHAWAR

Service Case No. _____/

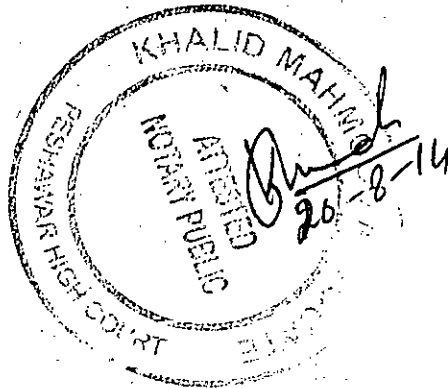
Zulfiqar Hussain Appellant

Versus

D.P.O, & others Respondents

A F F I D A V I T

I, Zulfiqar Hussain S/o Altaf Hussain R/o Alizai, District Kohat, do hereby solemnly affirm and declare that the contents of the accompanying **rejoinder** are true and correct to the best of my knowledge and belief and nothing has been concealed from this learned court.



[Handwritten Signature]
Deponent

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IN THE COURT OF SHAHID MEHMOOD, JUDICIAL MAGISTRATE-II,
KOHAT.

Case No.....187/2

Date of institution.....11.10.2012

Date of decision.....2.6.2014

THE STATE

VERSUS



1. Shahid Saleem S/O Abdul Qadeer R/O Kaghzai, District Kohat.
2. Zulfiqar S/O Altaf Hussain R/O Alizai, District Kohat.
3. Sakhi Badshah S/O Islam Shah R/O Ambar Banda District Kohat
(Accused facing trial)
4. Muhammad Tufail S/O Sadullah R/O Kaghzai (Absconding accused)

CASE FIR NO.453 dated 30.6.2012. U/S 419/420/468//471/ PPC/
221/223/155 Police Order PS Cantt, Kohat.

JUDGEMENT

2.6.2014

1. Accused Shahid Saleem, Zulfiqar and Sakhi Badshah were challaned to this court in order to face trial in connection with commission of crime, reported, vide FIR No. 453 dated 30.6.2012 registered U/S 419/420/468//471/ PPC/221/223/155 Police Order with PS Cantt.

2. As per gist of the prosecution story, on 30.6.2012 Muhammad Rauf ASI alongwith Ismail No. 735, Ameer Zaman No, 319, Mohsin No. 457, Shahid Saleem No. 1066 and Khyal Zaman No.314 were deployed on National Bank. At about 10:00 hours one person entered into the bank and started talking with constable Shahid Saleem, and after few minutes he scuffled with constable Shahid Saleem and extended fist blow. When Rauf Khan ASI inquired, constable Shahid Saleem told him that the said person is his cousin and serving in

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Post Office and they scuffled due to some domestic problem and recommended to set free him. Meanwhile Riders Sakhi Badshah and Zulfqar came to the spot. The said person was handed over to them with the direction to confine him in lockup. After some time Muhammad Rauf ASI came to know that the said person has been escaped from the custody of rider police. One card in the name of Muhammad Asif S/O Ajmal R/O Kaghzai clerk was recovered from the said person by Riders, which seems to be fake. The said person fraudulently shown himself as Muhammad Asif S/O Ajmal, rather he was Tufail S/O Asadullah R/O Kaghzai proclaimed offender in case FIR No. 308 dated 12.5.2006 U/S 302/324 PPC PS Cantt. Shahid Saleem despite knowing the fact that the said person is PO, committed fraud and concealed this fact from police and recommended to set free the said person. The said person escaped from the lawful custody from rider police Sakhi Badshah and Zulfqar due to their negligence in performance of their official duty, hence the instant case.

3. On being summoned, accused Shahid Saleem, Sakhi Badshah and Zulfqar appeared. Provisions of section 241 A Cr.Pc were complied with, followed by framing of charge, to which accused pleaded not their guilt and claimed trial, whereas proceedings U/S 512 Cr.P.C started against the absconding accused Muhammad Tufail.

4. Prosecution has produced as many as seven witnesses.

5. The gist of the prosecution evidence is as under:

Aqeeq Hussain SHO, was examined as PW-1, who on 30.6.2012 arrested accused Shahid Saleem constable No. 1066, Zulfqar constable No. 665 and Sakhi Badshah constable No. 563 and issued their card of arrest EX PW 1/1 and after completion of investigation submitted complete cahllan EX PW 1/2 against the accused.

Shakeel Khan ASI was examined as PW-2, who chalked out FIR EX PW 2/1 on receipt of Murasila.

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Muhammad Rauf ASI was examined as PW-3, who in his chief examination narrated the same and similar stance as mentioned in the report.

Ismail constable was examined as PW-4, who in his chief examination stated that he was on duty in National Bank alongwith other police officials. At about 10:00 O clock a person entered into the bank and meet with Shahid Saleem constable and start conversation with him. After few minutes the said person give list to Shahid Saleem, who was overpowered by Abdul Rauf ASI and handed over to rider constables. During his body search constable Saki Badshah recovered one I.D card in the name of Muhammad Asif S/O Ajmal Khan R/O Kaghzai, which was handed over to ASI Muhammad Rauf, which was later on found as bogus. The said card was taken into possession on the recovery memo in his presence. The rider constables took away the said person on Motorecycle and after some time they came to know that the said person has been fled away from the rider constables. The said person was PO namely Tufail S/O Asadullah R/O Kaghzai.

Khiyal Zaman constable was examined as PW-5, on the day of occurrence he was on duty at National Bank. One person came to National Bank and makes scuffle with Shahid Saleem constable. After the scuffle, Rauf Khan cursory made inquiry from Asif and after that he left the National Bank gate. His statement was recorded by IO.

Statement of Asif Khan S/O Ajmal Khan was recorded as PW-6, who in chief examination stated that he is resident of village Kaghzai and driving Suzuki to earn livelihood. Tufail is his cousin. He made a fake service card of Postal Service Department in his name. Except that he knows nothing about the instant case.

Statement of Ameer Zaman SI is recorded as PW-7, who is IO in the instant case. In his chief examination he stated that he proceeded to spot and prepared site plan on the pointation of Muhammad Rauf ASI alongwith other police officials, which is EX PW-7.1. He also took into possession one fake card

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memo EX PW 3/2 produced by constable Saleem Shah in the presence of marginal witnesses. He produced the accused before the court and obtained one day police custody; vide application EX PW 7/2. He interrogated the accused and produced the accused Zulfikar and Sakhi Badshah for judicial lockup, whereas accused Shahid Saleem for recording his confessional statement, however he refused to confess his guilt before the court and all the three accused were sent to judicial lockup. He summoned PW Asif and got recorded his statement in the court vide application-EX PW 7/5. He also initiated proceedings against the accused Tufail vide application EX PW 7/6 and EX PW 7/7 respectively. He also recorded statements of PWs and after completion of investigation handed over the case file to SHO concern for submission of complete challan against the accused.

6. At the conclusion of prosecution evidence statements of accused were recorded U/S 342 Cr.P.C, wherein they reiterated their innocence, however they neither wished to be examined on oath nor opt to produce any evidence in defense.

Arguments of learned counsel for the accused and APP for the state heard and perused the record.

Perusal of the case file reveals that the occurrence took place inside the bank in duty time and at that time bank staff, watchman as well as other general public were present. however, local police neither made witness nor recorded statement of any independent witnesses to this effect. Moreover there is contradiction in the statements of prosecution witnesses. PW-3 Muhammad Rauf in his cross examination stated that, the rider police arrived at spot after 10 minutes of his call through wireless and the said person was handed over to the riders within 4/5 minutes. however, PW-4 Ismail in his cross admitted that Asif remained with police in a bank for about 45 minutes. PW-3 Muhammad Rauf ASI in his cross examination admitted that there is no documentary proof available on file that the said person was arrested by him and he was handed over to the rider police. He also admitted that if some one scuffle with the police official in a

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uniform, the police usually booked such person U/S 186 PPC and it is correct that he had not formally arrested the said person. He further stated that he drafted the Murasila after 20 minutes when he informed that the said person went away. However PW-4 in his cross examination admitted that at the time of arrest of the accused Asif, Murasila was written, his card of arrest was prepared and after that he was handed over to the rider police. This statement of the PW-4 contradicted the statement of PW-3 Muhammad Raul, who stated that he drafted the Murasila after 20 minutes when he informed that the said person went away. Furthermore PW-7 Ameer Zaman SI/IO in his cross admitted that the Murasila was scribed when Tufail escaped from the clutches of police because the offence was committed after his escape and no offence is committed before the escape of Tufail. He also stated that point No. 4A, 5A and 6A were allotted at the pointation of Raul. These points were drawn at the road outside the bank and it is also correct that according to the complainant he did not came out of the bank. He further admitted as correct that he had not recorded the statement of watchman of the bank. Moreover the alleged service card, so recovered from the possession of accused Muhammad Tufail is not produced before the court for exhibition which create doubts in the prosecution case. Apart from this from the evidence recorded and referred above it is established that at the time of arrest of accused Tufail the police officials were not in the knowledge that the accused Tufail is an accused or proclaimed offender in case FIR No. 308 dated 12.5.2006 U/S 302/324 PPC PS Cantt. In the absence of knowledge of this fact section 221 and 223 and 155 of the Police Order does not attract in the circumstances.

With these lacunas, prosecution badly failed to establish his case against the accused and case of prosecution is full of doubt, the benefit of which is extended to accused, hence all the accused facing trial namely Shahid Saleem, Sakhi Badshah and Zulfiqar are acquitted of the charge leveled against them. Since, they are on bail, their bail bonds stands cancelled and sureties are discharged of their liabilities, whereas Prima facie case exist against the accused

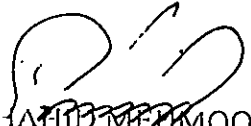
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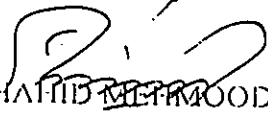
Muhammad Tufail S/O Sadullah R/O Kaphzai District Kohat, hence, in the existing circumstances I hereby declared him as Proclaimed Offender. Perpetual Non-bailable warrant of arrest be issued against him. The District Police Officer, Kohat be intimated to enter his name in the relevant register. Case property, if any, be kept intact till the arrest of the accused and final adjudication of the instant case while judicial file be consigned to record room after necessary completion and compilation.

Announced
2.6.2014

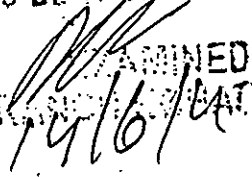

SHAHID MEHMOOD
Judicial Magistrate- II, Kohat
SHAHID MEHMOOD
Judicial Magistrate-II
Kohat

CERTIFICATE

Certified that my judgment consist of 06 pages. I have checked and signed each of the pages and made necessary correction, where required.


SHAHID MEHMOOD
Judicial Magistrate- II, Kohat
SHAHID MEHMOOD
Judicial Magistrate-II
Kohat

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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 1455 /ST

Dated 5 / 9 / 2016


To

The District Police Officer,
Kohat.

Subject: - **JUDGMENT**

I am directed to forward herewith a certified copy of Judgement dated 17.8.2016 passed by this Tribunal on the above subject for strict compliance.

Incl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.