

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT ABBOTTABAD

Service Appeal No. 1333/2013

Date of Institution... 09.09.2013

Date of decision... 19.09.2017

Saifur Rahman, Ex-Head Constable, Police Station, presently at Police Post Township, P.S City Mansehra. ... (Appellant).

Versus

1. The District Police Officer, Mansehra & 3 others.... (Respondents).

MR. Munir Ahmad Bhatti,
Advocate

... For appellant.

MR. Muhammad Bilal,
Deputy District Attorney

... For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. MUHAMMAD AMIN KHAN KUNDI,

... CHAIRMAN
... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellant was proceeded against departmentally on the charge of cowardice by issuing a charge sheet alongwith statement of allegations to him on 11.10.2012. On the same day in the statement of allegations Mr. Mukhtiar Ahmad, DSP Shinkiari was appointed as enquiry officer. After conducting the enquiry the matter culminated into major punishment of reversion in rank vide impugned order dated 11.3.2013.

ARGUMENTS

3. The learned counsel for the appellant argued that the order was passed by an incompetent authority as at the time when the proceedings were initiated and penalty was imposed, the competent authority was Superintendent of Police and the present penalty

has been imposed by the District Police Officer (of the rank of S.S.P). That neither in the charge sheet nor in the final show cause, the authority proposed specific penalty but only generally major penalty is mentioned which is also illegal. That only one witness was examined by the enquiry officer but no chance of cross examination was afforded to the appellant and the said witness was also a hearsay witness having no direct account of the occurrence. Besides the enquiry officer failed to examine any eye witness. That no chance of defence was afforded to the appellant by the enquiry officer. He also argued that no period of reversion is mentioned in the impugned order which is in violation of F.R 29. In support of his arguments, he relied upon judgments reported as 1999-SCMR-2321, 1998-SCMR-223, 2003 PLC(C.S) 358, 2000 PLC(C.S) 136 and 2001 PLC(C.S) 109.

4. On the other hand, the learned Deputy District Attorney argued that the order has been passed by the competent authority as the D.P.O has the rank of S.P. That the charge of cowardice against the appellant was proved. That the appellant himself admitted in his examination by the enquiry officer that he had committed cowardice.


CONCLUSION.

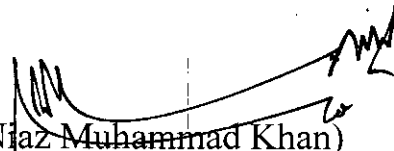
5. This Tribunal shall first deal with the competency of the authority passing the impugned order. In the Police Act, 1961, the head of the District Police is to be called "S.P". Against this post some time senior police officer were used to be appointed who used to be called "S.S.P" by virtue of his seniority and not by virtue of his post. An S.S.P while appointed as head of the District Police was exercising the powers of S.P. By virtue of Police Order, 2002, the successor of the S.P was called as DPO, hence the DPO being successor of S.P had the authority to pass the impugned order.

6. Coming to the charge of cowardice, the Police Rules, 1975 though have no specific definition of cowardice, however, the charge sheet brought the cowardice within the umbrella of the "misconduct". The term "Cowardice" is something which is highly relative and if any person is punished on the basis of this relative term it should be proved

beyond any doubt that the cowardice has been shown by the delinquent. If we go through the record it is established that the appellant was injured during the scuffle in his arm pit. How one can call such episode to be the result of cowardice on the part of the appellant. There is no clear cut evidence on the file, making the appellant guilty of the cowardice. Only one witness has been examined by the enquiry officer which is not the eye witness. This evidence is therefore, not admissible. Furthermore no chance of cross examination was given to the appellant. It is also a well established principle of evidence including the administrative law that chance of defence must be given to the delinquent during the enquiry. There is nothing on the record to show that the appellant has given any chance of defence. One of the judgment press into service by the learned counsel for the appellant is about the mandatory nature of FR 29 which has not been complied with by the authority while passing the impugned order.

7. Keeping all these circumstances and the law in view, this Tribunal reaches the conclusion that the penalty awarded to the appellant was not in accordance with law. The appeal is therefore, accepted and the impugned order is set aside. Parties are left to bear their own costs. File be consigned to the record room.


(Muhammad Amin Khan Kundi)
Member


(Niaz Muhammad Khan)

Chairman
Camp Court, A/Abad

ANNOUNCED

19.09.2017

19.09.2017

Counsel for the appellant and Mr. Muhammad Bilal, Deputy District Attorney alongwith Gulzar Khan, S.I (Legal) for the respondents present. Arguments heard and record perused. .

This appeal is accepted as per our detailed judgment of today. Parties are left to bear their own costs. File be consigned to the record room.

Amir
Ruhman
Chairman
Camp Court, A/Abad.

Member

ANNOUNCED

19.09.2017

1333/13

15.02.2017

Appellant with counsel and Mr. Nisar Ahmad, Inspector (Legal) alongwith Mr. Muhammad Siddique, Sr.GP for the respondents present. Due to non-availability of D.B arguments could not be heard. To come up for final hearing on 17.07.2017 before the D.B at camp court, Abbottabad.

Member
Camp court, A/Abad

17.07.2017

Counsel for the appellant and Mr. Muhammad Bilal, DDA alongwith Mr. Khaider Zaman, Inspector (Legal) for respondents present. The learned counsel for the appellant concluded his arguments. His main points are as under.

- i. That the schedule to the Police Rules was introduced in the year 2014 and prior to that there was no competent authority under Rule-2(ii) of the said rules to award any punishment.
- ii. That the appellant was not given opportunity of cross examining of sole witness who is a hearsay witness.
- iii. That no opportunity of producing defense was given to the appellant, and
- iv. That through the impugned order the respondents violated the mandatory provision of F.R. 29.

The learned DDA is not ready to reply to these arguments as the departmental representative has not got the record in time. The case is adjourned. Last change is given. To come up for arguments on 19.09.2017 before D.B at camp court A/Abad.

Member

Chairman
Camp court, A/Abad

21.10.2015

Agent of counsel for the appellant and Mr. Nisar Ahmad, Inspector (legal) along with Mr. Muhammad Tahir Aurangzeb, G.P for respondents present. Due to non-availability of D.B, arguments could not be heard. To come up for final hearing before D.B on 14.3.2016 at Camp Court A/Abad.



Chairman
Camp Court A/Abad.

14.03.2016

Counsel for the appellant and Mr. Aurangzeb, S.I along with Mr. Muhammad Saddique, Sr.G.P for respondents present. Arguments could not be heard due to non-availability of D.B. Adjourned for final hearing before D.B to 20.9.2016 at Camp Court A/Abad.

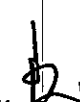
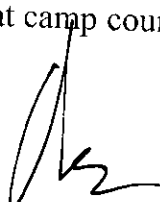


Chairman
Camp Court A/Abad

20.09.2016

Appellant with counsel and Mr. Muhammad Siddique Sr.GP for the respondents present. Learned Sr.GP seeks adjournment. Adjourned for final hearing before the D.B to 15.2.2017 at camp court, Abbottabad.

Member



Chairman
Camp court, A/Abad

12

16.3.2015

Counsel for the appellant

Mr. Muhammad Tahir Aurangzeb, G.P for respondents present. Requested for adjournment. The appeal is assigned to D.B for rejoinder and final hearing for 17.6.2015 at camp court A/Abad.



Chairman
Camp Court A/Abad

13 17.6.2015

Appellant with counsel and Mr. Zahid Rehman, Inspector with Mr. Muhammad Tahir Aurangzeb, G.P for respondents present. Rejoinder submitted. Due to non-availability of D.B, arguments could not be heard. To come up for final hearing before D.B on 21.10.2015 at camp court A/Abad



Chairman
Camp Court A/Abad

8 - 23.09.2014

Counsel for the appellant and Mr. Muhammad Adeel Butt, AAG with Naeemul Hassan Inspector (Legal) for the respondents present. Respondents need further time. To come up for written reply on 18.11.2014.



MEMBER

9 - 18.11.2014

Junior to counsel for the appellant and Mr. Muhammad Adeel Butt, AAG with Naeem Hasan, Inspector (Legal) for the respondents present. The Tribunal is incomplete. To come up for the same on 29.01.2015.



READER

10 - 29.1.2015

Appellant in person and Mr. Muhammad Jan, GP with Naeem Hussain, SI for the respondents present and reply filed; copy whereof is handed over to appellant. Appellant submitted that most of the parties, and his counsel belong to Hazara Division and requested for transfer of the case to Touring Bench, Abbottabad. Hence, the case be put up to the Worthy Chairman on 09.2.2015 for further proceedings.



MEMBER

11 - 09.02.2015

Appellant in person and Mr. Muhammad Jan, GP for respondents present. Case is adjourned for rejoinder to 16.03.2015 at camp court A/Abad.



Chairman

Appeal No. 1333/2013.
Mr. Saif-Ur-Rehman.

22.01.2014

Counsel for the appellant present. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. That the final order dated 07.08.2013, which was received to the appellant under endorsement No.6722/SRC, dated 23.08.21013, is not a speaking order and has been issued in violation of Rule-5 of the Civil Servant (Appeal) Rules-1986. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply on 09.04.2014.

Appellant deposited
of process fee & Security
Rs. 2000/- Bank Deposit
attached with file

22.01.2014

This case be put before the Final Bench 1 for further proceedings.

Member

Chairman

9.4.2014.

Junior to counsel for the appellant, and AAG with Tasleem Hussain, SI (Legal) for the respondents present and needs time. To come up for written reply on 16.6.2014.

MEMBER

MEMBER

16.6.2014

Junior to counsel for the appellant and Mr. Muhammad Jan, GP present and requested for time to contact the respondents. To come up for written reply on 23.09.2014.




MEMBER

Form-A

FORM OF ORDER SHEET

Court of _____

Case No. 1333 /2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	12/09/2013	<p>The appeal of Mr. Saif-ur-Rehman resubmitted today by Mr. Munir Ahmad Bhatti 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	24-9-13	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>17.3.14</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
3.	8.11.2013	<p>Notices be issued to the appellant and his counsel for preliminary hearing on 22.01.2014 instead of 17.3.2014.</p> <p style="text-align: right;"> Chairman</p>


The appeal of Mr. Saif-ur-Rehman Ex- Head Constable Police Station saddar received today i.e. on 09/09/2013 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of legal Opinion mentioned in para-7 of the memo of appeal (Annexure-L) is not attached with the appeal which may be placed on it.
- 2- Annexures of the appeal may be attested.
- 3- One more copy/set of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

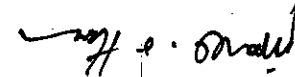
No. 1269 /S.T,

Dt. 10/09 /2013.

Mr. Munir Ahmad Adv.
High Court Abbottabad.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

After removing all the objections, the Appeal
is resubmitted.

 12/09/13
Munir Ahmad Bhels.
Adv. High Court, ATD.

**BEFORE KHYBER PAKHTOONKHWA SERVICE
TRIBUNAL, PESHAWAR**

Appeal No. 1333/2013

Saif ur Rehman, Ex. Head Constable, Police Station Saddar, presently at Police Post, Township, Police Station City, Mansehra.

...APPELLANT

VERSUS

District Police Officer, Mansehra and others.

....RESPONDENTS

SERVICE APPEAL

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11.	Copy of show cause notice	23	"J"
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...APPELLANT

Through

Dated: 05/09 /2013


MUNIR AHMED BHATTI
 Advocate High Court, Abbottabad

BEFORE KHYBER PAKHTOONKHA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1333/2013

Saif ur Rehman, Ex. Head Constable, Police Station-Saddar, presently at Police Post, Township, Police Station City, Mansehra.

...APPELLANT

VERSUS

Mr. W. J. P. P. P.
No. 1326
09-9-13

1. District Police Officer, Mansehra.
2. District Police Officer, Battagram.
3. Regional Police Office, Hazara Region, Abbottabad.
4. Govt. of Khyber Pakhtunkhwa, through Secretary Home Department, Peshawar.

....RESPONDENTS

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER PASSED BY THE RESPONDENT NO. 3, THE APPELLATE AUTHORITY, DATED 07/08/2013 RECEIVED BY THE APPELLANT ON 23/08/2013 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT WAS REJECTED.

Handwritten signature and date: 9/9/13

Re-submitted to and filed;

Handwritten signature and date: 12/9/13

PRAYER: ON ACCEPTANCE OF THE INSTANT APPEAL, THE IMPUGNED ORDER DATED 07/08/2013 PASSED BY THE APPELLATE AUTHORITY MAY KINDLY BE SET-ASIDE AND THE PENALTY OF REVERSION FROM THE RANK OF HEAD CONSTABLE TO THE RANK OF CONSTABLE IMPOSED BY THE DEPARTMENTAL AUTHORITY VIDE ORDER NO. 109-10/PA DATED 11/03/2013 BE GRACIOUSLY REVERSED.

Respectfully Sheweth: -

1. That on 04/10/2012 while the appellant was serving as Head Constable in Police Department and posted at Police Station-City, Mansehra on loan basis from District Battagram and on mobile duty chasing the timer^b smugglers when he was attacked by them, snatched his private pistol and fired at him which caused grievous injury. The occurrence was duly registered vide FIR No. 1137 dated 05/10/2012. Copy of the FIR and statement of appellant are annexed as Annexure "A" & "B".
2. That as consequence of the above occurrence, the appellant was proceeded against departmentally under the Khyber Pakhtunkhwa Police Disciplinary Rules, 1975 on charges of cowardice and criminal negligence amounting to misconduct. Charge sheet and statement of allegation were

served upon the appellant by the respondent No.1. Copies of the charge sheet and statement of allegations dated 11/10/2012 are annexed as Annexure "C" & "D".

3. That the appellant submitted reply of the charge sheet dated 08/11/2012. Copy is annexed as Annexure "E".
4. That Mukhtiar Ahmed, DSP Shinkiari, was deputed to conduct formal departmental inquiry against the appellant by the respondent No.1 vide letter dated 11/10/2012, who summoned the appellant through Police Station--City, Mansehra for 23/09/2012. Copy of the order sheet is annexed as Annexure "F".
5. That the inquiry officer after recording statement of the appellant and Rider Nasir No. 1222 of Police Station Saddar-Mansehra, submitted inquiry report No. 14 dated 14/01/2013 wherein finding the appellant guilty of cowardice, recommended suitable punishment. Statement of appellant, Nasir and Inquiry report are annexed as Annexure "G", "H", "I".
6. That the final show cause notice was issued, to which the appellant submitted written reply. Copies are annexed as Annexure "J" & "K".
7. That legal opinion was obtained from the PDSP, Mansehra by the respondents who advised criminal proceedings

against the appellant. Copy of the legal opinion dated 04/02/2013 is annexed as Annexure "L".

8. That the respondent No.1 after perusal of the inquiry report, recommended major punishment of the reversion from the rank of Head Constable to the constable and sent the departmental file to the respondent No. 2 for issuing appropriate order vide office letter No. 2647/OHC dated 26/02/2013. Copy of the letter is annexed as Annexure "M".
9. That the respondent No. 2, as recommended by respondent No.1, awarded major punishment of reversion to the appellant vide order No. 109-10/PA dated 11/03/2013. Copy of order is annexed as Annexure "N".
10. That the appellant submitted appeal/representation to the respondent No. 3 through proper channel vide letter No. 2528 dated 04/04/2013. Copies of the letter and appeal/representation are annexed as Annexure "O" & "P".
11. That the respondent No. 3, appellate authority, rejected the appeal/ representation submitted by the appellant vide impugned order / letter No. 6859 dated 07/08/2013 which was received by the appellant on 23/08/2013. Copy of the order / letter is annexed as Annexure "Q".

12. That feeling aggrieved by the impugned order/ letter dated 07/08/2013, the instant appeal is filed, inter-alia, on the following grounds; -

GROUNDS; -

- a) That the impugned order dated 07/08/2013 passed by the appellate authority alongwith the order dated 11/03/2013 passed by the departmental authority are illegal, result of misreading of material on record and are therefore, liable to be set-aside.
- b) That the charge leveled against the appellant is not proved in a satisfactory manner. The allegations of cowardice and negligence are not applicable on facts narrated by the appellant of the occurrence registered vide FIR No. 1137 dated 05/10/2012. The appellant was attacked by two timber smugglers who are habitual and hardened criminals, he received grievous fire-arm injury, never fled away but courageously tried his level best to apprehend the criminals. The defence put forth by the appellant was not taken into consideration at all whereas he was punished keeping in view a solitary statement of irrelevant witness who had not seen the occurrence.
- c) That the charge leveled against the appellant is vague and ambiguous, on such allegation no penalty

could be imposed upon him, thus entire proceedings are of no legal consequence.

- d) That when the appellant denied charges leveled against him, burden of proof lies on Authority which he had to prove in just, fair and reasonable inquiry conducted in accordance with the principles of natural justice.
- e) That the departmental authority acted in arbitrary manner, grossly violating the principles of natural justice. The order of competent authority, reverting the appellant from the higher rank to the lower was without jurisdiction, illegal, void ab-initio, bad in the eyes of law and liable to be set-aside.
- f) That the appellant restrained himself from attacking the assailants with firearm in good faith as he was not authorized to use lethal weapons against criminals who had not committed any offence punishable with death.
- g) That during the 23 years long tenure of appellant's service, it was first charge of misconduct, for which he was not primarily responsible. The act of omission or commission of appellant emanated from the instinctive possibility of human error, not prompted by any ulterior motive, it can be termed as case of lack of proper care and vigilance although

which was not willful. Punishment imposed should always commensurate to the guilt proved. In the instant case penalty imposed is definitely excessive which should be set-aside.

- h) That the departmental authority was neither competent to initiate the departmental proceedings against the appellant nor order of reversion was proper, legal or appropriate.
- i) That during the departmental inquiry the appellant was condemned unheard as he was neither provided any opportunity to cross examine the witness appeared against him nor allowed to record evidence in his defence especially statement of the eye-witness of the occurrence thus principle of natural justice as enshrined in maxim "audi alteram partem" was blatantly violated.
- j) That the competent authority failed to pass any order deciding whether the appellant should be tried judicially or departmentally. Although charges leveled against the appellant attracts initiation of criminal proceedings in accordance with the provisions of the police order 2002 and rules laid there under.
- k) That the inquiry proceedings carried out suffered from gross legal infirmities and procedural flaws.

Additionally the penalty of reversion without specifying period of punishment is violation of fundamental rules applicable to civil servants.

- l) That in service matters, extreme penalty for minor acts depriving person from right of earning would defeat the reformatory concept of punishment in administration of justice.
- m) That the instant appeal is within time.

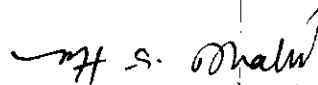
It is, therefore, prayed that on acceptance of the instant appeal, the impugned order dated 07/08/2013 passed by the appellate authority may kindly be set-aside and the penalty of reversion from the rank of head constable to the rank of constable imposed by the departmental authority vide order No. 109-10/PA dated 11/03/2013 be graciously reversed.



...APPELLANT

Through

Dated: 05/09/2013



MUNIR AHMED BHATTI
Advocate High Court, Abbottabad

VERIFICATION: -

Verified on oath that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.



...APPELLANT

**BEFORE KHYBER PAKHTOONKHWA SERVICE
TRIBUNAL, PESHAWAR**

Appeal No. ____/2013

Saif ur Rehman, Ex. Head Constable, Police Station Saddar, presently at Police Post, Township, Police Station City, Mansehra.

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VERSUS

District Police Officer, Mansehra and others.

....RESPONDENTS

SERVICE APPEAL

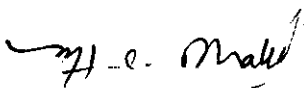
AFFIDAVIT

I, Saif ur Rehman, Ex. Head Constable, Police Station Saddar, presently at Police Post, Township, Police Station City, Mansehra, do hereby affirm and declare that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been suppressed from this Honourable Court.



DEPONENT

Identified by;


(MUNIR AHMED BHATTI)
Advocate High Court, Abbottabad



02/9/2013

BEFORE KHYBER PAKHTOONKHWA SERVICE
TRIBUNAL, PESHAWAR

CM No. _____/2013

IN

Appeal No. _____/2013

Saif ur Rehman, Ex. Head Constable, Police Station Saddar, presently at Police Post, Township, Police Station City, Mansehra.

...APPELLANT

VERSUS

District Police Officer, Mansehra and others.

....RESPONDENTS

SERVICE APPEAL

**APPLICATION FOR SUSPENSION OF THE
OPERATION OF IMPUGNED ORDER NO. 109-10/PA
DATED 11/03/2013 PASSED BY DEPARTMENTAL
AUTHORITY TILL FINAL DISPOSAL OF
ACCOMPANYING APPEAL.**

Respectfully Sheweth; -

1. That the titled appeal is being filed today before this Honourable Tribunal, contents of this application may please be read as an integral part of the same.
2. That the appellant has brought a good prima facie arguable case in his favour and balance of convenience also tilts in his favour.
3. That if the operation of impugned order dated 11/03/2013 is not suspended, the appellant would suffer with irreparable loss and purpose of filing of accompanying appeal will be defeated.

هونو اکي آدر نو سونو لدر کا ورا جي کا اسندھا
 سو کا ريد جو کي تير شي رسي، سزا کي کيو...
 کا رهي اسدھا لکي ورا کي...
 سو کي لکي...
 سو کي لکي...
 سو کي لکي...

Si. Ps - city - (17)
 05-X-2012

17/05/2012
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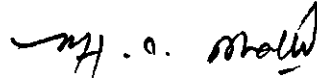
It is, therefore, humbly prayed that on acceptance of instant application, operation of impugned order dated 11/03/2013 passed by departmental authority may graciously be suspended till final disposal of titled appeal.



...APPELLANT

Dated: 05/09 /2013

Through



MUNIR AHMED BHATTI
Advocate High Court, Abbottabad

VERIFICATION:

Verified on oath that the contents of foregoing application are true and correct to the best of my knowledge and belief and nothing material has been suppressed from this Honourable Tribunal.



...APPELLANT

**BEFORE KHYBER PAKHTOONKHWA SERVICE
TRIBUNAL, PESHAWAR**

Appeal No. _____/2013

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SERVICE APPEAL

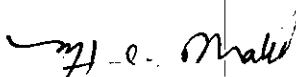
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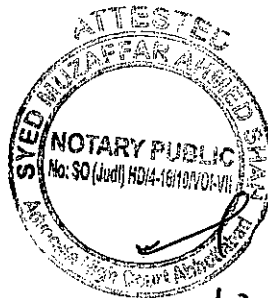
I, Saif ur Rehman, Ex. Head Constable, Police Station Saddar, presently at Police Post, Township, Police Station City, Mansehra, do hereby affirm and declare that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been suppressed from this Honourable Court.



DEPONENT

Identified by;

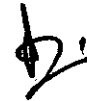

(MUNIR AHMED BHATTI)
Advocate High Court, Abbottabad



07/09/2013

21.10.2015

Agent of counsel for the appellant and Mr.Nisar Ahmad, Inspector (legal) alongwith Mr.Muhammad Tahir Aurangzeb, G.P for respondents present. Due to non-availability of D.B, arguments could not be heard. To come up for final hearing before D.B on 14.3.2016 at Camp Court A/Abad.



Chairman
Camp Court A/Abad.

14.03.2016

Counsel for the appellant and Mr. Aurangzeb, S.I alongwith Mr. Muhammad Saddique, Sr.G.P for respondents present. Arguments could not be heard due to non-availability of D.B. Adjourned for final hearing before D.B to 20.9.2016 at Camp Court A/Abad.



Chairman
Camp Court A/Abad

20.09.2016

Appellant with counsel and Mr. Muhammad Siddique Sr.GP for the respondents present. Learned Sr.GP seeks adjournment. Adjourned for final hearing before the D.B to 15.2.2017 at camp court, Abbottabad.

Member



Chairman

Camp court, A/Abad

12

16.3.2015

Counsel for the appellant and
Mr. Muhammad Tahir Aurangzeb, G.P for
respondents present. Requested for
adjournment. The appeal is assigned to
D.B for rejoinder and final hearing for
17.6.2015 at camp court A/Abad.



Chairman
Camp Court A/Abad

13 17.6.2015

Appellant with counsel and Mr. Zahid Rehman, Inspector with
Mr. Muhammad Tahir Aurangzeb, G.P for respondents present. Rejoinder
submitted. Due to non-availability of D.B, arguments could not be heard. To
come up for final hearing before D.B on 21.10.2015 at camp court A/Abad



Chairman
Camp Court A/Abad

CHARGE SHEET

I, Sher Akbar, District Police Officer, Mansehra as competent authority hereby charge you HC Saif ur Rehman No. 56 as follows.

On 04-10-2012 you showed high degree of cowards and criminal negligence in an incident vide FIR No. 1137 dated 04-10-2012 U/S 324/353/341/186/382/34 PPC PS City Mansehra, wherein two unarmed limber smugglers fired upon you and snatched a pistol from you.

You appear to be guilty of misconduct under Khyber Pakhtunkhwa, Police Disciplinary Rules 1975 and have rendered yourself liable to all or any of the penalties specified in the said Police Disciplinary rules.

You are therefore, required to submit your written defense within 07 days of the receipt of this charge sheet to the Enquiry Officer.

Your written defense, if any, should reach the Enquiry Office 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.

Intimate whether you desire to be heard in person or otherwise.

A statement of allegation is also enclosed.


District Police Officer,
Mansehra.

attested

Munir A. Bhatti

Adv. High Court, ATD

DISCIPLINARY ACTION

I, Sher Akbar, District Police Officer, Mansehra as competent authority of the opinion that you HC Saif ur Rehman No. 56 has rendered himself liable to be proceeded against as he committed the following act/omissions within the meaning of Khyber Pakhtunkhwa Police Disciplinary Rules 1975.

STATEMENT OF ALLEGATION

On 04-10-2012 you showed high degree of cowards and criminal negligence in an incident vide FIR No. 1137 dated 04-10-2012 U/S 324/353/341/186/382/34 PPC PS City Mansehra, wherein two unarmed timber smugglers fired upon you and snatched a pistol from you.

For the purpose of scrutinizing the conduct of the said accused Officer with reference to the above Mr. Mukhtiar Ahmad DSP Shinkhari is deputed to conduct formal departmental enquiry against you HC Saif ur Rehman No. 56

The Enquiry Officer shall in accordance with the provisions of the Khyber Pakhtunkhwa Police Disciplinary Rules 1975, provide reasonable opportunity of hearing the accused, record findings and make within thirty days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

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

OC District Police Officer
Mansehra

No 3509-10/PA dated Mansehra the 11-10 -2012.

A copy of the above is forwarded to: -

1. Enquiry Officer for initiating proceedings against the accused under the provisions of the KPK Police Disciplinary Rules 1975.
2. HC Saif ur Rehman No. 56 with the direction to submit his written statement to the Enquiry Officer within 7 days of the receipt of this charge sheet/statement of allegations and also to appear before the Enquiry Officer.

attached

M. A. Bhatti

Adv. H. C., ATO

بیان دستاویز 56 حصہ 187 حصہ 187 حصہ 187 حصہ 187 حصہ
 4536 سے 10/12 سے 10/12 سے 10/12 سے 10/12 سے 10/12 سے
 FRP
 128/ADN
 1222
 22.30
 770 20H
 20H 20H

attached
 Muzam A. Shalhi
 Adv. H.C. ADD

بیان از ان سف الرقن مفر 56 HC متعقہ حکام مفر مفر مال ایں میں سے مفرات پر رمانت بیان

ایک سے جو کہ مارے ٹیٹ مرداب سے تحریر ہے ۔
اسی کو ماضی بیان لکھ کر کیا یاد ۔ برای سی بیان ہے جو درست ہے

الحمد للہ

مہر ہرانت EC

سف الرقن مفر 56 HC حکام مفر مال ایں

XXX روال راک آ ۔ پر م الزام حکام آ ۔ قدر عدل 1137
320/353 4/X/12
341/186
352/34
مماں مٹی میں بزدلی کا ارتکاب کیا اس وقوع میں جو کچھ لکھا ہے غیر سچا ہے اس کا ارتکاب نہ ہوا ہے۔

میں کیا کیا طابقت میں دلائل کر رہے ہیں۔
جس سے حکام ملزمان مفر سب سے جاری جاری کا راسم کے ہیں مفر ای ایس ایس ایل عدل مفر 4536 FRP
مقام احقر صرف سرانہ مفر ایس ایس ایس کی طرف سے چھین کر جو ٹائٹل کر دی جو ملزمان کی طرف سے کر دی ہیں اس میں اسے شدت سے کسی ٹائٹل سے کٹ کر ماضی نام ملزمان کی مندرجہ ذیل دست با آئیں کے بارے میں مفر ایس ایس ایس ملزمان کو دست دہا کے نام پر بارے SMG سے ٹائٹل کی ہیں ملزمان وقوع سے بھارت

XXX روال مفر ماضی کیا آ ۔ بزدلی کے سلسلے میں ہیں مفر ایس ایس ایس واقعہ میں ہے
جی ہاں ۔ مگر وقوع کی ٹیٹ جو کہ مفر ایس ایس بزدلی میں ملزم ہے سی کے جواب

الحمد للہ

attested

Munir A. Bhalla
Adv. H. C, ATD

بیان از این مامورین 1222 قسمت معان صدر سلسلہ نے بدر اہانت بیان کیا
 حرف 4/12 میں پہلی اسسٹنٹ کھواری رخصت یاغہ ڈانٹ پر خود کا سینہ 1111
 سیکورٹی سے مع دیا کہ حکم 540 میں معان صدر سلسلہ آپ اپنا ڈانٹ صورت پر بار
 آج اس پر سزا غیر سزا کی اساتذہم داخل ہوئی ہے جو اس المدع میں 1226
 سیدلہ جو پہلے بیان میں سف الرمن 1111 کے لئے 33 درجہ تھا۔ سف الرمن 911 نے ار
 پائل عافت 1226 کر رہا تھا۔ اس وقت اس کے پاس میں اور کی طرف اس اور
 پڑھ مائی سول کے پاس نہیں تھا۔ میں حکم پر چلے۔ اسی اساتذہم سف 11
 کا فون آیا، اس کے فون پر آپ اسے ڈانٹ رہی ہیں۔ میں «بارہ»
 آتا تو سف الرمن 1111 ہم سے ہوا، ہاٹری غیر دالی تو آپ کے پاس نہیں کر رہی اور
 نے جواب کیا، بیان کوئی اس قسم کی ہاٹری میں گزری۔ سف الرمن 911 نے
 ہمیں بتایا، اس پر اس طرح ہم سیدرہ گاؤں سف الرمن 1111 میں چلے گئے
 جہاں سف الرمن 911 نے اسے مامورین آتے رہا دفعہ لٹ بیٹھی سالی
 سے اس پر دفعہ جو کہ گیا اسے دوران 540 میں اور مان م نونہ ایم
 کو پہنچے اس کے دفعہ سے سزا صرف زبانی سف الرمن 1111 بتایا
 جمع دفعہ میں جسے فرسین دیکھا گیا اسی بیان ہے جو اس سے

سف الرمن 911 دفعہ کی سزا کو کیا بتایا؟
 سف الرمن 1111 کے بتایا، سزا کوئی سزا کی سزا کر رہے تھے اس وقت 1222
 کی سزا کوئی سزا نہ تھی کیا جو سیدرہ گاؤں پہنچے غیر دالی ہاٹری دفعہ سے معاف
 سزا سے کامیاب ہو گئی یہ ہاٹری کی اور کرت والوں جہاں اس وقت رہا تھا جو سزا میں تھیں
 سزا کوئی سزا نہیں تھی اس لئے ان سے سزا ملنے سے پہلے سزا کوئی سزا نہ تھی
 سزا کوئی سزا کی ہے وہ زہنی سزا ملنے سے دفعہ دفعہ سے معاف

alleged
 Syed A. Shalbi
 Munsif A. Shalbi
 Adv. A. C. AFD



Ann - I **(21)**

**OFFICE OF THE DEPUTY SUPERINTENDENT
OF POLICE CIRCLE SHINKIARI.**

No. 14 Dated 14/01/2013.

To

The District Police Officer,
Manshra.

Subject DEPARTMENTAL ENQUIRY AGAINST HC SAIF-UR-REHMAN
NO. 56 PS CITY MANSEHRA UNDER THE K.P.K
DISCIPLINARY RULE 1975.

Memorandum.

Please refer to your office Endst: No. 3509-10/PA dated 11-10-2012 attached in original.

The departmental enquiry in respect of HC Saif-ur-Rehman No. 56 PS City Mansehra has received, in which he has alleged that he showed high degree of cowards and criminal negligence in an incident vide FIR No. 1137 dated 04-10-2012 u/s 324/353/341/186/382/34 PPC PS city Mansehra, wherein two unarmed timber smugglers fired upon your and snatched a pistol from him.

For scrutinizing the facts enquiry in hand was marked to the undersigned to probe into. I started the process of enquiry in the light of above leveled allegation, and summoned to HC Saif-ur-Rehman No. 56 and Constable Nasir No. 1222 PS City Mansehra, whose appeared before the undersigned, I examined them and recorded their statement, cross questions also been made from them, which are enclosed.

➤ **FINDING:-** →

From the perusal of above circumstances it was found that HC Saif-ur-Rehman alongwith Constable Adil No. 4536 were present on usual night patrolling at village Basund. They received an information through police informer that an illegal timber loaded vehicle is coming from Phulra toward Mansehra. HC Saif-ur-Rehman No. 56 gave that information to Inspector Amjid Hussain SHO PS Saddar Mansehra, Amjid Hussain SHO PS Saddar asked the HC Saif-ur-Rehman that he contact with rider Atif and told him that he stay with you. HC Saif-ur-Rehman

altered

Inf. o. Mail

Munir A. Bhatti

Adv. H-C, AFD

and he himself reached to village Ghazo near Ziarat, in the mean time the above illegal timber loaded vehicle reached there, HC gave the signal to driver to stop the vehicle but he refuse the signal of HC and driver flew-away the vehicle towards village Badra. HC Saif-ur-Rehman follow the said vehicle and he also reached there, in the mean time Motorcar Crola 86 driven by Arshad alias Shada s/o Ashraf r/o Gujran and Afzal alias Sona s/o Khani Zama r/o Tanda whose were look after the above vehicle have blocked the road and stated the quarrel with police officials, Afzal alias Sona snatched the pistol of HC Saif-ur-Rehman and started the firing upon him. Resultantly HC Saif-ur-Rehman has received fire injury on his arm pit, accused after committing of offence flood-away from spot towards the Parhana. HC Saif-ur-Rehman informed the SHO Saddar Amjid Hussain on his cell number regarding the occurrence as a result of which the cited case was registered in PS City Mansehra accordingly. After conducting detail enquiry, I reached to the conclusion that HC Saif-ur-Rehman has showed cowardice in the above occurrence the reason that two unarmed timber smugglers has snatched his pistol from him and fired upon the HC Saif-ur-Rehman, due to which he received fire injury on his arm pit, he also failed to get assistance of police strength from PS City or PS Saddar Mansehra to follow the above accused. Hence he is recommended for suit able punishment.

Submitted please.

[Signature]
Dy: Supdt: of Police,
Circle Shinkiyari.

Encls:(07).

AA
Issue F.S.C Notice

[Signature]
DPO Mansehra

attested
[Signature]
Mum A. Bhatti
A.S.W. I.A.C., MTD.

FINAL SHOW CAUSE NOTICE

You HC Saif ur Rehman No. 56 were proceeded against departmentally with the allegation that on 04-10-2012 you showed high degree of cowards and criminal negligence in an incident vide FIR No. 1137 dated 04-10-2012 U/S 324/353/341/186/382/34 PPC PS City Mansehra, wherein two unarmed timber smugglers fired upon you and snatched a pistol from you.

In this connection you were proceeded against departmentally. Mr. Mukhtiar Ahmad DSP, Shinkhari Enquiry Officer after conducting proper departmental enquiry has submitted his report. The Enquiry Officer recommended punishment for you. I am agree with the report of Enquiry Officer and therefore, hereby finally call upon you HC Saif ur Rehman No. 56 to show cause as to why you should not be awarded major punishment under the Khyber Pakhtunkhwa Police Disciplinary Rules 1975. In case your written reply is not received within 07 days after the receipt of this final show cause notice it shall be presumed that you have no defense to offer. You are also allowed to appear before the undersigned, if you so desire. (Copy of the finding of the Enquiry Officer is also enclosed).

District Police Officer,
Mansehra

attested

M. A. Bhatt

Munir A. Bhatt

Adv. H-C, MTD

23-A

بجای DPO نمبرہ

از دفتر Steno نمبرہ

نمبر۔ 238/PA مورخہ 13-1-22

بخدمت جناب AI سیکرٹری پولیس لائن مانسہرہ

بکار سرکار تحریر ہے کہ HC سید الرحیم گل صاحب کے خلاف فائینل شو کا نوٹس، بجگم

DPO صاحب، جاری ہوا ہے۔ لہذا نوٹس کی تعمیل کروا کر اندر تین 03 یوم دفتر ہذا میں ہمراہ جواب پیش ہونے کی تعمیل فرمائیں۔

A-Steno to DPO,
Mansehra

دستخط و مہول کنندہ
الذی

سید امیر علی

28-01-13

دست فائینل سیکرٹری لائن 1187

اللہ

Mumtaz A. Bhatti
Adv. H-C, AFD

ضلع عالی

انڈیا ٹیری ریفورٹ He سینٹر الر کوارٹر 56
مختصہ یو این ڈی این ال ایچ صرف سے ملو گے

He سینٹر الر کوارٹر سے آفری شوبہ رٹوش با جواب دیا و
انڈیا ٹیری سینٹر ASD سے شوبہ رٹوش سے آگے سے ثابت
میلو گیا ہے کہ He کے بڑھتی اور نا اہلی کا وہ سے
ملزبان سے اس کا ذاتی لیول چھین کر لے گئے ہیں
وظیفہ یو این ڈی آر ایفیل 155 عمر (B) (H) - اور P.C سے
دفعہ 221 کے ذریعہ میں آتا ہے جو میجر سزا کا عقوبت
رپورٹ سے ہے

~~Post Manager
4/27/13~~

attached
Munir A. Bhatti
Adv. H.C, ASD.



Ann-M

25-A

POLICE DEPARTMENT

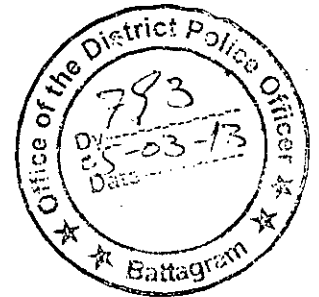
MANSEHRA DISTRICT

Office of the DPO Mansehra No 2647 /OHC, Dated 26/02/2013

From The District Police Officer,
Mansehra

To The District Police Officer,
Battagram.

Subject: DEPARTMENTAL ENQUIRY.



Memorandum

Head Constable Saif Ur Rehman No. 56 of Batagram district serving in Manshara district on loan basis, was proceeded against departmentally for the allegation that, on 04-10-2012 he showed high degree of cowards and criminal negligence in an incident vides FIR No. 1137 dated 04-10-2012 U/S 324/353/341/186/382/34 PPC PS City Mansehra, wherein two unarmed timber smugglers fired upon him and snatched a pistol from him.

Mr. Mukhtiar Ahmad DSP Shinkhari was deputed to conduct enquiry against the delinquent Head Constable Saif Ur Rehman No. 56 into the matter. The Enquiry Officer after conducting proper departmental enquiry proceedings has submitted his findings. The charges leveled against the delinquent Head Constable Saif Ur Rehman No. 56 have been proved. A final show cause notice was served upon the delinquent official. In response to final show cause notice the delinquent Head Constable Saif Ur Rehman No. 56 has submitted his written statement which was not satisfactory. He was also heard in person in orderly room held on 25-02-2013 but he could not satisfy the undersigned with his verbal defence. X

*Sir,
Submitted
for the
final order
and sent
order, pi*

The departmental file in respect of delinquent Head Constable Saif Ur Rehman No. 56 is sent herewith for passing final order. As the allegation found against the delinquent official have been proved; therefore it is recommended that he may be awarded punishment of reversion from the rank of the Head Constable to the rank of Constable under intimation to this office.

Encl(1)

[Signature]
District Police Officer,
Mansehra.

No. _____/OHC

Copy submitted to the Regional Police Officer Hazara Region Abbottabad for favour of information, please.

Handwritten notes:
A. Balh
C, ATD

District Police Officer,
Mansehra.

Handwritten notes:
Stereo
For n/a
Reversion
570

ORDER.

Ann - N

26

Head Constable Saifur Rehman No.56, of this District Police on loan to Mansehra District was proceeded against departmentally vide DPO Mansehra Memo: No.2647/OHC dated 26.02.2013, for the allegations that on 24.10.2012 he showed high degree of cowards and criminal negligence in an incident vides FIR No.1137 dated 04.10.2012 U/S 324/353/341/186/382/34 PPC PS City Mansehra, wherein two unarmed timber smugglers fired upon him and snatched a pistol from him.

Mr. Mukhtiar Ahmed DSP Shinkiari was deputed to conduct enquiry against the delinquent Head Constable Saifur Rehman No.56 into the matter. The enquiry officer after conducting proper departmental enquiry proceedings has submitted his findings. The charges leveled against the delinquent Head Constable Saifur Rehman No.56 have been proved. A final show cause notice was served upon the delinquent official. In response to final show cause notice the delinquent Head Constable Saifur Rehman No.56 has submitted his written statement which was not satisfactory. He was also heard in person in orderly room held on 25.02.2013 but he could not satisfy the undersigned with his verbal defence.

Keeping in view the above circumstances and recommendation of DPO Mansehra I, Ghulam Hussain, District Police Officer, "Competent Authority" awarded to Head Constable Saifur Rehman No.56, punishment of reversion from the rank of Head Constable to the rank of Constable under Police disciplinary rules-1975.

OB No. 23 Announced.

Dated: 12.03.2013.

(GHULAM HUSSAIN)
District Police Officer,
Battagram.
Competent Authority

Dated Battagram the, 11-03 2013.

Copies submitted to the for favour of information:-

1. Regional Police Officer, (Hazara Region) Abbottabad, with reference DPO Mansehra, Memo: No. quoted above, please.
2. District Police Officer, Mansehra, with reference to his office Memo: No. quoted above, please.

District Police Officer,
Battagram.

ATTESTED

Dy. Superintendent of Police
HQ Battagram
18-3-13

attested

Munir A. Bhatt
Adv. H.C, ADD

No. 109-101PA

Ann-0

27

From: - The District Police Officer,
Battagram.


To, The Regional Police Officer,
Hazara Region, Abbottabad.

No. 2528 /SRC, dated Battagram the, 04-04-2013.

Subject: - REPRESENTATION.

Memorandum:-

Enclosed kindly find herewith a representation submitted by Constable (Ex-HC) Saif-ur-Rehman No.56 of this District on-loan to Mansehra District for favour of further necessary action, please:


District Police Officer,
Battagram.

attested

1
Munir A. Bhatti

Adv. A.C., ATD.

BEFORE THE D.I.G. HAZARA RANGE
ABBOTTABAD

APPEAL AGAINST THE ORDER OF D.P.O.
BATTAGRAM VIDE WHICH THE APPELLANT WAS
REVERTED TO THE RANK OF F.C.

PRAAYER

On acceptance of appeal the impugned order of reversion may kindly be set aside and the appellant may kindly be restored to the rank of Head Constable.

Respected Sir,

1. That, the appellant alongwith the police party were on Gusht and received information about the smuggling of timbers, the appellant deployed the riders on various road and himself was on Gusht on Khewari Road; in the meanwhile the timbers smugglers came over there and a signal was given to them, but they fled away and we chased the timber smugglers and stopped them. They started grappling with the appellant and in the said process one of the smuggler snatched pistol and fired at the appellant. Had the appellant been free from grappling, or had the appellant ran away from the spot then it could have been said that the appellant had showed cowardice, the appellant had tried his best to meet the situation otherwise, but on account of grappling the smugglers snatched away the pistol. The appellant, though had received a fire arm injury, but did not leave the ground rather

alleged

1
Munir A. Bhatti

Adv. H.C., ATD

stood firm which would show that no any cowardice was exhibited/displayed.

- 2. That, the cowardice so mentioned is neither correct nor was every displayed by the appellant, it was altogether a vis; major that the said smuggler during grappling snatched the pistol which led to such situation.

It is therefore, most respectfully prayed that on acceptance of instant appeal the impugned order of reversion may kindly be set aside and the rank of head constable may kindly be restored.

Dated: 01-04-2013

Said Ur Rehman, Constable NO.56, F.C. Ex-Head Constable, presently Police Line Mansehra.....Appellant

attested
 /
 Muzni A. Bhalla
 Adv. High Court, MTD

Ann-Q

From: The Regional Police Officer,
Hazara Region, (Abbottabad).

To: The District Police Officer,
Battagram.

No. 6859 /PA Dated Abbottabad, the 7-8-2013.

Subject: REPRESENTATION

Memo:

- 1) Please refer to your office Memo: No.4332/SRC dated 21-06-2013.
- 2) After personal hearing in the OR held on 05-08-2013, the representation of Constable Saif-ur-Rehman No.56 of your District was reviewed and rejected.
- 3) The Service Record alongwith Fauji Missal containing enquiry file of FC Saif-ur-Rehman No.56 is returned herewith for record in your office.

Encl: - (as above)

[Signature]
REGIONAL POLICE OFFICER
Hazara Region, Abbottabad

OFFICE OF THE DISTRICT POLICE OFFICER, BATTAGRAM

Received by
[Signature]

[Signature]
SRC
15/8/2013

No. 6722 /SRC, Dated Battagram the, SR 23/08/2013.
Copy for information to the Const:
Saifur Rehman No.56 through DPO, Mansehra.

To Informed Const:
Saif-ur-Rehman No.56

RC
District Police Officer,
Battagram.



RC
[Signature]
15/8

attested

[Signature]
Mumtaz A. Bhatti
Adv. H.C, ATD.

[Signature]
23/8-2013

جناب عالی

جوالم مشمول چارج ٹیکٹ و ڈسپینری ایکشن ٹیکٹ
 مشمول ہذا فقروہن خدمت ہوں کہ سب سے درمیانی
 2012 - 4 کو میں مسلح بہہ داخل سرکاری زیر
 نگرانی سیف اترمن HC اعمان صدر مال سندھ کے بسند
 روڈ پر گشت کیا تھا۔ تم سیف اترمن HC صاحب کو
 بددلیہ فخر اطلاع ملی کہ بھلڑہ کی جانب سے ٹکڑے بھری
 بلیک کی ڈاکس آرہی ہے جس پر سیف اترمن
 HC نے S.H.O صاحب کو مطلع کیا اور نئی طلب کی۔
 جس پر S.H.O صاحب نے کھواڑی گشت دائرہ کو
 بیماری مدد کیلئے دیکھنے کی ہدایت کی۔
 اس پر سیف اترمن HC نے مذکورہ دائرہ کو چائی
 اسکول بیدارہ کے مقام پر پہنچ کر ڈاکس کا منتظر کرنے
 کو کہا اور خود سڑک پر نام بندی کے جوہر دیکھے
 کہ ایک ٹکڑے سے بھری تینر رفتار ڈاکس آئی جس کو ہم
 دیکھنے کا اشارہ کیا لیکن وہ نہ رکی۔ جس پر ہم نے
 پرائیویٹ آٹو جوڑے ڈر لے ڈاکس کا تعاقب کیا
 لیکن ڈاکس بیدارہ گاؤں کے قریب میں تازہ پل
 گئی۔ اس کے اثناء میں ڈاکس کی OP کرنے والی
 ایک عدد 86 ٹرولر جوڑے میں کچھ افراد سوار تھے نے ہمارا
 دستہ روکا اور گاڑی میں سے سوار افراد جن کی تعداد
 ما اندازہ دات کی تادیبی میں حصے نہ ہو سکے۔
 گاڑی سے نیچے اترے اور لٹکارتے تاکہ بیماری ڈاکس
 کا تعاقب کیوں کیا۔ اور کیوں روکنے کی کوشش
 کی ہے ساتھ ہی فرمان پراس سائڈ دست و گریبان
 ہو گئے۔ اسی دوران فرمان میں سے کسی نے
 فائر کیا جس کی گولی کے سیف اترمن HC ارضی ہوا
 چونکہ اندھیرا تھا۔ اس لیے میں نہ دیکھ سکا۔
 سیف اترمن HC ارضی ہو گیا ہے۔

اس دوران 2/3 افراد نے میری رائے کو دیکھنے کی کوشش کی جس پر میں نے حق حفاظت خود اختیاری کے تحت علم آوروں کو ڈرانے دھمکانے کیلئے چھوٹے چھوٹے فائر کیے اس پر مدزمان موقع سے بھاگ گئے ان سے جانے کے بعد جمع سیفے اٹرفلن 1HC نے اپنے ذمے چھوٹے اور بڑے چھین جانے کا بندوبست جس کی بابت F.R. تمام سٹی مالٹہ میں درج کروائی گئی جس کی نقل لف سے -

میں نے اپنے فرائلز منجھی دائرہ کار کے اندر ریست چھوٹے انتہائی دیانتدار، ذمہ داری اور جان نثاری سے انجام دی اور کوئی غفلت نہ ہوئی ہے۔ البتہ نفی کم چھوٹے کی وجہ سے مدزمان نے 1HC مذکورہ تو ذمے کیا اور مسئلہ بھی دیکھ کر گئے ہیں میری بندہ تی یا بے احتیاطی کا سوال ہی پیدا نہیں ہوتا

جناب سے التماس کی جاتی ہیں سائل کے خلاف جاری کی جانے والی چارج شیٹ و ڈسپلنری ایکشن شیٹ دافل دفتر فرمائی جائے

الاعمال
 اعظم 2012ء 22
 عادل منظور مانیٹل
 4536
 F.R.P.
 ستین
 تمام صدر مالٹہ -

اللہ کے

Prof. O. Malik
 Mum. A. B. Malik
 Adv. H.C., AFD

وکالت نامہ

کورٹ فیس قیمت

بعدالت خطاب خلیفہ فتحونجا سروس ٹرانسپورٹ بشاد

عنوان: سیف الرحمان بنام DPO مانسہرہ

منجانب: ایسٹ ایبڈ

نوعیت مقدمہ: سروس اپیل

باعث تحریر آنکہ

مقدمہ مندرجہ میں اپنی طرف سے واسطے پیروی و جواب دہی کل کارروائی متعلقہ آل مقام

بشاد و سیف الرحمان ایسٹ ایبڈ

کو وکیل مقرر کر کے اقرار کرتا ہوں کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا نیز وکیل صاحب

موصوف کو کرنے راضی نامہ و تقرر ثالث و فیصلہ بر حلف و دینے اقبال دعویٰ اور بصورت دیگر ڈگری کرانے اجراء

وصولی چیک روپیہ و عرضی دعویٰ کی تصدیق اور اس پر دستخط کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور

کی کل یا کسی جزوی کارروائی کے لئے کسی اور وکیل یا مختار صاحب قانونی کو اپنے ہمراہ اپنی بجائے تقرر کا اختیار

بھی ہوگا اور صاحب مقرر شدہ کو بھی وہی اور ویسے ہی اختیارات ہوں گے اور اس کا ساختہ پر داختم مجھ کو منظور و قبول

ہوگا۔ دوران مقدمہ جو خرچ و ہرجانہ التوائے مقدمہ کے سبب ہوگا اس کے مستحق وکیل صاحب ہوں گے۔

نیز بقایا رقم وصول کرنے کا بھی اختیار ہوگا۔ اگر کوئی پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب موصوف

پابند ہوں گے کہ پیروی مقدمہ مذکورہ کریں اور اگر مختار مقرر کردہ میں کوئی جزو بقایا ہو تو وکیل صاحب موصوف

مقدمہ کی پیروی کے پابند نہ ہوں گے۔ نیز درخواست بمراء استجارت ناش بصیغہ مفلسی کے دائر کرنے اور اس کی

پیروی کا بھی صاحب موصوف کو اختیار ہوگا۔

لہذا وکالت نامہ تحریر کر دیا تاکہ سند رہے۔

المقوم: 05/09/13

بمقام: ایسٹ ایبڈ

attested & accepted

Munir A. Bhatti

Munir A. Bhatti

Adv. High Court, AFD

(ایسٹ ایبڈ)

Sajid ur Rehman

Ex-Head Constable
P.S - Manselra

د. لکين، د افغانستان د پوهنتون د طب ښوونځي د لومړي
کلاس د څلورمې لاسه
د ښوونکي
د پيدايښت په مهال

د افغانستان د پوهنتون د طب ښوونځي د لومړي کلاس د څلورمې لاسه

د لکين

د ښوونکي

د افغانستان د پوهنتون د طب ښوونځي د لومړي کلاس د څلورمې لاسه

د ښوونکي

د افغانستان د پوهنتون د طب ښوونځي د لومړي کلاس د څلورمې لاسه

د ښوونکي

د افغانستان د پوهنتون د طب ښوونځي د لومړي کلاس د څلورمې لاسه

Before the KPK Service Tribunal, Peshawar

Saif ur Rehman, Ex Head Constable, Manselra

65
22/1/14

vs

District Police Officer, Manselra & others

(Service Appeal)

Application for transfer of captioned case to
Abbottabad

Respectfully Sheweth,

1. that the captioned case is instituted in this honourable tribunal which is fixed in Peshawar for preliminary hearing on 22/01/14.
2. that the parties reside and posted in Hazara, cause of action also arose in Manselra, Hazara.

It is, therefore, respectfully prayed that the captioned case, since it is admitted for regular hearing by the learned Judge of this honourable Tribunal, be fixed in Camp Court, Abbottabad for further proceedings

Appellant / Petitioner

Thru Counsel,

M. A. Mall

Munir A. Bhatti

Adv. High Court, AD

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

Put up
with case
file.

Appeal No. _____

22/10/13.

Saif ur Rehman, Ex Head Constable, Police Station Saddar, Presently at Police post Township, Police Station City, Mansehra.

Be fixed
at an early
available
date at Mansehra.

...APPELLANT/PETITIONER

VERSUS

District Police Officer, Mansehra and others.

1/11/13.

...RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KPK SERVICE
TRIBUNAL ACT, 1974.

**APPLICATION FOR EARLY HEARING OF THE CAPTIONED CASE IN
PESHAWAR**

Respectfully Sheweth; -

1. That the above titled case alongwith the application for suspension of the impugned order was instituted in this Honourable Tribunal on 09/09/2013 which is fixed for preliminary hearing before camp court Abbottabad on 17/03/2014.

2. That the nature of the case requires early hearing as if the impugned order is not suspended the appellant can not proceed for departmental training.

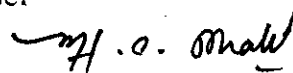
It is, therefore, respectfully prayed that the captioned case may kindly be fixed for early hearing in Peshawar.



...APPELLANT/PETITIONER

Dated: 17/01/2012

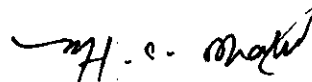
Through Counsel



(MUNIR AHMAD BHATTI)
Advocate High Court, Abbottabad

VERIFICATION:-

I, Munir Ahmad Bhatti Advocate High Court, Abbottabad, as stated by the appellant verify the contents of the forgoing application as true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal.



(MUNIR AHMAD BHATTI)
Advocate High Court, Abbottabad

Before The Khyber Pakhtunkhwa Service Tribunal, Peshawar

Service Appeal No. 1333/2013

Saif ur Rahman Ex Head Constable Police Station Saddar presently at Police Post Township
Police Station City Mansehra.

.....Appellant

VERSUS

1. The District Police Officer, Mansehra.
2. The District Police Officer, Batagram.
3. The Regional Police Officer, Hazara Region Abbottabad.
4. Govt. of Khyber Pakhtunkhwa, through Secretary Home Department Peshawar.

..... Respondents

Parawise comments on behalf of Respondents No. 1, 2, 3 & 4.

Respectfully Sheweth

Preliminary Objections:-

1. That the present appeal is barred by law.
2. That the appeal is not maintainable in the present form.
3. That the appeal is bad due to misjoinder and non joinder of necessary parties.
4. That the order of the competent authority has got finality and cannot be challenged at this stage.
5. That the appellant has got no cause of action to file the present appeal
6. That the appellant has got no locus standi to file the present appeal.
7. That the appellant is estopped due to his own conduct to file appeal.
8. That the appeal is bad in the present form and is liable to be dismissed.
9. That the appellant has not come to this Honorable Tribunal with clean hands.
10. That departmental representation of the appellant was time barred.

ON FACTS

1. Para No. 1 of the Appeal is correct.
2. Para No. 2 of the appeal is correct. The appellant was proceeded against departmentally on account of his cowardice amounting to mis-conduct as he was out flanked by two unarmed smugglers.
3. Para No. 3 of the appeal is correct.
4. Para No. 4 of the appeal is admitted.
5. Para No. 5 of the appeal is correct.

7. *Para No. 7 of the appeal needs no comments.*
8. *Para No. 8 of the appeal is admitted.*
9. *Para No. 9 of the appeal is also admitted.*
10. *Para No. 01 of the appeal is correct.*
11. *Para No. 11 of the appeal is correct to the extent that respondent No. 3 rejected departmental appeal of the appellant, the rest is denied.*
12. *Para No. 12 of the appeal need no comments.*

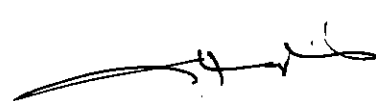
On Grounds:

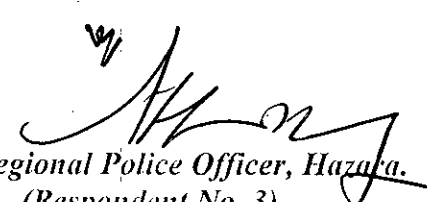
- A. *Incorrect. The orders of the respondents dated 07.08.2013 and 11.03.2013 are quite legal. The appellant was awarded punishment after proper departmental proceedings.*
- B. *Incorrect. The charges leveled against the appellant were proved beyond any doubt. It was proved during the enquiry process that the appellant committed cowardice amounted to gross misconduct. The appellant along with his rider colleague were armed, whereas unarmed smugglers snatched his pistol from him and even fired at him.*
- C. *Incorrect. The charges leveled were quite clear and unequivocal. Fact and circumstances also suggested that the appellant committed cowardice, whereas he himself admits in his statement that his pistol was snatched by smugglers from him.*
- D. *Incorrect. The appellant himself admitted cowardice in his statement, moreover it was proved beyond shadow of doubt that he committed cowardice. Facts, circumstances and statements against him also proved charges during the enquiry proceeding.*
- E. *Incorrect. Departmental authority has not acted in an arbitrary manner. No provision of law and rules have been violated so far. The principle of Audi Alterm Partm has been invoked at every step of enquiry. The appellant was provided every opportunity of full hearing to defend himself. The orders of the competent authority are just, legal and the appellant has rightly been reverted.*
- F. *Incorrect. The appellant could have fired at smugglers as a right of self defense. The accused were committing crime of illegal timber smuggling and the appellant was duty bound to apprehend them instead of surrendering.*


- G. Incorrect. The appellant was principally responsible for his own cowardice amounting to misconduct. The punishment is commensurate with the guilt committed by the appellant duly proved against him during the enquiry.
- H. Incorrect. Competent authority initiated departmental proceeding and competent authority awarded him punishment.
- I. The appellant was provided with full opportunity of hearing during the enquiry proceeding. The appellant did not cross examine witness meaning there by he waived off his opportunity.
- J. Incorrect. The appellant could have been tried both criminally and departmentally. It was upto the competent authority as to whether proceed against him criminally or departmentally. Therefore the competent authority decided to proceed against him departmentally.
- K. Incorrect. Enquiry proceedings conducted against the appellant are legal and no provision of law and rules have been violated so far.
- L. Incorrect. Police is a discipline force and cowardice committed by the appellant rightly attracted the punishment of reversion.
- M. Incorrect. The instant appeal is barred by law.

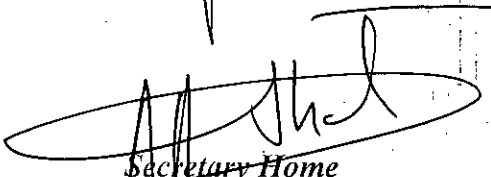
Prayer:-

In view of the above comments on facts and grounds it is therefore respectfully prayed that the appeal of the appellant may be dismissed with costs.


District Police Officer, Mansehra.
(Respondent No. 1)


Regional Police Officer, Hazara.
(Respondent No. 3)


District Police Officer, Battagram.
(Respondent No. 2)


Secretary Home
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 4)

VERIFICATION.

Verified on oath that the contents of foregoing written statement are through and correct to the best of knowledge and belief and no material has been suppressed/concealed from this honorable tribunal.


RESPONDENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No.1333/2013

Saif Ur Rehman

...APPELLANT

V E R S U S

District Police Officer, Mansehra & Others

...RESPONDENTS

REJOINDER ON BEHALF OF THE APPELLANT

Respectfully Sheweth;

The Para-wise replies of the comments are as under:-

PRELIMINARY OBJECTIONS:

1. That the para 1 of the reply is incorrect. The appeal in hand is well within time from date of communication of impugned order.
2. That the para 2 of the reply is incorrect, all legal and codal formalities had been complied with and form of appeal is also correct.
3. That the para 3 of the reply is incorrect, all the necessary parties had been impleaded, there is no misjoinder or non-joinder of the parties.
4. That the para 4 of the reply is incorrect, the appeal in hand is filed in accordance with law and rules laid thereunder and no finality is attached to the order of the competent authority.
5. That the para 5 of the reply is incorrect, cause of action accrued to the appellant when impugned order is communicated and received by the appellant.

17.06.15

6. That the para 6 of the reply is incorrect, since appellant is personally aggrieved from departmental and appellate authority orders therefore the appellant has got *locus standi* to institute the instant appeal.
7. That the para 7 of the reply is incorrect, the appellant promptly challenged the impugned order therefore there is nothing on record to suggest that the appellant is estopped to file the appeal in hand.
8. That the para 8 of the reply is incorrect, the appeal in hand is based on actual facts and reality and liable to be allowed.
9. That the para 9 of the reply is incorrect, the appellant has not concealed any material fact from this Hon'ble Tribunal therefore he approached this Tribunal with clean hands.
10. That the para 10 of the reply is incorrect, the appeal is instituted well within time after receiving the impugned order.

ON FACTS:-

1. That the para 1 of the reply is correct.
2. That para 2 of the reply is incorrect. The allegations of cowardice and negligence are not applicable on facts narrated by the appellant of the occurrence registered vide FIR No.1137 dated 05.10.2012. the appellant was attacked by two timber smugglers who were habitual and hardened criminals, the appellant received grievous fire arm injury, never fled away but courageously tried his level best to apprehend the criminals therefore he has not committed any misconduct.
3. That para 3 of the reply is correct.

4. That para 4 of the reply is correct.
5. That para 5 of the reply is correct.
6. That para 6 of the reply is missing from the copy provided to the appellant.
7. That para 7 of the reply requires comments which are not written by the respondents as legal opinion of the PDSP Mansehra advised criminal proceedings instead of departmental inquiry against the appellant which was not followed by the respondents.
8. That para 8 of the reply is correct.
9. That para 9 of the reply is correct.
10. That para 10 of the reply is correct.
11. That para 11 of the reply is, except pertaining to rejection of departmental appeal is incorrect.
12. That para 12 of the reply needs comments which are not mentioned by the respondents,

ON GROUNDS:-

- A. That ground "a" of the appeal is correct whereas ground "A" of the reply is incorrect. The impugned order dated 07.08.2013 passed by the appellate authority alongwith the order dated 11.03.2013 passed by the departmental authority are illegal, result of misreading of material on record and liable to be set aside.

- B. That ground "b" of the appeal is correct whereas ground "B" of the reply is incorrect. The rider colleagues of the appellant were not present on the spot at the time of occurrence but arrived after timber smugglers fled away. Further more the appellant was not officially permitted to fire directly at an individual in such like cases.
- C. That ground "c" of the appeal is correct whereas ground "C" of the reply is incorrect, the term cowardice is not defined any where in the Police Disciplinary Rules, 1975 or Police Rules, 1934. The plain dictionary meanings are lack of courage to face danger or pain which does not commensurate with the facts of the case.
- D. That ground "d" of the appeal is correct whereas ground "D" of the reply is incorrect, no admission was made in the statement by the appellant, the inference drawn by the respondents is illegal and against the facts.
- E. That ground "e" of the appeal is correct whereas ground "E" of the reply is incorrect. The appellant was neither provided any opportunity to cross examine the witnesses nor permitted to lead his evidence in defence.
- F. That ground "f" of the appeal is correct whereas ground "F" of the reply is incorrect. The appellant never surrendered but tried his level best to apprehend the criminals moreover injury which one inflicts in self defence must not be out of proportion to the injury with which he was threatened therefore the right of self defence was not available to the appellant.

- G. That ground "g" of the appeal is correct whereas ground "G" of the reply is incorrect, the appellant was not personally responsible of what happened at the place of occurrence. Moreover, the punishment imposed by the departmental authority does not commensurate with the alleged crime committed by the appellant.
- H. That ground "h" of the appeal is correct whereas ground "H" of the reply is incorrect. The departmental authority was neither competent to initiate the departmental proceeding nor order of reversion was proper, legal or appropriate.
- I. That ground "i" of the appeal is correct whereas ground "I" of the reply is incorrect. Appellant was neither provided an opportunity to cross examine witnesses nor permitted to lead evidence in his defence thus the principle of natural justice as enshrined in "audi altram partem" was blatantly violated.
- J. That ground "j" of the appeal is correct whereas ground "J" of the reply is incorrect, no proper order regarding initiation of departmental proceedings was passed by the competent authority.
- K. That ground "k" of the appeal is correct whereas ground "K" of the reply is incorrect, the penalty of reversion without specifying period of punishment is violation of the fundamental rules applicable to the civil servants.
- L. That ground "l" of the appeal is correct whereas ground "L" of the reply is incorrect, the punishment of reversion awarded to the appellant is harsh and would certainly defeat the reformatory concept of punishment in administration of justice.

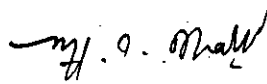
M. That ground "m" of the appeal is correct whereas ground "M" of the reply is incorrect, the appeal in hand is well within time after receipt of impugned order.

It is, therefore, humbly prayed that the comments of the respondents be rejected/ dismissed and appeal of the appellant may graciously be accepted alongwith special compensatory cost. Any other relief which this Hon'ble Tribunal deems appropriate may also be granted.



...APPELLANT

Through:



(MUNIR AHMAD BHATTI)

Advocate High Court, Abbottabad.

Dated:- 17/06/2015

VERIFICATION:

Verified that the contents of the foregoing *Rejoinder* are true and correct to the best of my knowledge and belief and that nothing material has been suppressed from this Honorable Tribunal.



...APPELLANT

Dated:- 17/06/2015

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 2172 /ST

Dated 5 / 10 / 2017

To


The District Police Officer,
Government of Khyber Pakhtunkhwa,
Battagram.

Subject: -

JUDGMENT IN APPEAL NO. 1333/2013, MR SAIFUR RAHMAN.

I am directed to forward herewith a certified copy of Judgement dated 19.09.2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

To

The Commissioner,
Bannu Division Bannu.

Subject:- SHOW CAUSE NOTICE.

Respected Sir,

With great reverence I beg to refer to show cause notice bearing No.AG-
I/PF.Nigar Naushad dated 28.5.2012 served upon me and to submit reply as under:-

1. That I had maintained proper record /register of telephone calls and noted each and every incoming call with date and time in the said record/register. The record and register are available in your goodself personal office.
2. That establishment/setting up of proper control room was not my responsibility nor it was within my sphere of duty hence the fault can not be attributed to me.
3. That usually the operator of police Control Room while communicating message to our control room ask the operator to pass on the message to Commissioner Bannu Division specifying the magnitude of the message. On the night of Central Jail Bannu incident the operator of Police Control room did not specify the sensitivity of the matter and not told me to inform the Commissioner hence I acted as usual and noted down the message. However on receipt of written report from the Special Branch about the jail incident early in the morning I immediately informed the Commissioner Bannu Division.

I had performed duty in your goodself personal office wholeheartedly and devotedly by working day and night to the entire satisfaction of superior officers and no complaint was made against me. I have no fault at all in the jail incident case being Class-IV employee and innocent.

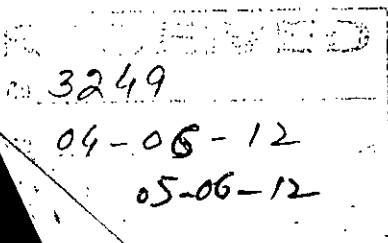
It is therefore humbly prayed that I may please be exonerated of the charges mentioned in the show cause notice and the same may please withdrawn so as my children are saved from starvation. *I wish to be heard in person.*

Dated: 04/06/2012

Yours obediently,

(Nigar Noshad)

Naib Qasid /Telephone Operator
Commissioner's Office Bannu



ACK
05-06-2012

04/06/2012