

rules applicable to the case of the appellant, and decision afresh in the light thereof within the time prescribed by the law; where-after, if the appellant still feels aggrieved of the final order in this case, he can seek remedy available to him under the law. The appeal is disposed of accordingly, with no order as to costs. File be consigned to the record.

ANNOUNCED

02.12.2013

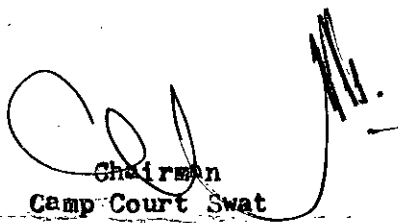


CHAIRMAN
Camp Court Swat

7.10.2013

Appellant with counsel and

Mr.Khawas Khan, S.I(legal) for respondents with Mr.Muhammad Zubair,Sr.G.P present. Representative of the respondents produced copies of departmental/ inquiry proceedings against the appellant. The learned Sr.G.P requested for adjournment in order to seek instructions from the respondent-department. To come up for further preliminary hearing, as before, at camp court Swat on 02.12.2013.


Chairman
Camp Court Swat

*Imdad
APW
[Signature]
Sr.G.P.
[Signature]*

02.12.2013

Appellant with counsel (Mr.Imdadullah,Advocate)



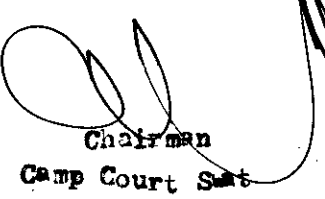
and Mr.Khawas Khan, S.I(legal) for respondents with Mr.muhammad Zubair, Sr.G.P present. After hearing the case at preliminary stage, the parties were found in agreement on the issue of validity/legality of the inquiry/ departmental proceedings as well as the penalty imposed as a consequence thereof; and were unanimous in proposing **denove inquiry/departmental proceedings in the case in accordance with law within a specific time frame so that the appellant may not suffer further due to delay of finalization of inquiry/departmental proceedings against him.**

In view of the above, on the partial acceptance of the appeal, and setting aside the impugned order dated 28.01.2013, in view of statement at Bar of both the learned counsel for the appellant and learned Sr.G.P, the case is remanded/sent back to the competent authority i.e. District Police Officer, Swat (Respondent No.3) for denove departmental/inquiry proceedings in accordance with law/

FORM OF ORDER SHEET

Court of _____

Case No. 1050 /2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	08/07/2013	<p>The appeal of Mr. Haider Ali resubmitted today by Mr. Aziz-ur-Rahman Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing and perusal of the observations of this office and reply of the counsel for the appellant.</p> <p style="text-align: right;"> REGISTRAR</p>
2	1-8-13	<p>This case is entrusted to Touring Bench Swat for preliminary hearing to be put up there on <u>02-09-2013</u></p> <p style="text-align: right;"> CHAIRMAN</p>
3.	2.9.2013	<p>Counsel for the appellant (Mr. Imdadullah, Advocate) present and heard. In view of the fact that neither the Authority has mentioned that provision of law under which the appellant has been proceeded against and penalized nor the penalty of forfeiture of approved service is provided for in any of the disciplinary laws, together with the fact that the authority has declared forfeiture of approved service as minor penalty while the appellant has assailed the same on the ground that the penalty is major, a pre-admission notice be issued to the respondents/Govt. Pleader for further preliminary hearing at camp court Swat on 07.10.2013.</p> <p style="text-align: right;"> Chairman Camp Court Swat</p>

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____ of 2013

Haider Ali versus The P.P.O. K.P. etc.

*Application for waiving the annexing of documents
not present with the appellant under the provision
provided for in the rules.*

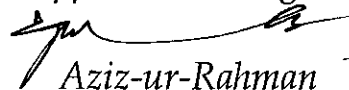
Respectfully Sheweth:

- i. That the above titled appeal is instituted before this Honorable Tribunal in which no date of hearing is fixed as yet.*

- ii. That the appellant is unable to procure the copies of various documents, lying with the respondents, which are required by this Honourable Tribunal to reach just conclusion.*

- iii. That this Honorable Tribunal has the powers under the law to requisition these documents, the complete inquiry proceedings, from the respondent department.*

It is, therefore, very respectfully prayed that on acceptance of this application the provisions regarding enclosing of the documents under the rules may be waived off and the same requisitioned under the same rules.

Applicant Through

Aziz-ur-Rahman


Advocate Swat

The appeal of Mr. Haider Ali Driver Constable No.18 D.I.G. Malakand Region Squad received today i.e. on 26.06.2013 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copies of Charge Sheet, Statement of allegations, Enquiry report and replies thereto are not attached with the appeal which may be placed on it.
- 2- Departmental appeal having no date be dated.

No. 960 /S.T,

Dt. 26/6 /2013.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Aziz-ur-Rehman Adv. Swat.

Sir,

Resubmitted. The appeal is dated, whereas, an application for waiving off the annexing of the documents has been prayed for. may please be placed before the bench.


Adv

1st July, 2013

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR

Service Appeal No. 1050 of 2013

Haider Ali Driver Constable No. 18 DIG Malakand Region Squad.

...Appellant

VERSUS

The Provincial Police Officer and Others.

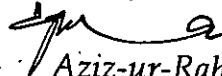
...Respondents

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S. No.	Description of documents	Annexure	Pages
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3.	Copy of the Judgment	A	6-8
4.	Copy of the Order of Reinstatement	B	9
5.	Copy of the Order	C	10
6.	Copy of the Appeal	D	11-12
7.	Vakalatnama	13

Appellant

Through Counsel,


Aziz-ur-Rahman

Advocate Swat

Office: Khan Plaza, Gulshone Chowk,

Mingora Swat, Cell 0300 907 0671

①

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1050 of 2013

Haider Ali Driver Constable No. 18 DIG Malakand
Region Squad.

...Appellant

1069
26/6/2013

VERSUS

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

...Respondents

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order of the respondent No. 3 bearing OB No. OB No. 7 dated 28-01-2013, received on 31-01-2013, vide which major penalty of forfeiture of two years has been imposed against the law, facts and natural justice and against which the appellant preferred appeal to the respondent No. 2 which still pending disposal despite the lapse of Statutory period.

Prayer:

On acceptance of this service appeal the impugned order of the respondent No. 3 may very kindly be set aside and the service of the appellant may be counted into qualifying service with all consequential benefits.

co-submitted to
and filed.

[Signature]
9/7/13

Respectfully Sheweth:

Facts:

1. That I was driver of DIG Malakand Region Squad till the service of the appellant were terminated due to alleged involvement in criminal activities.
2. That after trail the appellant was acquitted of the criminal charges yet the service remained terminated, whereas the acquittal by the court results in re-instatement.
3. That the appellant put the issue before the Khyber Pakhtunkhwa Service Tribunal, wherein the appellant was reinstated into service with the direction of conducting de-novo inquiry in accordance with the law and rules. Copy of the judgment is enclosed as Annexure "A" and that of the order is enclosed as Annexure "B".
4. That the appellant was issued charge sheet along with the statement of allegation on 31-10-2012 received on 01-11-2012, which was replied in detail.
5. That the reply was never considered and the inquiry carried out in a surreptitious manner as neither the statement of the complainant nor that of the ASI of Shergar Police Station was considered at all and the appellant was again awarded major penalty.
6. That the order of the DPO Swat OB No. OB No. 7 dated 28-01-2013, received on 31-01-2013, is

against the natural justice, law and facts. The appellant preferred appeal against the order impugned but the same is still pending disposal despite the lapse of mandatory period of time, hence this appeal on the following grounds. Copy of the order is enclosed as Annexure "C" and that of the appeal as Annexure "D".

Grounds:

- A. That the respondents have failed to conduct proper inquiry as warranted by the law and rules, rather the same was conducted in a surreptitious and hush hush manner to the detriment of the appellant.
- B. That the appellant has never been associated with the inquiry proceedings neither was he given the opportunity to cross examine the witnesses nor given the chance to defend himself properly.
- C. That the competent authority has used his official authority in a very colorful manner in blatant violation of the law.
- D. That mandatory provisions of law have been done away with by the competent authority.
- E. That previous qualified and unblemished service of the appellant was never considered while passing the impugned order.

F. That the appellant has not committed any act of commission or omission which may constitute any offence under any law.

It is, therefore, very humbly prayed that on acceptance of this appeal the order impugned may very kindly be set aside and the service of the appellant counted as qualified service with all consequential benefits.

Any other relief deemed appropriate may also very kindly be granted.

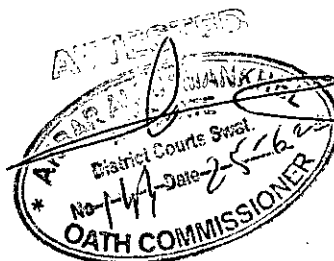
Appellant
Haider Ali
Haider Ali

Through Counsels,
Aziz-ur-Rahman
Imdad Ullah
Imdad Ullah
Advocates Swat

Affidavit:

It is stated on Oath that all the contents of this appeal are true and correct to the best of knowledge and belief.

Deponent
Haider Ali
Haider Ali



BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____ of 2013

Haider Ali Driver Constable No. 18 DIG Malakand
Region Squad.

...Appellant

VERSUS

The Provincial Police Officer and Others.

...Respondents

ADDRESSES OF THE PARTIES

Appellant:

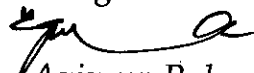
Haider Ali Driver Constable No. 18 DIG Malakand
Region Squad.

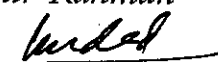
Respondents:

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

Appellant

Through Counsels,


Aziz-ur-Rahman

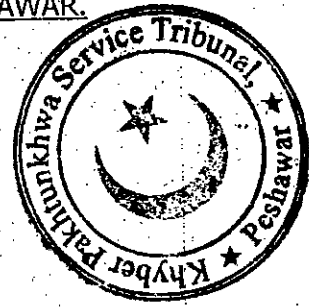

Imdad Ullah

Advocates Swat

1
Annexure "A" 6
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 2182/2010

Date of Institution. ... 18.10.2010
Date of Decision ... 24.04.2012



Haidar Ali No.18, Ex-Constable/Driver-resident of College Colony,
Saidu Sharif, District Swat. ...

(Appellant)

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa Peshawar.
2. Deputy Inspector General of Police,
3. District Police Officer, Swat.
4. Deputy Superintendent of Police(Headquarters), Swat. (Respondents)

SERVICE APPEAL AGAINST THE ORDER OF RESPONDENT NO.3 DATED 22.3.2010 THROUGH WHICH THE APPELLANT WAS DISMISSED FROM SERVICE AND ORDER OF RESPONDENT NO.2 DATED 16.9.2010 VIDE WHICH DEPARTMENTAL APPEAL OF THE APPELLANT WAS DISMISSED.

MR. FAZAL MAHMOOD,
Advocate

... For appellant.

MR. SHERAFGAN KHATTAK,
Addl. Advocate General

... For respondents.

SYED MANZOOR ALI SHAH,
MR. NOOR ALI KHAN,

... MEMBER
... MEMBER

JUDGMENT

SYED MANZOOR ALI SHAH, MEMBER.- This appeal has been filed by Haider Ali, the appellant against the order dated 22.3.2010, whereby he had been dismissed from service and against the order dated 16.9.2010, whereby his departmental appeal has been rejected. It has been prayed that on acceptance of the appeal, the impugned order may be set aside and the appellant may be reinstated into service.

2. Brief facts of the appellant are that the appellant was appointed on 25.1.1999 as Constable and was posted as Driver in the Squad of DIG Malakand Region. On 19.8.2008, a criminal case was registered against the appellant vide FIR No. 611, under Section 13-A(2) (a) of Arms Ordinance in Police Station Sher Gar with the allegation of smuggling arms and ammunition and he was arrested. The appellant was tried in the court of Additional Sessions Judge-II/Judge Special Court, Takht Bhai and was acquitted of the charge vide judgment dated

ATTESTED

Advocate

8.6.2009. After his acquittal, charge sheet and statement of allegations were issued to the appellant on 28.7.2009, which were duly replied by him on 13.8.2009. Respondent No.4 was appointed to conduct Departmental enquiry against the appellant, who conducted the enquiry and submitted his findings on 25.2.2010. Final show cause notice was issued to the appellant on 6.3.2010, to which the appellant submitted detailed reply and clarified his position. Thereafter; vide impugned order dated 22.3.2010, the appellant has been dismissed from service. Feeling aggrieved, the appellant filed departmental appeal on 29.3.2010, which was rejected on 16.9.2010, hence the present appeal.

3. The appeal was admitted to regular hearing on 12.11.2010 and notices were issued to the respondents. The respondents have filed their joint written reply and contested the appeal.

4. Arguments heard and record perused.

5. The learned counsel for the appellant argued that the appellant was implicated in a criminal case vide FIR No. 611 dated 19.8.2008 P.S Sher Garh. He faced trial and was acquitted of the charges leveled against him. He further argued that departmental enquiry against the appellant was not properly conducted. He was neither given chance to cross examine the witnesses produced against him or to produce evidence in his support. He was not given chance of personal hearing, which were mandatory under the law. The learned counsel for the appellant stated that the endst. Letter No. 607, dated 28.7.2009, shows that Mr. Muhammad Ayaz Khan, DSP (Legal) Swat was appointed as enquiry officer, while the enquiry report^{was} submitted by Mr. Habibur Rahman Khan, DSP (Headquarters), Swat. He further stated that no action was taken against other colleagues of the appellant and he has been discriminated. He requested that the appeal may be accepted as prayed for.

6. The learned AGP on the other hand argued that the appellant was charged in a smuggling case and retention of such an official in the department is not in the government as well as general public. He further argued that departmental enquiry against the appellant was conducted, he was given chance of defence, but he failed to prove his innocence and he has rightly been punished. He requested that the appeal may dismissed.

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED

ATTESTED
Advocate

7. The Tribunal observes that the appellant was implicated in a criminal case, and faced proceedings before the trial courts and acquitted by the competent court of law. In the instant case proper departmental enquiry has not been conducted. No statement of witnesses have been recorded in presence of the appellant. No chance of personal hearing was afforded to him. Mr. Muhammad Ayaz Khan, DSP (Legal) was appointed as enquiry officer while the findings have been submitted by Mr. Habibur Rahman, DSP (Hqts) Swat. The Tribunal agrees with the arguments advanced by the learned counsel for the appellant.

8. In view of the above, the appeal is accepted, the impugned orders are set aside and the respondents are directed to conduct proper departmental enquiry against the appellant within two months but strictly in accordance with law by affording opportunity of hearing and defence to him. In the meantime, the appellant is reinstated into service for the purpose of enquiry. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
24.4.2012.

(NOOR AFI KHAN)
MEMBER

(SYED MANZOOR ALI SHAH)
MEMBER

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 11.5.2012
 Number of Bundles 12
 Copying Fee 5
 Urgent Yes
 Total 17
 Name of Copyist Manzoor Ali Shah
 Date of Completion of Copy 11.5.2012
 Date of Delivery of Copy 11.5.2012

ATTESTED
[Signature]
Advocate

ORDER

In compliance of Service Tribunal Judgment dated 24/7/2012 vide No. 2343/legal dated 23/7/2012 regarding Ex Constable Haidar Ali No.18 of the following allegations.

He while posted/deputed as Driver with Squad of Deputy Inspector General of Police, Malakand Region, Saidu Sharif was involved in smuggling of Arms/ammunitions. In Official Vehicle he was arrested by the Shergar Police District Mardon vide Case FIR No. 611 dated 19/8/2009 u/s 13 AO and recovered 3 K.Koves, 300 rounds, 3 Nos Repeater (12 Bore) as a result of which he was dismissed from service vide O.B No 57 dated 22/3/2010 .

To conduct proper departmental Enquiry the appellant is reinstated in service by the Service Tribunal for the purpose of enquiry. Hence he is reinstated in Service and the DSP Hqrs is appointed as Enquiry Officer to conduct proper departmental Enquiry and submit finding report at the earliest possible time for further legal action.

Separate Charge sheet and statement of allegation is being issued to him accordingly.

O.B.No 198

Dated 31-10-12

19054-55 31-10

Copies to the:-

1. The Provincial Police Officer, Khyber Pakhtoonkhwa Peshawar with reference to his No. 2343/Legal,
 2. The Deputy Inspector General of Police, Malakand Region, Saidu Sharif
- FOR INFORMATION PLEASE.


DISTRICT POLICE OFFICER, SWAT.

DSP Hqrs to conduct the Enquiry and report compliance.

ATTESTED

Advocate

ORDER:

Annexure "C" 10

Ex Driver Constable Hajdar Ali No. 18 of DIG MKD. Squad was involved in smuggling of Arms/ammunitions in official vehicle was arrested red handed by Shergar Police District Mardan vide case FIR No. 611 dated 19-08-2009 u/s 13 AO. The following Recovery was made by the police.

1. Three Nos. K. Koves,
2. 300 rounds,
3. 7.62 Bore,
4. Three Nos. Repeater (12 Bore),

Proper departmental enquiry was conducted and he was found guilty of the charges as a result of which he was dismissed from service vide OB No. 57 Dated 22-03-2010. The criminal case was under trial in the court of Addl: Session Judge Takht Bial on 09-09-2009 the court gave benefits of doubts and acquitted the accused. Subsequently the accused moved an appeal before the Service Tribunal, Khyber Pakhtunkhwa, Petitioner was for re-instatement in service.

On 24-04-2012 the Service Tribunal in its judgment re-instated the appellant with the direction to conduct proper departmental enquiry strictly in accordance with law by according opportunity of hearing and defence.

Consequently Departmental Enquiry was conducted by DSP HQrs and the defaulter Constable was given proper opportunity of cross examination and it was clarified by the E.O that the police constable was actually involved in the criminal case of 13AO under Police Rules 16.3 giving benefits of doubt to the accused but the police rules 16.3 is not a bar for holding of Departmental enquiry despite of acquittal SCMR 1969 Page 332.

What so ever the case may be the enquiry officer held him responsible and recommended for suitable punishment. After completion of codal formalities of the enquiry he was found guilty of the charge.

I have gone through the relevant papers, statements of the concerned and finding report of the Enquiry Officer, held the constable responsible for commission/ guilt. But keeping in view his long service and poor family backgrounds, take a lenient view and award minor punishment of forfeiture of his two years approved service with immediate effect. The period of absence of the above named Constable (driver) is counted as leave without pay.)

ANNOUNCED.

ATTESTED
[Signature]
Advocate

[Signature]
District Police Officer, Swat

OB No. 7

Dated 28.1.2013

~~Annexure~~ "B" (17)

To

The Deputy Inspector General of Police

Malakand Region,

Saidu Sharif, District Swat.

Through: The Proper Channel.

Subject: Appeal against the order of DPO Swat bearing OB No. 7 dated 28-01-2013, received on 31-01-2013, vide which major penalty of forfeiture of two years has been imposed against the law, facts and natural justice.

Respected Sir,

The appellant submits as under;

1. That I was driver of DIG Malakand Region Squad till the service of the appellant were terminated due to alleged involvement in criminal activities.
2. That after trial the appellant was acquitted of the criminal charges yet he service remained terminated, whereas the acquittal by the court results in re-instatement.
3. That the appellant put the issue before the Khyber Pakhtunkhwa Service Tribunal, wherein the appellant was reinstated into service with the direction of conducting de-novo inquiry in compliance with the law and rules.

[Handwritten signature]

4. That the appellant was issued charge sheet along with the statement of allegation on 31-10-2012 received on 01-11-2012, which was replied in detail.
5. That the reply was never considered and the inquiry carried out in a surreptitious manner as neither the statement of the complainant nor that of the ASI of Shergar Police Station was considered at all and the appellant was again awarded major penalty.
6. That the order of the DPO Swat is against the natural justice, law and facts.
7. That mandatory provisions of law have been done away with by the competent authority.
8. That previous qualified and unblemished service of the appellant was never considered while passing the impugned order.

It is, therefore, very humbly prayed that on acceptance of this appeal the order impugned may very kindly be set aside and the service of the appellant counted as qualified service.

Haider
Appellant

Haider Ali

ATTESTED
Advocate
Advocate

بعدالت ضامہ۔ سوئیٹس ٹرسٹ اور انجمن اعلیٰ لہور

کورٹ فیس

قیمت ایک روپیہ

۲۰۱۳ منجانب ایڈووکیٹ

جوز

۱۸

مورخہ

بنام حکومت

صدر ایس سی

مقدمہ

دعویٰ

جرم

باعت خرید آنکھ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام لہور کیلئے / عزیز الرحمن ماسٹر اور لہور کے لکھنؤ مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیاط ہوگا۔ نیز وکیل صاحب کو راضی نامہ و تقرر ثالث و فیصلہ پر حلف دینے جواب دی اور اقبال دعویٰ اور درخواست ہر قسم کی تصدیق ذرا اس پر دستخط کرنے کا اختیار ہوگا نیز بصورت عدم پیروی یا ڈگری ایک طرف یا اپیل کی برآمد ہوگی اور منسوخ ڈائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ بصورت ضرورت مذکور کے نسل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اسکا ساختہ برواختہ منظور و قبول ہوگا اور دوران مقدمہ میں جو خرچہ و ہر جانہ التوائے مقدمہ کے سبب سے ہاگا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا و خرچہ کی وصولی کرتے وقت کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ ہر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہونگے کی پیروی مقدمہ مذکور لہذا دکالت نامہ لکھ دیا ک سند ہے

المرقوم ۱۸
ماہ جون ۲۰۱۳

العبد گواہ شدہ العبد

Attested and
Accepted by

بمقام لکھنؤ ضامہ لہور

ORDER:

(231/18) *[Handwritten signature]*

Ex Driver Constable Haidar Ali No. 18 of DIG MKD Squad was involved in smuggling of Arms/ammunitions in official vehicle was arrested red handed by Shergar Police, District Mardan vide case FIR No. 611 dated 19-08-2009 u/s 13 AO. The following recovery was made by the police.

- 1) Three Nos. K. Koves,
- 2) 300 rounds,
- 3) 7.62 Bore,
- 4) Three Nos. Repeater (12 Bore),

Proper departmental enquiry was conducted and he was found guilty of the charges as a result of which he was dismissed from service vide OB No. 57 Dated 22-03-2010. The criminal case was under trial in the court of Addl: Session Judge Takht Bhai. On 09-09-2009 the court gave benefits of doubts and acquitted the accused. Subsequently the accused moved an appeal before the Service Tribunal, Khyber Pakhtunkhwa, Peshawar for re-instatement in service.

On 24-04-2012 the Service Tribunal in its judgment re-instated the appellant with the direction to conduct proper departmental enquiry strictly in accordance with law by affording opportunity of hearing and defence.

Consequently Departmental Enquiry was conducted by DSP HQrs and the defaulter Constable was given proper opportunity of cross examination and it was clarified by the E.O that the police constable was actually involved in the criminal case of 13AO under Police Rules 16.3 giving benefits of doubt to the accused but the police rules 16.3 is not a Bar for holding of Departmental enquiry despite of acquittal SCMR 1969 Page 332.

What so ever the case may be the enquiry officer held him responsible and recommended for suitable punishment. After completion of codal formalities of the enquiry he was found guilty of the charges.

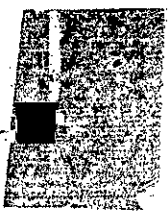
I have gone through the relevant papers, statements of the concerned and finding report of the Enquiry Officer, held the constable responsible for commission/ guilt. But keeping in view his long service and poor family backgrounds, take a lenient view and award minor punishment of forfeiture of his two years approved service with immediate effect. The period of absence of the above named Constable (driver) is counted as leave without pay.

ANNOUNCED.

[Handwritten signature]
District Police Officer, Swat

OB No. 17

Dated 08-1 /2013



(45) pages

1783P
93/1111

دفتر DSP ہیڈ کوارٹر (2)

انکوائری فائل رپورٹ

جناب عالی!

بحوالہ چھٹی انگریزی نمبر 222/EB مورخہ 31/10/2012 بجاریہ جناب گل افضل افریدی DPO صاحب سوات برخلاف ڈرائیور کنشیل حیدر علی نمبر 18 کے خلاف محکمانہ انکوائری کرنے کیلئے مجھے منتخب کیا گیا۔ جو معاملہ میں انکوائری ہو کر حالات و واقعات ذیل پائے گئے۔

(1) مورخہ 19/08/2008 کو بحوالہ FIR نمبر 611 جرم A(2) 13 تھانہ شیر گڑھ مشتاق خان ASI (مرحوم) تھانہ شیر گڑھ نے مراسلہ تحریر کر کے ذکر کیا ہے۔ کہ تخیر نے اطلاع دی کہ ایک جوان انعر لڑکا علاقہ غیر سے راستہ رنواز بانڈہ کافی تعداد میں ناجائز اسلحہ لئے ہوئے بطرف شیر گڑھ جا رہا ہے۔ اطلاع پر بمعدہ سیار 1082/FC، لعل محمد 124/LHC بمعدہ دیگر نفری زیر قیادت SHO صاحب جائے وقوعہ راستہ روندہ رنواز بانڈہ پہنچ کر مذکورہ کو قابو کر کے جس نے اپنا نام حیدر علی ولد گل محمد سکند کالج کالونی سیدو شریف بتلایا کے قبضہ سے پلاسٹک کی تاروں والی بوری قبضہ پولیس کر کے کھول کر پڑتال کر۔ نے پر بوری میں سے 3 عدد کلاشنکوف 1955TRW5161

1954FYM2288، 1976-2277 بمعدہ 6 عدد چارجز 300 عدد کارتوس 7.62 بور، 3 عدد ریپیٹر 12 بور بلا نمبر کل 5 عدد

چار جز بارہ بور 3 عدد پستول 30 بور بلا نمبر بمعدہ 3 عدد چارجز 100 عدد کارتوس 30 بور بلا نمبر سبس برآمد کر کے بروئے فرد قبضہ پولیس کر کے ملزم کو حسب ضابطہ گرفتار کیا۔ بعدہ شاہ جہان خان SI انوسٹی گیشن کو مامور تفتیش کیا گیا جس نے مذکورہ کے خلاف بمطابق ریکارڈ مورخہ 06/09/2008 کو بھیج دیا گیا۔

(2) بحوالہ OB نمبر 6897/E مورخہ 26/09/2009 کے مطابق DPO صاحب نے مذکورہ کے خلاف محکمانہ کارروائی کیلئے حبیب الرحمن DSP/HQ کو انکوائری آفسر مقرر کیا جس نے مورخہ 26/02/2010 کو مذکورہ کے خلاف انکوائری مکمل کر کے اسکو قصور وار پایا۔ اور اس کے خلاف سزا کیلئے فائل رپورٹ آفران بالا کو پیش کی۔ فائل رپورٹ کاپی ہمراہ لف ہے۔

(3) بحوالہ OB نمبر 57 مورخہ 22/03/2010 کو ڈرائیور کنشیل حیدر علی کو بہ ثبوت جرم سابقہ DPO صاحب سوات قاضی غلام فاروق نے محکمہ سے درخواست کیا (آرڈر نوٹو کاپی ہمراہ لف ہے)

(4) مورخہ 8/06/2009 بعد از ٹرائل محمد ظفر خان II ASJ جج سیشن کورٹ تحت بائی نے تفصیلی فیصلہ جاری کر کے ڈرائیور کنشیل ملزم حیدر علی کو رہا کر کے ذکر کیا ہے کہ پراسیکیوشن کیس شک، شبہات سے بھرپڑا ہے۔ ہدیں وجہ ملزم حیدر علی کو رہا کیا جاتا ہے۔ (نقل فیصلہ ہمراہ لف ہے)

(5) مورخہ 18/10/2010 کو ملزم حیدر علی نے سروس ٹریبونل خیبر پختون خواہ میں اپنی برخاستگی کے خلاف اپیل دائر کی۔ مورخہ 24/04/2012 کو سروس ٹریبونل نے فیصلہ کر کے فائنڈنگ میں تحریر ہے۔ (1) کہ ملزم حیدر علی کو عدالت نے رہا کیا ہے (2) صحیح محکمانہ کارروائی نہیں کی گئی ہے۔ گواہوں کے بیانات قلمبند نہیں کئے گئے ہیں۔ پرسنل ہیرونگ کا موقعہ ملزم کو نہیں دیا گیا ہے۔ ابتداء میں محمد ایاز خان PDSP کو انکوائری

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مارک ہوئی ہے اور فائل رپورٹ حبیب الرحمان خان سابقہ DPS/HQ نے دی ہے۔ مذکورہ بخلاف دو ماہ کے اندر انکو ایئرٹی قانونی مطابق ملزم کو صفائی پیش کرنے کا حق دیا جائے۔ ملزم حیدر علی کو انکو ایئرٹی کے مقصد کے خاطر بحال کیا جاتا ہے۔ RT:24/04/2012

فائیڈنگ :-

ڈرائیور کنشٹیبل حیدر علی کے خلاف حسب ضابطہ محکمانہ انکو ایئرٹی ہو کر رحمت علی SI پولیس لائن کو اس مقصد کیلئے تھانہ شیر گڑھ بھجوایا تاکہ کریمنٹ کیس کی فوٹو کاپی حاصل کر کے اس سے انکو ایئرٹی میں مدد لیا جاسکے۔ چونکہ 13AO کے تحت مثل دو سال بعد تلف ہو جاتا ہے۔ لہذا مورخہ 11/11/2012 کو اور پھر مورخہ 20/11/2012 کو دوبارہ رحمت علی SI تھانہ شیر گڑھ جا کر بستہ دو سالہ میں مثل فیصلہ شدہ نہ ملا۔

مورخہ 11/11/2012 کو اور پھر مورخہ 20/11/2012 کو دوبارہ رحمت علی SI تھانہ شیر گڑھ جا کر بستہ دو سالہ میں مثل فیصلہ شدہ نہ ملا۔ رحمت علی SI کے مطابق مشتاق ASI جس کے مراسلے پر FIR درج ہوا اور تفتیشی آفسر شاہان SI دونوں فوت ہو چکے ہیں۔ عدالت محمد ظفر خان II ASJ تحت بھائی کی جھینٹ ملاحظہ ہو کر جس سے یہی اندازہ ہے کہ ملزم بے گنا نہیں تاہم تفتیشی آفسر کی کمزور تفتیش کے وجہ سے رہا چکا ہے۔ دوسرے طرف ڈرائیور کنشٹیبل حیدر علی کو طلب کر کے صفائی کا موقع دیا گیا۔ جس نے تحریری بیان میں اپنا بے گناہی کا ذکر کیا ہے۔ تاہم یہاں پر اس امر کی وضاحت کرتا ہوں کہ شیر گڑھ پولیس کی اسکے ساتھ کیا دشمنی تھی۔ اور مزید یہ کہ شیر گڑھ پولیس کا کیا مجال ہے کہ

DIG صاحب ملا کنڈریجن کے سکواڈ کے ڈرائیور کو بے گناہ ملوث کرے۔ ڈرائیور کنشٹیبل حیدر علی کو صفائی پیش کرنے کا بہترین موقع دیکر اس وقت کے SHO انسپکٹر شیر گڑھ رشید اقبال خان جو موقع کے گواہ ہے کر کے ڈرائیور کنشٹیبل حیدر علی کے سامنے سوالات جوابات ہوئے۔ انسپکٹر رشید اقبال نے اپنے بیان میں ذکر کیا ہے کہ اس کی موجودہ ملزم حیدر علی سے متذکرہ اسلحہ مندرجہ FIR برآمد ہو کر گرفتار کیا گیا تھا۔ ڈرائیور کنشٹیبل حیدر علی کے سامنے انسپکٹر رشید اقبال نے ایک جواب پر کہا کہ ملزم حیدر علی واقعی صحیح ملزم ہے۔ تاہم تفتیش کے کمزوریوں کی وجہ سے عدالت سے رہا ہو چکا ہے۔ انسپکٹر رشید اقبال اور حیدر علی کے بیان، کراس کوئسٹین ہمراہ لف ہے۔

بجائیت انکو ایئرٹی آفسر میں اس نتیجے پر پہنچا ہوں کہ ڈرائیور کنشٹیبل حیدر علی واقعی صحیح A(2) 13 کا ملزم تھا جس کے خلاف FIR میں شیر گڑھ کی کوئی بددیانتی شامل نہیں تھی۔ البتہ تفتیش کی کمزوری جو ہمارے پورے خیبر پختون خواہ کا مسئلہ ہے کی وجہ عدالت سے رہا ہو چکا ہے۔ برطابق پولیس رولز 3-16 کوئی پولیس آفسر اگر عدالت سے کسی وجہ کی بناء پر بری بھی ہو جائے تو محکمانہ انکو ایئرٹی میں اسکو مزاد کی رپورٹ عرض ہے۔

(میاں نصیب جان)

DSP ہیڈ کوارٹرسوات

Sr

Submitted for order please

مورخہ 12/12

290/R

17/12/012

AEV. 30.12.2012

To

The DSP Headquarter

The Inquiry Officer.

Subject: Reply to the Charge Sheet and Statement of Allegations

Respected Sir,

Reference the No. 222/E dated 31-10-2012 received on 01-11-2012

My reply is as under:

That all the charges leveled against me are incorrect, devoid of facts and have already been denied. These are again specifically denied on the basis that on 19-08-2009 I along with other personels of the Police Force were on our way to Mardan in Official Vehicle on the order of the then Worthy DIG Malakand Region. I was driving the official vehicle when the police at Shergar Police Station signaled us to stop. On our introduction and showing our purpose for going to Mardan the SHO concerned got annoyed without any reason or provocation and asked me to come out of the vehicle and let my other colleagues to proceed to Mardan. The said SHO then put me behind the bars on frivolous charges under Section 13 AO vide FIR No. 611 dated 19-08-2009 and kept me in illegal confinement.

That on the basis of the frivolous charges leveled against me in the FIR and the arms and ammunition shown to have been recovered from my possession, I was kept behind the bars for 4 long months. The charges and the recovery alleged assigned to me were never proved and I was acquitted clear of all the criminal charges.

That despite my acquittal I was proceeded against departmentally and in a very strange and hurried manner the inquiry was concluded and I was awarded major punishment. Against this awarding of major punishment I filed departmental appeal and finally proceeded to the Khyber Pakhtunkhwa Service Tribunal, wherein it was held that I may be reinstated into service and that a fresh inquiry be initiated but, in strict compliance with the law and rules.

5

That had I been committed the alleged acts which were assigned to me so neither I would have been acquitted nor the Service Tribunal would have reinstated me into service, which both judgments prove my innocence.

That have not committed any act of commission or omission and has got clean service record till date and no complaint, whatsoever, has ever been made by the authorities till date.

It is, therefore, very humbly prayed that on acceptance of this reply the charge sheet may be filed.

That I want to be heard in person.

Yours Truly

Haider Ali No. 18

Haider

2/10/12

Attested

MIA

DSP / H-8

(6) (2)

DISCIPLINARY ACTION

I **Mr. Gul Afzal Khan Afridi DPO Swat** as competent authority, is of the opinion that you **Ex-Driver Constable Haider Ali No. 18** while posted to **DRIVER D.I.G, MKD, SWAT SQUAD** have rendered yourself liable to be proceeded against departmentally as you have committed the following acts/omissions as defined in Rule 2 (iii) of Police Rules 1975, as per Provincial Assembly of Khyber Pukhtunkhwa Notification No. PA/Khyber Pukhtunkhwa/Bills/2011/44905 dated 16/09/2011 and C.P.O, K.P.K Peshawar Memo: No. 3037-62/Legal, dated 19/11/2011.

STATEMENT OF ALLEGATIONS

It has been reported against you that you while posted to **DRIVER D.I.G, MKD, SWAT SQUAD** Committed the following act / acts, which is / are gross misconduct on your part as defined in Rules 2 (iii) of Police Rules 1975.

That the Ex-Driver Constable Haider Ali No. 18 while he was deputed as driver with squad Worthy Deputy Inspector General of Police, Malakand Region, Saidu Sharif was found involve in smuggling arms/ammunition in official vehicle and arrested by the local police Shergar, District Mardan vide case FIR No. 611 dated 19/08/2009 u/s 13-AO and recovered three Nos. Kalashnikov, 300 Rounds, 7.62 Bore, Three Nos.Repeater (12 Bore) Police Station Shergar, District Mardan.

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

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

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


District Police Officer, Swat
23/10/2012

No. 222 /EB, Dated Gulkada the, 31-10 2012.

Copy of above is forwarded to the:-

1. **DSP H. Swat** for initiating proceeding against the accused Officer/ Official namely **Ex-Driver Constable Haider Ali No. 18** under Police Rules, 1975.
2. **Ex-Driver Constable Haider Ali No. 18 r/o College Colony, S.Sharif, Swat.**

C/O ASP Saidu Sharif, Swat

With the direction to appear before the enquiry officer on the date, time and place fixed by the enquiry officer for the purpose of enquiry proceeding.

(7)

CHARGE SHEET

In compliance of Service Tribunal, Khyber Pakhtunkhwa, Peshawar Judgment dated 24/04/2012 whereby a fresh enquiry has been ordered. I Mr. Gul Afzal Khan Afridi, D.P.O Swat as competent authority, hereby charge you, Ex-Driver Constable Haider Ali No.18 resident of College Colony Saidu Sharif, Swat as under:

You Ex-Driver Constable Haider Ali No. 18 while you was deputed as driver with squad Worthy Deputy Inspector General of Police, Malakand Region, Saidu Sharif was found involve in smuggling arms/ammunition in official vehicle and arrested by the local police Shergar, District Mardan vide case FIR No. 611 dated 19/08/2009 u/s 13-AO and recovered three Nos. Kalashnikov, 300 Rounds, 7.62 Bore, Three Nos. Repeater (12 Bore) Police Station Shergar, District Mardan.

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

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

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

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

6. A statement of allegations is enclosed.

No. 222 /E

Dated: 31-10 /2012


District Police Officer, Swat
23/10/2012



allowed for filing an appeal has lapsed without appellate or revisionary proceedings having been instituted. Departmental punishments under this rule shall be awarded in accordance with the powers conferred by rule 16.1.

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

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

- Action following on a judicial acquittal.
- (a) the criminal charge has failed on technical grounds ; or
 - (b) in the opinion of the court or of the Superintendent of Police the prosecution witnesses have been won over ; or
 - (c) the court has held in its judgment that an offence was actually committed and that suspicion rests upon the Police officer concerned ; or
 - (d) the evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify departmental proceedings on a different charge ; or
 - (e) additional evidence admissible under rule 16.25(1) in departmental proceedings is available.
- (2) Departmental proceedings admissible under sub-rule (1) may be instituted against lower subordinates by the order of the Superintendent of Police but may be taken against Upper Subordinates only with the sanction of the Deputy Inspector-General of Police ; and a police officer against whom

such action is admissible shall not be deemed to have been honourably acquitted for the purpose of rule 7-3 of the Civil Services Rules (Punjab), Volume I, Part I.

Case-Law

Police constable charged with offences under sections 363 and 376, P. P. C., but given benefit of doubt and acquitted. Rule 16-3 is not a bar to holding of departmental inquiry despite acquittal. 1969 S C M R 332.

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

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

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

Case-Law

Superintendent of Police reverted the plaintiff, directly recruited as Sub-Inspector to post of Head Constable. Order was, held, against rules and plaintiff has right to sue and Civil Court, in circumstances, had jurisdiction to interfere. P L D 1969 Azad J & K 1.

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

(2) Approved service for increment may be forfeited, either temporarily or permanently and such forfeiture may entail either the deferment of an increment or increments or a reduction in pay. The order must state whether the forfei-

**BEFORE THE KHYBER PAKHTUNHWA
SERVICE TRIBUNAL, PESHAWAR**



Service Appeal No. 1050 of 2013

Haider Ali Driver Constable No. 18 DIG Malakand
Region Squad.


...Appellant

1069
26/6/2013

VERSUS

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

...Respondents

	3.	2.9.2013		<p align="center">Counsel for the appellant (Mr. Imdadullah, Advocate) present and heard. In view of the fact that neither the Authority has mentioned that provision of law under which the appellant has been proceeded against and penalized nor the penalty of forfeiture of approved service is provided for in any of the disciplinary laws, together with the fact that the authority has declared forfeiture of approved service as minor penalty while the appellant has assailed the same on the ground that the penalty is major, a pre-admission notice be issued to the respondents/Govt. Pleader for further preliminary hearing at camp court Swat on 7.10.2013.</p>
Date			Date of presentation of Application	
				<p>Certified to be true copy</p>  Chairman Camp Court Swat

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

No. 1742 /ST,

Dated 06/12 /2013

To:

The District Police Officer,
District Swat at Gulkada.

Subject:- SERVICE APPEAL NO. 1050/2013, HAIDER ALI VERSUS THE
PROVINCIAL POLICE OFFICER KHYBER PAKHTUNKHWA,
PESHAWAR ETC.

I am directed to forward herewith a certified copy of order dated 2:12.2013 passed by the Final Bench-I of this Tribunal in the above mentioned appeal for further necessary action.

Encl.As above.



REGISTRAR
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.

o/c